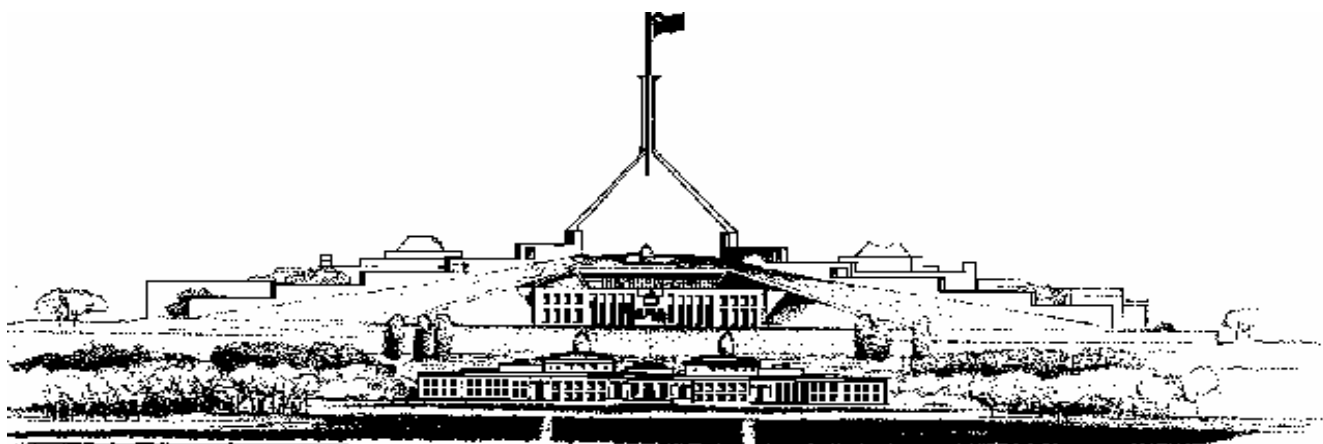




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**Senate**

**Official Hansard**

**No. 17, 2005**

**THURSDAY, 10 NOVEMBER 2005**

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

**BY AUTHORITY OF THE SENATE**



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### SITTING DAYS—2005

Month	Date
February	8, 9, 10
March	7, 8, 9, 10, 14, 15, 16, 17
May	10, 11, 12
June	14, 15, 16, 20, 21, 22, 23
August	9, 10, 11, 16, 17, 18
September	5, 6, 7, 8, 12, 13, 14, 15
October	4, 5, 6, 10, 11, 12, 13
November	3, 7, 8, 9, 10, 28, 29, 30
December	1, 5, 6, 7, 8

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**FORTY-FIRST PARLIAMENT  
FIRST SESSION—FOURTH 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. Robert Murray Hill

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

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

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

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

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

**Senate Party Leaders and Whips**

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

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

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

*Deputy Leader of The Nationals*—Senator John Alexander

Lindsay (Sandy) Macdonald

*Leader of the Australian Labor Party*—Senator Christopher Vaughan Evans

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

*Leader of the Australian Democrats*—Senator Lynette Fay Allison

*Leader of the Family First Party*—Senator Steve Fielding

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

*Nationals Whip*—Senator Julian John James McGauran

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

*Australian Democrats Whip*—Senator Andrew John Julian Bartlett

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### Members of the Senate

Senator	State or Territory	Term expires	Party
Abetz, Hon. Eric	TAS	30.6.2011	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
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 <sup>(4)</sup>	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 <sup>(3)</sup>	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 <sup>(2)</sup>	VIC	30.6.2008	LP
Forshaw, Michael George	NSW	30.6.2011	ALP
Heffernan, Hon. William Daniel	NSW	30.6.2011	LP
Hill, Hon. Robert Murray	SA	30.6.2008	LP
Hogg, John Joseph	QLD	30.6.2008	ALP
Humphries, Gary John Joseph <sup>(3)</sup>	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 <sup>(3)</sup>	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	NATS
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, Santo <sup>(1)</sup>	QLD	30.6.2008	LP
Scullion, Nigel Gregory <sup>(3)</sup>	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.

#### PARTY ABBREVIATIONS

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

#### **Heads of Parliamentary Departments**

Clerk of the Senate—H Evans

Clerk of the House of Representatives—I C Harris

Secretary, Department of Parliamentary Services—H R Penfold QC

## HOWARD MINISTRY

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

**(The above ministers constitute the cabinet)**



# **HOWARD MINISTRY—*continued***

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

## SHADOW MINISTRY

Leader of the Opposition	The Hon. Kim Christian Beazley MP
Deputy Leader of the Opposition and Shadow Minister for Education, Training, Science and Research	Jennifer Louise Macklin MP
Leader of the Opposition in the Senate, 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 Aged Care, 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 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, 10 NOVEMBER

### Chamber

Notices—	
Presentation .....	1
Business—	
Rearrangement.....	8
Rearrangement.....	8
Rearrangement.....	9
Committees—	
Foreign Affairs, Defence and Trade References Committee—Reference .....	9
Commonwealth Scientific and Industrial Research Organisation.....	9
Committees—	
Legal and Constitutional References Committee—Extension of Time .....	10
National Recycling Week .....	10
Multiculturalism And Australia's Muslim Communities .....	10
Committees—	
Publications Committee—Report.....	11
Budget—	
Consideration by Legislation Committees—Additional Information .....	11
Committees—	
Regulations and Ordinances Committee—Report.....	11
Community Affairs References Committee—Additional Information.....	11
Australian Crime Commission Committee—Report.....	11
Foreign Affairs, Defence and Trade References Committee—Report .....	16
Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005—	
Second Reading .....	24
In Committee .....	45
Third Reading.....	47
Business—	
Rearrangement.....	48
Personal Explanations.....	51
Corporations Amendment Bill (No. 1) 2005—	
Second Reading .....	53
In Committee .....	60
Third Reading.....	61
National Health Amendment (Immunisation Program) Bill 2005—	
Second Reading .....	61
Third Reading.....	66
Higher Education Legislation Amendment (2005 Measures No. 3) Bill 2005—	
Second Reading .....	66
In Committee .....	70
Third Reading.....	71
Questions Without Notice—	
Workplace Relations.....	71
Indonesia: Terrorist Attacks.....	73
Workplace Relations.....	74
Workplace Relations.....	75
Workplace Relations.....	76

## CONTENTS—*continued*

Family Assistance.....	78
Human Embryo Export .....	79
Broadband Services .....	80
Telstra .....	81
Senate Processes.....	83
Defence: Funding .....	84
Queen's Baton Relay .....	85
Answers to Questions on Notice—	
Question Nos 908, 1031, 1032, 1151, 1152, 1172, 1241 and 1287 .....	86
Department of Parliamentary Services .....	88
Questions Without Notice: Take Note of Answers—	
Workplace Relations.....	88
Committees—	
Reports: Government Responses.....	94
Community Affairs References Committee—Reports: Government Response .....	157
Community Affairs References Committee—Reports: Government Response .....	159
Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Bill 2005—	
Report of Economics Legislation Committee .....	163
Energy Efficiency Opportunities Bill 2005—	
Report of Economics Legislation Committee .....	163
Committees—	
Economics Legislation Committee—Report.....	163
Membership.....	163
Workplace Relations Amendment (Work Choices) Bill 2005—	
First Reading .....	164
Second Reading .....	164
Border Protection.....	170
Documents—	
Australian Industrial Relations Commission and Australian Industrial Registry .....	195
Industrial Relations Court of Australia.....	198
Consideration.....	201
Personal Explanations.....	202
Notices—	
Presentation .....	203
Committees—	
Electoral Matters Committee—Report.....	205
Consideration.....	205
Auditor-General's Reports—	
Consideration.....	206
Adjournment—	
Townsville City Council.....	206
Remembrance Day 2005 .....	208
World Diabetes Day .....	210
Mrs Joanna Gash .....	212
Documents—	
Tabling.....	212
<b>Questions on Notice</b>	
Minister for Small Business and Tourism—(Question No. 894 supplementary) .....	214
Minister for Veterans' Affairs—(Question No. 896 supplementary) .....	214
Cairns Search and Rescue—(Question No. 1070).....	215

**CONTENTS—*continued***

Transair Pty Ltd—(Question No. 1075) .....	215
Aviation: Night Vision Goggles—(Question No. 1220).....	216
Coal Exports—(Question No. 1269) .....	217

*Thursday, 10 November 2005*

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

## NOTICES

### Presentation

**Senator Allison** to move on the next day of sitting:

That the Senate—

(a) notes and welcomes:

- (i) the L28 resolution, 'Renewed determination towards the total elimination of nuclear weapons', sponsored by Australia, Bangladesh, Chile, Italy, Japan, Nepal, Nicaragua, Spain, Switzerland and Ukraine and passed by the United Nations (UN) General Assembly First Committee with unprecedented support and only India and the United States of America (US) voting against it, and
- (ii) the L26 resolution on the Comprehensive Nuclear-Test-Ban Treaty (CTBT) sponsored by Andorra, Australia, Czech Republic, Finland, Mexico, New Zealand and South Africa and was passed with only the US voting against it;

(b) notes that resolution L28:

- (i) calls for the nuclear weapon states to further reduce the operational status of nuclear weapons systems in ways that promote international stability and security,
- (ii) encourages further steps leading to nuclear disarmament, to which all states party to the Nuclear Non-Proliferation Treaty (NPT) are committed under Article VI, including deeper reductions in all types of nuclear weapons, and emphasises the importance of applying irreversibility and verifiability, as well as increased transparency in a way that promotes international stability and undiminished security for all, in the process of working towards the elimination of nuclear weapons,

- (iii) encourages the Russian Federation and the US to implement fully the Treaty on Strategic Offensive Reductions and to undertake nuclear arms reductions beyond those provided for by the treaty, while welcoming the progress made by nuclear weapon states, including the Russian Federation and the US on nuclear arms reductions,
- (iv) urges all states that have not yet done so to sign and ratify the CTBT at the earliest opportunity with a view to its early entry into force, and stresses the importance of maintaining existing moratoriums on nuclear weapon test explosions, pending the entry into force of the CTBT,
- (v) calls on states not party to the NPT to accede to it as non-nuclear weapon states without delay and without conditions and, pending their accession, to refrain from acts that would defeat the objective and purpose of the NPT, and to take practical steps in support of the treaty,
- (vi) emphasises the importance of the immediate commencement of negotiations on a fissile material cut-off treaty (FMCT) and its early conclusion, and calls on all nuclear weapon states and states not party to the NPT to declare moratoriums on the production of fissile material for any nuclear weapons, pending the entry into force of the FMCT,
- (vii) calls on all states to redouble their efforts to prevent and curb the proliferation of nuclear and other weapons of mass destruction (WMD) and their means of delivery, and
- (viii) stresses the importance of further efforts for non-proliferation, including the universalisation of International Atomic Energy Agency comprehensive safeguards and the Additional Protocol on strengthened safeguards, and the full implementation of UN Security Council resolution 1540; and

(c) reaffirms the importance of:

- (i) the continued development of the CTBT verification regime, including the international monitoring system,
- (ii) all states party to the NPT complying with their obligations under all the articles of the treaty, and stresses the importance of an effective treaty review process and the universality of the NPT,
- (iii) the early entry into force of the CTBT and of all efforts made by Australia to further that aim,
- (iv) the nuclear disarmament and non-proliferation goals and the balanced approach to nuclear disarmament and non-proliferation contained in the final document of the 2000 NPT Review conference and the L28 resolution, and
- (v) international efforts to prevent the acquisition and the use by terrorists of nuclear or other WMD, and radioactive materials and sources, including strengthened international protection of WMD-usable materials and relevant equipment, facilities and technology.

**Senator Nettle** to move on the next day of sitting:

That the Senate—

(a) notes:

- (i) the recent widespread protest and opposition across Latin America to the President of the United States of America (US), George W Bush and his proposed Free Trade Area of the Americas,
- (ii) the concern of Latin Americans that such an agreement would reinforce economic inequality in the region and political domination by the US, and
- (iii) the failure of American leaders to agree to further negotiations on the agreement; and
- (b) commends the Argentinean people and Latin American leaders for their campaign to defend their culture and economies

from the threat of a Free Trade Area of the Americas.

**Senator Murray** to move on the next day of sitting:

That the Senate—

(a) notes that:

- (i) Senator Calvert, in his capacity as a senator for Tasmania, has written to the Prime Minister (Mr Howard) suggesting that the question of regularising daylight saving and examining time zones be listed for discussion at the next Council of Australian Governments (COAG) meeting, and
- (ii) Australia's time zones date from the 1880s and that individual approaches by states and territories to daylight saving have a significant, continuing and detrimental economic impact on Australian commerce and communications; and
- (c) supports the call for this important matter to be discussed at COAG as an important step in examining this economic handicap, and urges the Prime Minister to raise this important matter of reform with the Premiers and Chief Ministers of the states and territories.

**Senator Siewert** to move on Monday, 28 November 2005:

That the Senate—

- (a) notes the imminent arrival of the Japanese whaling fleet in the Southern Ocean and its intention to commence whaling under the greatly expanded JARPA II whaling program;
- (b) recognises the leadership the Australian Government has shown to date on this issue;
- (c) notes the changed legal context owing to the radical expansion of the Japanese whaling program;
- (d) supports the submission of JARPA II to an environmental impact assessment under the provisions of the Protocol on Envi-



ronmental Protection to the Antarctic Treaty;

- (e) supports the monitoring and documentation of the whaling program by Australian inspection vehicles;
- (f) urges that Australia requests:
  - (i) the Commission for the Convention on the Conservation of Antarctic Marine Living Resources to undertake an investigation of JARPA II at the earliest possible opportunity, and
  - (ii) that a diplomatic conference be convened to amend Article VIII of the International Convention for the Regulation of Whaling ; and
- (g) urges Australia to:
  - (i) commence a claim against Japan in an Annex VII Arbitral Tribunal under the provisions of the 1982 United Nations Convention on the Law of the Sea challenging the legality of JARPA II, and
  - (ii) seek an order for provisional measures to halt the conduct of JARPA II from the International Tribunal for the Law of the Sea, pending the establishment of the Annex VII Arbitral Tribunal.

**Senator WATSON** (Tasmania) (9.32 am)—Following the receipt of satisfactory responses, on behalf of the Standing Committee on Regulations and Ordinances, I give notice that on the next day of sitting I shall withdraw 5 notices of disallowance as follows:

Business of the Senate—Notices of Motion Nos.

- (1) Australian Passports Determination 2005, made under section 57 of the *Australian Passports Act 2005* and section 8 of the *Australian Passports (Application of Fees) Act 2005*.
- (2) Foreign Passports Determination 2005, made under section 24 of the *Passports Act 1938*.
- (3) Public Accounts and Audit Committee Regulations 2005, as contained in Select Legislative Instrument 2005 No. 127 and made under the *Public Accounts and Audit Committee Act 1951*.

Eight sitting days after today

Business of the Senate—Notices of Motion Nos.

- (1) Health Insurance (Obstetric Item 15999) Determination HS/02/2005, made under subsection 3C(1) of the *Health Insurance Act 1973*.
- (2) Variation to Licence Area Plan for Scottsdale Radio—No. 1 of 2005, made under subsection 26(2) of the *Broadcasting Services Act 1992*.

I seek leave to incorporate in *Hansard* the committee's correspondence concerning these instruments.

Leave granted.

*The correspondence read as follows—*

**Australian Passports Determination 2005 and Foreign Passports Determination 2005**

11 August 2005

The Hon Bruce Billson MP

Parliamentary Secretary to the Minister for Foreign Affairs

Suite R2.85

Parliament House

CANBERRA ACT 2600

Dear Parliamentary Secretary

I refer to the following Determinations made under section 57 of the *Australian Passports Act 2005* and section 8 of the *Australian Passports (Application Fees) Act 2005* and section 24 of the *Passports Act 1938* respectively

Australian Passports Determination 2005

The Committee raises the following matters concerning this Determination.

First, subsection 2.1(3) lists the special circumstances in which the Minister may issue a passport to a child even though a person with parental responsibility for the child has not given consent to the child travelling internationally. Paragraph 2.1(3)(g) specifies the issue of a family violence order, as defined under Part VII of the *Family Law Act 1975*, against the non-consenting parent as one such special circumstance. The definition of 'family violence order' under the *Family Law Act* includes interim orders (see section 60D(1)).

An interim order may be issued without evidence and in the absence of the party accused of violence. The Committee seeks your advice on whether it is intended that a passport may be issued to a child in such circumstances and, if so, whether a passport that is issued on the basis of an interim family violence order may be cancelled if the interim order is not subsequently confirmed.

Secondly, section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken particularly where a proposed instrument is likely to have an effect on business. Section 18 of the Act provides that in some circumstances consultation may be unnecessary or inappropriate. The definition of 'explanatory statement' in section 4 of the Act requires an explanatory statement to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken. The Explanatory Statement that accompanies this Determination, though detailed, makes no reference to consultation. The Committee therefore seeks your advice on whether consultation was undertaken and, if so, the nature of that consultation. The Committee also seeks an assurance that future explanatory statements will provide information on consultation as required by the *Legislative Instruments Act*.

#### Foreign Passports Determination 2005

The Committee notes that section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken particularly where a proposed instrument is likely to have an effect on business. Section 18 of the Act provides that in some circumstances consultation may be unnecessary or inappropriate. The definition of 'explanatory statement' in section 4 of the Act requires an explanatory statement to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken. The Explanatory Statement that accompanies this Determination makes no reference to consultation. The Committee therefore seeks your advice on whether consultation was undertaken and, if so,

the nature of that consultation. The Committee also seeks an assurance that future explanatory statements will provide information on consultation as required by the *Legislative Instruments Act*.

The Committee would appreciate your advice on the above matters as soon as possible, but before 2 September 2005, to enable it to finalise its consideration of this Determination. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

John Watson

Chairman

---

8 November 2005

Senator John Watson

Chairman

Standing Committee on Regulations and Ordinances

Australian Senate

Parliament House

CANBERRA ACT 2600

Dear Senator Watson

Thank you for your letter dated 11 August 2005 seeking advice on Determinations made under section 57 of the *Australian Passports Act 2005* and section 8 of the *Australian Passports (Application Fees) Act 2005*. I apologise for the delay in replying.

#### Australian Passports Determination 2005

Each application to issue a passport to a child in accordance with paragraph 2.1(3) (g) of the *Australian Passports Determination 2005* would be considered on an individual basis, and this includes interim orders. Passport issue would also be determined in accordance with paragraph 2.1(2).

A passport issued under 2.1(3) (g), on the basis of an interim family violence order that was not subsequently confirmed, would not be automatically cancelled. However, consideration may be given to cancellation of the passport in accordance with Section 22(2) (e) of the *Australian Passports Act 2005*.

Public consultations were undertaken with interested groups prior to the introduction of the Australian Passports Bill into Parliament to ensure the revised legislation met the needs of Australian passport holders. This process involved the setting up of a Passport Legislation Consultative Group to allow key stakeholders to be briefed on the proposed legislation and comment on the changes. Participants of the group were drawn from privacy, human rights, consumer, family law, police and citizenship groups and from travel, financial and biometrics industries with ex officio participation by the Privacy Commissioner.

The first of three meetings was held in Canberra on 23 February 2004. Public meetings were also arranged in Sydney, Melbourne and Canberra to allow members of the public the opportunity to comment on the revised legislation. Written submissions were also sought from interested members of the public. Proposals from these consultations were fed directly into the drafting of the bill.

Details on the level of consultation undertaken on legislative changes will be included in explanatory statements in future.

#### Foreign Passport Determination 2005

This information has previously been provided in response to your letters of 15 September 2005, addressed to Senator the Hon Chris Ellison, Minister for Justice and Customs, and 6 October 2005, addressed to the Hon Alexander Downer, Minister for Foreign Affairs.

A copy of the original response has been attached.

Yours sincerely

Bruce Billson

Parliamentary Secretary to the Minister for Foreign Affairs

*Attachment*

Mr John Watson

Chairman

Standing Committee on Regulations and Ordinances

Australian Senate

Parliament House

CANBERRA ACT 2600

Dear Mr Chairman

I refer to your letter of 15 September 2005 to the Senator the Hon Chris Ellison, Minister for Justice and Customs, requesting details of the nature of the consultations carried out in relation to the *Australian Passports Act 2005* and the *Foreign Passports (Law Enforcement and Security) Act 2005*.

Public consultations were undertaken with interested groups prior to the introduction of the Australian Passports Bill into parliament to ensure the revised legislation met the needs of Australian passport holders. This process involved the setting up of a Passport Legislation Consultative Group to allow key stakeholders to be briefed on the proposed legislation and comment on the changes. Participants of the group were drawn from privacy, human rights, consumer, family law, police and citizenship groups and from travel, financial and biometrics industries with ex officio participation by the Privacy Commissioner.

The first of three meetings was held in Canberra on 23 February 2004. Public meetings were also arranged in Sydney, Melbourne and Canberra to allow members of the public the opportunity to comment on the revised legislation. Written submissions were also sought from interested members of the public. Proposals from these consultations were fed directly into the drafting of the bill.

The seizure powers introduced under the *Foreign Passports (Law Enforcement and Security) Act 2005* were not covered by the public consultation arrangements due to the timeframe set by ASIO for this legislation to be introduced into Parliament.

Details on the level of consultation undertaken on legislative changes will be included in explanatory statements in future.

Thank you for your enquiry.

Yours sincerely

Alexander Downer

**Public Accounts and Audit Committee Regulations 2005, Select Legislative Instrument 2005 No. 127**

11 August 2005

Senator the Hon Nick Minchin

Minister for Finance and Administration

Suite M1.49

Parliament House

CANBERRA ACT 2600

Dear Minister

I refer to the *Public Accounts and Audit Committee Regulations 2005*, Select Legislative Instrument 2005 No. 127.

Schedule 1 to these Regulations specifies the fees payable to witnesses appearing before the Public Accounts and Audit Committee. The Committee notes that Items 1 and 2 in this Schedule specify a fee “for each day on which the witness appears”. It is not clear what, if any, fee is payable if a witness appears for only part of a day.

The Committee would appreciate your clarification on this matter as soon as possible, but before 2 September 2005, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

John Watson

Chairman

13 October 2005

Senator John Watson

Chairman

Standing Committee on Regulations and Ordinances

Room SG49

Parliament House

CANBERRA ACT 2600

Dear John

Thank you for your letter of 11 August 2005 in relation to the *Public Accounts and Audit Committee Regulations 2005*, Select Legislative Instrument 2005 No. 127 (the Regulations).

As the Explanatory Statement to the Regulations states, the Regulations repeal and replace the former Public Accounts Committee Regulations (the former Regulations). Both sets of Regulations set out the scale of fees and travelling expenses for witnesses appearing before the Joint Committee of Public Accounts and Audit (JCPAA). However, the former Regulations contained an outdated reference to the title of the JCPAA's Act, several instances of non-gender-neutral language and an ambiguous reference to the High Court Rules. The Regulations clarify these references. The JCPAA was consulted regarding the Regulations.

You have requested my clarification in relation to Items 1 and 2 of Schedule 1 to the Regulations. These Items specify a fee “for each day on which the witness appears” but does not state what, if any, fee is payable if a witness appears for only part of a day.

As was the case under the former Regulations, the fees payable under these Items are linked to the High Court Rules. The Registry of the High Court of Australia has advised my Department that, where such fees are payable, the full daily fee would be paid for each day's appearance, including part days. That is, if a witness appeared for one and a half days, two days' fees would be paid.

It is proper to follow the High Court's approach in relation to the administration of those fees linked to the High Court Rules in the Regulations. That is, a witness appearing before the JCPAA, who is to be paid a fee in accordance with Item 1 or 2 of Schedule 1 to the Regulations, should be paid the full day's fee, even where that witness appears for only part of a day.

The Office of Legislative Drafting and Publishing in the Attorney-General's Department has confirmed to my Department that this approach is an appropriate incorporation of the High Court Rules.

I have provided a copy of this letter to Mr Bob Baldwin MP, JCPAA Chair.

Yours sincerely

Nick Minchin

Minister for Finance and Administration

**Health Insurance (Obstetric Item 15999) Determination HS/02/2005**

8 September 2005

The Hon Tony Abbott MP

Minister for Health and Ageing

Suite MG.43

Parliament House

CANBERRA ACT 2600

Dear Minister

I refer to the Health Insurance (Obstetric Item 15999) Determination HS/02/2005 made under subsection 3C(1) of the *Health Insurance Act 1973*.

This Determination is expressed to apply until 31 October 2005. The Committee notes that it revokes and replaces a previous determination (HS/09/2004) that would cease to have effect on 2 September 2005. The Explanatory Statement does not give a sufficient explanation as to why it is necessary to, in effect, extend the operation of the previous Determination for 2 months. The Committee would therefore appreciate your advice on the reasons for extending the cessation date.

The Committee would appreciate your advice on the above matter as soon as possible, but before 30 September 2005, to enable it to finalise its consideration of this Determination. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

John Watson

Chairman

12 October 2005

Senator John Watson

Chairman

Senate Standing Committee on Regulations and Ordinances

Parliament House

CANBERRA ACT 2600

Dear Senator Watson

Thank you for your letter of 8 September 2005 regarding the Health Insurance (Obstetric Item 15999) Determination HS/02/2005 made under subsection 3C(1) of the *Health Insurance Act 1973*. I apologise for any confusion that the Explanatory Statement to this Determination may have caused.

By way of information, the purpose of Determination (HS/09/2004) was to introduce Medicare coverage for the planning and management of pregnancies that progress beyond 20 weeks. It was always the Department's intention to move this service from the Determination into the General Medical Services Table (GMST) which will occur for the 1 November 2005 update of the Medicare Benefits Schedule.

As you are aware the current Determination (HS/09/2004) ceased to have effect on 2 September 2005, so the purpose of the new Determination (HS/02/2005) is to allow for benefits to be payable between 2 September 2005 and 31 October 2005, prior to the 1 November 2005 GMST taking effect. This will ensure continued coverage for all patients and a seamless transition from the Determination into the GMST.

I trust that this information is of assistance.

Yours sincerely

Tony Abbott

Minister for Health and Ageing

**Variation to Licence Area Plan for Scottsdale Radio—No. 1 of 2005**

8 September 2005

Senator the Hon Helen Coonan

Minister for Communications, Information

Technology and the Arts

Suite MG.70

Parliament House

CANBERRA ACT 2600

Dear Minister

I refer to the Variation to Licence Area Plan for Scottsdale Radio —No. 1 of 2005 made under subsection 26(2) of the *Broadcasting Services Act 1992*, varies the characteristics of the technical

specification with which services in the Scottsdale Area of Tasmania area must comply. This Instrument is dated 5 August 2005.

The Committee notes that the opening paragraph to the Instrument, and the Explanatory Statement, each state that the Variation was made by the Australian Communications and Media Authority on 4 August 2005. The Instrument does not contain a commencement clause that specifies a day or time for commencement. Accordingly it appears that paragraph 12(1)(d) of the *Legislative Instruments Act 2003* applies; that is, the Instrument is taken to have commenced on the day after it is registered. If, on the other hand, it is intended that the Instrument commenced on 4 August, there is no assurance in the Explanatory Statement that the retrospective commencement does not adversely affect the rights of persons other than the Commonwealth. The Committee therefore seeks clarification of the commencement date of this Instrument.

The Committee would appreciate your advice on the above matter as soon as possible, but before 30 September 2005, to enable it to finalise its consideration of this Instrument. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

John Watson

Chairman

18 October 2005

Senator John Watson

Chairman

Senate Standing Committee on

Regulations and Ordinances

Room SG49

Parliament House

CANBERRA ACT 2600

Dear Senator Watson

Request for advice on Licence Area Plan Variation for Scottsdale Radio

Thank you for your letter of 8 September 2005 on behalf of the Standing Committee on Regulations

and Ordinances seeking clarification of the intended date of commencement of licence area plan (LAP) variations.

The Australian Communications and Media Authority (ACMA) has confirmed that in accordance with paragraph 12(1)(d) of the *Legislative Instruments Act 2003*, each LAP variation is taken to have commenced on the day after it is registered.

Accordingly, there is no retrospective commencement as noted in the Standing Committee's letter and I am advised by ACMA that the rights of persons other than the Commonwealth are not adversely affected.

Yours sincerely

Helen Coonan

Minister for Communications, Information Technology and the Arts

## BUSINESS

### Rearrangement

**Senator ELLISON** (Western Australia—Manager of Government Business in the Senate) (9.33 am)—I move:

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

No. 6 Corporations Amendment Bill (No. 1) 2005

No. 7 National Health Amendment (Immunisation Program) Bill 2005

No. 8 Higher Education Legislation Amendment (2005 Measures No. 3) Bill 2005

Question agreed to.

### Rearrangement

**Senator ELLISON** (Western Australia—Manager of Government Business in the Senate) (9.33 am)—I move:

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

- (a) general business notice of motion No. 312 relating to Australia's border security; and
- (b) consideration of government documents.

Question agreed to.

**Rearrangement**

**Senator EGGLESTON** (Western Australia) (9.34 am)—by leave—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move:

That the following business of the Senate orders of the day relating to the presentation of reports of the Economics Legislation Committee, be postponed till a later hour:

- No. 2 provisions of the Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Bill 2005.
- No. 3 provisions of the Energy Efficiency Opportunities Bill 2005.
- No. 4 annual reports tabled by 30 April 2005.

Question agreed to.

**COMMITTEES**

**Foreign Affairs, Defence and Trade  
References Committee**

**Reference**

**Senator HUTCHINS** (New South Wales) (9.35 am)—I move:

That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by the last sitting day in 2006:

The scope and opportunity for naval shipbuilding in Australia, and, in particular:

- (a) the capacity of the Australian industrial base to construct large naval vessels over the long term and on a sustainable basis;
- (b) the comparative economic productivity of the Australian shipbuilding industrial base and associated activity with other shipbuilding nations;
- (c) the comparative economic costs of maintaining, repairing and refitting large naval vessels throughout their useful lives when constructed in Australia vice overseas; and
- (d) the broader economic development and associated benefits accrued from undertaking the construction of large naval vessels.

Question agreed to.

**COMMONWEALTH SCIENTIFIC AND  
INDUSTRIAL RESEARCH  
ORGANISATION**

**Senator MILNE** (Tasmania) (9.35 am)—I move:

That there be laid on the table by the Minister representing the Minister for Education, Science and Training, no later than 3.30 pm on Monday, 28 November 2005, all correspondence including e-mails, directions and guidelines between the Minister and the board of the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and between the Minister and the Chief Executive of the CSIRO, dated between 1 June and 1 November 2005, concerning the research and development work to be undertaken by the CSIRO.

Question put.

The Senate divided. [9.40 am]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	31
Noes.....	<u>33</u>
Majority.....	2

**AYES**

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Brown, B.J.
Campbell, G. *	Conroy, S.M.
Crossin, P.M.	Faulkner, J.P.
Fielding, S.	Forshaw, M.G.
Hogg, J.J.	Hutchins, S.P.
Kirk, L.	Ludwig, J.W.
Lundy, K.A.	Marshall, G.
McEwen, A.	McLucas, J.E.
Milne, C.	Moore, C.
Murray, A.J.M.	O'Brien, K.W.K.
Polley, H.	Sherry, N.J.
Siewert, R.	Stephens, U.
Sterle, G.	Stott Despoja, N.
Webber, R.	Wong, P.
Wortley, D.	

**NOES**

Abetz, E.	Adams, J.
Barnett, G.	Boswell, R.L.D.

Brandis, G.H.	Calvert, P.H.
Campbell, I.G.	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.
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.	Ronaldson, M.
Santoro, S.	Scullion, N.G.
Troeth, J.M.	Trood, R.
Watson, J.O.W.	

#### PAIRS

Brown, C.L.	Vanstone, A.E.
Carr, K.J.	Parry, S.
Evans, C.V.	Hill, R.M.
Hurley, A.	Payne, M.A.
Nettle, K.	Patterson, K.C.
Ray, R.F.	Ferris, J.M.

\* denotes teller

Question negatived.

#### COMMITTEES

##### Legal and Constitutional References Committee

##### Extension of Time

**Senator CROSSIN** (Northern Territory) (9.43 am)—by leave—I move the motion as amended:

That the time for the presentation of the report of the Legal and Constitutional References Committee on the administration of the Migration Act be extended to 21 December 2005.

Question agreed to.

##### NATIONAL RECYCLING WEEK

**Senator SIEWERT** (Western Australia) (9.44 am)—I move:

That the Senate—

- (a) notes that the week beginning 7 November 2005 is National Recycling Week;
- (b) commends local, state and federal governments for the increase in recycling and waste management initiatives over the past 10 years, which have resulted in sub-

stantial increases in recycling of aluminium cans, newspapers, organic waste, used oil and some plastics such as polyethylene terephthalate and high density polyethylene;

(c) notes that:

- (i) Australians are among the largest waste producers in the world, with an average of 2.25kg of waste being produced per person per day,
- (ii) although there have been substantial increases in recycling, many Australians are still not effectively utilising all recycling services, and
- (iii) a recent Roy Morgan survey commissioned by Planet Ark stated that 48 per cent of Australians are still confused about what they are allowed to recycle (despite 99 per cent agreeing that it is important for the environment); and

(d) recommends the:

- (i) extension of current education programs on waste management initiatives, entailing 'reducing, reusing, recycling and recovery',
- (ii) investigation of nationally consistent legislation for product stewardship, and
- (iii) introduction of a national waste and recycling audit system to accurately measure the national recycling rate, starting with priority waste streams.

Question agreed to.

##### MULTICULTURALISM AND AUSTRALIA'S MUSLIM COMMUNITIES

**Senator BARTLETT** (Queensland) (9.45 am)—I move:

That the Senate—

(a) expresses the view that:

- (i) the recent anti-terror raids in Sydney and Melbourne demonstrate the importance of the Government maintaining open and honest communication with Australia's Muslim communities at this crucial time,



- (ii) keeping intermediaries between Government and the Muslim community informed on developments and listening to their views is essential to ensure that the Government is aware of how people in Muslim communities are responding to events, and to prevent further feelings of alienation amongst Muslims, and
- (iii) a failure to defend and promote the principles at the heart of multiculturalism against attacks on it will lead to a deepening divide between people and communities of different cultures and heritage within Australia; and
- (b) calls on all political parties to promote and protect diversity in Australia by encouraging the benefits of multiculturalism and to facilitate the building of better ties.

Question agreed to.

## COMMITTEES

### Publications Committee

#### Report

**Senator WATSON** (Tasmania) (9.45 am)—I present the eighth report of the Publications Committee.

Ordered that the report be adopted.

## BUDGET

### Consideration by Legislation Committees

#### Additional Information

**Senator EGGLESTON** (Western Australia) (9.45 am)—On behalf of the respective chairs of the Legal and Constitutional and the Rural and Regional Affairs and Transport Legislation Committees, I present additional information received by the committees relating to hearings on the 2004-05 additional estimates and the 2005-06 budget estimates.

## COMMITTEES

### Regulations and Ordinances Committee

#### Report

**Senator EGGLESTON** (Western Australia) (9.46 am)—On behalf of the Chair of the

Standing Committee on Regulations and Ordinances, Senator Watson, I present a volume of ministerial correspondence relating to the scrutiny of delegated legislation for the period December 2004 to June 2005.

### Community Affairs References Committee Additional Information

**Senator EGGLESTON** (Western Australia) (9.46 am)—On behalf of the Chair of the Community Affairs References Committee, Senator Moore, I present additional information received by the committee on its inquiry into the delivery of services and treatment options for persons with cancer.

### Australian Crime Commission Committee Report

**Senator EGGLESTON** (Western Australia) (9.47 am)—On behalf of Senator Santoro, I present the report of the Parliamentary Joint Committee on the Australian Crime Commission on the review of the Australian Crime Commission Act 2002, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**Senator LUDWIG** (Queensland) (9.48 am)—I move:

That the Senate take note of the report.

I rise to speak on the report tabled by the Parliamentary Joint Committee on the Australian Crime Commission. The terms of reference of that committee as set out were to conduct its review over two main areas. The terms of reference established for the review included, firstly, the effectiveness of the investigative, management and accountability structures established under the act and, secondly, whether the role, powers and structures granted to the Australian Crime Commission under the act and the associated legislation remain appropriate and relevant to

meeting the challenge of organised crime in the 21st century.

The terms of reference also included the need for amendment of the act and any other related matters and included a review of the parliamentary joint committee itself. I note that Senator Santoro has arrived in the chamber, and I apologise for speaking first on this. I know that he is the chair of this particular committee but we needed to ensure that we had a debate. I thank the chair for the work that he has done during that time. There was also an independent review of the PJC. It was conducted by Professor James Davis of the Australian National University and is attached at the end of the report.

The review makes 16 recommendations. Broadly these go to five areas. In the first area, in recommendations 1 to 5, the committee makes a number of recommendations on the operational powers possessed by the ACC, the Australian Crime Commission, and in the majority of cases these recommendations seek to clarify the powers. Recommendation 1 relates to the giving of evidence during an examination at the time the person is also subject to criminal or confiscation proceedings. The committee heard evidence from the Attorney-General's Department indicating that it was unclear whether an examiner can summon a person who has been charged with a criminal offence and then question them on matters of that offence. It is of great importance that the examination powers of the Australian Crime Commission do not undermine the right to a fair trial, and so the committee is recommending in this instance that legislation be developed to ensure that a person summoned by the ACC is not able to be examined on matters which are before the courts.

Recommendations 2 and 3 again relate to the conduct of examinations. In particular,

these recommendations call for the revision of the summons and memorandum to ensure that summoned persons better understand the process and procedures of the ACC, as well as recommending the development of a procedure manual for the benefit of practitioners and examinees.

Recommendations 4 and 5 relate to regulatory or legislative change. Recommendation 4 is for the development of proper procedural walls to prevent the sharing of ACC information that is linked with an identifiable entity with the private sector. While the committee raises no objection to joint research and task forces between the ACC and industry, it is important to strike a balance between criminal intelligence gathering and the protection of the right to privacy. Recommendation 5 calls for the amendment of the ACC Act to provide for ACC officers with identified powers, such as the right to carry a firearm or to apply for and execute a warrant. However, it is important that the PJC continue to observe closely these provisions. Similarly, recommendation 6 calls for the amendment of the ACC Act to allow for the addition of the Commissioner of Taxation to the ACC board. The committee found that there was general acceptance for the representation of the ATO, the Australian Taxation Office, on the board from the AFP and some cautious support from the Attorney-General's Department.

Recommendations 7 to 13 go to accountability practices. I will deal with them together. The committee noted that the ACC has a special accountability burden, bestowed on it by the extensive powers it wields. At the moment, the ACC is subject to a range of accountability measures, both internal and external—from its internal procedures through to oversight by the Ombudsman and the joint committee. In this area, the recommendations go to the formalisation of some existing practices and the broadening

of the scope of external oversight bodies such as the Ombudsman.

Recommendations 7 and 8 go to the practice for reporting allegations of misconduct. These recommendations stress the need for formal arrangements to be adopted for the reporting of these allegations to the relevant accountability organisations. Similarly, recommendation 9 indicates that the CEO of the ACC adopt, as a matter of practice, Commonwealth protocols in a case where the ACC procedurally has a choice of regulatory regime for the use of its investigatory powers.

Recommendations 10 to 13 recommend the expansion of the bodies responsible for the external oversight of the Australian Crime Commission. Recommendation 10 recommends a broadening of the scope for the Ombudsman to report to the PJC on any matters relating to the operation of the ACC. Recommendation 11 calls for the expansion of the ACC Act to require more explicit reporting from agencies represented on its board to assist with the operation of the committee. This was brought about by the current review in which some board agencies offered perhaps less than the desired level of assistance, if I can put it that way.

Also, the Australian Commission for Law Enforcement Integrity and the oversight of law enforcement agencies is a matter I have been pursuing with some interest with the Minister for Justice and Customs. ACLEI is the acronym for the commission, and for ease we might refer to it in future as 'ACLEI', as a way of turning it into a word, as we tend to do. We are not going to have the legislation for the Australian Commission for Law Enforcement Integrity until the second half of next year. It was scheduled for this sitting period. Unfortunately, the minister for justice and the Parliamentary Counsel have advised that the legislation will not be

introduced in this sitting, and it will not be available until as early as next year. Hopefully, it will be put in place as early as possible.

It is also important to consider the intended oversight functions of the proposed Australian Commission for Law Enforcement Integrity. Recommendation 12 recommends that ACLEI, as it will be, be included within the purview of the committee upon its creation. In addition, at recommendation 13, the committee has recommended the creation of a general PJC on law enforcement, encompassing both ACLEI and the agencies which fall under ACLEI's oversight—that is, the AFP, the ACC and the ACS, the Australian Customs Service, in relation to its law enforcement activities. That is a significant step and one that is welcome.

Recommendations 14 and 15 go to the staffing of the ACC. Recommendation 14 calls for the standardisation of employment contracts for secondees. The committee heard that, as secondees were covered under their normal employment conditions, this created a mismatch in their duties performed while on secondment to the ACC. Recommendation 15 goes to the maximum number of examiners allowed to work, and I will not deal with that in any particular detail. It is there for people to read in the report.

Recommendation 16, the final recommendation, is one of those that is important to make sure that we get the balance right when we look at these issues. It is to ensure that examinees and persons summoned for examination are eligible for legal aid. It is important to ensure that, when people are called before the examiners who use the special powers of the ACC, there is an ability to ensure that their rights are protected, and this is one measure which will go some way to ensuring that.

In conclusion, the report has indicated a number of recommendations which go to tightening and clarifying the position of the ACC, in particular its accountability mechanisms and also the powers that the ACC holds, and the practices by which it uses those powers. In those cases, clarity is needed for examinees and to ensure the integrity of the criminal justice system. I commend the report to the Senate. I thank the secretariat and the chair for their work, and I particularly thank the chair for his even-handed dealing with the committee.

**Senator SANTORO** (Queensland) (9.57 am)—I am very pleased to speak to the tabling of the Parliamentary Joint Committee on the Australian Crime Commission's report on the review of the Australian Crime Commission Act 2002. This is the first major review of the ACC Act since its commencement in 2002. In the time since, the ACC has become established administratively and operationally, and the committee has observed considerable development and maturing in the organisation in these three years. The review was established on 20 July 2005, when the committee adopted terms of reference under section 61A of the ACC Act. The review was to focus particularly on the effectiveness of the investigative, management and accountability structures established under the act. The committee also examined whether the roles, powers and structure granted to the Australian Crime Commission under the act and associated legislation remained relevant and appropriate to meeting the challenge of organised crime in the 21st century. Unusually for a parliamentary committee, the terms of reference included an independent review of the PJC itself, as the committee is a creation of the ACC Act.

In consultation with the Minister for Justice and Customs, the committee appointed Emeritus Professor James Davis to examine the PJC's role and performance. Professor

Davis was asked to examine the appropriateness of the committee's statutory role and functions and its effectiveness in scrutinising the ACC's activities. I thank Professor Davis for his insightful contribution, which is annexed to the report. I note Professor Davis's comment that the committee's role is a unique and essential one, and that the ACC's operations are subject to a greater level of scrutiny and accountability than similar organisations in the United Kingdom. Accountability was a theme which recurred throughout the review and one which has been of major concern to the committee.

Before I turn to the report, I would like to emphasise the bipartisan character of the committee's approach to this inquiry. For this reason, I have found it immensely satisfying to be a participant. This unanimous approach also cannot help but give greater weight and credibility to the conclusions and recommendations. I want to record my thanks to the deputy chair of the committee, the Hon. Duncan Kerr SC, for his contribution to the inquiry and, in particular, his assistance on legal matters. I also thank my fellow senators Senator Ludwig, Senator Polley and, in particular, Senator Ferris. Senator Ferris's long experience with this committee is a great resource for newer members such as me. We look forward to having the benefit of her knowledge and experience on this committee when she returns next year. I also thank the committee members from the House of Representatives: Mr Kym Richardson, Mrs Joanna Gash, Mr Jason Wood and, most recently, Mr Chris Hayes. I value their contributions to the committee and to the preparation of this report.

The committee held hearings in Brisbane, Sydney, Melbourne and Canberra. We received 27 submissions and heard from 43 witnesses. I place on record the committee's thanks to all of those who appeared as witnesses and who took the time to provide

comprehensive and thoughtful submissions. I also wish to acknowledge the assistance and cooperation of Mr Mick Keelty, the Chair of the ACC Board; Mr Alastair Milroy, the CEO of the ACC and officers of the commission for their high level of cooperation and assistance to the committee.

The report makes 18 recommendations. The committee's recommendations canvass regulatory and legislative change, accountability and integrity issues as well as matters of staffing, resources, and ACC examination practice and procedure. I would like to highlight some of these.

There are some recommendations for legislative and regulatory change. These include one pressing amendment to the ACC Act to ensure that a person summonsed by the ACC, at a time when they are the subject of criminal or confiscation proceedings, may be examined by the ACC only in relation to matters which have no connection with the pending proceedings. This has been a source of uncertainty which delays the examination process and, in turn, the ACC's work. The committee believes that consideration of this amendment should be given high priority.

Another recommended amendment is the inclusion of the Commissioner for Taxation on the board of the ACC. This was supported by several witnesses. It is clear that the working relationship between the ACC, the tax office and the AFP warrants this addition, and that the ACC would benefit from it. The committee also recommends a statutory limit to the number of examiners who can be appointed to the ACC. The committee considers that prescribing the number of examiners will ensure that the powers they exercise are used selectively for the most essential investigations.

The committee heard that a number of staffing issues have emerged. There was concern that the ACC has a practice of using

the Australian Federal Police special constable provisions to provide ACC staff with particular powers. Accordingly, we have recommended that the ACC develop proposals to amend the act to provide categories of ACC officers with the necessary identified powers. These may include the power to apply for or execute a warrant and the right to carry a firearm. A further staffing matter is the current secondment process, which appears cumbersome and unsatisfactory, resulting in inconsistencies in employment conditions between staff seconded from different state jurisdictions. The committee has recommended that this be resolved as a matter of priority.

Of major concern were systems for accountability and integrity, which the committee explored in some detail. This resulted in recommendations to extend the Ombudsman's role to allow him to brief the PJC on any matter relating to the operations of the ACC. At present those briefings are limited to the ACC's involvement in controlled operations under part 1AB of the Crimes Act 1914. The committee has also recommended that the informal arrangements whereby the ACC informs other agencies such as the PJC, the Intergovernmental Committee and the Commonwealth Ombudsman of allegations of misconduct within the ACC should be formalised. Further, when the proposed Australian Commission for Law Enforcement Integrity is established, it should be included in the arrangement. We also recommend that a similar arrangement be introduced to require the Commonwealth Director of Public Prosecutions to notify the Commonwealth Ombudsman, and later ACLEI, of allegations of misconduct that arise during a prosecution.

The report also includes recommendations which provide for improved scrutiny of Commonwealth law enforcement agencies by the parliament, including the proposed

Australian Commission for Law Enforcement Integrity. The committee has also recommended that the legislation establishing ACLEI include provision for the committee to refer matters to the commission for investigation, with a requirement to report to the committee on the results of such investigations. This ensures the completeness and effectiveness of arrangements for scrutinising the operations of agencies.

Finally, the committee looked in detail at the examination process, and recommends greater assistance for those who are required to appear at examinations or produce documents. These include changes to ACC documentation, the development of an examination practice and procedure manual, and the broadening of provision for legal assistance.

The committee found in the ACC a robust and dynamic organisation. I would like to commend the ACC on its open and professional relationship with the committee. The commission provides regular information and briefings to the committee, and is prompt in its responses to requests for clarification. The proposals in this report allow the committee to maintain its watching brief on the ACC, and are designed to enhance and support the accountability and integrity environment in which the ACC operates.

In conclusion, I would like to thank the committee secretariat for its assistance with the inquiry and the report. In particular, I wish to thank the committee secretary, Jonathan Curtis, and principal research officer, Anne O'Connell, for their diligent and meticulous work in relation not only to the review which produced the report tabled today but also in relation to the overall work of the committee.

Question agreed to.

### **Foreign Affairs, Defence and Trade References Committee Report**

**Senator HUTCHINS** (New South Wales) (10.05 am)—I present the first report of the Foreign Affairs, Defence and Trade References Committee on its inquiry into Australia's relationship with China entitled *Opportunities and challenges*, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**Senator HUTCHINS**—I seek leave to move a motion to set the reporting date for the committee's second report on this matter.

Leave granted.

**Senator HUTCHINS**—I move:

That the second report of the Foreign Affairs, Defence and Trade References Committee on its inquiry into covering the geo-political and strategic aspects of Australia's relations with China be presented by 30 March 2006.

Question agreed to.

**Senator HUTCHINS**—I now seek leave to move a motion in relation to the report.

Leave granted.

**Senator HUTCHINS**—I move:

That the Senate take note of the report.

At the outset, I would like to thank the wordsmiths who made up this report: Dr Kathleen Dermody, the secretary of the committee; Dr Richard Grant, who is still here, and Miss Jessica Shaw, who has now left the committee and is doing her master's degree at Cambridge University. We are indeed very fortunate to have such talented and dedicated servants of the parliament who compiled this, I would have to say, outstanding report. You might think that I would say that anyway, but I believe that it is outstanding. I would also like to thank my colleagues as we conducted this inquiry in the spirit of bipartisanship. As you will note, Mr Acting Deputy President,

the report, again in this committee, is unanimous.

This is a comprehensive report on Australia's relations with China. It is the first of two reports that deal with Australia's economic, political, cultural and social links with China. China's continuing economic growth and expanding trading activities offer new opportunities for its trading partners. It is a huge market for a variety of goods, services and investments. Its sheer size and the dynamics of its growing economy make it increasingly important to its trading partners.

This report noted that China is currently one of Australia's major trading partners and underlined the growing importance of China to Australia's economy. Indeed, Australia has a vital interest in China maintaining its steady and sure economic growth path. The report found that: both countries desire to strengthen economic ties and have taken definite steps toward a free trade agreement; China's and Australia's economies are complementary with potential for deepening and broadening the relationship; and the transformation of China's economy presents opportunities for Australian business and means China is attracting a wider range of Australian companies.

There are, however, potential social, political and environmental factors that could derail China's economic progress: the Chinese government's ability to manage effectively a rapidly expanding economy; the potential for social and political unrest as the country opens up to new ideas and its people's expectations change; the gap between rich and poor; China's growing appetite for energy resources; and environmental degradation. There are also external threats that could disrupt China's economic progress, such as the conflict between Taiwan and China over the One China policy; tensions between China and Japan over sensitive is-

ssues such as their differing interpretations of history; and the trade deficit with the United States. These matters will be examined in the committee's second report.

Clearly, Australia needs to monitor and understand developments in China. In order to take advantage of the opportunities on offer in China, and to better anticipate developments in that country, the Australian government and businesses need to have access to Chinese specialists. One of the strongest messages emerging from the inquiry was the need for Australia to have highly skilled and knowledgeable experts in Australia ready to advise government and business leaders on developments in China.

Since its accession to the WTO in 2001, China has continued its transition to a market economy. It has embarked on a program of sweeping reforms intended to allow the Chinese economy to become fully integrated with the rest of the world. It has adopted an export orientated strategy to underpin its economic development and made remarkable progress in dismantling barriers to trade. Even so, the committee concluded that doing business in China is complicated by a cumbersome and inefficient bureaucracy and that the influence exerted by state owned enterprises is considerable. It found a complex legal system exacerbated by added layers of rules and regulations. In some instances, the system operates in favour of domestic firms. Enforcement of the law is a significant problem, with major deficiencies in the judicial system, such as poorly trained judges and lack of independence.

There are three main problems that I would like to draw attention to. The first is corruption in local government. Witnesses highlighted the need for improved corporate governance in China with many calling for greater transparency in the marketplace. Poor corporate governance is a sure breeding

ground for corruption and in China corruption is a serious problem for its citizens and businesses, in particular foreign direct investors. This problem is exacerbated by the influence exerted by local authorities over business activities. Evidence showed that regional protectionism and barriers to inter-provincial trade disadvantaged Australian companies. Those local obstacles meant that 'foreign companies are unable to compete on equal terms.' Central and local authorities need to commit to reform and actively cooperate to ensure that laws and government undertakings are applied consistently throughout the country and in the spirit of China's reform agenda.

While acknowledging the changes that have been implemented since China's accession to the WTO, some commentators recognise that one of the major challenges is not only implementing law reform but also ensuring that the laws, once introduced, are enforced. This raises the question of the provincial governments and their place in assisting the central government with its reform programs. For example, two commentators noted that China had, at the central government level, made fundamental changes to its legal and regulatory frameworks to comply with WTO principles. Even so, they observed:

... China's commitments imply a need to ensure adequate enforcement of new rules at all levels, especially the provincial levels and municipal levels, where administrative and judicial capacity constraints, as well as the potential role of vested interests, may hamper progress (e.g., in eliminating restrictive practices such as the pervasive inter-provincial taxes, fees and other non-tariff obstacles).

In some instances, local governments may not only fail to enforce law but may also impose additional burdens on foreign businesses. One group of commentators with the IMF have suggested that, 'in an effort to pro-

tect industries from competition, local governments in China are erecting barriers to the entry of goods from other provinces.' The committee found that the involvement of local authorities in trade and commercial affairs at the provincial level is a major impediment for Australian companies operating in China.

Clearly, China is a country that, despite reform, still has inadequate legal protections, intellectual property rights violations and government interference, particularly at the local level. Australian business should understand the legal and regulatory framework operating in China to ensure that they are fully aware of the legal and business implications of any decisions or agreements entered into and are in a position to adequately protect their interests. In particular, Australian business should not underestimate the influence of local bodies in China.

More effective, fairer and consistent enforcement of laws, rules and regulations at all levels of government would benefit and encourage Australian companies to establish their businesses in China. Governments at all levels throughout China need to embrace legal change. Central and local authorities need to commit to reform and to actively cooperate to ensure that laws and government undertakings are applied consistently throughout the country and in the spirit of the reform agenda. The nature and extent of reform required to bring China's legal system into step with international standards requires wide-ranging change. The committee understands the importance of Australia joining other WTO members to encourage China to undertake further reform and to impress on China the need to ensure that its legislative reforms are adopted and effectively enforced throughout the country.

The second area of concern is intellectual property. One of the most contentious areas



of commercial law in China is that governing the protection of intellectual property. The committee found that China is currently failing to enforce IP standards and that 'it is common Chinese practice to simply copy products without fear of reprisal'. Indeed, some have asserted that counterfeiting is rife across most industrial sectors in China. Even where a foreign company is successful in the courts, the damages awarded may be trifling.

In relation to car manufacture, a company called Great Wall Motors manufactures SUVs. Both Honda and Nissan reckon they look like their vehicles. There is a company called Red Flag Motors that manufactures vehicles that look suspiciously like Rolls Royce Phantoms. There is a company—and I have forgotten its name—that manufactures CR-V Hondas. Honda reckons there are 11 companies in China that manufacture their Honda and, in fact, one of them even sells the equipment to manufacture the CR-V Honda badge. Those concerns were raised with the committee and they were noted. We have raised them equally with Chinese authorities.

Other concerns of the committee were that the Australian government places too much weight on the trading relationship and economic aspects of Australia's relationship with China, and ignores the human rights abuses occurring in that country. Mr Woodard told the committee that he suspected that Australia had watered down its stand on the protection of human rights in China because of other considerations and that Australia may give 'a high priority to economic relationships and not enough attention to issues such as human rights, labour rights and environmental concerns'.

I come to my third point: human and labour rights. With regard to human rights violations in China, the committee believes that the government has an important role in en-

couraging China to abide by international principles. The committee accepts that the matter of human rights in China is a most sensitive one. It is important for Australia to manage any disagreement with China in a way that allows it the opportunity to raise objections or concerns about human rights abuses, but at the same time ensures that the substance of the relationship remains sound. This means that a balance has to be reached in the relationship whereby Australia does not feel as though it must compromise its values in order to gain economic favour.

The committee received a number of submissions suggesting that the human rights dialogue was inadequate and advocating that Australia adopt a more forceful approach to confronting China on its apparent human rights failures. Some submitters to this inquiry were equally critical of the dialogue on human rights between the two countries. Dr Ranald believed that the China-Australia human rights dialogues have not been 'very effective' and that both countries 'find it convenient' to keep trade discussions and the human rights dialogue apart. Dr Goodman was of the view that the dialogue attracts little attention either here or in China. The human rights dialogue held in June this year was conducted behind closed doors and produced only a short, bland statement about the meeting. On the other hand, the Human Rights Council of Australia argued that 'there needs to be an open exchange on matters of substance as the basis for future dialogue, both with the Chinese government and with representatives of Chinese civil society'.

The committee found it difficult to assess the effectiveness of the human rights dialogue with China because of the lack of information available on the outcomes achieved as a result of the dialogue. The committee believes that the dialogue provides an opportunity for Australia and China

to demonstrate to the people of both countries, and more broadly to the international community, that they are strong advocates of the protection of human rights. Such demonstration cannot take place behind closed doors and be further masked by bland statements about progress.

The committee would like to see an informative agenda issued before the dialogue takes place. It would also like to see a joint statement released by both parties immediately following the talks that provides a detailed assessment of the progress made since the last meeting, a discussion of the topics considered during the dialogue, and the agreements reached for future action. The committee believes that such a measure, while still taking account of the need for both parties to be able to talk frankly about sensitive issues, would add greatly to the value of the talks.

I am well aware that my colleague Senator Hogg will no doubt concentrate on the labour rights violations being conducted in China at the moment. I seek leave to incorporate the rest of my remarks in *Hansard*.

Leave granted.

*The speech read as follows—*

Australia and China are not taking advantage of the human rights dialogue to promote the protection of human rights. There are people not only in Australia but in China who want confirmation that both countries are committed to advancing the rights of individuals. Both countries should welcome the opportunity to present an accurate assessment of the work they are doing to improve their human rights record. They should not shy away from showing the world their shortcomings and achievements in protecting human rights.

The committee notes the number of witnesses who underlined the importance of Australia speaking out against human rights violations. They spoke of the need for Australia to send the 'right signal' to China and the international community. The committee endorses their view and

believes that the Australian government must take a public stand on the protection of human rights. It also accepts that strong words are not enough and if Australia is to influence the behaviour of other countries in respect of human rights, it must ensure that it is providing an example that other countries should follow. Australians must be aware of how other countries perceive its record on the protection of human rights and work to ensure that the country is a positive force in leading others to adhere to the principles underpinning internationally recognised human rights.

Views put to the committee by a number of witnesses supported the contention that China falls short in meeting the standards set by the ILO.

The committee believes that a trade agreement would not be the most effective way to ensure that all enterprises in China abide by international labour standards. The issue extends beyond Australian businesses in China and requires multinational cooperation. This does not mean that in consultations with China on the FTA that Australia ignore the matter. The consultation process should indeed provide the opportunity for Australia to express its concerns and urge China to adopt international standards. The committee believes that concerted pressure applied through multilateral fora would be a more productive way of convincing China of the need to improve its record on labour standards. The committee suggests that Australia continue to work through international organisations to persuade China to adopt all of the ILO conventions and to ensure that they are observed.

A number of witnesses considered that foreign companies operating in China had a responsibility to ensure that they abide by basic labour standards and human rights and environmental protections. They noted, however, the temptation for companies to concentrate on profits at the cost of maintaining recognised labour and environmental standards. Dr Ranald expressed strongly her opinion that at the moment companies are not observing international standards in China. She was of the view that, although some companies have considered these issues, the subcontracting system militates against the observance of such standards because 'it is basically a lowest bid sys-

tem'. To her way of thinking, China is 'becoming the focus of a race to the bottom on labour standards'.

**Senator JOHNSTON** (Western Australia) (10.21 am)—The production of this report is one of the prouder moments in the work of the Foreign Affairs, Defence and Trade References Committee. The inquiry was very diligently conducted. I compliment the chair of the committee for the manner in which he undertook the quite Herculean task of analysing what is a growing, moving and transitional relationship with China. I congratulate the chair on the way he managed the committee. I also compliment all the members of the committee for the diligence that they applied in pursuing what is a very important diplomatic, economic and security relationship in East Asia, the relationship with China.

I also pay tribute to Dr Richard Grant and Dr Kathleen Dermody, the two secretariat members who spent the most time on the report. It is a large report. It involves a very broad range of knowledge about and information on the very dynamic relationship we have with China. In the brief time that I have, I also want to pay tribute to all of the witnesses who attended to give evidence on matters of trade, security, human rights, labour relations, diplomacy et cetera. That was all very interesting to and very informative for the many senators who may not have had the same exposure to the emergence of China that we in Western Australia have had.

For some years now, Western Australians have seen a huge demand from China for our minerals, predominantly our iron ore. This has meant that literally tens of billions of dollars have been invested in Western Australia to expand our iron ore mines, to expand our nickel production and to expand our rare earth production so that we can produce commodities which are in high demand in China. We have exported, over a number

of recent years, very large quantities of wheat to China. China has the capacity to produce a surplus of wheat from time to time, but as its population grows and as its standard of living improves so the demand for things such as bread increases in China. Australia has been at the forefront of developing China as a market for wheat, particularly Western Australian wheat.

In Western Australia we have a very large number of Chinese students—tens of thousands of them. Our tourism industry is benefiting greatly from the ingress of Chinese tourists. A very large number of Chinese students are in our secondary schools learning English so that they can progress to our tertiary institutions. A number of Western Australian institutions have blossomed because of the support of Chinese students coming to live for five, six or seven years in Western Australia to acquire their tertiary qualifications. They then return home to China as engineers, accountants, geologists et cetera.

I want to pause to pay a special tribute to the Chinese mission here in Canberra. The ambassador has done a great deal for the relationship between Australia and China, and I want to pay special tribute to her. I also want to pay tribute to two counsellors who assisted the committee, Madame Ou and Mr Wang. They came to the committee meetings and attended a number of the public hearings. They were very forthright people. We welcomed them openly into the parliament. They understand that we acknowledge openness as the principle, the yardstick and the benchmark for doing business here in Australia. When a person from an embassy such as the Chinese embassy comes to the parliament, they are allowed to attend important policy discussions and to see and hear exactly how government operates and is formulated. This is a very good thing.

The principal thing that I came away from this inquiry with is that China has no real history of transparency. This is a country with enormous challenges. It has 1.3 billion people. This places a huge logistical burden on public policy and public administration. Australians would struggle to come to terms with the length and breadth of the burden upon public administrators in China in dealing with things like effluent, food, energy, transport, roads, air transport, shipping, harbours, ports and rail. In China, they need to do things on such a huge scale, catering for many cities with populations in excess of five million or 10 million people. These are things that Australians are not familiar with. One needs to go to China, as our committee members did, to understand the length and breadth of capability required in terms of public administration and governance to manage that country.

China has no democratic history, really—and I stand to be corrected on that. They came out of the dynastic, monarchical rule of two centuries ago, and that transformed to the one-party rule of a Communist government. Now we are starting to see China emerge as a market economy. I for one want to encourage China. I want to show them how open Australians are and how open Australian government is, so that each of their provinces and their central government have something to compare with. They have a limited understanding of and a limited experience with the way openness and transparency in government works. I want to be seen to be tolerant of a slow but steady and careful emergence in China of the democratic principles that we have here. People often demand far too much of China in terms of its progress in democratising and becoming transparent in its governance.

It is always worrying when a country spends a very significant proportion of its gross national product on armaments and on

defence. China has recently been buying a lot of Soviet weaponry and developing a number of its own defence capabilities—for example, missiles. I want to put that in context. There have been some worrying aspects in their cross-strait relations with Taiwan, but we learnt when we were over in China that there are some distinct positives. I encourage China and Taiwan to pursue the road of peace and to seek to resolve their differences. Australia stands and falls on its One China policy. This is something that China and Taiwan must never forget: Australia has maintained, and for a long time, a One China policy. China has no aircraft carriers. China has very limited amphibious capability. In one sense, all of this build-up is defensive.

I want to also put what has happened with China's security in context. Its near neighbourhood contains neighbours such as North Korea. That would have to be a worry for any country, knowing what we know about North Korea. There are over 50,000 US troops in South Korea. Japan has recently been building up its defence capability. Taiwan has received US armaments, weapons and planes. Vietnam is on the southern border, and China had a war with Vietnam in 1988 and 1989. Then you have Pakistan and India—two nuclear powers—in the southwest. Then you have Xinjiang province, which has a huge Islamic insurgency. These are things that people need to relate to in order to put China into a context. When there is a defence build-up, one needs to ask: what type of armaments and capability is China seeking to build up? From my perspective, what I know about China is that they are largely defensive weapons and it is largely a defensive capability.

Lastly, I would say that China and Australia share a common bond in trade. China is a recent member of the WTO. As I perceive it, it seeks to live by WTO principles, rules and guidelines. Australia has for a long time been

struggling to see a freeing-up of world trade, particularly with agricultural goods. China is doing exactly the same thing, except with manufactured goods. There is a huge possibility for China's expansion into Europe, as there is a huge possibility for Australia's expansion into Europe—China with its manufactured goods and Australia with its agricultural goods. Together we stand to say to Europe, 'Enough is enough—you must lower your trade barriers.' This is a great bond between Australia and China. As we go forward into the world—us with agriculture and minerals, and China with manufacturing goods—we say: 'Let us free up trade. Let us be trading nations. Let us trade fairly and equitably.' That is a very significant bond that Australia has with China. I think that transcends so many of the worries that the US has about China. It transcends cross-strait and East Asian tensions. I congratulate the committee on what I think is a very timely and strong report which is a good signpost to our future relationship with potentially our most important near neighbour.

**Senator HOGG** (Queensland) (10.31 am)—As a member of the Senate Foreign Affairs, Defence and Trade References Committee I found this inquiry, like many of the others conducted by the committee, fascinating indeed. It focused on our largest neighbour and growing partner in trade—China. Whilst the report itself does not focus simply on trade—and I am going to come to that in a moment—it is one of the things that really brings us very close together. They have a great interest in many of our resources, particularly iron ore, liquid natural gas, coal and so on. But we import from China many manufactured goods.

In setting up the trade relationship, it is not easy for a number of Australian companies to get into the marketplace in China. One thing that stands out, as always, is the role of Austrade. Austrade performs a mag-

nificent task in assisting Australian manufacturers to tap into the marketplace in China and open the horizons of many smaller companies in Australia. I think that is a marvellous thing indeed. I will quote a couple of sections of the report, because I think the executive summary and recommendations really highlight some of the difficulties that do exist for us in trading with China. In the executive summary it says that evidence pointed to a legal and regulatory environment that is 'complex, time-consuming, expensive, uncertain and discriminatory'. The report goes on to say:

China is a country that, despite reform, still has inadequate legal protections, poor corporate governance, intellectual property rights violations, government interference particularly at the local level and corruption.

If anyone thinks that trading with or opening a business in China is a bed of roses, I think just that in itself shows that that is not the case.

It does show that Australians have the skill, capacity and expertise to penetrate a market as difficult as China and to be successful there. Like my colleagues Senator Johnston and Senator Hutchins, I had the pleasure of going to China recently as the guest of the Chinese government, for which I thank them very much. We saw evidence of the great work being done by Austrade and Australian companies in China. But even more, we saw the opportunities that do exist there. However, there are still a number of hurdles that need to be overcome—for example, tariff and non-tariff barriers. One of the most absurd non-tariff barriers that came to our attention was the fact that iron ore shipped out of Australia was subject to quarantine on reaching China. What quarantine considerations there would be in respect of iron ore is anybody's guess. Nonetheless, that was a problem.

One of the things that the report did note—and I think this is important to point out as Senator George Campbell is in the chamber—concerned the area of manufacturing. The committee notes in its report the concern expressed during the inquiry about Australia's reliance on the export of raw materials to boost its balance of trade figures. The report says:

There has been strong support for the Australian government to have an overarching national policy on manufacturing to address China's challenge. This was recommended by both the Australia-China Business Council (ACBC) and the AMWU in their submissions to the committee.

The committee, it went on to say:

... believes that two key pillars of a national manufacturing policy must be to fund and coordinate research and development in value-added technologies, and to support skills development in technical education.

I hope the government takes to heart that sort of recommendation coming out of the committee's report.

Last but not least, I want to make a brief comment about the assistance that was given by Dr Richard Grant on our visit to China—I appreciated that—and by the secretariat in the preparation of the report. I also appreciate the assistance that came out of the Chinese embassy, from the ambassador and from Ms Ou in particular, in coordinating our visit. I commend the report to the Senate. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

#### **HIGHER EDUCATION LEGISLATION AMENDMENT (WORKPLACE RELATIONS REQUIREMENTS) BILL 2005**

##### **Second Reading**

Debate resumed from 9 November, on motion by **Senator Abetz**:

That this bill be now read a second time.

upon which **Senator Siewert** had moved by way of an amendment:

Omit all words after "That", substitute "the Senate rejects this bill and expects the Government to:

- (a) desist from interfering with the independence of universities;
- (b) increase public funding of Australia's higher education sector;
- (c) recognise that university staff should be entitled to collectively bargain with universities, without prescriptive government interference; and
- (d) refrain from insisting on its ideological industrial relations agenda being applied to universities"

**Senator LUNDY** (Australian Capital Territory) (10.37 am)—It is with great concern that I stand to speak on the Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005, because it is another piece of legislation in a raft of legislation from the Howard government that represents a direct attack on working people in Australia. What we have before us is effectively a piece of blackmail. This piece of blackmail says to universities in this country: 'We're not going to allow you to govern yourselves with an appropriate array of corporate governance rules applying. We're going to set conditions on how you employ your staff.' This level of microintervention into the management of universities is being done for one reason only. The reason is that the Howard government is seeking to impose its Australian workplace agreements on the employees of universities right around the country.

It is very clear from the actions of universities to date that this is unwelcome. If it were welcome, or indeed had any semblance of business sense, I am sure that a different response would have been received from the vice-chancellors and the university staff. The bottom line is that this is not good for Aus-

tralia's universities. It will force upon the management of our universities a new system of employment that disfranchises directly the pay and conditions of academic staff, support staff and general staff and impose on the management a regime that they do not want. It does not make sense in terms of permitting universities to do what the Howard government thinks they should be doing—as we have heard in general policy announcements—which is competing effectively in what is a global education market. How can they, when they are not even permitted to make choices about how they pay their staff and apply minimum wages, conditions, awards and collective agreements that are now well established?

The problem the Howard government has is that it does not understand and chooses to reject the notion that employers and employees—in this case we are talking about universities and university staff—are capable of coming to a reasonable agreement. We have a century's worth of history behind the development of awards and collective agreements in this country. We have come to a point now where this dictatorial approach effectively blackmails universities into adopting these conditions. Make no mistake about this level of blackmail, either: if they do not comply by 31 August, the universities will not get the funding they need to survive. But the Howard government does not care about that. It is prepared to throw away the history, culture and good practice that have existed all the way through, culminating in the way in which university staff and university management sort out their wages and conditions.

You cannot look at this legislation outside the context of the IR legislation that is being debated in the other place. Just a few days ago we deliberated over the abandonment, the abolition, of the National Occupational Health and Safety Commission. We had

many pieces of legislation prior to 1 July this year—some got through this place but most did not—that constituted an ideological raid on good practice in industrial relations over many years. I say 'good practice over many years' because for over a century Australia had a system of industrial relations that was enshrined in our Constitution, that was given form and substance with the 1904 Conciliation and Arbitration Act and then, through a large number of struggles by unions, reactive campaigns by employers and arbitrated decisions culminating in awards, led to a system that is unique and was unique for all of that time.

Even under previous Liberal governments the strength of our industrial relations system in this country was acknowledged. That was until we got the Howard government, until the Howard government came along, full of ideologues. They seem to have cleaned out all the wets, following the 1993 loss by the Liberals in the federal election. All these ideologues ran ultra right-wing campaigns through the eighties, through the Labor government's good management of industrial relations and the economy. We found most of them were elected in 1996. Those who were not elected managed to find their way in here soon afterwards. So the same group of people who constitute the bulk of the Cabinet Office under the Howard government were the group of ideologues who were the first to emerge in the Australian political system and who had any power at all in the Liberal Party through the late eighties and the early nineties.

It is that ideological campaign that has been unleashed with full force in the federal parliament since 1 July, when the coalition government got the majority in the Senate. Now we are experiencing a campaign in a very old ideological battle—an ideological battle that perhaps was started back with the Harvester case, with HR Nicholls running

what can only be described as an out-of-this-world campaign against the reality of life in Australia in the earlier part of the previous century. That person has become the icon of the conservative Right in this country. People worship HR Nicholls, who opposed a fair day's work for a fair day's pay. That is what they were fighting against; that is what HR Nicholls was taking on. HR Nicholls has become the icon now, so much so that it would be very interesting to see just who on the front bench of the coalition is still a paid-up member of the HR Nicholls Society.

The HR Nicholls Society was very active during the 1980s, when the Liberal Party were completely out of their depth in making any impact on the then Labor federal government. Having those same ideologues cutting loose with this agenda is going to do untold damage to Australian working people and to the Australian economy and will take away this unique system we have of resolving industrial relations disputes and effectively managing fairness in Australian workplaces. A system that was enshrined through the federal power in the Constitution to resolve disputes across state borders, and further codified in the 1904 Conciliation and Arbitration Act.

Where does that leave us? We have a gagged debate in the other place and industrial relations laws that are so far departed from what we have always understood to be a system for managing fairness in the workplace that it is hard to predict what the impact will be. Having come from the building industry—I am sure my Senate colleagues are aware of that; if they were not aware of it they now are—I know that how these changes will manifest themselves at the grassroots in industries like the building industry is going to be devastating. As I said the other day, as a former organiser of the Building Workers Industrial Union, I know that, with the loss of the ability and power of

unions to have access to workplace sites, safety standards will drop. Employers and employees alike relied on the resources of the trade unions in that industry to play that watchdog role in occupational health and safety standards and to reassure both parties that work practices were safe and that people's lives and health were protected.

One of the upshots of this ideological attack on unions and union bashing that we have seen so consistently from the Howard government—using whatever powers they could before they got the numbers in the Senate and certainly completely unleashed now to disfranchise unions and to deprive them of their rights and powers and to deprive workers of the right to collectively organise—will be a reduction in health and safety standards in workplaces around Australia. There cannot be any other outcome because of the practical way these workplaces function.

I have particular experience in the building and construction industry but I know that it is exactly the same in many other areas. The role that the unions have played in the development of standards and of codes of practice and the information and intelligence they are able to feed into the development of those codes of practice and health and safety standards has been absolutely critical in the attempt to reduce workplace illness, accident and death in Australia. We do not have such a good record in this regard because we have a lot of dangerous industries. Whether it is mining, agriculture, building and construction or the manufacturing sector—not just physical grades work—many accidents happen in a range of areas. It appals me to think that the government are so mindless in their ideological pursuit of these changes that they are prepared to sacrifice health and safety and ultimately put more people's lives and health at risk.



Another aspect of the broad attack on unions through the IR changes comes through the dignity of and right to work. The right to collectively bargain is another way in which awards have been able to be perpetuated with particular workplace conditions being taken into account. Without the base of the awards it is very hard to allow those workers who do have a bit of industrial clout—and this has always been an acknowledged pattern—to stand up for those workers who do not. This is one of the great strengths of the award system and indeed the establishment of the minimum wage. Workers around the country took care of each other through the system of collective representation, collective bargaining, arbitrated decisions resulting in awards and ultimately a national wage case being run on the minimum wage. It is essential to the Australian sense of a fair go.

It is interesting to hear a lot of talk about values in this place. All sides of politics talk about values. Values about fairness and opportunity go to the heart of how you manage fairness in the workplace. These industrial relations changes that are taking place have no moral basis whatsoever. They remove what has been a longstanding Australian value: that the strong look after the weak.

Another particularly important area was sharpened in my mind this morning as I listened to the news. Yesterday, we saw Senator Abetz struggle with a very straightforward question on the impact of accumulating a 38-hour week over a period before penalty rates cut in. The answer we could not get was whether that would guarantee people a 38-hour week and not more hours. The government are not giving that guarantee because they cannot. Their new system will allow employers to average 38 hours a week over a whole year. Employees could find themselves working without penalty rates for more than 38 hours per week, provided those

core hours are averaged over a whole year and annualised.

What does that mean for workers, particularly young workers? What does that mean for families and what does that mean for the weekend? Mr Howard yesterday said that the concept of the five-day week had to go, or some such comment. It was the unions that brought the weekends to the workers of Australia, as they did in most places around the world where they established the 40-hour week and various penalty rates associated with working beyond that. That was linked to a fair day's work for a fair day's pay—eight hours sleep, eight hours leisure and eight hours work, and all of those fundamental tenets of what constitutes fairness in the workplace and, indeed, fairness in life.

The Prime Minister was alluding to the concept of having a balance between family time and work time. That is out the window. The Prime Minister of this country is saying that no longer will that principle be applied in this country. The balance between life and work will be now be solely determined by employers. That is one of the gravest changes that will happen with the industrial relations amendments that have been gagged in the House and which, no doubt, we will see here in a few weeks time when the Senate resumes. It will deprive Australian working people of any protection from employers who are, perhaps, bound by law to pursue their shareholders' interests to maximise every bit of profit and therefore to work their workers for as little money and for as many hours as possible. That is rational corporate behaviour, some would argue. Where does the government get off by removing from this essential balance the federal checks and balances via our industrial relations system, via our awards, via the minimum wage and via protecting conditions of employment? Make no mistake: there is only one group of employers that really understand the core of

this change—that is, the big companies that at their heart are bound by the corporate behaviour which the whole system sets up to use their ability to make a return and divest it amongst their shareholders.

Other employers, particularly small business, may find themselves caught up in the ideological campaign that this is about empowering them. But I do not know too many small businesses that employ people that would want to see those lives completely exploited. They will not know how to deal with pressure from companies that can find the means or are able, because they have a complete lack of commitment to their employees' welfare, to pursue these changes. What happens to the competitive tension between the big and small end of town when you take away these regulated checks and balances on conditions of employment?

We do not quite know how what the government is unleashing will pan out. What will happen to those employers who have a conscience, who want to pay and reward their employees well and who want, heaven forbid, to continue with current rates of pay or, perhaps, a worthy allegiance to an existing collective agreement or award? What will happen to them in the competitive market when they are competing against companies who have thrown those principles away at the behest of the Howard government? It messes with the economy in a way that I think a lot of businesses do not understand. They have not thought about it, because those running the campaign in the business community, who find themselves so closely aligned with the Liberal Party of Australia, are indeed the big end of town.

Ultimately, these changes will hurt workers and their family lives. The point is that if you have to work longer hours in a given working week—perhaps for less pay; perhaps not for less pay until there is a down-

turn in the economy—what happens to the work-family balance that we all claim to be pursuing? What happens to the principles of getting one's life in order and being able to spend time with one's children or elderly folk in the ultimate pursuit of the great nirvana of the 21st century: work-life balance? More than anything else, the Prime Minister's comments yesterday in relation to this issue expose the fact that work-life balance is no more important to the Howard government than any principle associated with IR has been. This industrial relations legislation is absolutely and fundamentally about work-life balance. That balance, which is so hard fought for and has been for a century now by Australian workers, is directly under threat.

**Senator STOTT DESPOJA** (South Australia) (10.57 am)—The Australian Democrats have expressed their concerns about this legislation in its myriad forms over the last couple of years. Both you, Mr Acting Deputy President Murray, and I have made clear, on behalf of the party, the concerns that we have. Most recently, along with opposition senators, we provided a contribution to the Senate committee report that makes clear our recommendation that the legislation in its current form should, for many of the reasons that have been articulated in this debate by other speakers, be rejected.

It is difficult to see this legislation as other than part of the continuing attacks on the sector. As commentators and other speakers in this place have pointed out, it is a twin attack. On the one hand, there is the government's arguably ideological obsession with workplace relations; on the other hand, there is the government's ideological agenda in relation to higher education. So it is the worst of all possible worlds.

The legislation in its most basic form requires that all new staff be offered AWAs by the end of this month, November 2005, and

that all existing staff be offered AWAs by August of next year. It allows AWAs to override collective agreements through a provision in enterprise agreements. It removes the restriction on fixed term and casual employment from enterprise agreements and—to quote from an NTEU briefing paper—an agreement ‘must not limit management’s capacity to make decisions; for example, having to consult staff and unions’. It enforces the notion that unions can only become involved in an industrial matter if an employee requests it.

We are looking at some fairly bizarre, draconian provisions that largely rely on coercion. Indeed, at the bottom of this is the issue of blackmail and the fact that universities, if they fail to implement these legislative changes, will be short-changed. This legislation will have an impact on their funding and their access to the Commonwealth Grants Scheme, the CGS. More broadly, it will have a deleterious impact on research quality, on teaching practices and on the notion of university and academic life generally—that is, academic and general staff in a general sense. That is something that I have talked about repeatedly in this place—in fact just this week—given that we have dealt with a raft of higher education legislation.

I cannot help but see this legislation in the context of continuing attacks on the sector. This is the seventh bill that we have dealt with that changes the Higher Education Support Act. It is the seventh bill since 2003 and the implementation of that legislation. As I remarked in this place earlier this week when dealing with the budget measures legislation—and, again, not reflecting on a vote of the Senate—that legislation was the sixth fix-it bill in relation to higher education legislation, particularly the Higher Education Support Act. So this is the seventh piece of legislation that we have had to deal with. There will be another bill this afternoon deal-

ing with higher education legislation—and, indeed, there are more to come.

So when it comes to this particular sector and questioning whether it is under attack, there is no doubt. We are dealing with inadequate indexation arrangements. We are dealing with proposals to implement so-called voluntary student unionism, which will emasculate the services and facilities provided for students, be they sporting services, representative services, media services, child-care services, catering services—you name it. We have got unprecedented HECS hikes, deregulation of the postgraduate sector and fees, charges and costs unlike most public university institutions in the industrialised world. We have threats to academic independence as never before—absolute, blatant interference in university autonomy—continual underfunding and now, through this legislation, blackmail of a kind that I am not sure many institutions around the world have been privy to. It is quite an extraordinary precedent for us to set in this country.

So you get the context—to the point where it is becoming boring. I am sick and tired of standing up in this place and having debates about higher education legislation when there is nothing positive. This bill achieves nothing positive. It completely underestimates the modern-day university. It completely underestimates the changes that have gone on in terms of workplace relations within those institutions. It is completely unnecessary. It is sector specific—so it is totally ideologically driven. Apart from the building and construction industry, this is the only other industry-specific legislation with which we are dealing in relation to workplace relations in this country.

This bill signifies, yet again, a complete renege on a commitment that was made by this government. We talked about it this week when we were dealing with the budget

measures bill. When it comes to indexation and the Commonwealth Grants Scheme and the debate and the deal that was struck in 2003 with the four Independent senators, the government has completely reneged on the deal that was made at that time—in the same way that the indexation deal was made and broken.

I cannot quite ascertain the reason for this legislation—so, no doubt, everyone in this place is particularly sceptical and calling it ideologically driven. I have to say, though, that the committee inquiry into and the public hearings held on this legislation were interesting. The public hearings were attended by Senator Trish Crossin on behalf of the Labor Party, the chair, Senator Judith Troeth, for the government, and me on behalf of the Democrats. In addition to the submissions that were provided to the Senate Employment, Workplace Relations and Education Legislation Committee, we heard public submissions from a range of groups in the sector—I would argue, a representative group of the sector—and the Department of Education, Science and Training. The really important thing to note here is that the sector was completely united in its criticisms and rejection of the legislation. In some ways, they encapsulated the concerns best.

The Australian Vice-Chancellors Committee, represented at that stage by Professor Richard Larkins, who is the Vice-Chancellor of Monash University, summed up the AVCC's objections by giving us seven points—a nice neat seven points. He said:

I will give seven reasons for that opposition. The first is that it is unnecessary; the second is that it is unprincipled; the third is that it is discriminatory; the fourth is that it is impractical; the fifth is that it has procedural unfairness associated with it; the sixth is that it is counterproductive; and the seventh is that it is rigid and micro-regulatory.

That is a brilliant summation of what is wrong with the legislation. I quote the AVCC

because the government has an association with the Australian Vice-Chancellors Committee. When it comes to the Higher Education Support Act and the deal that was struck in 2003, apparently the government relied heavily on the AVCC's recommendations and advice.

I will go to some of the seven points, because it is actually a reasonable way of addressing the higher education workplace relations legislation before us. Talking about the first point—that is, it being unnecessary—Professor Larkins said:

... for several years now, the universities have actually been exercising considerable flexibility. Indeed, most staff on the higher level—

the high-performing staff—

are on performance contracts which reward good performance. In addition, through the performance management system, we have methods of dealing with unsatisfactory performance—which, although time consuming, are effective. Therefore, as there is current flexibility, the legislation is unnecessary.

That is because universities already have the power to introduce, to offer and to provide AWAs. They already have a degree of flexibility. They already understand, as most workplaces do, the concept—if not the flexibility—of rewards, good performance and addressing the issues of poor performance.

To me, this exemplifies something that I have known for a long time in this place, but particularly under this government and, indeed, the current Minister for Education, Science and Training: this parliament has no concept of the modern university. It is still mired in these notions of ivory towers, vice-chancellors who have little to do with administration or their students and, indeed, academia that is on tenured contracts—not a problem with that, I might say. The notion is of academia that are in some way not responsive to the current, modern needs of their workplaces, their students, their teaching, their research and their other roles.

Mr Acting Deputy President Murray, do you remember the comments in this place by then Minister for Employment, Education, Training and Youth Affairs, Senator Amanda Vanstone, encouraging institutions to do in an academic? 'Put the brown paper bag under the door'—no kidding! And then they are talking about ivory towers. These are romantic but somewhat misleading perceptions, or conceptions, of how a university works in this day and age. This legislation exemplifies that fact. There is no understanding. The vice-chancellors are saying this. I often describe them—with all due respect, because I have and always have had a very good working relationship with that body—as not the most radical bunch of people. So when they are effectively telling the government to dump the legislation, I wonder who is listening.

The second point is the issue of the legislation being unprincipled. Again, the entire legislation is unprincipled, but Professor Richard Larkins, on behalf of the AVCC, points out:

... at the time of the Higher Education Support Act and negotiations surrounding that prior to its passage in December 2003, there was considerable discussion about linking higher education workplace relations requirements to the Commonwealth Grants Scheme increases.

He goes on to talk about the deal that was struck with the four Independent senators—after negotiation, he adds of course, with the AVCC—and he says their support was:

... very much around the decision by government to drop the requirement for linking the—

workplace relations requirements—

to the CGS increase—

that is, the Commonwealth Grants Scheme increase. He went on to say:

To go back on that agreement, which was one of the bases of the AVCC supporting the legislation at that time, would seem to be unprincipled.

Hear, hear! It is blackmail. This legislation is blackmail: you do not get your funds unless you implement these workplace relations changes. You do not get your funds unless you allow, for the first time in modern history—certainly in this country and arguably around the world—public university institutions to have their autonomy interfered with and a level of ministerial discretion that is inappropriate, unprecedented and not the basis on which universities should be working.

The third point, he says, is that it is discriminatory. You bet it is. He goes on to say:

The universities are perfectly willing to conform to workplace relations requirements that apply throughout the work force.

Hear, hear! But why design a sector-specific workplace relations system and make funding contingent upon that? Why single out universities in this way? No wonder people conclude it is ideological obsession. No wonder people hark back, as I heard Senator Lundy do, to HR Nicholls and people's past student lives, or what have you. No wonder they cannot help doing that, because you have to wonder: why pick on universities specifically? Again, if the AVCC are asking the question, obviously the rest of us have to wonder.

Professor Larkins says the fourth reason the AVCC have problems is that the legislation is impractical:

The component that is impractical is the requirement to offer AWAs to casual workers.

Now, hello! If there is one aspect of this legislation that the government could clean up it is the requirement that casual workers will be covered by this legislation. Casual workers will be covered—whether they are people invigilating exams or helping out from one month to the next! Who is going to provide the additional funds with which the universities will administer this process? Casual

workers are going to be offered AWAs for the purposes of what—how many weeks or months that they are there? Is it really necessary to have this in law? It is quite extraordinary and, again, totally underestimates the modern functionings of an Australian university workplace. As Professor Larkins of the AVCC says:

To offer all of those AWAs is incredibly complex and would achieve nothing. We would suggest that, if the legislation were to go ahead, the requirement to offer AWAs to casual workers be deferred indefinitely for casual workers employed for a period of less than six months.

Good idea. I was going to move that amendment, but I read the numbers, so I am appealing to the government now. If you are going to go ahead with such draconian legislation, such ideologically driven law, that is okay. We accept that you have the numbers now. But, for goodness sake, at least when it comes to the casual workers provision—in fact, I may still move that amendment, I am so angry about this.

**Senator Conroy**—Good on you!

**Senator STOTT DESPOJA**—Thank you, Senator Conroy. I know it will fail. It would be so much better if the government moved that amendment. It is a practical, good idea. Yes, I will reserve my right on that one.

The fifth reason is procedural unfairness, and Professor Larkins goes on to talk about those universities that have EBAs in current operation:

To require them to implement the HEWRRS by 30 November this year and the other universities not until the following year is an example of procedural unfairness.

The sixth reason is that it is counterproductive, Professor Larkins suggests:

... because the requirement to deliver a conforming EBA actually gives substantial bargaining power to the unions ...

So here they are actually worried that the unions are going to have too much power as a consequence of this legislation. Again, these statements do not necessarily encapsulate all of my views and certainly not those of the NTEU, and it was an interesting debating point at the committee. But if they are telling you that this legislation does not actually achieve what you want it to achieve, government, then certainly you have to re-think.

The seventh and final point is that it is rigid and microregulatory. Professor Larkins asked:

Why do we have to have an EBA, for example? Why can't we have other ways of interacting with our work force?

Hear, hear! Go back to the drawing board, government. This legislation is not appropriate. It is sector specific, it is full of black-mail, it is ideologically driven and it is unnecessary.

That does not even get to the impacts on the work force, on morale, on academic quality and on research and teaching, the core roles of those institutions—not that I necessarily think that some in government argue that anymore. I draw senators' attention to an advertisement that was placed in the *Australian* this week, organised by the National Tertiary Education Union but supported by more than 200 professors in this land. More than 200 professors in this land did this statement for the media. The union held a press conference on Monday morning and they outlined their concerns about the impact of these proposals, particularly on university autonomy and academic quality. They called for this government to reject, or at least withdraw, the proposals contained in this legislation. They claimed:

The HEWRRs—

the workplace relations requirements—

are part of the Government's broader Work-Choices industrial agenda, and require the offering of Australian Workplace Agreements to all university staff and the removal of limits on fixed term and casual employment.

The statement urges the Federal Government to withdraw these proposals and, if they do not, for the Senate to reject them. So, honourable senators, this is our chance. Listen to the intellectual lifeblood of this country. More than 200 professors in this land have signed a half-page advertisement in the *Australian* calling for this legislation to be rejected. You do not sniff at that, although I have seen what has happened when people have spoken out on behalf of intellectualism and fair debate in this country in recent times, particularly academics. Those professors acknowledge that this legislation will see universities denied \$300 million in much needed funds in 2006-07 unless they adopt these hardline workplace relations requirements.

On that note, I made clear earlier this week when talking about the issue of indexation that we have to put this in perspective. Since this government came to power we know that universities have lost anything up to \$500 million in revenue. At the risk of being seen to be unfair I just want to make clear that successive governments are responsible for not addressing adequately the indexation issue of universities but this government has compounded that, along with all its other measures that have seen our higher education system go backwards in terms of equity and access, whether it is fees, charges, barriers, lack of income support, proposed voluntary student unionism—you name it. The indexation requirements are the single biggest priority issue for groups like the Australian Vice-Chancellors Committee, and this legislation does nothing to address that.

The government's own ministerial reviews and reports show that between \$911 million and \$988 million is required over the next four years in order to adequately resource universities when it comes to indexation. If that is what the legislation provided it would be a joyful day. Instead of that the government is blackmailing universities by saying that they will get their meagre Commonwealth Grants Scheme money in return for workplace relations requirements. If this legislation were adequately dealing with indexation it would be a joyful day for those 200 professors and the students, graduates and aspiring students in this country. But, no, we are just dealing with another bill that does very little for education in this country, I am sad to say, and the Democrats will be opposing the measures.

**Senator MOORE** (Queensland) (11.17 am)—I want to make a couple of points on this particular piece of legislation. Many people have contacted our office with their concerns about the Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005. Amidst all the other legislation that we have to consider, there have been many calls and emails about this one. Their concerns are not new. Many of the emails and comments I have received talk about the fact that this legislation has come back before us and that there have been clear attempts to bring this one forward in the past. It has not been able to get through previously and now it is back because of the situation we face where the government has achieved the numbers.

Notwithstanding that, and echoing many of the comments that Senator Stott Despoja has made, I think it is important that at least we put the issues out there so that we can have some debate over something that is going to impact upon the university sector. It is such an incredibly important sector in our community, one that we talk about a lot. But

I wonder whether people really understand the value the university sector gives to our community. It is not just in terms of the intellectual studies that come and the areas of research and the experience levels that we have there. I think it is also the impact that universities have on local communities. That is no more real than in areas such as where I come from in Toowoomba. We speak of the university there as 'our university' because it grew with the community and in fact only acquired its university status because of demonstrations made by local people to say that they wanted this kind of institution to benefit and augment the kind of life that was available for people who live on the Darling Downs.

That kind of institution is replicated in places like Central Queensland, where we have the Rockhampton campus and also the burgeoning campuses that have spread out through Central Queensland, and there is also James Cook University. I am mentioning the regional campuses—and this is by no means a way of giving certain weight to them as opposed to others—because of the impact of the legislation that we are facing. I think that in many ways you can see a snapshot of exactly what will occur by seeing what will happen in places like Toowoomba or Townsville or Rockhampton. Sometimes when we talk about universities we tend to concentrate on the academic staff because universities are there to teach, but the legislation that we have before us will not only impact on those people who are fortunate enough to be educators. Look at the wide range of people who are employed on a university campus. It is wonderful to visit the campuses and see the people who work in the libraries, in the gardens and in the kitchens. All of them proudly identify as members of that university community. All of those workers will be impacted by this legislative

change so when we are considering that we should look across the board at the impact.

It was really difficult sitting here before and hearing all the things that I was going to say being said by the other speakers. Senator Stott Despoja's contribution dealt with many of the issues that I wanted to raise so I will not go over them all again, but the kinds of emails that I got were saying, 'Why do we need this legislation?' There is already a healthy situation in terms of what already occurs in negotiating process—though apparently 'negotiating' is a dirty word, because the evidence I got from the department was that they really do not like the word 'negotiation'; it should be removed from the whole process, which should now always reflect 'consultation' rather than negotiation. But in all the discussions we have had around this process what is clear is that there is already a healthy industrial relationship at the universities. When this legislation is pushed through there will be the imposition of the industrial relations changes that the government will already be wanting to push through with the legislation coming before us in a couple of weeks time. The key difference here, as Senator Stott Despoja said, is that it is some kind of industry experiment, in that we are clearly focusing on this particular area. But it seems to me to be particularly confronting because we have a list of expectations being given out to university management groups and they are being directed to change their way of operating in the area of workplace relations, and if they do not implement those changes by a certain date they will automatically lose funding.

We in this place all know how terribly important the issue of funding is to our university sector. We have heard already statements made about the volume of expenditure that has been reduced from university funding over the last 10 years. We have had strong representations from people saying that there



needed to be more funding given to universities to allow for greater research and greater activity to implement the kinds of environmental changes that we would like to have. But, in this particular case, not only is the government wanting to use the university sector as some kind of pilot or trial for the workplace relations changes that are all included in the workplace relations bills—which will be before us probably in the next sitting—but they also want to get those changes enforced in the university area first, with the added threat that, if the universities do not do it, they will lose money.

That process is, to me, one of the saddest things about the circumstances we are discussing with this legislation. Whether you agree or disagree with the range of changes that the minister is imposing through this legislation, the actual way that it is being implemented must cause everyone in this chamber some concern because it is a direct threat: do it or you lose your money. We have seen the government attempting to do that in other pieces of legislation on the construction industry and funding to various state programs, but I find it particularly offensive that the very industry which should be the place where free thought and free expression is blossoming is the one that is going to be used as the pilot, and I use that term again, for pushing through these industrial relations changes.

Other speakers have talked about the various things that will happen as a result of this legislation, but I just want to go through them a little to justify my speaking here. When this legislation first came on we were told that it was a simple matter of choice. We were told that the only change that was going to be put in place by this was that people would have the option to have Australian workplace agreements in their industrial options. It was something that we should not have been too concerned about. All it was

going to do was to offer the people who work in universities—and, even then, there seems to be a concentration on the academic ranks, but in fact it is for all people working in universities—the option of being able to take up an AWA. It is more than that. Certainly the AWA clause is very important in the whole process, but it is not just the offer. It is that every single person who will be working in this sector must be offered an AWA.

Once again, it is a change. This has come through in the difference between this legislation and what we had before. It is not just in some flexible options list that is available for everyone to take up—that you can have a certified agreement, that you can have these other ways and, if you did seek information on AWAs, that could be a choice that you may want to take. No, with this legislation we are going one step further. We are saying that in this industry there must be the offer of an Australian workplace agreement. It would be no surprise to people from the government that that is an option that I do not value particularly highly. The indications that we have already on the history of Australian workplace agreements are that people who take them are not always getting the best deal. Certainly my own experience in the Australia Public Service was that over the series of Australian workplace agreements—in some parts of that industry we are into second and third times—people do not always get the best possible outcomes.

For me—and I understand that people would accept that I have a particular philosophy on this point—the real issue is that this actually focuses again on the individual; it is always on the individual. It is the competitive and divisive nature of this form of enterprise discussion which offends me and, in fact, it scares me for the future. If you have a community which is focused on achieving an outcome and you impose—and

I use that verb absolutely clearly—upon them a system for their workplace relations which focuses exclusively on the individual and also encourages people, through the terms that are offered, to outbid each other on how hard they can work and what kinds of things they can provide, it breaks down the sense of shared working experiences. It breaks down the sense of community. Once again, it focuses on the individuals being out for themselves.

Also, in this particular case—where we have the change so that it is no longer an option but it must be offered—we have a situation where the people who are being offered these agreements, in the individual choice element, are asking, ‘What happens to me if I don’t take up this offer?’ We all know that the university sector is an intensely difficult area of education to work in. There are huge demands and challenges for people who work in that area. We also know that, in the university sector, it has been very difficult over the last 15 to 20 years in Australia to obtain long-term secure work. People feel very threatened by anything that could make their employment even more vulnerable, particularly in an environment where other forms of funding are very questionable. People survive, grant by grant, to see whether they will be able to maintain their work.

Once again, it is not just the people directly involved in education but all those people surrounding them who are part of the university family. By imposing this process of having a single contract, it could lead to—and I am not saying that it automatically leads to it in all cases—individuals feeling so threatened and vulnerable that they would be prepared to accept any form of contract just to ensure employment. That is the worst possible outcome of a system which enshrines individual contracts, and an environment where division and competition seem to be the norm.

It goes on to the different principles of the direct relationship and freedom of association—one of my favourite terms. When we talk about freedoms that should be enshrined, freedom of association is one that is very dear to me. In terms of the environment in which we are operating, within this particular legislation a great effort is being made to ensure that there is balance, that there is no favouritism and that there is the option for people to take up their rights to be a part of an union agreement and to be part of a union, if they choose to.

I will now refer to comments that have already been made by the department to universities regarding arrangements for agreements that are being negotiated now, in order to meet the deadline imposed by the department that if you have an enterprise agreement it must be finalised by the end of this month. With respect to clauses to do with negotiations that currently take place in the university between a staff member, their union and their boss, the department has commented:

Clauses should be amended to replace the word ‘negotiation’ with ‘consultation’ and, where appropriate, should also specify exactly between whom the consultation takes place.

And this is the bit that I am really worried about:

‘With a view to reach a shared decision’ and ‘with a view to reaching agreement’ also inhibit flexibility and should be removed.

That deeply concerns me. If, in a current workplace discussion—and I will try to keep away from the unfortunate word ‘negotiation’—we are able to achieve an outcome which enshrines in an agreement the term ‘with a view to reach a shared decision’, should not we be applauding that? Should not we be saying that that is actually a successful outcome? But under the current guidelines and the current advice being given to employers on this basis, that is seen as

somehow inflexible. On that point, having regard to the words that are in front of us, and having regard to the environment that is being created by this government across the community, when you have that clear advice that you should be avoiding use of the term 'with a view to reach a shared decision' in an agreement between employers and employees on the basis that it could be inflexible, that must raise some concerns. It certainly does for me.

Because of my particular bias, in that I strongly support the role of unions, particularly when people have an issue about which they want support, I will quote another comment made by the department about employers currently involved in negotiations. It refers to a staff member who happens to be a member of a union getting some assistance when they are facing a situation in the workplace. The advice from the department is as follows:

The definition of 'representative'—

and that is the kind of support that someone could get—

provides an advantage to a union member in that they can have access to a representative from the union or another staff member, where a non-union member of staff only has access to a staff member to represent them. This should be amended so that all staff members have the same flexibility and choice as to who represents them.

It interests me that there is so much focus on excluding access by an employee to help from their union, even though we have protestations about individual union members being able to have someone from the union in to talk to them. In fact, on this point I cannot help referring to the advertisements displayed across the media at the moment—and I will not mention how much they have cost; you are very well aware of that, Mr Acting Deputy President Forshaw. I refer to that wonderful scene where the employer and the employee together usher in the representative

from the union to assist in working through an issue. We are not quite sure what the issue is, but they are actively welcomed and ushered in to be part of the discussion.

From the advice that is currently being given about what will happen, it seems to me that, whilst being very clear to meet the legal requirements in not totally excluding the option of having someone from the union present, the onus is completely on the individual. As I said earlier in my contribution, my concern is that, where the onus is entirely on the individual, there is the possibility that they may be intimidated and may not have the strength or knowledge to take up the options which are there but which are not highlighted.

We have clear advice on a written agreement that a staff member who chooses the option of accessing a member of the union or a staff member to help them has an advantage that is somehow unfair. That reflects more clearly the intent of this process. From my reading of it, and definitely from the concerns that have been raised with me in my office, there is a fear that this is yet one more attempt to totally break the nexus between an employee who chooses to be a member of a union and their right to meet with their union representative in the workplace. It will prevent open access to union activity in any form of negotiation or discussion in the workplace.

We know that is the intent of the government having regard to the wider community. What is also now being forced upon the university culture and community, quite unnecessarily, through this separate piece of legislation, is the fear, anxiety and concerns that have been raised, when there is no necessity for this to occur. The natural processes that will occur in this country over the next few years will mean that this kind of debate will take place, so why, at this time, are the peo-

ple who work in higher education being confronted with their workplace being subject to not only the industrial relations changes that we have identified but also to the added blackmail that their key funding will be cut if they do not take up, word for word, the instructions that have been given by the government?

Where do we go now? We will have a debate on the matter, and the government will continue to be lobbied on it. We know that will happen, because we have seen the process that has occurred in the media. Members of university communities across the country have said that this does not make them feel more secure, it does not make them have a greater sense of fairness, it does not make them feel more productive and it certainly does not make them feel more flexible. We will go through this process because it is important that issues about fairness, genuine productivity and a clear community focus on our education system are put clearly on the record. This means the information will be on the record not only for this debate but for future debates, and people in the future will have a clear understanding of what happened with this legislation in 2005. It has been defeated before, but we will see what happens now, in 2005.

**Senator STEPHENS** (New South Wales) (11.37 am)—I rise as the final speaker in the debate today on the Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005. As we have heard from several other speakers, this is an example of how this government is forcing inappropriate workplace relations requirements onto higher education institutions and Australian employees. It is interesting to note that to date there has been no contribution from government senators prepared to defend this legislation. We have to wonder why that is the case—perhaps it is, ‘Why bother?’

or ‘Does it matter?’ or, even worse, ‘Who cares?’

The purpose of the bill is to offer additional funding to our universities and other higher education institutions under the Commonwealth Grants Scheme, but it is conditional on the adoption of the government’s higher education workplace requirements. Universities that comply with these requirements will receive increases in their basic CGS funding of 2½ per cent in 2005, five per cent in 2006 and 7½ per cent in 2007 and beyond. And there is a 30 December 2005 compliance deadline for our universities. The rub in this bill is not even subtle. Vice-chancellors have been told, ‘Implement this workplace relations scheme and offer all employees Australian workplace agreements, or you do not get the dollars.’ Several speakers have already mentioned the explicit blackmail that is inherent in that message. We heard the same message in the TAFE funding agreement legislation debated during the last session: no choice, no time, no scrutiny. It equates to bully boy tactics of our institutions and interference in their administration by a government that on the one hand, like yesterday, talks up the capacity, innovation and dynamics of our universities and, on the other hand, hacks away at the resources of these institutions.

As I said, Senator Crossin and Senator Stott Despoja have called it blackmail and I agree. The workplace reforms are being debated in the other chamber and here in the Senate we are debating a bill that gives no indication of, for example, maintaining a no disadvantage test for AWAs in higher education institutions. This despite the Minister for Education, Science and Training, Dr Nelson, in his second reading speech saying:

As with collective agreements, AWAs are subject to a no disadvantage test.

It is just another sleight of hand. The government insists that it is not enforcing the issue of AWAs and that take-up is voluntary and yet, in this bill, is tying additional funding to the offering of AWAs.

At the ARC awards yesterday, the Parliamentary Secretary to the Prime Minister, who stepped in at the last minute for Minister Nelson, was spruiking the value of research partnerships. The figures quoted confirmed that the federal government contributes a small proportion of the total funding in the higher education sector. Evidence to the Senate inquiry into this bill indicated that higher education funding from the Commonwealth government to that sector is now less than 50 per cent. Yet this is a government that wants total control of what happens in higher education institutions right down to the employment conditions of each and every employee—from the university vice-chancellors to the cleaners and casual outdoors staff.

The bill reintroduces the industrial relations elements that were defeated here in December 2003. Of course, the circumstances are very different now and this government is intent upon imposing a range of obligations on universities to meet provisions under the national governance protocols and the higher education workplace relations requirements. There are dire consequences for failure to satisfy these requirements and that is a cut in their proportion of university funding.

Under this legislation, every university staff member will have to be offered an AWA by August next year. What is that all about? This goes beyond the requirements for employees in any other industry. Universities are confronting enterprise agreements that are going to be stripped back to a frightening safety net. We are going to see greater casualisation, and limited contracts for staff will

be encouraged and facilitated through the legislation. What are the consequences for our communities going to be? Certainly, we have heard a lot in the debate about university independence. We have heard about academic and support staff who will lose their tenures. Job security will certainly disappear and there will be limits on fixed-term and casual staff.

We heard in the debate yesterday and this morning about the Industrial Relations Commission's decision 10 years ago about fixed-term and casual employment in higher education institutions. We have heard from the Prime Minister that if employees do not like conditions that might be unfair and potentially unreasonable under these arrangements, they can go somewhere else. Senator Moore raised the issue of the regional universities and just how many options people might have to go somewhere else. If you think about universities in Darwin, Alice Springs, Toowoomba, Gladstone, Wagga Wagga, Albury, Bathurst, Orange or Bendigo, if you are dissatisfied with your employer, who happens to be one of those universities, and who you believe is dealing with you unfairly, just where do you go and what you do? You do not really have very many options at all.

As the final speaker in the debate, I would like to summarise the five specific conditions that must be met that Labor is completely opposed to. The first relates to choice in agreement making. Under the provisions, universities must offer Australian workplace agreements to all new employees employed after 29 April this year and to all other employees by 31 August next year. Until 30 June next year, universities are exempt from offering AWAs to casual employees engaged for a period of less than one month. Any certified agreements made by the university and certified after 29 April this year, are to include a clause that expressly allows for

AWAs to operate to the exclusion of the certified agreement or to prevail over the certified agreement where there is any inconsistency.

At the moment, as we know, universities may offer AWAs to staff under existing certified agreements. That is something that was agreed to as part of the negotiations in 2003, but apparently it is not enough for this government. A new condition imposed in this bill is that every single university employee must be offered an AWA by 31 August 2006. This absolutely demonstrates the minister's misunderstanding, lack of understanding or, perhaps, complete disregard for how universities operate and, certainly, his lack of concern about how employees on Australian workplace agreements might manage.

By mandating that every employee must be offered an AWA rather than leaving it as one of various options, this provision goes well beyond the existing position. In the process, the government is actually seeking to introduce a stipulation for the higher education sector that, as we have heard from several speakers already, is way in excess of its own extreme industrial relations policy for the work force generally.

Many people will be quite specifically impacted. The first group I want to speak to are women. Women employed on individual contracts now earn about 11 per cent less an hour than men employed on collective agreements. Currently, women receive about 90 per cent of the hourly rate of men employed on collective agreements. That percentage is reduced further under AWAs, where women earn only about 80 per cent of the hourly pay of men. So we know from current experience that when employees are put on individual contracts they are, on average, worse off. It certainly is the case that AWAs are bad news for employees in universities—especially for women, because we

know that women represent more than 50 per cent of university staff.

The second part of the bill relates to direct relationships with employees. Several speakers in the debate have discussed how much this is actually about undermining the role of unions. This condition stipulates that university workplace agreements, policies and practices must provide for direct consultation between employees and the institution about workplace relations and human resource matters. Further, so-called third-party involvement in the representation of employees must occur only at the request of an affected employee. That means that the union can intervene on behalf of an employee only at the request of the employee.

Another detail under this condition is that consultative and other committees must include direct employee involvement and that employee involvement in negotiations on industrial relations issues must not be restricted only to third-party representation. We know, as we have heard several times, that this is about excluding the unions from a role in consultative processes related to staff. If third-party involvement can occur only at the request of an individual employee and not as a right, it is all too easy to imagine that many university staff will feel intimidated and forgo the opportunity to be represented at all. I am not even going to explore how that impacts on staff who might be from a non-English-speaking background or unskilled outdoor or support staff who perhaps do not have the capacity to represent their own interests and need the representation of something like their union. Just on that fact alone, Labor is certainly not going to support this legislation.

The next condition is about workplace flexibility. That condition states that workplace agreements should expressly displace previous workplace agreements in relevant

awards. Those new workplace agreements are not to limit or restrict the ability of the universities to make decisions and implement change in respect to course offerings and associated staff requirements, and limitations are not to be placed on forms and mix of employment arrangements.

So what is this all about? Really, those provisions will help the Howard government to nullify the impact of the existing higher education contract of employment award. That is the employment award made by the Industrial Relations Commission and spoken to so clearly by Senator Crossin. Under this condition, the government is also taking aim at the vital protections in place through restrictions on casual employment that were agreed to between the universities and the unions in the last round of enterprise bargaining. The level of casualisation in the higher education sector is very high; it is second only to that of the hospitality and tourism industry. There can be no doubt that, if the bill is passed, the government will press universities to strip back essential protections from their agreements until the result is something that resembles very much hollowed-out safety net awards.

The next area is productivity and performance. The university workplace agreements must include a fair and transparent performance management scheme to reward so-called high-flyers and must also include efficient processes for managing poorly performing staff. What this seems to ignore is that all universities are already able to do just that. They are able to reward their high-flyers, and they do so using salary loadings and the payment of market and merit loadings. Existing arrangements also provide mechanisms for dealing with unsatisfactory or poor performance. So what is really going on here? It really is about making it much easier to terminate the employment of staff that universities deem to be unsatisfactory.

We again see that this is undermining the protections that are already in place for university staff and which were agreed so sensibly in the last round of enterprise bargaining.

The next issue goes to freedom of association. Again, we have had lots of discussion about this part of the bill. Under this condition, university enterprise agreements must be consistent with freedom of association principles contained in the Workplace Relations Act 1996 and institutions must neither encourage nor discourage the membership of unions. The bill also imposes a condition prohibiting universities from using the Commonwealth Grants Scheme funds to pay university union staff salaries or to fund union facilities. The prohibition on the capacity of universities to use the Commonwealth Grants Scheme funds to assist in the resourcing of officers, facilities or salaries of the local branch of a relevant union certainly exposes this government's anti-union agenda.

The Minister for Employment and Workplace Relations, the Prime Minister and others, as we well know, repeatedly express the view that employers and employees should be free to choose the form of agreement that best suits them and should be free to determine for themselves what should be included in their agreement. Yet what is going on in this legislation is that we will have a third uninvited party—that is, the Commonwealth government—muscling in to add confusion to the debate, as well as greater complexity and regulation, in absolute contradiction to their stated aims of choice and flexibility, which is what we are hearing about in the industrial relations legislation.

This is a very confusing and frustrating bill that will not be supported by Labor. It is clear that the bill is ideologically driven and is all about the industrial relations agenda. This time, the setting is the higher education

sector. There are six principles in Labor's industrial relations policy that we will reflect in our policy direction for higher education. The six key features of our position are that a Labor government would recognise: the need for a strong safety net of minimum award wages and conditions; the need for a strong independent umpire to assure fair wages and conditions, and to settle disputes; the rights of employees to bargain collectively for decent wages and conditions; the rights of workers to reject individual contracts which cut pay and conditions and undermine collective bargaining and union representation; proper rights for Australian workers who are unfairly dismissed; and the right to join a union and be represented by a union. They are the principles that Labor will base our industrial relations policy on.

Labor are committed to a productive and fair industrial relations system and want to see a return to dignity as well as productivity in the workplace. They certainly do not seem to matter to this government. This bill is creating a vehicle for the salaries and working conditions of university employees to be eroded and diminished. This has often been misunderstood, but we are not talking just about academic staff; we are talking about all employees of universities. Many of these hard-won conditions will be wound back or lost if the bill proceeds.

There are some other issues that I am very concerned about. One that was raised in the House of Representatives in this debate was the issue of maternity leave and the negotiations that have gone on around maternity leave in universities. Another is the restriction on the number of casual staff able to be employed in our universities. We need to think about who the losers are going to be: the staff, the students and the communities which the universities operate in and support.

Paid maternity leave is only one area where there will be a reduction in conditions. It is something that is of real concern when you consider the number of women working in universities—as I mentioned before, women make up more than 50 per cent of university staff. In many universities, maternity leave provisions have quite recently been improved. The community standard for maternity leave under the Howard government is no paid leave at all, and the community standard is the one that the universities will have to measure themselves against. What we could see is those hard-won maternity leave provisions, which have been carefully negotiated to support women in the higher education system in both work and study, being stripped back. That is a very significant issue when we are looking at the role of higher education and research in this nation.

The restriction on casual staff employed in universities is also a critical issue. We know that the level of casualisation in the higher education sector is as high as it is in the hospitality and tourism sectors. There are many examples where the conditions negotiated for casual employees will be undermined because of the way that negotiations will have to take place under the new regime. Individual contracts will undermine many of the conditions that have been so carefully won for casual staff. That does not seem to be of any interest to this government at all. We know students are going to be the great losers. We know that students make up quite a reasonable number of the part-time and casual staff employed at universities. Recently, at the University of Canberra—where I studied—we saw students supporting themselves and helping to pay for their HECS fees by working in the library, in student support services and in the cafeterias and shops that are at the university. Those people are going



to be very significantly impacted by these changes.

It seems very clear that this is not about quality of education; it is not about improving productivity in the universities; it is not about anything except the industrial relations agenda that this government is trying to impose. The idea that you can use this legislation to push the industrial relations reform debate that is going on in the other house is an appalling misuse of the higher education legislation—and of the higher education sector. We know that education is fundamentally threatened by this legislation. Labor are not going to support it in any shape or form, and we are going to be telling the community that right up to the election.

**Senator ABETZ** (Tasmania—Special Minister of State) (11.57 am)—I thank honourable senators for their contributions to this debate. The Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005 is necessary if Australia is to retain its competitive edge in the provision of higher education. Increasingly, Australian and overseas students will make their choices on the basis of cost, reputation for standards, and local and overseas career options. In order to compete with international universities, Australian universities need to be able to attract and keep the best staff and reward them in accordance with their skills. Universities are failing to attract and retain talented academics to undertake great teaching and research. Research undertaken for the Department of Education, Science and Training has shown that salaries for university academics in Australia are less competitive than similar positions in the private sector and overseas.

The higher education workplace relations requirements are designed to support a workplace relations system in universities focused on greater freedom, flexibility and

individual choice. The workplace relations requirements enable members of staff and higher education providers to negotiate mutually beneficial work arrangements tailored to meet the needs of both the individuals and the institution. AWAs allow greater flexibility than certified agreements to provide bonuses and other rewards for high performance. They assist employers to offer incentives to attract and retain the best employees. Under this legislation, universities will be required to offer an AWA to all employees. Under the workplace relations requirements, certified agreements may not inhibit productivity, flexibility or the form and mix of employment arrangements. To fulfil the requirements, universities must be able to offer employment on the condition of an AWA if universities so wish.

The government's approach is about providing choice, not prescribing particular outcomes. Choice is about providing scope for individuals to negotiate pay and conditions which suit their particular needs and circumstances rather than being locked into a one-size-fits-all approach. In debating the bill it has been argued by opposition senators and in the other place that universities already have the capacity to offer individual arrangements and recognise high-performing staff. They have said that this happens through individual common law contracts rather than AWAs. What they have not said is that these contracts are usually offered to senior staff and no-one else. This means that the majority of university staff are not able to negotiate conditions that are mutually beneficial to them and their university.

There has also been criticism that the workplace relations requirements force universities to have in place agreements that displace previous awards and agreements. This is not new. The government's former workplace reform program between 2000 and 2004 also included this element. Before

the introduction of this program, some universities had agreements that needed to be read in conjunction with up to 10 different awards. The majority now have single agreements containing all of the relevant conditions of employment in one comprehensive document.

The workplace relations requirements will have no impact on academic freedom. Universities will still be able to make their own decisions about the appointment of staff and other academic activities. The requirements will encourage universities to develop a culture of direct communication with their staff. Third parties, including unions, will only be allowed to represent an employee at the request of that employee. Whilst staff liaison committees will be able to continue to exist with an important consultative function, they will not be able to exert powers to block change and hinder progress and productivity.

The requirements will provide universities with increased flexibility to offer courses that are relevant to the needs of the country and the students, and that will respond to market pressures and the demands of our immediate environment. The reforms will assist institutions to encourage individual and organisational performance and productivity, including rewarding high-performing individuals, efficiently managing underperformance and strengthening management and leadership capability. Through the higher education reforms that this government introduced this year, the government has committed more than \$11 billion in additional support for higher education. However, this funding will only assist the sector if it is accompanied by significant changes in the way that universities are managed.

I understand that the Greens have moved a second reading amendment, which the government opposes. Their amendment is in four parts. I will not delay the Senate for long on

this. In relation to subparagraph (a), I simply indicate that the requirements that we will be legislating will have no impact on university independence. In relation to the suggestion in subparagraph (b) about funding, I refer to the fact of the extra \$11 billion boost to our higher education sector, which effectively debunks that part of the amendment. In relation to subparagraph (c), I indicate that the only change is that the requirements provide that third parties, including unions, may only be involved at the request of an affected employee. Finally, it is the government's view that the time for significant workplace reform in Australia's higher education system has well and truly come. That is why we are moving the bill and that is why we are rejecting the Greens' second reading amendment. I commend the bill to the Senate.

**The ACTING DEPUTY PRESIDENT (Senator Forshaw)**—The question is that the second reading amendment moved by Senator Siewert be agreed to.

Question negatived.

Question put:

That this bill be now read a second time.

The Senate divided. [12.09 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	34
Noes.....	<u>30</u>
Majority.....	4

#### AYES

Abetz, E.	Adams, J.
Barnett, G.	Boswell, R.L.D.
Brandis, G.H.	Calvert, P.H.
Campbell, I.G.	Chapman, H.G.P.
Colbeck, R.	Coonan, H.L.
Eggleston, A. *	Ellison, C.M.
Ferguson, A.B.	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.
Ronaldson, M.	Santoro, S.
Scullion, N.G.	Troeth, J.M.
Trood, R.	Watson, J.O.W.

## NOES

Allison, L.F.	Bishop, T.M.
Brown, C.L.	Campbell, G.
Conroy, S.M.	Crossin, P.M.
Evans, C.V.	Faulkner, J.P.
Forshaw, M.G.	Hogg, J.J.
Hutchins, S.P.	Kirk, L.
Ludwig, J.W.	Lundy, K.A.
Marshall, G.	McEwen, A.
McLucas, J.E.	Milne, C.
Moore, C.	Murray, A.J.M.
O'Brien, K.W.K.	Polley, H.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Stott Despoja, N.	Webber, R.
Wong, P.	Wortley, D.

## PAIRS

Ferris, J.M.	Nettle, K.
Hill, R.M.	Bartlett, A.J.J.
Parry, S.	Ray, R.F.
Patterson, K.C.	Carr, K.J.
Payne, M.A.	Brown, B.J.
Vanstone, A.E.	Hurley, A.

\* denotes teller

Question agreed to.

Bill read a second time.

**In Committee**

Bill—by leave—taken as a whole.

**Senator STOTT DESPOJA** (South Australia) (12.13 pm)—I move Democrat amendment (1) on sheet 4751:

Schedule 1, item 1, page 3 (after line 14), after paragraph 33-15(1)(c), insert:

; and (d) the Higher Education Workplace Relations Requirements must not require a casual worker employed for a period of 6 months or less to sign an Australian Workplace Agreement.

The amendment relates to the issue of casual workers and the requirement that they be offered an AWA. The amendment seeks to ensure that casual workers of less than six months employment do not have to be offered an AWA. It is a requirement of universities to offer AWAs to casual workers of less than six months employment. That requirement is removed by this amendment. The aim is to ensure that at least one of the impractical provisions of this legislation is alleviated in some way.

In my speech in the second reading debate I made clear a number of concerns that the Australian Vice-Chancellors Committee had in relation to this legislation—concerns that I might say are shared by the entire sector. When the committee heard public submissions from the sector as part of the inquiry into this bill, the sector was pretty much unanimous on the deleterious impact of the legislation. The fourth point that I made in my remarks was a point made quite clearly by Professor Richard Larkins, the Vice-Chancellor of Monash University, at the hearing. The point that he made at the hearing on behalf of the Australian Vice-Chancellors Committee was that this legislation before us is impractical. In his comments to that inquiry he said:

The component that is impractical is the requirement to offer AWAs to casual workers. Following a meeting with the two relevant ministers the legislation was amended to give a deferment until June 2006 of the requirement to offer AWAs to casual workers employed for less than a month. Universities employ many casual workers for periods of high demand such as invigilating at exams or demonstrating in practical classes and so on. These are very often students given the opportunity to work for a short period of time. To offer all of those AWAs is incredibly complex and would achieve nothing. We would suggest that, if the legislation were to go ahead, the requirement to offer AWAs to casual workers be deferred in-

definitely for casual workers employed for a period of less than six months.

Those are the words of Professor Larkins, the Vice-Chancellor of Monash University. In that spirit I have circulated an amendment which seeks to do just that—that is, implement the recommendation of the Australian Vice-Chancellors Committee.

There are many other amendments this legislation could do with but the best thing for the government to do would be to go back to the drawing board completely—hence the decision of the Democrats to oppose this bill at the second reading stage. However, this is a minor but practical and reasonable amendment. It is one that is supported strongly by the Australian Vice-Chancellors Committee, which has been involved in discussions and negotiations with this government on regular occasions, most notably in striking a deal on the Higher Education Support Bill 2003. If the government are serious about the implementation of this legislation and want to create a so-called flexible workplace environment for universities—not something that I think will be achieved by this legislation; quite the contrary—then they will consider this practical amendment at the behest of the Australian Vice-Chancellors Committee, with which they have worked and waxed lyrical on occasions, specifically when dealing with them on the 2003 bill, and, hopefully, vote for it.

The government have already gone some way to supporting an amendment of this kind as a consequence of the negotiations with the AVCC, and that is the deferral of the implementation of the legislation as applied to casual workers until June 2006. The government recognise that there is an issue with this and that there is a problem. Therefore I strongly support the AVCC recommendation for an indefinite postponement in the case of casual workers, particularly those employed for a period of less than six months. This

amendment achieves that practically. I commend it to the chamber. I hope it will have support. I understand it has opposition support, and certainly that of the Greens. I ask the minister for the government's response to the amendment before the chamber.

**Senator WONG** (South Australia) (12.18 pm)—I indicate that the opposition are prepared to support this amendment but we do want to place on record that we do not think this position goes far enough, hence our opposition to the bill. Our position is that we do not think it is appropriate for the national government to be utilising taxpayers' money as leverage to impose an inappropriate intrusion into the management of our universities. The Labor Party's view is that universities should not be put in a position where employees must be offered an AWA, whether they are casual or not. We understand the practical reasons why Senator Stott Despoja, on behalf of the Democrats, has moved this amendment and we will support it. Because of our opposition to the intrusion into university management I reiterate the position that I and other Labor speakers have put very clearly in our speeches in the debate on the second reading, and that is that Labor is fundamentally opposed to the way in which this bill allows this minister and this government to impose a radical industrial relations agenda requiring AWAs to be offered in our universities. That is the basis on which the opposition supports this amendment.

**Senator ABETZ** (Tasmania—Special Minister of State) (12.19 pm)—I thank Senators Stott Despoja and Wong for their brevity in dealing with this bill. It will not surprise them to know that the government oppose the amendment moved by Senator Stott Despoja. Senator Stott Despoja was right about the initial approach of the government. Then, as a result of consultations, it was announced on 16 June 2005 to continue until 30 June 2006. The reason for that is that the making

of AWAs will be considerably simplified as a result of the passage of the Work Choices legislation and therefore this interregnum was appropriate. In considering it we believed it should be limited to those who are offered employment for a period of one month or less. Other than that we are of the view that the legislation and the principles behind it remain but we do accept that there might be some administrative difficulty until such time as Work Choices has been passed by this parliament, and that is why we have given the flexibility until 30 June 2006. Having said that, the government oppose the amendment.

**Senator STOTT DESPOJA** (South Australia) (12.21 pm)—Will the minister outline what additional resources will be provided to universities to assist with implementation, particularly given the complexity of negotiating or providing AWAs to, for example, casual workers in this instance? What assistance will be provided? I am not talking just about the period from now until June next year, when everything will be magically okay, apparently, but beyond that point. What assistance, given that universities are concerned about resources generally, will be given to universities specifically as a consequence of this legislation?

**Senator ABETZ** (Tasmania—Special Minister of State) (12.22 pm)—The \$75 million which is going to be given by the 2.5 per cent extra funding, as I understand it, can be used for administrative purposes. As I think Senator Stott Despoja and I both know, it will not be costing universities \$75 million. In fact, I do not think that there would be any substantial administrative cost increase to universities. Of course, with their compliance with this requirement they will be the beneficiaries of a 2.5 per cent increase.

**Senator STOTT DESPOJA** (South Australia) (12.22 pm)—So there have been no

specific funds allocated for the purposes of dealing with the HEWRRs and their implementation. The minister says he does not think there will be additional costs; I am wondering if the minister knows that for sure. Have there been any studies ascertaining the financial impact or the administrative cost associated with implementation of this legislation?

**Senator ABETZ** (Tasmania—Special Minister of State) (12.23 pm)—As with any implementation, some people can make an absolute lather of it and make it very costly; others can simply roll up their sleeves, get on with it and make it very cost-effective. It will be up to each university as to how it tackles the task before it but, realistically, it is not going to be a substantial task for the universities.

**Senator STOTT DESPOJA** (South Australia) (12.24 pm)—Rather than call for a division on the amendment, I will just note that the amendment has Labor's support and I was told it has the Greens' support. Obviously it is opposed by the government.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

### Third Reading

**Senator ABETZ** (Tasmania—Special Minister of State) (12.25 pm)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [12.29 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	33
Noes.....	<u>29</u>
Majority.....	4

## AYES

Abetz, E.	Adams, J.
Barnett, G.	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.
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.	Ronaldson, M.
Santoro, S.	Scullion, N.G.
Troeth, J.M.	Trood, R.
Watson, J.O.W.	

## NOES

Allison, L.F.	Bishop, T.M.
Brown, C.L.	Campbell, G.
Conroy, S.M.	Crossin, P.M.
Evans, C.V.	Faulkner, J.P.
Forshaw, M.G.	Hogg, J.J.
Hutchins, S.P.	Kirk, L.
Ludwig, J.W.	Lundy, K.A.
Marshall, G.	McEwen, A.
McLucas, J.E.	Milne, C.
Moore, C.	Murray, A.J.M.
O'Brien, K.W.K.	Polley, H.
Siewert, R.	Stephens, U.
Sterle, G.	Stott Despoja, N.
Webber, R. *	Wong, P.
Wortley, D.	

## PAIRS

Campbell, I.G.	Sherry, N.J.
Ferris, J.M.	Brown, B.J.
Hill, R.M.	Carr, K.J.
Parry, S.	Bartlett, A.J.J.
Patterson, K.C.	Hurley, A.
Payne, M.A.	Nettle, K.
Vanstone, A.E.	Ray, R.F.

\* denotes teller

Question agreed to.

Bill read a third time.

## BUSINESS

## Rearrangement

**Senator ABETZ** (Tasmania—Special Minister of State) (12.32 pm)—by leave—I move the motion as amended:

That—

(1) On Thursday, 1 December and 8 December 2005:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to 11.40 pm;
- (b) the routine of business from 7.30 pm shall be government business only;
- (c) divisions may take place after 4.30 pm; and
- (d) the question for the adjournment of the Senate shall be proposed at 11 pm.

(2) The Senate shall sit on Friday, 2 December and 9 December 2005 and that:

- (a) the hours of meeting shall be 9.30 am to 3.30 pm;
- (b) the routine of business shall be:
  - (i) notices of motion, and
  - (ii) government business only; and
- (c) the Senate shall adjourn without any question being put.

**Senator CONROY** (Victoria) (12.33 pm)—I rise to oppose the motion moved by Senator Abetz. This motion demonstrates once again the growing contempt of the Howard government for the legitimate role of the Senate as a house of review. The 2006 parliamentary sitting schedule caps an unprecedented decline in the number of scheduled sitting days for this chamber. In the first year of the Howard government, the Senate sat for 71 days. Next year, in 2006, it will sit for just 56.

The Senate used to play a valuable role in Australia's democracy. The Senate used to be a house of review. The Senate used to be able to go over government legislation with a fine toothcomb, identifying all of the unintended consequences of legislation, identifying the

inevitable drafting errors in legislation and protecting the Australian public from the excesses of unfettered executive power—but no more. Apparently, control of both houses of parliament has made the Howard government infallible.

We have all heard the speeches from those opposite about how important the role of the Senate was, how important the states house was. Each and every one in the Howard government has stood on their feet in this chamber and defended the role of the Senate; yet, at the first sniff of an absolute majority in each chamber, they just rip up the procedures and rip up the practices. It really puts paid to Prime Minister John Howard's disingenuous promise earlier this year to use his Senate majority soberly, wisely and sensibly. The Howard government sees no role for the Senate as a house of review. In fact, it sees so little role for the Senate that it sees fit to slash the number of sitting days. This contempt for the Senate and the senators who comprise it demonstrates the growing extremism and arrogance of the Howard government.

**Senator Marshall**—It's an outrage!

**Senator CONROY**—It is an outrage, Senator Marshall. It is clear that the Howard government views the Senate as nothing more than a rubber stamp for its ideological agenda. Unfortunately, the Howard government's contempt for legitimate parliamentary accountability is not just limited to the number of days that the Senate is permitted to sit; the Howard government's contempt for the role of the Senate extends to all aspects of its day-to-day activities. Take question time. In the past, question time has provided a valuable opportunity for the opposition to hold the government to account and to scrutinise its activities. In recent times, however, the government has been moving to unaccepta-

bly restrict this longstanding parliamentary process.

In the previous Senate, before 30 June, when the extreme Howard government's excesses were checked by an independent and active Senate, the opposition was able to ask at least six and often seven questions of the government per day—but no more. Immediately after obtaining Senate control, the government moved to change the question time rules to deny Labor and the minor parties the opportunity to submit it to scrutiny. Under the new arrangements for question time, the opposition is averaging just five questions per day. Five questions is all we are allowed to ask. And increasingly, as we saw again yesterday, the opposition is being restricted to asking just four questions a day—just four chances to try to shine some light on the activities of an increasingly extreme ideological and out of touch government.

What have we got instead? I do not want anyone listening to this debate to think we are getting questions of substance. Instead of the opposition getting questions, we are getting more dorothy dixers: more opportunities for ministers to regurgitate scripted government propaganda.

**Senator Sherry**—Senator Abetz is a prime example.

**Senator CONROY**—He is one of the worst examples, Senator Sherry, you are dead right. As if spending hundreds of millions of dollars of taxpayers' money on government advertising was not enough. Michelle Grattan recently pointed out in the *Age* that the Howard government:

... has about as much regard for Senate rights as it has for advertising guidelines ...

Things have reached such a poor state that even yesterday, when calling someone to ask a question, the President of the Senate made reference to the farce that question time has

become. We have examples like Senator Ian Campbell, who spent his response to one Dorothy Dixey talking about how he had been inspired by the Qantas inflight video. Even when the President called him to order, not once but twice, he kept talking about the Qantas inflight video that he had seen while flying from Perth to Canberra. That is the level of debate and scrutiny that this government is interested in: the Qantas inflight video gets a run in Senate question time. Just yesterday, he surpassed himself. I did not think it was possible, but yesterday he won the Al Gore 'I invented the internet' award for his global quest to save whales, when he announced:

I will work harder than anyone else on this planet to save the whales ...

I mean, really! That is the sort of mindless propaganda we are being subjected to instead of question time in its legitimate role, which is for the opposition to hold the government of the day accountable.

The Howard government's contempt for the longstanding role of the Senate as a house of review is also evident in the government's treatment of committee scrutiny. Senate committees have made a significant contribution to Australian democracy over the years. Senate inquiries have investigated some of the most important policy and governance issues faced by Australia and have played an important role in scrutinising both the actions and policies of governments. They have done this under Labor governments and under this government when no-one has had the control of both chambers.

Senate committees have often identified drafting errors in legislation and discovered unintended consequences of government legislation. They have also given the broader Australian public a chance to be heard—a chance to go on the public record on the big issues—through public hearings held across

the country. Unfortunately, the Howard government has nothing but contempt for the roles these committees have played. The government's approach to Senate committees since it took control of both houses of parliament has been nothing short of arrogant and contemptuous. It is all summed up in some comments Senator Brandis made to the party room. He labelled the Senate committee system as 'stupid'. This is indicative of the contempt in which this government now holds this chamber.

Upon the introduction of the Telstra sale legislation, the government allowed only one day of scrutiny of five extremely complex bills. There was one day of hearings, restricted to Canberra, only two days after the bill had been introduced and with only 24 hours notice to the public to allow the public to have their say. There was one day of hearings in Canberra on an issue that will have a massive impact across Australia, especially in rural and regional areas. How can people in rural and regional areas possibly have their say on this issue when they have this short a period in which to even lodge a submission to the inquiry, let alone appear at the hearing? In fact, the government was so rushed that it missed the advertising deadlines for two newspapers and missed a spelling error in the headline of the published advertisement. Is this responsible government?

Is complete avoidance of any parliamentary scrutiny the way to produce legislation free from drafting errors and unintended consequences? Of course not. The real reason for the Howard government's nobbling of the committee system is that it knows its ideas will not hold up to that kind of scrutiny. The real reason the Howard government does not want the people of Australia and their elected representatives to have a say on legislation like the sale of Telstra is that it knows the extremism of its policies would be



revealed. The Howard government's real objective is to hide the growing extremism of its policies. That is why it is limiting these inquiries. That is why it is rushing its legislation through. It wants to hide the growing extremism of its policy agenda.

That is why it has drafted the terms of reference of the Telstra inquiry to exclude any discussion on the question of privatisation. That may sound odd. You have a legislation committee whose job is to look at legislation, yet when the resolution turns up from the government it says, 'Okay, you can look at the bill, but you can only look at these bits of the bill.' What is the point of a legislation inquiry into legislation if the government says: 'You cannot ask any questions about this part. You cannot ask any questions about this part. You can only ask questions about this part of the bill.' What is the point? What have you got to hide? That is the question the Australian public is beginning to ask.

The Australian public is starting to wake up to the Howard government and realise the arrogance and extremism behind the government's policy agenda. The Howard government is doing everything it can to handicap Senate scrutiny, because it knows that if the Senate is allowed to perform its role the Howard government will be exposed. Nowhere is this more evident than in the area of industrial relations, where a Senate inquiry will have just two weeks to examine the most radical and extreme changes to workplace laws in 100 years. Even that ridiculous two-week inquiry period had to be fought for tooth and nail, with the government initially refusing to allow scrutiny of the bill through a Senate inquiry. Shame on you, Senator Sandy Macdonald. This kind of arrogance and contempt for accountability is dangerous for Australia.

In the near future the Senate will consider new antiterrorism laws. You could hardly

think of a more serious subject of public policy for Australia, particularly in the light of recent events. Terrorism must be an issue where we can put aside partisan differences to ensure that the government's response to this issue is airtight. Senate scrutiny on this issue should play an important role in the process. Let us look at what Tony Blair did. Faced with the same sorts of threats that Australia is faced with, Tony Blair called together all the parties.

Debate interrupted.

#### PERSONAL EXPLANATIONS

**Senator ALLISON** (Victoria—Leader of the Australian Democrats) (12.45 pm)—I seek leave to make a personal explanation.

Leave granted.

**Senator ALLISON**—There have been a number of media reports about the timing of the police raids in New South Wales and Victoria that have attributed comments to me which I believe require clarification. My comments regarding those events were widely publicised in the national press. But the comments were not printed or aired in their entirety, which has resulted in an inaccurate portrayal of what I said. I do not accuse the Prime Minister of orchestrating the raids, nor was I speculating that he did. I clearly said that I did not have any information to suggest that this was the case. I made it clear that while some people may speculate that this timing was a little too convenient, I was not. As I told the *John Laws* program on Wednesday morning, 'I am very pleased that people have been arrested and that we are not facing a terrible terrorist attack in this country. There is no question of that.'

I am not arguing against the government's motivation in stopping acts of terror occurring on Australian soil either. The need to stamp out extreme terrorist acts of violence is paramount to safety and security both in Australia and internationally and I congratu-

late the police on their efforts so far. But I do not resile from questioning the need for the antiterror legislation that the government has introduced or the timing of last week's extraordinary recall of the Senate. It is arguable that correcting sloppy drafting in which terrorist acts were variously referred to as 'a' and 'the' throughout the legislation made a difference.

The government also admits being told about the error by its prosecutors at least a year ago and by all accounts those arrested on Monday night had been under surveillance for 16 months. I am not accusing the government of determining the timing of these raids, but I do believe that we have an obligation to continue questioning the motivations of a government that has deceived the Australian public in the past. Taking us to war for weapons of mass destruction that did not exist and falsely claiming that refugees threw their children overboard for their own ends are two examples.

I agree that we must support moves to protect Australia from threats of violence, but we should not be cowed into suspending our critical analysis of antiterror laws that have few safeguards against abuse. If a tangible threat does exist against Australia then the government already has the power to take protective action against that threat. The government already has all the powers that it needs to apprehend, arrest and prosecute terrorists. The Democrats remain opposed to the forthcoming antiterror bills. We say that no case has been made for these new laws and no case has been made that they are necessary or effective in fighting terrorism. However, a compelling case has been made for their danger to ordinary Australians.

**Senator O'BRIEN** (Tasmania) (12.48 pm)—I also seek leave to make a personal explanation.

Leave granted.

**Senator O'BRIEN**—Yesterday in question time the Deputy Prime Minister, Mr Vaile, in answer to a question from Mr Rudd alleged that certain comments which were made by me in my time as the shadow minister for primary industries exonerated the government from the sort of scrutiny that the opposition was applying to it in relation to the Iraq-AWB wheat arrangements, those shameful arrangements. Mr Vaile said:

... I am also highlighting the knowledge of others who made public comments at the time with regard to this and about the allegations that were made at the time. In the press release issued by Kerry O'Brien and Craig Emerson, they say:

'US Wheat Associates must be asked to substantiate its claims.'

And later in the same answer he said:

That is how I knew about it—and everybody else, including Senator O'Brien and Craig Emerson. They went on to say in this press release:

In the absence of evidence to support the allegations, Australian wheat growers are entitled to dismiss the claims as an attempt to promote the sale of US subsidised wheat in the Iraq market.

He went on to say:

That was the attitude taken by quite a number of people, including the Australian government—

as if that was the attitude that the opposition took entirely to the matter. But of course the press release that was issued, to which the Deputy Prime Minister was referring, was headed, 'Iraq "kickback" claims must be investigated', and it reads:

The Howard Government must investigate claims by the United States wheat lobby that Australia's wheat sales to Iraq helped prop up Saddam Hussein's regime.

It went on:

US Wheat Associates has told the US Secretary of State, Colin Powell, that Australian wheat contracts under the UN Oil for Food program were inflated by millions of dollars per shipload and 'the excess may have gone into accounts of Saddam Hussein's family'.

While the claims appear bizarre, it is important they are properly investigated and disposed of as quickly as possible.

Australian wheat growers would be the real losers from any such illegal arrangement.

Kickbacks to the family of the former dictator would have diverted money from Australian wheat growers' pockets to enrich the Iraqi regime.

The Government must protect growers' interests and the integrity of Australia's wheat trade by investigating the US wheat lobby's claims.

So when the Deputy Prime Minister attributed to us the view that he represented in the answer to the question, that the allegation ought to be dismissed in the absence of evidence, he was quite wrong and was misleading the House of Representatives and the Australian people. In fact, if the investigation had been carried out as suggested we may have saved wheat growers money. We certainly would have saved Australian wheat growers from the ignominy of being revealed by the Volcker examination which now has the US wheat trade repeating calls to block sales of wheat, costing Australian wheat growers potentially millions of dollars.

#### **CORPORATIONS AMENDMENT BILL (No. 1) 2005**

##### **Second Reading**

Debate resumed from 5 September, on motion by **Senator Colbeck**:

That this bill be now read a second time.

**Senator WONG** (South Australia) (12.52 pm)—I would like to make a few comments in relation to the Corporations Amendment Bill (No. 1) 2005 to outline our position and to indicate our view on Senator Murray's amendments, even though they have not been put yet. The bill before the chamber amends section 197 of the Corporations Act, which affects the potential indemnity of directors of corporate trustees from the liabilities of the trust. The intent behind the amendment is to ensure that directors of cor-

porate trustees have a level playing field with regard to indemnity from liability, as do directors of other entities. This is a clarification of section 197 that Labor accept as necessary.

Specifically, the amendment will clarify the potential personal liability of the directors of corporate trustees following the case of *Hanel v O'Neill* in the South Australia Supreme Court. In effect, the decision in *Hanel v O'Neill* meant that the liability of directors of corporate trustees would include the paying of trust debts. This was a level of liability that extended beyond that of directors of other companies and certainly beyond the original intent of section 197 of the Corporations Act. Given this, the amendment contained in the bill is a necessary clarification of section 197.

From Labor's perspective, it is important that we note that the amendment proposed will not indemnify a director of a corporate trustee for liability if they commit a breach of trust or act against the interests of the trust as per the trust agreement. This interpretation is in line with the original intent of section 229A of the Companies Code—a position which we say should be maintained. Labor have always sought to ensure that the Corporations Law balances the need of business proprietors for reasonable protection in the conduct of their business affairs, whilst ensuring that there are adequate safeguards in place to prevent the abuse of these protections. This objective and intent for precedent laws to the current section 197 was outlined by the then Attorney-General, Lionel Bowen, in October 1985 in his second reading speech on the then companies and securities legislation. He said:

Currently persons contracting with a trustee, whether an individual or a corporation, are entitled to be subrogated to the trustee's right of indemnity out of the trust assets to meet liabilities properly incurred. However if the trustee acts in

breach of trust or in a manner which is not authorised by the terms of the trust, the trustee's right of indemnity, and therefore the creditor's right of subrogation, is lost.

The problem this creates for creditors has been exacerbated by the widespread use of business structures involving a nominally capitalised corporate trustee to carry on business on behalf of a trust, together with other refinements, such as the careful siphoning of funds into the trust business. In such cases the creditor's primary right to sue the corporate trustee for the debt may well be worthless.

I think there is a general recognition in the business community that the legal system cannot tolerate the continued use of artificial legal contrivances which result in the deliberate avoidance of liabilities legitimately owed to other persons. It is proposed to amend the Companies Act to impose personal liability on directors of companies acting as trustee when a debt has been incurred but the trustee company is not entitled to be indemnified out of the assets of the trust.

That is the position that the then Attorney-General outlined. With that considered view in mind, I indicate the opposition initially held reservations about some implications of the drafting of the current amendment set out in the bill before the chamber. In particular, we were concerned that the terms of the amendment would limit its application to very narrow circumstances and thereby work against the objective of ensuring these provisions could not be abused. However, we have received advice from the office of the Parliamentary Secretary to the Treasurer—and I thank him for his assistance in this regard—and we have also consulted with some commercial lawyers familiar with the *Hanel v O'Neill* decision. We are advised by the government that the intent of the amendment is not to diminish the potential liability of directors who have not met their obligations to the trading trust. On this basis we support the legislation. Ensuring the right balance between the rights of directors and business

stakeholders remains as important and objective now in our corporate law as ever.

Since this bill has passed through the other place, concerns have been raised with me, and I also understand with other senators, in relation to the application of the proposed changes to section 197 contained in the bill in relation to trust splitting. I understand this is the issue that Senator Murray's amendments are directed at. I am advised by the Parliamentary Secretary to the Treasurer of Treasury's assessment of those concerns. I put on record my understanding that the government has considered the matters raised by the lawyers who have communicated their concerns on this issue, and that the government will address this issue if it considers it necessary. I understand also that the representing parliamentary secretary today will outline the government's views in relation to its advice on the trust splitting issue. On that basis, we will be supporting passage of the legislation today.

Given these considerations, the proposed amendment to the potential liability of the directors of corporate trustees under section 197 to bring it into line with that of other directors is a sound objective and one that Labor supports. We have sought to cooperate with the government on this bill, recognising that uncertainty for many directors of corporate trustees in this country should be addressed as soon as possible. As a result, we agree that the amendment is a necessary clarification of the application of section 197 and should provide the certainty the directors of corporate trustees are seeking in this regard.

**Senator MURRAY** (Western Australia) (12.57 pm)—In speaking to the Corporations Amendment Bill (No. 1) 2005, at the outset I want to thank the parliamentary secretary and his advisers for a helpful and cooperative approach with regard to the queries we have

made with respect to this bill. We have before us today an amending bill to that cumbersome piece of legislation known as the Corporations Law. Section 197 has been found wanting as a result of an expansive interpretation by the courts. Before I address that section and my amendment to that section, I would like to address section 1462. I indicate to the chamber that I do not intend to discuss my amendment in the committee stage. I will take that amendment on the voices, and I will address my motivation for the amendment in my speech on the second reading. So we will be able to proceed quite rapidly.

I would like to first address section 1462 because it amends the Corporations Law and relates to the Corporate Law Economic Reform Program, in which I and other members of the chamber were heavily involved. Although this amendment is a clarifying amendment to ensure that the application of the Corporations Act and related legislation is clear, it does provide me with an opportunity to again bring the Senate's attention to the limitations of the CLERP amendments which were made. I speak, of course, about auditor independence.

There are major changes afoot in corporate Australia, and auditor independence will become increasingly important—not least because of the increasing dynamism, volatility and more market-responsive activity that we will see because of the changes to the harmonised, and internationally harmonised, accounting standards. During the last decade, we have seen auditors shirk their duty in a number of areas—for example, in the cases of One.Tel, HIH insurance and, of course, the recent fiasco in my own state with the Sons of Gwalia.

Most of the corporate problems can be placed at the feet of two sets of people: one is auditors who were not diligent enough,

and the other is directors who were poor in the execution of their duties. Sometimes the auditors were hoodwinked, but more often than not they did not ask the hard questions and did not cover the range of issues that they should have. They did not want to investigate the information they were given. They did not want to delve deeply into a matter that looked a bit suspicious, because it might embarrass their mates in those particular companies, which have been exposed as being so badly run that they have resulted in a scandalous dereliction of duty to shareholders and stakeholders. That is not good enough for Australian shareholders and stakeholders. It is not good enough for people relying on insurance companies to keep them covered in times of crisis. It is not good enough when shareholders' hard-earned money is lost. Of course, the government has quite properly reacted to that crisis and has produced law changes which have been thoroughly supported by the chamber.

Turning back to the particular case of the Sons of Gwalia as an example, Ferrier Hodgson has pointed the finger at the directors of the company, the Lalor brothers, plus Thomas Lang, who was the chairman of the audit committee, and at the auditors—who are one of the big four—Ernst and Young. There is a suggestion in that report from the administrators that this is an example of auditors not doing their job properly, of not being properly independent and not looking out for the interests of shareholders. If there had been proper scrutiny of the conduct of the company between 1994 and 2000, many of the issues which led to the demise of the company might well have been averted. According to an article in the *Australian Financial Review* on 18 August 2005, the report from administrators Ferrier Hodgson states that:

Save for the journal entries representing the net deferral, all of the detail of the trading transactions was kept from the chief accounting officer

then responsible for preparation of the financial statements.

We were advised that the company's auditors worked with the senior executive in the development of the accounting treatment.

Needless to say, Sons of Gwalia shareholders are angry that they were misled by information in the annual report and in the figures presented to them. They want their money back because they believe they were lied to by the people who ran the company and they believe they were lied to, or let down, by the people who audited the books of the company. The reason I raise that specific example is because it is an example of why an independent audit committee and an independent auditor are essential for the good governance of corporate entities in this country and that is why I will keep harping on about it.

But one of my great concerns is that people automatically assume audit committees are independent. Currently the appointment of an auditor is a decision of the board of a company and this can give the board a dangerous level of power over the auditor if the board itself is not independent and therefore the audit committee itself is not independent. Legislatures and regulators the world over are trying to tighten up on these appointments—and for very good reason. However, an audit committee is not independent—and an auditor is not independent, therefore, as an extension—if that audit committee or if that auditor is subject to the patronage or direction of the dominant shareholder or dominant shareholders, especially if that dominant shareholder, or those dominant shareholders, has a majority of representatives on the board. The auditor will generally be chosen because he or she is seen to be able to 'work with the board', and working with the board may mean that the auditor is not looking out for the best interests of all shareholders but for a select group of domi-

nant shareholders that may have control over the appointment of directors—and therefore the appointment of the audit committee, and therefore the appointment of the auditor.

Independence is a state of mind that allows for opinions to be arrived at without being affected by external influences. And the independence of audit committees is important to ensure that the external auditor is free from management interference. Such independence, I believe, is associated with raising the quality of the audit and safeguarding the integrity of corporate financial reporting. As I have previously quoted, the United States Securities and Exchange Commission provided a compelling description of the importance of the independent audit function when it said they are important to public trust. An auditor's opinion furnishes investors with critical assurances that the financial statements have been subjected to a rigorous and forensic examination by an objective, impartial and skilled professional team. And, therefore, the investors, shareholders and stakeholders can rely on them.

The Democrats believe that, at its very core, existing company law is inadequate in terms of corporate governance, that the board and directors are central to the relationship between shareholders and company, and that those relationships are still not sufficiently regulated. In discussing corporate governance, our political and constitutional language is a helpful tool. 'Best practice regular elections': how many people can believe that the companies on the stock exchange all conduct best practice regular elections? 'Compulsory voting': we are supporters of compulsory voting of institutional shareholders. 'Representative bodies': well, sometimes that applies in companies, sometimes not. Independent institutions and people; appointments on merit; the separation of powers; transparency, accountability and full disclosure—these are the elements of our na-

tional democracy; they should be the elements of corporate democracy.

In keeping with this, I believe that a small corporate governance board separate from the main board has great merit. Dr Shann Turnbull is one of the significant writers and thinkers on this, but I have been on about this for many, many years. Importantly, such a board would be elected by shareholder and not shareholding, so avoiding the trap of dominant shareholders exercising patronage. The corporate governance board would be composed of non-executive directors with a limited remit. Part of their responsibility would be the appointment of auditors and other advisers such as valuers, and they would also be responsible for management of the process to elect directors and executive management. One of the interesting features of Senator Joyce's vote to pass the Telstra legislation is that, if the negotiation for the sale of Telstra had ended up in my hands, Telstra might well have found itself with a corporate governance board, courtesy of that concept I have just outlined.

As I stated in my speech in the second reading debate on the Corporations (Fees) Amendment Bill (No. 2) 2003, which was the CLERP (Audit Reform and Corporate Disclosure) Bill 2003 as well, the separation of powers seems a difficult concept for the traditional business community to fully appreciate even though it has worked well and has been embraced in our broader political democracy. When we talk about independent auditors, we are talking about nothing else but the separation of powers. The Australia Democrats have sought, through the committee process, through our consultations with business and through advocacy in the Senate, to get an understanding of and a response to the sorts of philosophical beliefs which should underpin the way in which board directors and companies operate. In our view, you cannot approach corporate governance

and corporate law without questioning the basic underpinning of corporate law in this country, which is dominant shareholder orientated. We think there needs to be a shift in the way in which these matters are addressed.

The Democrats will keep putting this proposal before the Senate and before corporate Australia in the hope that repetition of this concept will result in a greater understanding and support for the general propositions we are putting. Of course, there is nothing but dominant shareholder interest to stop companies doing that already and it is perfectly open to companies to change their constitutions but, of course, the way in which institutions and dominant shareholders vote will affect any prospect of that outcome.

The other aspect of the bill before us involves clarifying the application of section 197 of the Corporations Law. The government's proposed amendment is designed to plug a hole that was identified by judges in the court case *Hanel v O'Neill* in relation to trust law. I am not a great supporter of trusts when they are used as a tax minimisation tool and I remain deeply concerned that the Ralph review mechanism was not used to limit them being used as a tax minimisation tool. However, I do believe in equity and certainty before the law. I do believe that, if trusts are available, the people who take advantage of them and order their business accordingly should all be treated equally.

I have received correspondence, which was referred to by my colleague from the Labor opposition earlier, from lawyers Jackson McDonald in Perth—in particular, partner Jonathan Ilbery, who is a life member of the Taxation Institute of Australia and who works extensively in the area of taxation and succession law. He is well known to all sides of the house and, of course, to the treasury department itself. He has pointed out short-

comings in the government's proposed legislation. He is not alone as there are several other members of the Tax Institute and other bodies who also see shortcomings with the current wording. I understand that the government has also received this correspondence, has responded to it and has had discussions with Mr Ilbery but that the government does not fully agree—as yet, perhaps—that the problem as identified needs to be addressed in this legislation. In its current wording, the bill's amendment may well create another problem which will need to be addressed by the courts in the future, at some cost to those who have to go to the courts, or will need to be addressed in a further amendment to the Corporations Law.

I do not pretend to be an expert on succession law—in fact, Senator Wong is undoubtedly going to be better in that field than I am—but an example which clarifies the difficulty with the current wording involves trust splitting in relation to a business like a family farm. Farms these days are often owned via trust structures. When parents retire from the business of farming, they often divide the business. The original trust is split up with a new trust set up for the active farming business going to, say a daughter, while passive assets established in another trust are distributed, say, to the son. Not all farming businesses thrive and many face financial difficulty brought on by drought or bad luck, and the farm may go belly up. In the new split trust arrangement, if the farm fails, there may be an argument that creditors can go after the personal assets of the farmer, and even possibly assets of the passive trustee. This is because they are trusts split off from the original trust of the parents—they are not entirely separate trusts for the purposes of the application of trust law—and that leads to an inequitable situation.

Trusts are established to avoid personal liability, except in the case of fraud; however,

in the current wording of the amendment, it is not sufficiently clear that the directors will avoid personal liability in this particular situation. All people who establish trusts should be treated equally under the law. The current wording appears to be open to a number of interpretations, which will create problems for lawyers drafting trust documentation and when they are trying to assist people in succession planning.

This is a matter which is not only of concern to farming businesses but also important throughout the business community. While I respect their opinion, I am concerned enough that the government is unwilling to clarify the amendment recommended by someone who deals in the application of this law on a day-to-day basis that I have moved amendments today, which, on advice, would clarify the very points I have outlined. I understand that lawyers will always have disagreements about interpretation and I understand that if the government cannot see its way clear to agree to my amendment then it is imperative that it clarify instead, today, in this second reading debate, the situations to which their amendment will apply.

I understand that Treasury has advised interested parties that it may look at the concerns raised by Mr Ilbery, and it has given that assurance to Senator Wong on behalf of the Labor Party opposition, and that it will consult others in a possible further amendment to the Corporations Law. The danger with that, of course, is that, for the next 12 months or perhaps longer, the drafting of trust deeds and succession planning may be problematic, if Mr Ilbery is right. My judgment is that he seems to be. It seems that the government are plugging up one hole in the Corporations Law but they might well spring a leak somewhere else in doing so. That is why I propose to move the amendment during the committee stage.



**Senator SANDY MACDONALD** (New South Wales—Parliamentary Secretary to the Minister for Trade) (1.13 pm)—I thank Senator Wong and Senator Murray for their constructive contributions. I note that Senator Murray does not propose to deal with his amendments in committee so—

**Senator Murray**—I will be, but not formally speaking to them.

**Senator SANDY MACDONALD**—I understand that. Perhaps I might respond to your comments in the sum up of the second reading. In introducing this bill, the government's chief concern is to remove business uncertainty in this area by restoring the long-standing interpretation of section 197(1). The amendments put by Senator Murray relate to the potential impact of section 197(1) on the practice of trust splitting. Specifically, it has been suggested that any limitation on a trustee having recourse to the assets of other subfunds in relation to post separation liabilities may ground a liability under section 197(1).

The government considers that this submission involves a misreading of this long-standing provision. The critical question is identifying the capacity in which the corporation is acting as trustee. A corporate trustee of a particular subfund of a trust will only be acting as a trustee in relation to assets of that subfund. It must follow that, in applying section 197(1), the trust assets are the assets of that particular subfund. A term in a trust deed that purports to limit indemnity from the assets of another subfund in relation to post-separation liabilities could not alone ground a liability under section 197(1). Such a term purporting to limit indemnity from the assets of an entirely separate trust could not. To the extent, if any, that the text of section 197 permits a construction suggested by Senator Murray, this would be inconsistent with the apparent object of the provision. Section

15AA of the Acts Interpretation Act 1901 states that:

In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act ... shall be preferred ...

I also note that, notwithstanding the long history of trust splitting and the even longer history of section 197(1) and its predecessor provisions, this issue has not arisen in practice. Moreover, the concern has not been raised by the accounting or legal professions. The proposed variation of this longstanding provision could have unforeseen adverse effects on the efficacy of the provision. This is an inherent risk in tinkering with the law in this matter. As such, the government does not support the proposed amendment.

I will make some other comments in the summing up of the second reading debate. This bill will clarify the scope of the personal liability of directors of corporate trustees. It will address concerns that have arisen in the light of the recent decision in *Hanel v O'Neill*, which extended the personal liability of these directors under section 197(1) of the Corporations Act 2001. Prior to the December 2003 decision of the full court of the South Australian Supreme Court in *Hanel v O'Neill*, section 197 and its predecessors had traditionally been interpreted as applying in very limited circumstances. *Hanel v O'Neill* radically reinterpreted section 197, significantly increasing the level of exposure to personal liability for directors of all corporate trustees. In effect, the judgment renders the directors of corporate trustees guarantors of any debt incurred by the corporate trustee on behalf of the trust. This radical reinterpretation of the law would affect all corporate trustees, from large superannuation trusts through to trading trusts running a small business. It is inconsistent with the treatment of directors of general companies who are protected by the insolvent trading defences.

There is no economic or social justification for such inconsistency.

In introducing this bill, the government's chief concern is to remove business uncertainty in this area by restoring the longstanding interpretation of section 197(1). For constitutional and broader policy reasons, the bill is not retrospective. As such, facilitating early passage of this bill is particularly important. I would like to take this opportunity to thank all stakeholders who made submissions on the proposed reforms. In addition to the clarification of section 197(1) of the Corporations Act, this bill also contains technical amendments to clarify the operation of a transitional provision in the CLERP 9 legislation. This will ensure that the auditor independence provisions, which applied before the enactment of that legislation, will continue to apply to financial years commencing prior to 1 July 2004. In conclusion, I take the opportunity to note that this bill will work to rebuild business confidence, importantly. It will also preserve the application of the auditor independence provisions of the pre-CLERP 9 legislation. I acknowledge and thank the opposition for its support of the bill. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

#### In Committee

Bill—by leave—taken as a whole.

**Senator MURRAY** (Western Australia) (1.20 pm)—by leave—I move items (1) and (2) on sheet 4749 together:

- (1) Schedule 1, page 3 (line 14), after “assets”, insert “administered by the corporation as trustee”.
- (2) Schedule 1, page 3 (line 19), at the end of subparagraph 197(1)(b)(iii), add “out of the trust assets administered by the corporation as trustee”.

**Senator WONG** (South Australia) (1.20 pm)—Very briefly, I want to make a couple

of comments about the amendments moved by Senator Murray to the Corporations Amendment Bill (No. 1) 2005. I will also briefly respond to the parliamentary secretary, who described the *Hanel v O'Neill* decision as a radical interpretation. I would not presume to call the South Australian Supreme Court radical. I am sure they called it as they saw it.

In relation to the amendments moved by Senator Murray, I indicate that, while we share some of the concerns that Senator Murray has in relation to the application of this provision to the situation of a trust splitting, and while we have also considered the Jackson McDonald advice, the difficulty the opposition have is that we are in a situation where we are in a very complex legal area. We have conflicting legal advice between one set of undoubtedly highly qualified and experienced lawyers as against the advice provided by the government. In those circumstances, and given the importance of clarifying the operation of this section and the obvious uncertainty for the corporate sector that arises from the *Hanel v O'Neill* decision, we do not feel it is appropriate to tinker in this context with the amendments proposed by the government.

We note the advice that Senator Sandy Macdonald has read into *Hansard* in relation to these amendments. We put on record our hope that, if the matter is raised again with the government, they will consider very closely and carefully the issues raised by Jackson McDonald and other parties in relation to the application of these amendments to a trust-splitting scenario. On that basis, we are not minded to support Senator Murray's amendments. Notwithstanding, we share some of his concerns regarding the provisions.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

### Third Reading

**Senator SANDY MACDONALD** (New South Wales—Parliamentary Secretary to the Minister for Trade) (1.23 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

### NATIONAL HEALTH AMENDMENT (IMMUNISATION PROGRAM) BILL 2005

#### Second Reading

Debate resumed from 12 October, on motion by **Senator Abetz**:

That this bill be now read a second time.

**Senator McLUCAS** (Queensland) (1.23 pm)—The stated intent of the National Health Amendment (Immunisation Program) Bill 2005 is to amend the National Health Act to improve vaccine funding advisory arrangements for the government's funded National Immunisation Program, commonly known as NIP, as announced in the 2005-06 budget.

The intention of the bill, as outlined in the explanatory memorandum, is to ensure that vaccine funding advisory arrangements place an emphasis on cost-effectiveness assessment and provide a transparent and robust framework for evaluating vaccines and making decisions on whether or not to publicly fund them. The EM states that the amendments will provide:

... a stronger focus on cost-effectiveness assessment by utilising the established transparent and rigorous decision-making processes of the Pharmaceutical Benefits Advisory Committee (PBAC) for vaccine funding recommendations.

Currently, the Australian Technical Advisory Group on Immunisation, ATAGI, and the Pharmaceutical Benefits Advisory Committee, PBAC, consider vaccines for listing on

the National Immunisation Program and the Pharmaceutical Benefits Scheme using very different criteria. When a vaccine is listed on the National Immunisation Program it is because universal coverage—to develop what is called 'herd immunity'—is considered a cost-effective public health initiative. Those vaccines which are listed on the PBS, such as Hepatitis A and influenza, are not considered that way but are still required to meet cost-effective criteria.

There are concerns that the Howard government is increasingly looking to reduce immunisation costs by ignoring expert advice to add new vaccines to the National Immunisation Program. We saw this most recently with pneumococcal, oral polio and chickenpox vaccines. In the case of the latter two vaccines, the Minister for Health and Ageing, Mr Abbott, tried to get ATAGI to reconsider their advice to list them—which, to their credit, ATAGI refused to do. As a consequence of this, and as a result of Labor pressure, these vaccines have finally been added to the National Immunisation Program.

It seems that the downgrading of ATAGI's role in vaccine listing is a payback for this. This proposal was included in the last budget without any consultation with or advice to ATAGI and resulted in the immediate resignation of the chair of ATAGI, Professor George Rubin. ATAGI is still without a chair. We are concerned that the very substantial expertise that exists within ATAGI will not be utilised by the Pharmaceutical Benefits Advisory Committee, although I understand that there are a couple of new places on PBAC as a result of this legislation. We know that Minister Abbott has on the public record expressed disdain for the advice that health experts provide.

There are concerns that the Howard government will see new vaccines which are

likely to come on the market in the next few years—vaccines against Human Papilloma Virus, which causes cervical cancer; gonorrhoea; and rotavirus, which causes intestinal flu, particularly in children—as addressing ‘lifestyle’ conditions and therefore not worthy of listing on the NIP. This change would potentially facilitate that sort of move.

The Howard government has a shameful record of inaction in the funding of vaccines for Australian children. As I have mentioned, there was a delay in listing the replacement of oral polio vaccine with inactivated polio for infants. There was also a delay in the introduction of chickenpox vaccine for children which caused inordinate stress and, potentially, some deaths in the Australian community. We know that ATAGI had recommended, on two occasions, the listing of those two vaccines on the National Immunisation Program. We have also seen a delay in funding of the pneumococcal vaccine. In my view, that funding only occurred after consistent and very vigorous agitation, particularly from the Labor shadow minister, Julia Gillard, who highlighted the continued risks to children of nonlisting of the pneumococcal vaccine.

ATAGI will no longer provide recommendations to the government on which vaccines will be funded by the government. This is the price that ATAGI will pay for giving independent advice to the Minister for Health and Ageing. Sadly, it is not just ATAGI who will suffer the consequences; so will hundreds of children and their families if sound health outcomes advice is not taken in a timely way by this government.

We will watch this process very carefully to ensure that needed new vaccines continue to be available in a timely fashion and that these will be funded through the National Immunisation Program when it is considered by medical experts to be appropriate because

of population health evidence. We will support the bill with that provision. We will watch very closely the operation of vaccine recommendations made by PBAC.

**Senator ALLISON** (Victoria—Leader of the Australian Democrats) (1.29 pm)—I seek leave to incorporate my speech on the second reading.

Leave granted.

*The speech read as follows—*

The purpose of the National Health Amendment (Immunisation program) Bill 2005 is to change the current arrangements for providing advice to the government in relation to the National Immunisation Program.

This bill will transfer some of the advisory powers of the government’s expert group—the Australian Technical Advisory Group on Immunisations (ATAGI)—to the Pharmaceuticals Benefits Advisory Committee (PBAC). The Government is going to allow the PBAC to take over the role of considering the cost-effectiveness of vaccines and to advise the government when it is making decisions on whether to publicly fund a vaccine.

The Democrats will not be opposing the bill but we do have a number of concerns that we would like to raise.

Australia’s record on immunisation has not always been as good as it currently is.

Back in 1990’s, statistics demonstrated that Australia had appalling levels of immunisation. The national immunisation rate was as low as 53 per cent—one of the lowest rates for a developed country and a disgrace for a country as wealthy as Australia.

There has been considerable work undertaken over the past decade by all levels of government to improve this situation and ATAGI has been an important part of those efforts.

They have assessed the evidence for new vaccines, taking into account their safety, their impact on the burden of disease and their cost effectiveness, and have provided frank and fearless advice on which vaccines should be subsidised.

Unfortunately at the end of 2002 we saw the government decide to ignore the advice of ATAGI—

the very group that it had set up to advise and make recommendations on immunisation.

On 5 September 2002, ATAGI advised the government of several recommendations for the inclusion of new vaccines on the Australian standard vaccination schedule.

Among those recommendations was meningococcal C, which the government had already agreed to fund. However, also on that list were several other vaccines.

But the government decided it didn't want to fund them.

The most controversial of these decisions was the decision not to fund the vaccine against pneumococcal disease.

The Government was finally shamed into funding this recommended vaccine in the last budget by extensive campaigning on many fronts.

And ATAGI was at the forefront of that campaigning. Despite repeated refusals on the part of the government to heed the advice of its own advisory body, ATAGI kept on arguing for the pneumococcal vaccine.

The Government's decision to stop following the advice of its own expert committee on funding of immunisation has undermined the progress that has been made in promoting immunisation within the broader community.

Immunisation experts said that we should fund vaccines against pneumococcal, chickenpox and polio but in a move which can only be due to cost cutting, the government did not follow this advice. It refused to fully fund Australia's immunisation program.

This caused confusion amongst parents and weakened the message on the importance of immunisation.

It took almost two years for the government to respond to calls for funding for the pneumococcal vaccine and the funding was only announced in the lead up to an election.

And now that that election is past, the Budget only contains funding for that vaccine up until December 2006. And there is still no funding for the chicken pox or polio vaccines.

By taking so long to provide funding and for continuing to refuse to fund all of the recommended

vaccines the Government has revealed its lack of commitment to preventative health and measures that would save suffering and lives in the short term and health costs in the long term.

And just to make sure that it is not embarrassed in the future, the government is now stripping ATAGI of its advisory powers and transferring those powers to the Pharmaceuticals Advisory Committee.

It is true that there are new challenges in the field of vaccine development and vaccine safety.

More complex vaccines are being developed and tested. These may require increasingly sophisticated screening and monitoring systems.

They will change delivery schedules and simplify delivery technologies.

The benefit-to-risk ratio of some newer vaccines may be lower than that of many older vaccines.

Although safe and effective, some newer vaccines may be many times more expensive and deaths from the disease they prevent less common or confined to high risk groups.

Decisions about whether a vaccine should be in the routine childhood schedule, limited to high risk groups or given to school children or adults and whether they should be fully funded by government will become more complex and difficult in the future.

These decisions will be increasingly important in an environment where we face persistent warnings of a global flu pandemic and threats of biological terrorism.

Health spending is all about tough choices. In a perfect world all vaccinations would be free. But in a world in which we make choices about which vaccines are funded by the government and which are not, it is important that the opinions of immunization experts are taken into account.

Of course cost-effectiveness and health economics will also have a role in informing decision making.

It is true that one of the strengths of the Pharmaceutical Benefits Scheme is its use of cost-effectiveness criteria to determine under what conditions people will be able to access a PBS subsidised treatment.

However the PBS is not without its faults and there is no evidence to suggest that ATAGI were not performing adequately in relation to the funding advice they were providing to the government—there is only evidence that the government did not want to follow that advice.

Questions have long been raised concerning the transparency of the processes used by the Pharmaceutical Benefits Advisory Committee, as the information they use in their decision making process is not made public.

There have also been concerns raised about the length of time taken for decisions to be made by the PBAC.

The move to a cost-recovery approach to operations, similar to the one used by the TGA, also presents some problems. Many organisations have raised concerns about the ability of the TGA to act independently when its activities are closely linked to income. It is difficult to see how this will be different with the PBAC and may have implications for the evaluation of vaccines.

It is also difficult to see how adding another body into the approval process will 'stream line' the process—which has been the rationale put forward by the Government for relieving ATAGI of its role in advising on the funding of vaccines.

One also has to question whether the PBAC has the necessary knowledge and skills in the area of immunization to be able to correctly determine the cost-effectiveness of vaccinations.

As well as doctors and consumers, ATAGI has immunisation experts on its committee. The PBAC does not have this representation and although the government has indicated that there would be two additional members of the PBAC with expertise in vaccines and virology, there is no guarantee of this. Nor have we seen the additional guidelines that the PBAC is supposed to consider when it is evaluating vaccines.

Decisions on new vaccinations will always be influenced by many different factors. There will be (often contradictory) pressures from vaccine manufacturers, the media, the public and lobby groups.

There will be ongoing debate about the merits of new and existing vaccines. Such discussions are an important element of a democratic society.

However it is vital that controversy over changes to the immunisation program do not undermine recent successes in increases in immunisation coverage.

The challenge today is to keep up the momentum amongst the community so that the decline of vaccine preventable diseases is maintained.

We do not want to go back to the situation where we were ranked 68<sup>th</sup> in the world, with immunisation levels below countries such as Vietnam, Algeria, India and China.

To this end we need a public that is informed by impartial, accessible evidence about the benefits, risks and costs of immunisation.

We do not need a process that is going to occur behind closed doors and which is controlled by politicians rather than guided by expert knowledge.

There is already a section of the community that harbours sufficiently serious doubts about the benefits of vaccination that they refuse to have their children vaccinated or to be vaccinated themselves.

Some people believe that information about the adverse reactions to vaccinations are, at best, being underreported, and at worst being deliberately suppressed and ignored.

They also argue that the benefits are hugely overstated.

It is true that people who raise concerns about vaccination are not a large group. Australia wide the proportion of all children registered with Medicare for whom there is a registered conscientious objection to immunisation is less than 1%.

But there are parents who report that people are pressured into having their children immunised because they can not get the conscientious objection form signed or because they can not access child care or schools if they do not have their child immunised.

Vaccination is not and can not be compulsory but the availability of the best possible information and evidence on the risks and benefits will always be the best way to make sure that people are making decisions armed with all of the necessary facts.

It is important that all adverse reactions to vaccinations are reported and that this information is readily available. It is also important that we continue to collect information on the effectiveness, or otherwise, of vaccinations in preventing disease outbreaks within the population.

It is important that decisions about vaccination, whether at the individual or government level, are made on the basis of information and advice from people with expertise in public health and immunisation.

Immunisation has been demonstrated by research and in the field to be one of the most effective public health tools we have.

Let us hope that this government is not moving away from protecting the health of Australian children and the health of the Australian community.

**Senator SANDY MACDONALD** (New South Wales—Parliamentary Secretary to the Minister for Trade) (1.30 pm)—I did grant leave for Senator Allison to incorporate the speech, understanding that if I had refused she of course could have read the speech into *Hansard*. There are, I am advised, a couple of aspects of the speech that the government is not happy with, but they are in her speech and they shall be acknowledged as such. The National Immunisation Program, NIP, is a joint Australian state and territory government initiative through which vaccines are provided free of charge to the Australian community.

Prior to the government's announcement in the 2005-06 budget, the Australian Technical Advisory Group on Immunisation, ATAGI, provided advice to the minister on vaccines suitable for funding under the NIP, along with advice on the clinical administration of vaccines to the National Health and Medical Research Council. Following the government's announcement, the funding advisory function is transferring to the Pharmaceutical Benefits Advisory Committee, PBAC. This change requires amendments to the National Health Act 1953 to

allow the PBAC to consider vaccines for funding under the NIP. The PBAC will retain the ability to assess vaccines for suitability for subsidisation through the PBS.

Australian government expenditure on vaccines increased from \$13 million a year in 1996 to \$288 million in 2004-05, a massive 22-fold increase. Despite this significant increase in government investment in the NIP, the immunisation program still relied on the same advisory structures as in 1998 when the ATAGI was established. The new arrangements ensure that the ATAGI is resourced to undertake the role it does best—that is, providing evidence based clinical advice. ATAGI will continue to provide advice to the NHMRC and the minister on the medical administration of vaccines. The PBAC is being asked to contribute what they do best—that is, giving advice on cost-effectiveness in a transparent and rigorous way.

This bill will extend the functions of the PBAC to consider and make recommendations to the minister on the funding of new vaccines under the NIP, with the system to take effect from early 2006. This will introduce a strong focus on cost-effectiveness and ensure the government receives expert advice on the cost-effectiveness of new vaccines proposed for the funding under the NIP and for any changes to the funding arrangements. In the 2005-06 budget, the government also announced administrative arrangements to improve vaccine pricing processes and the role of the Pharmaceutical Benefits Pricing Authority will be extended to include vaccine price setting. Vaccines currently funded under the NIP will continue to be funded according to the current arrangements. I thank Senator McLucas for her contribution, and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

### **Third Reading**

Bill passed through its remaining stages without amendment or debate.

## **HIGHER EDUCATION LEGISLATION AMENDMENT (2005 MEASURES No. 3) BILL 2005**

### **Second Reading**

Debate resumed from 23 June, on motion by **Senator Patterson**:

That this bill be now read a second time.

**Senator STOTT DESPOJA** (South Australia) (1.34 pm)—In the absence of a Labor speaker at this time, I will speak, albeit briefly. I cannot incorporate a speech because I tend not to write them these days and, with the raft of higher education bills coming before us, it is enough to keep up with the legislation. The Higher Education Legislation Amendment (2005 Measures No. 3) Bill 2005 is our second higher education bill for today. As senators would be aware, it is our third for this week and, just in case you do not think I am keeping track, it is now the eighth amendment to the Higher Education Support Act. As I commented in my earlier speech today, we dealt with the seventh radical change. I do not want to reflect on a decision of the Senate, but radical changes to workplace relations were passed earlier in this day.

This legislation deals with accountability requirements for the non-table-A providers and makes a number of technical changes to the act—technical changes that I will not seek to address in my remarks at this stage. The bill specifically, as senators may be aware, inserts a provision into division 19 of the act, which deals with quality and accountability requirements for higher education providers. It allows the minister to require non-table-A providers ‘to be audited as to compliance with any one or more of the

following requirements’. They include: financial viability, fairness, compliance, contribution and fee requirements. Audits are to be conducted ‘by a body determined in writing by the minister’, and, without any amendment at this stage, this occurs at ministerial discretion. I say without amendment because I have moved an amendment on behalf of the Australian Democrats that would rectify one of the difficulties—in fact, the difficulty—we see with the legislation before us, and that is, yet again, an unprecedented level of ministerial interference.

It is a very tight amendment, one that goes to the issue of removing that ministerial discretion and ensuring that providers are audited on a regular basis—that is, the audits that would apply to non-table-A providers would be conducted on a cyclical basis aligned with the Australian Universities Quality Agency audit cycles. That is instead of what is currently occurring—certainly in this legislation—which is that they happen at such times and in such manner as the minister requires. That is the terminology the government is happy with; we are not happy with it. We think the audits should be undertaken on a cyclical basis, not just when the minister decides, ‘Yep, it’d be good to do it now.’ This is discretion that he otherwise should not have, and we are seeking to amend that.

I note, just in case anyone from the government side wants to remind me, that I am aware that audits of table A providers are currently conducted by the AUQA every five years. The reason I have not stipulated a five-year cyclical basis is obvious—in case those time frames change. What I have done is make it very clear it should be cyclical—that is, regular—and that it should also happen at the same time as that quality framework allows. There is no reason for this inoffensive but constructive amendment not to be accepted by the chamber and, specifically,



by the government. We think it removes that level of ministerial discretion—ministerial discretion, I might say, that is coming to characterise our higher education regulatory system and specifically the Higher Education Support Act.

I looked at the *Bills Digest*, and I am sure honourable senators have also referred to it, on this bill, because like many others I have been wondering why this is just dealing with non-table-A providers. The *Bills Digest* surmises:

Presumably, Table A providers have been excluded from this provision because they are statutory bodies which already have extensive reporting and auditing requirements. In addition, Table A basically comprises those institutions which agreed to become part of the Unified National System in 1989 and which accepted the Commonwealth Government's role in monitoring the sector. Since then they have been providing the Commonwealth with extensive statistical and other information to ensure that Commonwealth policies are administered appropriately. It would be difficult to justify the imposition of another auditing requirement upon the public universities when they have a long history of compliance and accountability with Commonwealth procedures.

I emphasise this last part of the quote from the *Bills Digest*:

The non Table A institutions do not have this history and it is not unreasonable for the Commonwealth Government to introduce this auditing requirement to ensure accountability.

The National Tertiary Education Union have pointed out that table B providers are in receipt of public funding, obviously through the Commonwealth Grants Scheme, if grants relate to the national priorities or for research and training of research students. So there is a level of accountability that the community would expect. That ministerial discretion, particularly in relation to the time of the auditing, is something that I think should be fixed up, and that is what I seek to do with the amendment before us.

In conclusion: I made the point earlier that this is the eighth bill, that we are dealing with a raft of changes and that they are not positive changes. There may be some technical changes, some fix-up measures, some of which may seem a little inoffensive. But we have yet to deal with some positive total re-investment in the sector and we have failed completely to grapple with fundamental issues like indexation of the sector. As I pointed out this morning and the other day, \$911 million, up to \$988 million, is required over the next four years to ensure adequate indexation and to make up for that \$500 million that has been lost over the last decade or certainly since this government came to power.

Again, we have not had any legislation that deals with the issues of income support—removing barriers for students, injecting more money into scholarships or reducing fees and charges—the postgraduate sector, research or training and development. We are not debating the issues in any of these areas, and I do not suggest that we are about to do it now. The Democrats have put forward an amendment that I think deals with the vexed issue of ministerial discretion, which is becoming a quite ubiquitous thread in legislation that we are dealing with in the sector and which I would seek to curtail or at least put some constraint on, if not abolish completely—I certainly would in this case. I commend the amendment to the Senate. We will move it during the committee stage.

**Senator STEPHENS** (New South Wales) (1.41 pm)—I rise to make a contribution to the debate on the Higher Education Legislation Amendment (2005 Measures No. 3) Bill 2005 and present the Labor Party's position on this bill. The bill, as we know, provides yet further amendments to the Howard government's flawed principal higher education act. Many of these changes are relatively inconsequential. The bill seeks to: clarify the

definition of student load, ensure that the guidelines for incidental fees in relation to overseas students are specified in the higher education provider guidelines rather than in the Commonwealth Grants Scheme guidelines and establish the requirements that must be satisfied in order that a person will be regarded as a Commonwealth supported student. The bill also removes an obsolete provision of the Australian National University Act 1991 and corrects a minor drafting error contained in the Higher Education Support Act 2003.

The change of the name of the organisation formerly known as Open Learning Australia to its new incarnation, Open Universities Australia, is an additional component of this bill. The opposition supports this particular amendment and notes that the creation of Open Learning Australia, OLA—or Open Universities Australia, as it is now known—was a very positive policy initiative of the last federal Labor government. Indeed, the creation of Open Learning Australia is an example of what distinguishes the approach of federal Labor to education and training from the incoherent and reactive policy framework of the present government.

The former Open Learning Australia was established as part of an integrated and forward-looking public policy framework designed to foster non-traditional modes of delivery of higher education. Flexible delivery mechanisms were and are recognised by federal Labor as a vital and innovative response to the changing patterns of work force participation. The establishment of Open Learning Australia also responded to shifting patterns of life and work balance for many individuals and families. The opportunity provided through the flexible delivery of courses enabled workers and other individuals to study online, at night or in other ways that suited their lifestyles and time con-

straints. I am one of those people who benefited from that flexibility.

By contrast, the Howard government has been preoccupied with its massive hikes in HECS fees. Universities have been starved of resources following the savage cuts to operating grant funding imposed in the Howard government's very first budget. The reduction of funding imposed by the Howard government of some \$5 billion has been exacerbated by the stubborn refusal for nine years to introduce a fair and reasonable system of grant indexation—an issue that I spoke to in the chamber yesterday or the day before. This has been despite the fact that the coalition parties went to the 1996 election promising not to reduce Commonwealth funding of universities by one dollar.

There have been no serious policy initiatives from the Howard government on a par with the creation of Open Learning Australia. Contrast the establishment of Open Learning Australia with this government's ideologically fuelled attacks on vulnerable students through the threatened withdrawal of support for essential university facilities, services and amenities. Nine long years of Howard government incompetence and underfunding are taking their toll on Australian universities. Massive fee hikes, a drop in the number of Australians attending our universities, chronic underfunding which is forcing institutions to increase fees, and threats to quality and standards are becoming the all-too-familiar hallmarks of the higher education sector under this government. This government is failing to promote policies that would allow a country with a dispersed population like Australia to provide its citizens with the opportunity for a high-quality tertiary education, no matter where they live.

The Howard government has spent the last nine years starving our universities into submission. Now it is being forced to con-

template radical restructures to survive—and we heard about that in a previous debate. The Howard government's \$100,000-plus full fee degrees benefit the oldest and most prestigious universities at the expense of newer universities. The plans for research are similar. Minister Nelson has even warned that some universities may end up without any research funding at all. The increased income from fees and extra research resources for the relatively asset-rich universities will increase their ability to pay a premium to attract the best staff from other institutions. At the same time, the Howard government's unwarranted industrial relations agenda will encourage universities struggling to balance the books to drive down relative wages and become low-cost, high-volume institutions. The pattern is very clear. It will be a system of haves and have-nots, where the haves are struggling to keep up with international standards and the have-nots are struggling just to survive.

The Howard government likes to talk about diversity, but its policies have the exact opposite effect. We need look no further than the uniformity of university responses to HECS increases. Barely six months into so-called variable HECS and the variation is nowhere to be found. Only three universities have resisted HECS increases, and without proper Commonwealth funding it is only a matter of time before they too join the rush for desperately needed income, further burdening students and their families with higher fees. Rather than supporting all of our universities to continue to live up to their title, the minister is proposing to redefine and dilute what a university is. Watering down the definition of a university could open the door to fly-by-night providers and damage Australia's outstanding international reputation, thereby jeopardising about \$5 billion per annum in export earnings by the university sector alone. Defining the problem

away by letting anyone who wants to set up as a university is the easy and predictable response of a moribund government, but investing in the skills and innovation of Australians by supporting our higher education institutions to live up to their title is the right response. Against this backdrop, the bill before us is a do-nothing disgrace.

While the opposition does not intend to resist the various minor elements of this bill, it would be remiss not to mention two of the specific clauses that potentially are of some cause for concern. The bill provides for the clarification of quality and accountability requirements to ensure that higher education providers' selection procedures are, in the words of the explanatory memorandum:

... based on merit in the providers' 'reasonable view'.

Taken at face value, this change would appear to be worth supporting, but we remain concerned that the amendment sought may lead to a softening of the fairness and transparency of selection procedures. The opposition serves notice on the government that it will monitor the impact of this element of the bill to ensure that transparency and fairness remain bedrock principles and practices in the selection and enrolment of students to courses of study in our higher education institutions.

The bill contains a provision for an audit to be conducted on the operation of so-called non-table-A higher education providers to determine their compliance with one or more of the requirements of the principal act. The opposition has consistently called for robust and efficient accountability mechanisms, including the capacity to undertake suitable audits of higher education providers from time to time. However, in amending the act to provide for audits in the manner set out in this bill, the opposition is mindful of the undesirability of excessive central regulation.

The education minister is well known as someone who has exercised his ministerial prerogatives without due regard for the principles of academic freedom and institutional autonomy. His breathtaking decision to prefer his judgment in relation to three Australian Research Council applications to that of an expert peer review process, together with his recently announced decision to axe the board of the ARC, are but two examples of a minister who does not understand what it is to regulate with a light touch.

While the audit provisions of the bill as presented will not immediately apply to table A higher education providers, one can only wonder how long it will be before the minister inevitably weakens in the face of temptation to apply such mechanisms to all such higher education providers. Such heavy-handedness would surely be consistent with the track record of this minister and this out-of-touch regime. In summary, despite these concerns federal Labor will support this bill, but we will watch the Minister for Education, Science and Training closely to ensure that he does not even further undermine quality and standards in Australian higher education.

**Senator SANDY MACDONALD** (New South Wales—Parliamentary Secretary to the Minister for Trade) (1.51 pm)—I will not take the opportunity to sum up the debate on the second reading at this stage. In the interests of time, I think we should move straight on to the committee stage.

Question agreed to.

Bill read a second time.

#### **In Committee**

Bill—by leave—taken as a whole.

**Senator STOTT DESPOJA** (South Australia) (1.52 pm)—I have addressed the intention of the amendment that is circulated in my name on behalf of the Australian Democ-

rats. It is to ensure that auditing of non-table-A providers takes place on a cyclical basis as opposed to at the minister's discretion. I move the amendment standing in my name:

- (1) Schedule 4, item 1, page 10 (lines 18 and 19), omit paragraph 19-80(b) substitute:
  - (b) on a cyclical basis, aligned with Australian Universities Quality Agency audit cycles.

I hope the government will support it.

**The TEMPORARY CHAIRMAN (Senator Watson)**—I believe you also have another amendment with the opposition, or has that been withdrawn?

**Senator Stott Despoja**—I believe it has been withdrawn. You would be aware that that is the regular amendment moved on behalf of the Australian Democrats and the opposition in relation to advertising. I am not sure if it has been withdrawn. I suspect it may have been withdrawn for this bill. I do not think it is appropriate for this legislation. If I need to seek leave to double-guarantee that that has been withdrawn on behalf of me and Senator Chris Evans, I will do so.

**The TEMPORARY CHAIRMAN**—No. Just do not move it.

**Senator SANDY MACDONALD** (New South Wales—Parliamentary Secretary to the Minister for Trade) (1.54 pm)—The government opposes this amendment. While table B providers in the Higher Education Support Act 2003 are audited by the Australian Universities Quality Agency, other providers are not at this stage required to be audited by the AUQA. The audits provided for in this amendment bill go to compliance with the Higher Education Support Act 2003. Rather than being an audit of a university's quality, such as is conducted by the AUQA, this compliance goes to issues of financial viability, contribution, fee requirements and fairness obligations as stipulated by the act.

At present, the AUQA only conducts quality audits every five years. The amendment bill provides for audits at such time or times as the minister requires. The Democrat amendment would have the effect of limiting, for instance, when an audit of financial viability may be undertaken. For example, if in a particular year the government had significant concerns about the viability of an institution but the AUQA audit was not due for another four years, no audit of the institution could be undertaken until that time. So the government opposes this amendment.

**Senator STEPHENS** (New South Wales) (1.55 pm)—I want to indicate that Labor supports this amendment. In her speech, Senator Stott Despoja adequately described the purpose of this very slight amendment which would align the auditing requirement with the Australian Universities Quality Agency's audit cycles. I think it is an indication of the very concern that I expressed in my speech about the minister's capacity for heavy-handed response that he would consider that this was not a reasonable amendment.

**Senator STOTT DESPOJA** (South Australia) (1.56 pm)—I thank the government for the explanation for their lack of support for this amendment. Obviously, Senator Sandy Macdonald told me a few things that I already know, but I do wonder whether the government is intending to tighten up this legislation as a consequence of the great deal of ministerial discretion that they are affording in this case, and whether there will be any attempts to further define or specify what 'at such time or times, and in such manner, as the minister requires' actually means. I am a bit concerned that this is far too open ended.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

### Third Reading

**Senator SANDY MACDONALD** (New South Wales—Parliamentary Secretary to the Minister for Trade) (1.57 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

### QUESTIONS WITHOUT NOTICE

#### Workplace Relations

**Senator WORTLEY** (2.00 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Is the minister aware that the current Workplace Relations Act contains a no disadvantage test? Doesn't this ensure that if employees trade off conditions such as penalty rates, leave loadings or shift allowances in their agreements, they will receive compensation in return, such as wage increases, more family-friendly hours and additional holidays? Can the minister confirm that this test will be abolished as a result of the government's industrial relations changes? Doesn't this mean that workers are now at risk of losing penalty rates, overtime and leave loadings in their workplace agreements and getting nothing in return?

**Senator ABETZ**—There will be a new regime in place, and that is quite obvious. The purpose of the new regime is to ensure that there is genuine work choice in the employment market. But we fully accept that there are circumstances where workers need to be protected. As a result, in our legislation we have determined that there will be five minima below which people cannot contract. Some of those minima have not been in place before for the protection of workers. Indeed, under the current regime of the no disadvantage test, employees could in fact trade away the totality of their sick leave and

annual leave. The government says that as a maximum you should only be allowed to trade away two weeks of your annual leave and none of your 10 days sick or carers leave.

What we have here is a very good, balanced package which provides for the greatest degree of flexibility while also providing for the greatest degree of protection for employees. That is what we as a government have been working on for some considerable time. I am delighted that we have been able to achieve that. The Fair Pay Commission will also be put in place, and its standards will not be able to be contracted below. You cannot contract below those minimum conditions, the fair pay standards and other matters that they might determine.

I think there were three or four elements to the question, but the answer to all of the Labor assertions, as is the case during question time on most days, is no. What we have is a regime which will enable employees and employers to get together and work out agreements that satisfy their mutual needs to their mutual satisfaction. The senator mentioned penalty rates et cetera. I indicate that Greg Combet has been on radio agreeing that he has negotiated awards which got rid of penalty rates. The problem with the Labor Party is that if the trade union movement negotiates away a penalty rate, that is okay. But dare not let an individual worker determine for himself or herself what might be within his or her individual interests and the interests of the particular workplace.

**Senator WORTLEY**—Mr President, I ask a supplementary question. If the government is genuine about protecting employee entitlements, why does it want to remove the no disadvantage test from the Workplace Relations Act? Is this just another aspect of the government's plans that the

minister does not understand, or was he being deliberately misleading on 12 October—

**The PRESIDENT**—Order! Senator—

**Senator Conroy**—She asked the question.

**The PRESIDENT**—I don't need your advice, Senator Conroy. To accuse someone of being deliberately misleading is unparliamentary. It has always been ruled that way, and I ask you to withdraw that part of your supplementary question.

**Senator WORTLEY**—I withdraw it.

**The PRESIDENT**—Thank you.

**Senator Chris Evans**—Mr President, I raise a point of order. As I understand it, the senator was asking the question: 'Were you being misleading?' I am just trying to clarify your ruling.

**The PRESIDENT**—I am not querying the question, Senator. I am just saying that those particular couple of words that she used, accusing the senator of being deliberately misleading—

**Senator Conroy**—She did not.

**The PRESIDENT**—That is the way I heard it. I will look at it again after question time. I thought that was in the question.

**Senator Chris Evans**—Mr President, I am happy for you to look at it.

**The PRESIDENT**—In any event, the senator has withdrawn that remark.

**Senator Chris Evans**—I am happy for you to look at it, because my understanding was that she asked whether he was being deliberately misleading, which I would contend is probably not out of order. But if you want to look at the videotape, that would be great.

**The PRESIDENT**—In any event, Senator, continue with your supplementary question.

**Senator WORTLEY**—when he said ‘under our proposals, what you have got you keep’?

**Senator ABETZ**—The honourable senator has got it in one: we are genuine about these reforms, and I am delighted that that has been recognised by those opposite. Can I also say that this is typical of the Labor Party when they start running out of arguments. We used to hear it from Senator John Faulkner—the levels would go up as the argument became weaker. It appears now from those opposite that they will use extreme language to try to bolster their very weak arguments. We, for the first time, will be legislating basic minima which will be enforced and enhanced by the Fair Pay Commission. The Office of Workplace Standards will be of assistance as well. In all of those circumstances workers will be very much protected. *(Time expired)*

#### **Indonesia: Terrorist Attacks**

**Senator EGGLESTON** (2.07 pm)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister update the Senate on recent developments in the fight against terror in our region and, in particular, efforts to combat the Jemaah Islamiah organisation?

**Senator ELLISON**—I thank Senator Eggleston for what is a very important question. As a result of an operation by the Indonesian National Police overnight, it is believed that Dr Azahari Husin was killed in an operation which involved police being confronted with gunfire. I can report that during an attempt to gain entry to premises just outside of Semarang in East Java, police were confronted with gunfire and explosive devices. On the basis of information from Indonesian authorities, we believe that Azahari, a person who has been of great interest to us, was killed along with two others in an explosion. We have offered forensic assistance

from the Australian Federal Police to assist in the confirmation of that and in bomb blast analysis. I can also confirm that members of the Australian Federal Police Jakarta operation centre were in Semarang and provided technical assistance to the operation. This is a very big breakthrough in the fight against Jemaah Islamiah. Azahari was believed to have been behind the bombings of our embassy, the Marriott and, of course, the two Bali bombings of 2002 and this year. Of course, this is not the end of it. Whilst we believe that this has been a great breakthrough in the fight against Jemaah Islamiah, we are still searching for Noordin Top and others whom we believe are responsible for the bombings. We believe Azahari to have been a skilled bomb maker and the mastermind, if you like, behind the bombings that I mentioned.

This is a decisive blow to Jemaah Islamiah but, of course, we are not saying that this is the mission accomplished. There is a lot more work to be done. What it does demonstrate is the high degree of cooperation between the Australian Federal Police and Indonesian National Police in the fight against terrorism. We are, of course, pursuing those others who were responsible for the recent Bali bombings and we will continue to do so. In August this year, I opened up a further stage of the Jakarta Centre for Law Enforcement Cooperation. This has been a great project and Australia has funded it to the tune of just over \$38 million. It sets up a centre of excellence for the fight against terrorism and transnational crime. It has received international recognition. I am pleased to say that a number of European countries are contributing towards it and the United States has also expressed interest in it. But, at the end of the day, it remains a great partnership between Australia and Indonesia in the fight against terrorism.

I have said that the fight goes on. We have a number of police still stationed in Bali carrying out investigations. We will be providing further numbers of police in relation to this latest exercise. When I was in Indonesia recently with the Minister for Foreign Affairs, there was a great deal of appreciation for the cooperation that we gave to the Indonesian police. The President of Indonesia expressed a strong desire that we continue in this close cooperation in the fight against terrorism and transnational crime. What we have here is a great breakthrough with the death of Azahari; the person that we believed to be behind these bombings and a person who was very senior in Jemaah Islamiah. It is a great breakthrough and I commend the work done by the Indonesian National Police, and the Australian Federal Police who were there on the ground working with them.

#### **Workplace Relations**

**Senator HUTCHINS** (2.11 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that, under the government's plans, the so-called Fair Pay Commission will not make its first minimum wage determination until at least spring 2006? Is the minister aware that the last safety net adjustment by the Australian Industrial Relations Commission was handed down in June 2005? Doesn't this mean that low paid workers covered by federal awards will be forced to endure a wage freeze of up to 18 months? Was this the government's intention when it decided that the so-called Fair Pay Commission would not award any further minimum wage increases until at least September next year?

**Senator ABETZ**—The Australian Fair Pay Commission is going to be determining minimum standards for Australian employees. That is an important role that it will take

on and when it is set up, after the establishment of the legislation and a date is determined for the legislation to come into force, then the other things which Senator Hutchins speaks about will undoubtedly come into being as well.

It is interesting to note in that question that he is concerned about delays in payments for low paid workers. I know what happens in our home state of Tasmania, Mr President. The Australian Industrial Relations Commission makes a determination about the minimum wage and then the Tasmanian Industrial Commission, at a cost of \$2 million per annum, busies itself to determine what the minimum wage ought to be in Tasmania. And guess what, Mr President? Surprisingly, it is nearly always exactly the same as the Australian minimum. That determination takes a number of weeks, indeed months, to come down. If those opposite are genuinely concerned about low paid workers getting their entitlements immediately, they would make sure that we got rid of the state industrial commissions, which simply mimic that which the Australian Industrial Relations Commission does—or which the Fair Pay Commission will now do—and allow workers to get their increases immediately, rather than going through the silly farce of going to state industrial commissions.

**Senator Chris Evans**—Mr President, I raise a point of order on the question of relevance. The minister was asked a question related to his responsibilities. While his musings on Tasmania are fascinating, the question goes to his responsibilities and what will occur with minimum pay protection under the government's proposed legislation. I ask you to draw him back to the question about whether in fact there will be an 18-month freeze for low paid workers.

**The PRESIDENT**—I do not believe it is Senator Abetz's responsibility—he only



represents the minister here—but I remind him of the question and remind him also that he has two minutes left for his answer.

**Senator ABETZ**—That is very helpful because, as I was able to sit down, I recollected that the honourable senator feigned concern for low-paid workers having a delay in getting any wage increase that might rightfully be theirs. And, if those opposite have such a concern in only one circumstance, in the transition period with the Fair Pay Commission—if that were to eventuate—they would also express, if they were consistent, concern about the delays of individual industrial commissions in each state, other than Victoria, in determining the minimum wage and entitlements for low-paid workers. They come into this place feigning concern for low-paid workers but are not willing to change the system so that all low-paid workers together, all around Australia, can share the benefits of the increased productivity which we as a country are going to provide to them.

**Senator HUTCHINS**—I assume that the answer is: yes, they will have to wait. Mr President, I ask a supplementary question. Is the minister aware that one of his colleagues, Senator Troeth, said at a recent hearing into workplace agreements:

Government party senators take the view ... that safety-net awards are probably too high ...

Hasn't Senator Troeth exposed the government's real agenda by taking responsibility for setting minimum wages away from the independent umpire and giving it to the alleged 'Fair Pay' Commission?

**Senator ABETZ**—Senator McGauran has just done some numbers for me. Senator McGauran has advised that the time period from June 2005 through to August 2006 is more likely to be 14 months than 18 months, as suggested by Senator Hutchins, so I will just correct his maths for the moment. In

relation to Senator Troeth, I indicate that she is a very distinguished chair of the Senate committee and is highly regarded, and those opposite would do well to take more note of her.

### Workplace Relations

**Senator FIFIELD** (2.17 pm)—My question is to the Special Minister of State, Senator Abetz, representing the Minister for Employment and Workplace Relations. Will the minister outline to the Senate how the government's new workplace relations plan Work Choices will provide Australian workers with the flexibility they want, whilst protecting their rights? Is the minister also able to provide information on alternative policies to the government's position on this important issue for Australian workers?

**Senator ABETZ**—I thank Senator Fifield for his excellent question. Work Choices is all about providing flexibility to the workers of Australia—flexibility which will give the workers of Australia the opportunity to sit down with their employers and negotiate working conditions which suit them best, protected by a legislated safety net. That safety net includes protections against unlawful terminations and allows for fair dismissals. Speaking of which, never mind Paul Keating's comments that Sir John Kerr should have been placed under house arrest after dismissing Gough Whitlam 30 years ago tomorrow. Just imagine if his ridiculous unfair dismissal laws had been in place when Sir John Kerr quite rightly dismissed the most incompetent Prime Minister this country has ever had. There would have been the IRC hearings and, possibly, Mr Whitlam would have been given a huge payout, or Kerr might have been forced to reinstate him. Just imagine the headlines: 'IRC reinstates Whitlam'; 'Khemlani loan to go ahead'; 'Unemployment to go ahead'; 'Inflation to rise again'.

Moving on—or, rather, back to 1971—guess who made these visionary comments some 34 years ago in relation to flexibility in the workplace:

The least likely way of maintaining harmonious relations in industry is going to be a system where some external parties impose their will on the two parties most affected.

I wonder if those opposite actually agree with those sentiments. It is quite obvious that they do not. So allow me to ask: who said it? I will give those people opposite a hint. It is not often that I agree with this person and, back in 1971, it was one of his more lucid moments, to put it politely.

*Honourable senators interjecting—*

**Senator ABETZ**—Somebody has nearly got it. It was Bob Hawke, President of the ACTU, who made that statement some 34 years ago—the policy which we are now trying to introduce some 34 years later. But those opposite continually misrepresent what we are seeking to do, such as the instance of the Telstra call centre in Hobart, where Senator Bob Brown, the unions and the member for Denison deceptively tried to claim that the call centre workers were being forced to work on Hobart Show Day because they were on AWAs. In fact, those workers were on a four-year-old, union negotiated, commission-sanctioned agreement which allowed for exactly this practice—union negotiated, commission endorsed—which they now condemn as somehow being part of the evil Howard regime. They have negotiated these agreements in the past. They know it is good for workers. They know it is good for employment. They know it is good for the country. This is just another example of Labor knowing what needs to be done. Mr Hawke knew about this over 30 years ago. Labor know what needs to be done, but they simply cannot bring themselves to do that

which is so desperately needed for the benefit of this nation.

### **Workplace Relations**

**Senator WONG** (2.21 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Is the minister aware that the current Workplace Relations Act requires the minimum wage to be fair and set in the context of living standards generally and of inflation? Isn't this requirement one of the foundation stones of Australia's system of protection for our workers and their families? Can the minister confirm that the government is now expressly removing the requirement that the minimum wage be fair from the new rules for setting the minimum wage? Given that the government claims it does not want to drive down the minimum wage, why does it want to abolish the long-standing protections and reference to fairness contained in the current laws?

**Senator ABETZ**—What we as a government are doing is ensuring that minimum standards are set by the Australian Fair Pay Commission. Whether it is the Australian Industrial Relations Commission or the Australian Fair Pay Commission, what we will have is a commission that will be determining these matters for Australian workers. And they will be determining these matters—it will not be a recommendation to government; it will be an actual determination that will have the force of law and with which every employer will need to comply. With the Australian Fair Pay Commission, the name says it all: it is about fair pay.

As I have indicated previously, in the United Kingdom Mr Blair introduced a similar system—I think it was in 1997—which has in fact been of great benefit to workers in the UK who are on low wages. Low wage earners have in fact benefited from this new mechanism. While our proposals are not ex-

actly the same, we have learnt from New Labour in the United Kingdom. We were reminded of that last question time when the Leader of the Opposition in the Senate interjected saying that we were looking more and more like New Labour. To a certain extent, he might be right. But what is more to the point is that they are looking more and more like an old, outdated Labor that has no relevance to the 21st century and the modern day work practices that the people of Australia are now aspiring to. The talk of class warfare and all those things that those on the other side still wallow in are the discussions of about 200 years ago.

**Senator Wong**—Mr President, it will come as no surprise that I rise on a point of order on relevance. It was a very specific question about the removal of the reference to fairness in the setting of the minimum wage.

**The PRESIDENT**—Senator Abetz, I remind you of the question, and remind you that you have two minutes left to answer it.

**Senator ABETZ**—I thank Senator Wong for the interjection. As I have indicated previously, you know you are on a roll when the Labor Party thinks there is a need to get up on a fatuous point of order. Her question was all about the Australian Fair Pay Commission and the new regime. I was outlining to the Senate that part of our thinking, part of our rationale for the Fair Pay Commission was in fact based on New Labour's approach in the United Kingdom. That is what so offends them, because they have no idea how to become a new Labor Party for the 21st century. They are still stuck 200 years ago, wallowing in the concept of class warfare rather than accepting the concept of individual workers and individual employers being able to come together to negotiate above and beyond the minimum standards which will be determined by the Australian Fair Pay

Commission. The Australian Fair Pay Commission is designed to ensure that low paid Australian workers get a fair deal.

**Senator WONG**—Mr President, I ask a supplementary question. The minister in his answer said that the name said it all. Can he confirm that the government was happy to include fairness in the name of the Fair Pay Commission but in fact removed it as a requirement to which the commission must have regard when setting wages for workers in Australia? Doesn't the express removal from the new laws of the longstanding requirement that the minimum wage be fair expose as a blatant lie the government's claim that it does not want to drive down the minimum wage?

**Senator ABETZ**—Blatant lie? The only blatant lies that are being told in this campaign are from those opposite, and the worst offender is Mr Beazley. All his frontbench are now trying to mimic him.

**The PRESIDENT**—Order! Those sorts of terms can be used in a general sense, but when you identify a person, that is unparliamentary. I ask you to withdraw that.

**Senator ABETZ**—I withdraw. Those on the other side engage in blatant lies about our proposals, as indeed was the allegation made by the other side.

**The PRESIDENT**—Order! I was referring to you mentioning the Leader of the Opposition in the other place.

**Senator ABETZ**—Yes, and I have withdrawn that. I am now saying that those on the other side—in the generic, as Senator Wong used in her question to me—who are in fact led by Mr Beazley—

**Senator Conroy**—Mr President, I rise on a point of order. I wonder if you can clarify that last ruling of yours? Are you suggesting that standing up and saying, 'You're all a bunch of liars,' is parliamentary?

**The PRESIDENT**—That was not the term he used.

**Senator Conroy**—He has just said, ‘Those on the other side are liars.’

**The PRESIDENT**—Resume your seat, Senator Conroy. There is no point of order.

**Senator ABETZ**—I suggest to Senator Conroy that he simply have a look at the question asked by Senator Wong. The Fair Pay Commission will be required to ensure there are appropriate specific rates established for each category.

**Senator Wong**—What is ‘appropriate’?

**Senator ABETZ**—Some people might use the word ‘fair’; some might use the word ‘appropriate’. This is simply a silly game of semantics and I suggest that Senator Wong should rise above it. (*Time expired*)

#### **Family Assistance**

**Senator FIERRAVANTI-WELLS** (2.28 pm)—My question is to the Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues, Senator Patterson. Will the minister inform the Senate how the Howard government’s strong economic management is delivering record assistance to Australian families? Is the minister aware of alternative policies on the issue of support for families?

**Senator PATTERSON**—Unlike Labor, the Howard government understands the issues facing Australian families. The best form of support that any government can give to a family is to ensure that they have a job. We have provided over 1.7 million new jobs since we came into government. This strong budgetary and economic management has allowed us to provide families with real choices to balance their working arrangements. We have given families the assistance they deserve.

I will provide you with a few examples. Each eligible family now receives an average

payment of around \$7,700 a year in family assistance. That is a 300 per cent increase since 1996. Since we came into government, assistance to families has increased by 300 per cent. We have brought in the maternity payment of over \$3,000 per child—increasing it to \$4,000 next July—which helps with the cost of a new baby. We have introduced the 30 per cent child care tax rebate on out-of-pocket child care expenses. The number of child care places has doubled since 1996.

In addition, families, as they have lodged their tax returns, have received the benefit of the ongoing supplement of \$600 per child and 1,118,791 people so far have received that benefit since the beginning of this financial year. That is on top of more than two million families that received the benefit of \$600 per child last year. This is the \$600, you will all remember, that Labor said at the last election was not real. It is real. Families are benefiting, to the tune of over two million families last year. To date, 1,118,791 families have already benefited. We know it is real and ongoing, and families know it.

Eligible families lodging income tax returns have also received an increase in family tax benefit B. At the election the government committed to increasing the maximum rate of family tax benefit B by \$300 from 1 July 2005. But, due to our strong economic management, we have been able to deliver this six months earlier. This means that families lodging their tax returns are receiving \$150 in benefits this financial year. Next year families will receive \$300 extra in family tax benefit B. This measure benefits over 1.3 million sole parent families and families with one main income earner. I would encourage all of those families who are eligible to make sure they put their tax returns in as soon as possible.

As the shadow Treasurer has come to realise and as Australian families know, this is real money. Families also know that they are better off than they were under Labor, when there was record high unemployment and 17 per cent interest rates. The Labor Party's policy was going to cut assistance to over one million people in low-income families. The more children you had, the less assistance you were going to get. The shadow Treasurer has admitted that the ALP's election policy would have 'had some low-income Australians going backwards'. From July 2006 another 400,000 families will benefit when we increase the lower income threshold for family tax benefit A. This will mean an average \$24 a fortnight boost to the pockets of low-income families. Unlike the Labor Party, the Howard government is delivering record assistance to Australian families and has a plan for them for the future.

#### **Human Embryo Export**

**Senator FIELDING** (2.33 pm)—My question is to the Minister representing the Attorney-General, Senator Ellison. I draw the minister's attention to the submission by the Attorney-General's Department to the Lockhart committee. The submission recommends abolishing existing Customs policy which is designed to ban the export of human embryos for commercial surrogacy. Given that the government recognises that commercial surrogacy exploits women, is the government changing its policy to allow human embryos to be exported? If so, why?

**Senator ELLISON**—It is a serious question and one which I have had involvement with for some time now, because I have had to sign the permits in relation to permission for exports of embryos. The Senate will recall that the agreement we came to was that embryos could be exported only for the purpose of a couple having a child. There was a provision to allow for commercial surrogacy

before a certain date, and that still stands. This is being reviewed. The Attorney-General's Department made a submission on how it was working. I am not so sure that the submission actually stated that commercial surrogacy should be allowed. I think it was more on the question of who should have responsibility for governing the export of human embryos. But I will take that on notice and make sure that I have answered Senator Fielding's question correctly.

This is an issue that is under review. We said at the time that it would be reviewed. It is an issue we take very seriously. Obviously, you have situations where Australian couples who have been engaged in IVF treatment in Australia travel overseas. You often have that in defence services. Of course, there has to be an allowance for them to be able to carry on with their IVF overseas because they could be overseas for some time and naturally they want to have children. But what was discussed when we put this in place was that there should not be commercial exploitation of this. There had to be strict safeguards in relation to commercial surrogacy. At that time, if I recall, there was a case of a couple who had engaged in commercial surrogacy and were about to lose that opportunity if we put the regulation through which totally prohibited it. That is why we allowed for that one clause which allowed it up to that date, which I think was around March 2003—but I will check on that. But it is under review. I was not aware of any position which advocated opening up commercial surrogacy. I will look into that and get back to Senator Fielding if there is anything I can usefully add.

**Senator FIELDING**—Mr President, I ask a supplementary question. I thank the minister for looking into it. If he does find—and I have the submission here—that there is a proposal to remove that transitional period, what action will the government take to en-

sure that the Lockhart committee knows that the government does not support this proposal? What action will it take against the public servants who sought to change the government's policy?

**Senator ELLISON**—The point that Senator Fielding makes about the transitional period was raised, but I did not take that as opening up the question of commercial surrogacy and allowing willy-nilly the export of human embryos where there is commercial surrogacy involved. I understood that aspect to be of a more technical nature. But I will take that on notice and get back to the Senate on it.

#### **Broadband Services**

**Senator JOYCE** (2.37 pm)—My question is to the minister for Communications, Information Technology and the Arts, Senator Helen Coonan. Will the minister advise the Senate of the importance of broadband in boosting the export potential of regional Australia? What is the Liberal-National government's commitment to targeted investment in broadband to further close the gap between country and city? Is the minister aware of any alternative policies on this issue, which is critical to the productivity of non-metropolitan businesses in Australia?

**Senator COONAN**—I acknowledge Senator Joyce's question and his ongoing interest in the very important matter of the provision of broadband services throughout Australia.

*Opposition senators interjecting—*

**Senator COONAN**—Not only Senator Joyce but also everyone on this side of the chamber is interested in telecommunications issues for consumers. If the opposition would like to listen to this answer they might actually learn something. Broadband internet access is not just an issue of relevance for capital cities. Broadband is an important tool—and we all acknowledge that—for

Australians doing business, studying and participating in their communities, irrespective of where they live. That is why we in the Howard government have committed ourselves so strongly to connecting all Australians through the Connect Australia package. We know that the existence of broadband simply makes the difference to people being able to live and work and study and keep in touch with their communities in rural and regional Australia.

The Australian Local Government Association's *State of the regions* report, which was released this week, adds support to the government's policy. It concludes that greater penetration of broadband in regional Australia will significantly boost the nation's export potential. In August the Australian government committed a further \$1 billion to extend broadband availability in regional Australia because we recognise the importance of providing broadband to all Australians, irrespective of where they live. In the past year alone, more than 800 regional and rural towns have been connected to terrestrial broadband services. That is a direct result of government subsidies. More than 600,000 homes and small businesses in rural areas can access broadband that was not available just 12 months ago.

There are now more than 10,000 subsidised satellite services in operation in more remote areas. Using a competitive market and targeted subsidies, the government is simply closing the gap between metro and regional take-up. Two years ago broadband take-up in regional areas was just five per cent. In metro areas it was 11 per cent. Today's regional take-up is running at 19 per cent and in metro areas it is 21 per cent. During the 12 months to June 2005 the number of broadband subscribers more than doubled. That is more than a million new customers connected to broadband in one year. This lifted Australia to eighth place on the OECD

league table in terms of growth in broadband take-up. There are now more than 2.1 million broadband subscribers in Australia.

*Opposition senators interjecting—*

**Senator COONAN**—I am sure Senator Joyce would be interested in the sort of response we see from the Labor Party on these issues. I can say without being contradicted that there is nothing of substance whatsoever. After almost a decade in opposition Labor still has no plans for telecommunications—not a clue about looking after consumers who need telecommunications services. Australia's 2.1 million broadband subscribers must be thanking their lucky stars that they have not been left to the devices of the Labor Party, who wanted to mandate a \$5 billion program to give people dial-up services. There are commercial trials up to 100 times faster now being rolled out. The Labor Party's approach to communications is an absolute disgrace. The Howard government remains committed to connecting Australians to the broadband services they need, irrespective of where they live.

**Senator JOYCE**—Mr President, I ask a supplementary question. I could not hear over the noise in the chamber. Minister, could you clarify: are you aware of any alternative policies or is it the case that there are no alternative policies? I could not hear. It is very important that we know of alternative policies.

**The PRESIDENT**—I have ruled on this before. If you are asking about alternative policies it is not a supplementary question.

**Senator Ian Campbell**—Mr President, I rise on a point of order. Senator Joyce was relating directly to his substantive question. Quite frankly, I could not hear the answer and I was sitting next to the minister for communications.

*Opposition senators interjecting—*

**Senator Ian Campbell**—Mr President, they need to be brought to order so that we can hear our minister answer the senator's question. Senator Joyce comes from Queensland and he wants to hear an answer to an important question. This rabble opposite will not allow us to hear the answer.

**The PRESIDENT**—Order! Resume your seat, Senator. I do not need advice from you, thank you.

#### **Telstra**

**Senator CONROY** (2.43 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer the minister to Telstra's recent decision to slash over 200 jobs from Telstra Research Laboratories. Is the minister aware that TRL played a key role in developing Australian ICT intellectual property and ICT skills? Is the minister also aware that one of TRL's key functions was to adapt international technologies to the uniquely harsh Australian environment—a crucial role in maintaining service standards in rural and regional Australia? Isn't the gutting of TRL just a further example of Telstra fattening up the cow to increase its short-term share price for privatisation? Will the minister accept responsibility for the crippling of TRL as a direct result of the government's extreme privatisation agenda?

**Senator COONAN**—What comes to mind in dealing with Senator Conroy's question is just how little he really understands about rural and regional Australia. If he knew anything about cattle he would know that you milk cows; you do not fatten them up for slaughter.

*Opposition senators interjecting—*

**The PRESIDENT**—Order! Senators on my left will come to order. I think there is something wrong with the microphones on this side. I have had trouble hearing Senator Patterson today, and Senator Coonan's mi-

crophone does not seem to be at the normal level because it is very hard to hear her—albeit there are a lot of interjections on my left.

**Senator COONAN**—I am aware of media reports that Telstra is considering the restructuring of its research and development operations as part of the broader review of the organisation. There are further reports that include a comment from Telstra stating that it is not closing its research labs and has absolutely no plans, for example, to close the lab at Clayton. I welcome the commitment from Telstra to research and development, but ultimately commercial decisions about the structure of the organisation have to be a matter for Telstra's management and the board, irrespective of how Telstra is owned in terms of its shareholding.

The government expects Telstra and the rest of the industry to continue developing and offering innovative services to all Australian consumers. Part of the \$1.1 billion Connect Australia package that I referred to in my previous answer to Senator Joyce has a component for continued research and some R&D, with the \$113 million Clever Networks program, which will go towards funding the delivery of innovative telecommunications solutions in regional, rural and remote Australia. The government also continues to fund innovation in the ICT sector through a range of initiatives that I would be very glad to remind the Senate of.

There is the \$60 million advanced network program which funds advanced communication networks, including Australia's first 3G network and the high-speed grid network. There is the \$380 million ICT centre of excellence, NICTA, and ICT research undertaken within the cooperative research centres, DSTO and CSIRO. The government provides significant incentives for private sector research, including the 125 per cent

R&D tax concession and the \$1 billion Commercial Ready program.

Under this government, business investment in ICT R&D has risen dramatically from \$1.3 billion in 1995-96 to \$2.1 billion in 2002-03. So, whilst the government welcomes Telstra's contribution to R&D and the fact that Telstra will continue to make this commitment, this is by no means the only measure of the level of R&D that takes place in this country or of the importance that the government places on research and development. It is a critical part of ensuring that Australia can take advantage of innovation and technological development and that we can continue to make available far-sighted policies that will enable people in rural and regional Australia to have access to an equal share of the results of innovation. The government will continue to be committed to not only R&D but also the delivery of R&D throughout Australia on an equitable and fair basis.

**Senator CONROY**—Mr President, I ask a supplementary question. Is the minister aware that these cuts—these 200 at TRL—are in addition to the following already announced redundancies: around 800 job losses in Telstra's technology group, more than 200 redundancies at Sensis, the abandonment of its 2006 graduate program and, particularly for Senator Joyce, the closure of Telstra's call centres in Roma and Goulburn, taking to over 1,000 the number of job cuts announced by Telstra since the sale legislation was passed by the Senate? Can the minister confirm predictions that more than 9,000 jobs will be slashed in Telstra's strategic review to be announced next week?

**Senator COONAN**—It is very difficult to believe that the Labor Party could actually ask a serious question about the loss of jobs. Labor has absolutely no credibility on jobs. With today's results we know that our unem-



ployment rate is steady at five per cent. What we have seen over the last 9½ years is 1.7 million extra jobs created in Australia.

**Senator Conroy**—Mr President, I raise a point of order on relevance. I asked specifically about Telstra job cuts and about closing down the Roma Telstra call centre, and the minister is giving us a brief about employment statistics from somewhere else.

**The PRESIDENT**—You know the answer to that: there is no point of order.

**Senator COONAN**—When Labor was in government Telstra staff numbers fell from 90,000 in 1990 to 75,000 in 1996. The Labor Party's questions on jobs have no credibility—not only on Telstra but on any part of the Australian economy. It is this government that has revolutionised the way in which people can have a decent job and a decent livelihood in this country.

#### Senate Processes

**Senator ALLISON** (2.50 pm)—My question is to the Leader of the Government in the Senate. After last year's election the Prime Minister said:

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.

Was it not provocative for the government to force the Telstra bills through the Senate in a week with a one-day hearing? Was it not an abuse of power to deny a reasonable request for an extra six days to take the massive workplace relations bills to public inquiry? Why did you refuse to allow the superannuation contributions splitting bill any inquiry at all? Do you regard as provocative your decision to not allow evidence to be taken in the Northern Territory from the Territorians who will have your dump dumped on them? How careful and wise is it to gag debate and prevent the Senate from doing its job of scrutinising legislation?

**Senator HILL**—The fundamental difference is that the Democrats believe that the role of the Senate is to obstruct the government in implementing its program. The coalition went to the people, put detailed policies to the community, received overwhelming endorsement for its program and now has not only a commitment to do its best to legislate that program but also a responsibility to do so.

Certainly, the Senate obviously has an important role in scrutiny. There is no quarrel about that. But, at the end of the day, the government have to be entitled to get a vote and to seek to do their best to implement their commitments. The commitments that we made in relation to continuing the economic improvement of this country, trying to lock in the record low unemployment of which we are so proud, and trying to create an economic environment where we can continue to achieve real wage income growth are things that we are determined to achieve. We will bring our bills to the Senate as promptly as we can. We will allow adequate scrutiny within the Senate.

We have endorsed three important inquiries to take place over the next fortnight. Senators will have to work hard in the two up-weeks to do that job, but that is part of the responsibility of being a senator. The Senate will then have the opportunity to come back and debate those matters in this chamber in a fortnight's time. It is true that within that fortnight we expect votes on those important bills, because the Australian people are entitled to have the government implement their program. It is our responsibility to bring those bills as promptly as we can to the parliament and to do our best to get the numbers in this place to achieve an outcome that we believe is in the best interests of the Australian community.

**Senator ALLISON**—Mr President, I ask a supplementary question. Minister, the Senate web site says:

Detailed analysis of election results makes it clear that many Australians deliberately cast their votes in Senate elections with this review role in mind.

Does the minister believe that those Australians who re-elected this government, knowing that the Senate would still be able to review and scrutinise legislation, would support the government's continued abuse of Senate processes? Minister, will you guarantee here and now that legislative debate in this place will not be gagged?

**Senator HILL**—How the parliamentary web site knows what was in the minds of voters is beyond me, I have to say. But I accept that the people of Australia expect the Senate to scrutinise legislation. They expect senators to work hard at that task, and we want senators to work hard at that task. But in the end we want a vote. The Leader of the Opposition in the Senate yesterday said that we would not get a vote without a guillotine. If that is the attitude of the Australian Labor Party—that they intend to talk out legislation in this place—then we will do what is necessary to get a vote.

**Senator Chris Evans**—Mr President, I rise on a point of order. The minister made an allegation that is not correct, and he knows it. He seeks to misrepresent my position. I made it clear that he would have to use a guillotine to get all the legislation through.

**The PRESIDENT**—That was not a point of order; it was more a point of explanation.

**Senator HILL**—Senator Chris Evans says that he said we would not achieve our program without a guillotine. I say that we have a responsibility to do our best to get votes in this place. The people of Australia expect the Senate to vote on bills—not to not vote on bills. I am afraid that we have a fun-

damental difference of view with the Australian Democrats as to what is the role of this chamber. (*Time expired*)

#### **Defence: Funding**

**Senator MARK BISHOP** (2.56 pm)—My question is to the Minister for Defence and Leader of the Government in the Senate, Senator Hill. Can the minister confirm that Defence is still waiting for three critical funding and strategic planning proposals to be endorsed by cabinet? Didn't the minister claim last week that he was working on the basis that they would be considered by cabinet this week? Didn't the minister express surprise when it was put to him that the Prime Minister had deferred these decisions until next year? Isn't one of the reasons for the delay the minister's failure over the last four years to get financial management in his portfolio under control? Doesn't the ongoing delay in getting cabinet approval for these critical Defence proposals, occasioned by ministerial procrastination, mean continuing defence policy drift and indecision on our strategic needs?

**Senator HILL**—The questioner refers to three fundamental policy decisions without telling us what he is talking about, basically.

*Senator Chris Evans interjecting—*

**Senator HILL**—What has that got to do with it? How is that a funding decision? Is that what he is talking about?

**The PRESIDENT**—Order! Minister, ignore the interjections and address your remarks through the chair.

**Senator HILL**—He said 'three fundamental funding decisions', and he is fundamentally wrong in his question. This government is approving record financial support for Defence to implement the largest and most comprehensive acquisition program in this country's history.

**Senator Mark Bishop**—Mr President, I rise on a point of order. The minister deliberately chooses to misrepresent the question that was put to him. The minister was asked to confirm three funding and strategic planning proposals going to cabinet. That was the question; it was not purely about funding.

**The PRESIDENT**—The minister has just got to his feet; he has three minutes and 15 seconds to answer the question. I remind the minister of the question. That was not a point of order.

**Senator HILL**—Unlike the previous Labor government, this government has a detailed acquisition program for defence. We are implementing that program—with record expenditure in Commonwealth terms—to significantly upgrade the capability of all three services. We have made major decisions in relation to Navy, Air Force and Army in recent years. The program is achieving the upgrade in capability that the Defence Force wanted to have and needed to have under Labor, but which Labor was not able to deliver. I would not giggle about that if I were on the other side—or you will be reminded of some of the decisions, and lack of decision, from the Labor Party in relation to defence. We are proud of the capability that we are giving to the ADF. We are proud of their contribution to Australia's security. We will continue to support them in a way that the Labor Party never did.

**Senator MARK BISHOP**—Mr President, I have a supplementary question arising out of that response by the minister.

*Opposition senators interjecting—*

**The PRESIDENT**—Order! If you are going to have a supplementary question your colleagues should at least keep quiet so we can hear it!

**Senator MARK BISHOP**—Minister, isn't it really the case that the Prime Minister has deferred cabinet consideration of those

three crucial defence planning submissions until next year because he would like to send the Minister for Defence on an overseas posting and perhaps appoint someone else to the Minister for Defence's chair by then?

**Senator HILL**—The honourable senator should not believe everything he reads. This government not only implements strategic defence policy in a way that did not occur in the past but is also committed to the acquisition and support program that is necessary to meet Australia's security needs for the present and the future. If the honourable senator concentrated a little more on the detail of that program he would be doing a more useful job.

#### **Queen's Baton Relay**

**Senator RONALDSON** (3.02 pm)—Given the hour, it is a great honour to be able to direct my question to the Minister for the Arts and Sport, Senator Kemp. Will the minister update the Senate on the progress of the Queen's Baton Relay in preparation for the Melbourne 2006 Commonwealth Games?

*Honourable senators interjecting—*

**The PRESIDENT**—Order! I think we would all like to hear this answer with some silence in the chamber, and I would ask senators on both sides to come to order.

**Senator KEMP**—I thank Senator Ronaldson for that excellent question. Colleagues will recall that the good senator was in fact an excellent shadow minister for sport pre 1996. I think, Senator Ronaldson, that you set a fine example of what a constructive shadow minister for sport should do. Senator Ronaldson is long remembered with affection by the sporting community—unlike some other shadow ministers for sport, Senator Lundy, if I can make that point.

The community is very interested in the progress of the Queen's Baton Relay. Senators and others would have seen some press

on this issue this morning. There are only approximately 125 days to go until Melbourne hosts the 2006 Commonwealth Games. The 18th Commonwealth Games will be held from 15 to 26 March next year and will bring together some 4,500 sportsmen and sportswomen from 71 Commonwealth nations and territories. I assure senators that the Australian government is very proud to be supporting what will be Victoria's biggest ever sporting and cultural event, providing over \$290 million towards the running of a successful games.

*Opposition senators interjecting—*

**The PRESIDENT**—Order! Senators on my left, the minister has a right to answer the question in silence.

**Senator Forshaw**—Mr President, I rise on a point of order. Is it in order for Senator Heffernan to join the baton relay in advance and wander around the chamber like he is doing?

**The PRESIDENT**—Senators have a habit of wandering around the chamber during question time, which is, I would remind the Senate, against standing orders. You are quite correct, Senator Forshaw, but it happens on both sides of the chamber.

**Senator KEMP**—Thank you, Mr President. It is, I agree, very hard to hear oneself talk with people like Senator Lundy calling out during what I would have thought was a matter of interest, particularly to Senator Lundy. As the good senator knows, one of the great traditions of the Commonwealth Games is the Queen's Baton Relay. The Queen's Baton Relay is a wonderful tradition and a great symbol of Commonwealth unity. As we all know, it is on its way to Australia. Newspapers across the country listed nearly 2,000 people who have been nominated as community runners for the Queen's Baton Relay.

**Senator Conroy**—Are you running?

**Senator KEMP**—No, I am not running, Senator Conroy—and neither are you, if I have anything to do with it. Of course, I do not have anything to do with it, but Senator Conroy will not be running. I think I can assure the Senate of that.

The Australian government has provided some \$15 million to fully fund the staging of the international and Australian legs of the Queen's Baton Relay. The baton will arrive in Sydney on 24 January 2006 for the 50-day relay covering all states and territories. As even Senator Lundy would know, the relay will finish in Melbourne and the Queen's message, which is carried in the baton, will be read at the opening ceremony.

The journey commenced on 14 March at Buckingham Palace—Senator Evans would be pleased with this—with the Queen placing in the baton her message to the athletes and entrusting it to the many thousands of runners carrying the baton towards Australia. This is a very important part of the Commonwealth Games. It is one which has wide community support. It is one which I would have thought that even the Labor Party would get behind in a very enthusiastic fashion. I must say that I am very delighted that so many Labor Party members have in fact got behind this. It is a very important project, and we would like Senator Lundy to show some positive support as well.

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

#### ANSWERS TO QUESTIONS ON NOTICE

**Question Nos 908, 1031, 1032, 1151, 1152,  
1172, 1241 and 1287**

**Senator ALLISON** (Victoria—Leader of the Australian Democrats) (3.07 pm)—Pursuant to standing order 74(5), I ask the Minister representing the Minister for Health and Ageing for an explanation as to why an-

swers have not been provided to questions on notice 908, 1031, 1032, 1151, 1152, 1172, 1241 and 1287, all of which were lodged prior to 26 September.

**Senator PATTERSON** (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for Women's Issues) (3.08 pm)—I believe that all those questions were directed to Mr Abbott. I do not know whether any were my questions. I do try and answer my questions as far as possible within the due time. I will draw Mr Abbott's attention to Senator Allison's question.

**Senator ALLISON** (Victoria—Leader of the Australian Democrats) (3.08 pm)—I move:

That the Senate take note of the explanation.

I point out to the Senate that early this morning I gave notice of this to both Senator Patterson's office and Mr Abbott's office, as he is the Minister for Health and Ageing. The staff from both those offices were advised that I would be requesting an explanation as to why these questions had not been answered, so I find it inadequate that the minister simply says she will draw this to Minister Abbott's attention. Minister Abbott has become notorious, at least in my books, for not answering questions. This is not the first time that I have used this opportunity to ask for explanations and have been given none. The first of the questions was asked six months ago, on 11 May, in the middle of a debate about IVF and funding for IVF. The answer to that question still has not been provided.

I would argue that the questions have always been relevant to particular issues. Question No. 1031 asked about the most recent figures available for expenditure on the Medicare safety net. As you would be aware, Mr President, we have on the list of bills to be dealt with this week—obviously it will not now be dealt with until the next sitting

week—legislation about the safety net and changes to the threshold. That information would have been very useful to us in that Medicare debate. I asked how many people had registered for the Medicare safety net in total and by electorate; I asked how many people have reached the safety net threshold in total and by electorate; I asked for information about when and by electorate the next Medicare safety net data will be publicly available; and so on. I also asked for national trends in suicide, which is one of the really serious health and social issues affecting this country. My question was about what those trends have been over the past 10 years, what changes were made in the late 1990s to the coding and classification of deaths in Australia and how those changes have affected the collection of data.

On 7 September I asked questions about 'The quality in Australian health care study' by Wilson et al in 1995 published in the *Medical Journal of Australia*, about admissions to hospitals. It was estimated that 470,000 admissions to hospitals occur annually in Australia because of medical mistakes. We in this chamber will be debating terrorism bills in a couple of weeks time. Terrorism has not actually killed anybody in this country, on our soil, and yet we have 18,000 deaths and 50,000 patients being permanently disabled to a greater or lesser extent as a result of medical mistakes.

I complain about the fact that we are not getting answers to questions from the Minister for Health and Ageing. Perhaps he holds the Senate in disrespect, as others appear to be doing recently, and perhaps he thinks those questions are not important. But I put it to you that they are. I put it to you that it is reasonable for the minister to get answers to those questions to senators—I am not the only one whose questions have been outstanding for very long periods—that it is his responsibility to answer those questions and

that it is important for us to know those answers.

Question agreed to.

#### **DEPARTMENT OF PARLIAMENTARY SERVICES**

**Senator MARSHALL** (Victoria) (3.13 pm)—by leave—Mr President, I refer to the decision of the Department of Parliamentary Services to abandon usual practice and not take on any trade apprentices next year, particularly in the areas working on the parliament's electricity, airconditioning and plumbing. Can you explain why this decision has been taken? Can you also explain why the parliament is denying young Australians apprenticeship opportunities in areas of critical skills shortage when, at the same time, the government is seeking to import skilled workers from overseas to try to overcome those same shortages? Shouldn't the Commonwealth parliament use the best possible employment practices to act as an example to other employers around the country and not abandon young Australians seeking apprenticeships in areas of skills shortage? Mr President, will you personally intervene in this matter and overturn this short-sighted decision?

**The PRESIDENT** (3.14 pm)—Thank you for the question. I will take that question on notice and inquire into the queries you have raised. I am not aware of that, and I will give you a considered answer as soon as possible.

#### **QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS**

##### **Workplace Relations**

**Senator LUDWIG** (Queensland) (3.14 pm)—I move:

That the Senate take note of the answers given by the Special Minister of State (Senator Abetz) to questions without notice asked today relating to workplace relations.

The industrial relations system has stood the test of time. Unlike what Senator Abetz has alleged about unfair dismissals being a recent phenomenon, one of the first things that the new federal parliament put in place after Federation in 1901 was legislation for the industrial relations system. The Australian Labor Party had been formed more than 10 years earlier to fight for that type of fairness for the workers and the common people of this great country. Today we see the Howard government's extreme industrial relations legislation seeking to dismantle the basic fairness that has characterised this system since Federation.

The Howard government's ideologically driven legislation abolishes the very structure that has safeguarded the rights and conditions of ordinary working people for 100-odd years. The government has misled the Australian people with its \$55 million advertising campaign, which is full of spin and propaganda aimed at selling its extreme agenda on industrial relations. The ad campaign was in full swing before the Work Choices legislation had even entered parliament. The Howard government's ideological industrial relations proposals are extreme, unfair and divisive and they undermine the principles of fairness that have underpinned the Australian industrial relations system for the past 100 years.

Under the Howard government's extreme legislation, individual contracts will undermine the rights of Australian workers under collective agreements and awards. The changes will eliminate penalty rates, shift loadings, overtime and holiday pay as well as other award conditions. If the government think that will not happen, then they should hold their breath and, hopefully, they will turn blue. They will have to take a breath shortly after this extreme industrial relations legislation is put in place because they will be held out to have misled the Australian

people about how unfair and divisive this legislation really is.

The changes will have a devastating effect on hundreds of thousands of Australian workers who rely on penalty rates to boost their wages, who rely on not only overtime and shift penalties but also other penalties and who rely on a wage structure that brings about an income that includes other allowances. Under the extreme industrial relations package that is going to be imposed on workers, those conditions will disappear. Employers will not bargain them away; they will rip them out of the agreements and the conditions that employees have had. They will ensure that the wage structures that have been built up since enterprise bargaining was put in place will be decimated. They will ensure that they reduce conditions to the lowest common denominator. They will not be able to help themselves under this package, because there will be no safety net. There will be no conditions to ensure fairness. If you call your five legislative minima a safety net, shame on you. It is not a safety net. The five legislative minima are full of holes, and you know it.

You can always tell when the government are in trouble because they have to wheel out not only the \$55 million but also their employer organisations to try to support them as well. Look at some of the issues that get exposed. Last night on *A Current Affair* we saw that three young Telstra workers hired to sell the benefits of the government's industrial relations changes were sacked after less than a month, even though they were told that their jobs would last for three months. It is extraordinary. This government is already trying to introduce its legislation by stealth. The observation on *A Current Affair* was that once the public started giving the hotline the cold shoulder these girls paid the price and were given the heave-ho. The government said that they did not need them anymore,

and that is how the unfair dismissal laws will work. Employers will be allowed to rip away jobs from people without a fair hearing, without their being informed about how their employment conditions— (*Time expired*)

**Senator FIFIELD** (Victoria) (3.19 pm)— Senator Ludwig's opening bat was that the current industrial relations system has stood the test of time and that because it is there it should be treated as a given. On that basis we would not have moved away from CB radios or LPs or horses. Just because something is still there does not mean that it is the best that we can do.

We have had two great pieces of news today. The first is the ABS labour force figures for October, which show that the trend unemployment rate is unchanged at 5.1 per cent. Also, there is fantastic news that the Work Choices package of bills has passed through the other place. They are two great pieces of news which go together. We are putting this package of measures through because we want to see unemployment as low as it can possibly be. Every workplace in Australia is different. Workplaces are changing and the needs of employers and employees are constantly changing. We need to have a workplace relations system that recognises those changes and that can be flexible and able to respond to the changes in the workplaces and in the economy.

We have to lay the foundations today for tomorrow's economic growth and prosperity. We are enjoying great prosperity today because we have got the policy right over the past decade. Good policy today makes a huge difference to the strength of the Australian economy tomorrow. We can see that in real wages, which have increased over 14 per cent since 1996; in the lowest unemployment rate in 30 years, with more than 1.7 million new jobs created and seven million Australians in full-time work; in the lowest levels

of strikes ever; and in higher productivity and higher living standards. But Australian workplaces need to continually change so that we can continue to enjoy this sort of strength.

I would like to cite one instance of a workplace that was seeking to do just that—seeking to respond to its changed circumstances. I am referring to the firm Kemalex Plastics. Ken Phillips in the *Canberra Times* on Tuesday wrote:

Kemalex Plastics was based in Dandenong. It's a family business running a struggling plant that needed improvements in work practices to survive. As part of the improvements the company had been using independent contractors for over two years. The National Union of Workers had agreed to this. But ... a new enterprise agreement had to be negotiated and the NUW—

the National Union of Workers—

said the independent contractors had to go. The owner said no.

The Colebatch family had been running this business for more than 50 years and had never experienced a strike. They did not know what was about to befall them: that they were going to face the full might, the full onslaught, of an ACTU-National Union of Workers organised industrial campaign. The campaign was for one simple purpose, and that was to use this particular business as an example to highlight what would supposedly happen increasingly under the new workplace relations laws being introduced by this government.

There was no great matter of principle at stake here. It was just an act of bastardry against an Australian business to make an example for a political purpose. After 10 weeks of violence, intimidation and media hype, the strike stopped. Why did it stop? Because the final public rally in relation to this particular industrial act had happened, that particular element of the ACTU campaign was over, so as a result the strike

ended. The only problem was that it was too late. Mr Colebatch has since put the Dandenong plant into administration and the plant is broke for one simple reason: the strike cost that family business about \$1 million as a result of legal fees, lost production, lost sales, plant and truck damage, excess transport fees and sabotage. That was the result.

This business was not a victim of cheap imports, corporate downsizing or globalisation; it was a victim of industrial bastardry. This was an Australian business that was simply trying to change its workplace relations to better reflect the needs of the business so it could continue to give jobs to workers, as it had done for 50 years. The changes that we are introducing, which have been passed in the other place and will come to this chamber, are designed to help businesses like this employ more Australians.

**Senator GEORGE CAMPBELL** (New South Wales) (3.24 pm)—I also want to take note of the responses by Senator Abetz today in question time to questions asked of him about the workplace choices legislation or policy proposals. I say his 'responses' because no-one could judge what Senator Abetz said today in question time as coming remotely close to trying to answer the questions that were put to him. Senator Abetz said that there is a new regime in place. There certainly is when it comes down to answering questions in this chamber. It has been very evident over the past five months or so. The ministers either simply ignore the question entirely or have a rave about whatever rhetorical points of view they want to get across, and they do it with almost impunity as no-one is prepared to pull the ministers up on the relevance of their answers to the questions. We have seen that again today with Senator Abetz, and we are seeing it more and more with other ministers in this chamber.



Senator Abetz made some comments in relation to the questions asked of him. In one comment he said Work Choices was about genuine choice. It is certainly about choice. It is about the choice that the Prime Minister outlined the other day in the House of Representatives, and that choice to new workers coming into the work force is: take it or leave it. Take the offer or what? You do not even get the dole if you do not take the offer. You get dismissed off the dole, so you take whatever offer the employer gives you. When they talk about flexibility, what do they mean? They mean flexibility downwards. They mean the capacity of pushing wages down, because that is what the agenda of this government is. It has been exposed by Senator Troeth in the report of the agreement making and workplace agreements inquiry conducted by the Senate Employment, Workplace Relations and Education Committee. Senator Troeth said, in part, 'Government party senators take the view here that safety-net awards are probably too high ...'

In practice, let us look at the history of this government. The history of this government since 1996 is that, if its submissions to every national wage case, which is about the safety net and awards, had been adopted by the Industrial Relations Commission, workers in this country would be \$50 a week worse off—that is, \$2,600 a year less in workers' pockets than is otherwise the case because of the independence of the Industrial Relations Commission. Why does the government want to set up the Fair Pay Commission? Is it because the Industrial Relations Commission is not independent? No. It is because the government can create a set of circumstances where it thinks it can get the results it wants.

That position of trying to force down wages was also reinforced not by a backbencher or a senator on a committee but by a senior member of the government, a minister

in the cabinet, Mr Ian Macfarlane, who told the John Laws show—sorry, I mean he told the Alan Jones show; I should be more respectful to John Laws—that it was important to get wages in this country down to the same level as they were in New Zealand. What does that mean for every Australian worker? A 25 per cent cut in wages, because that is the difference between the two countries.

Let me dispel one myth perpetuated again today by Senator Abetz and Senator Fifield—that is, that wages have grown by 14 per cent. If you are in the top 10 per cent of wage earners in this country, your wages certainly have grown by 13.8 per cent. But, if you are in the lowest two percentiles, your wages growth over the same period of time is 1.2 per cent—and that is what people on the other side of this chamber describe as being a fair wages system. The only people to whom it is fair are the people at the top who are running the businesses in this country, because workers are the ones who are going to be—(*Time expired*)

**Senator FIERRAVANTI-WELLS** (New South Wales) (3.30 pm)—With six different workplace relations systems in Australia, 130 pieces of industrial relations law, 4,000 different awards and 30,000 different classifications, it is little wonder that the system needs reform. Workplace relations laws affect jobs, investment, productivity, competitiveness and economic activity, which in turn affect our living standards. Workplace relations reform is all about, for all of us, a stronger Australia for our businesses, our employees and our families. It is about people and for people—business people and working people. In the working relationship, these are the two important components.

Whilst past reforms have sought to make Australia's workplaces more flexible and responsive to change, overly complex, opera-

tional, detailed and prescriptive awards and red tape associated with agreement making remain at the heart of Australian workplace relations. Work Choices will replace a rigid and outdated system that was designed over 100 years ago—a system designed to deal with the problems of the 1890s, certainly not a system geared for the challenges that Australia faces today.

Ten years ago, the union movement and the ALP predicted that the Workplace Relations Act would drive down wages, destroy working conditions and increase unemployment. How very wrong they were. Today, the mantra of opponents to further workplace relations reform is that it will erode fairness in Australia's workplaces. They were wrong in 1996 and they are still wrong in 2005. The Australian people and the Australian economy have adapted well to change over the past two decades. Economic reform, including workplace relations changes, has produced benefits. The experience of the past 10 years is testament to this. Since 1996, Australia has achieved 1.7 million new jobs, the lowest unemployment rate in 30 years, real wage growth of 14.9 per cent compared to 1.2 per cent during 13 years of Labor government and the lowest levels of industrial dispute since records were first kept in 1913. For example, unemployment in the Illawarra, where my electorate office is located, has virtually halved since 1996. In the federal seat of Cunningham, it is down from 11 per cent to 6.7 per cent and in the federal seat of Throsby it is down from 12 per cent to 6.5 per cent.

The opposition does not have to take our word for it. Over the last few days we have heard from Minister Abetz. Today he quoted Bob Hawke when he was President of the ACTU. I refer the Senate to the remarks that the minister made on Monday, when he quoted former Prime Minister Paul Keating as saying:

Let me describe the model of industrial relations we are working towards. It is a model which places primary emphasis on bargaining at the workplace level within a framework of minimum standards provided by arbitral tribunals.

As Senator Abetz said, do they agree with that? Mr Keating was also quoted as saying:

It is a model under which compulsorily arbitrated awards and arbitrated wage increases would be there only as a safety net.

I could go on. One can look at other comments that have been made by Labor figures. Perhaps they ought to be paid a bit more attention. Mr Bob Carr, speaking in 1990, said:

In a nation of 17 million people struggling to modernise its economy, seven separate systems of industrial regulation are an absurd luxury.

Steve Bracks, in the Victorian parliamentary *Hansard* of 21 November 1996, said:

The Victorian ALP supports in principle the concept of a single national system of industrial relations, and it always has.

Simon Crean, when he was Senior Vice-President of the ACTU, said:

I think that there is a substantial view within the ACTU that there should be a movement towards the development of a national industrial relations system.

Bill Shorten, in an address to the National Press Club in 2002, said:

Variations in state laws are also time consuming and frustrating for employers. It is ridiculous that there are more than 130 pieces of state and federal legislation pertaining to industrial law.

I could go on. If the Labor Party do not take note of what we say, perhaps they ought to listen to what their own people have been saying about the need to reform industrial relations laws.

**Senator WORTLEY** (South Australia) (3.35 pm)—I rise to take note of answers given by Senator Abetz in relation to the Workplace Relations Amendment (Work Choices) Bill 2005. This bill attacks the

standard of living of millions of Australian workers and their families. The government, in an attempt to convince Australian workers that they are being given choice about the changes to their employment conditions, is spending \$55 million of taxpayers' money on an advertising campaign about this bill. That \$55 million could be better spent on skilling our young people, on education, on health, on providing more child-care places, or on addressing the problem of greenhouse pollution. There is no gain with the introduction of the government's Work Choices bill—workers lose, and their families lose.

Consider what disappears under the bill. Unfair dismissal protection for workers employed by an organisation with 100 or fewer employees—gone. Job security—gone. You can be sacked without reason, and then the employer can employ someone else in your place under an Australian workplace agreement for less pay and inferior conditions. And there is absolutely nothing you can do about it. Thirty-eight hours per week ordinary time—gone. The 38 hours per week ordinary time can be averaged over 12 months. This means you could work 20 hours one week and 60 hours the next. The government says you won't have to work unreasonable additional hours, but you won't know that you are working extra hours until you have met the annual limit.

What about the no disadvantage test which, when properly applied, currently ensures that you are to be no worse off under an AWA than you would be if you were under an award or enterprise agreement? The no disadvantage test—gone. The role of the Australian Industrial Relations Commission in handing down the minimum wage increase—gone. This role, currently carried out by the Australian Industrial Relations Commission, will be handed to the Howard government's Fair Pay Commission. Well, we already know how John Howard views in-

creases in the minimum wage. We know what the government thinks of the current system. In October this year, in a report by government senators involved in the workplace agreements inquiry conducted by the Senate Employment, Workplace Relations and Education Committee, they told us—and I quote:

It is likely that the legislation committee, looking at the proposed WorkChoices Bill, will be taking a closer look at awards and the no disadvantage test. Government party senators take the view here that safety net awards are probably too high—a matter to be addressed in the forthcoming legislation—and that this causes serious distortion in the wage structures, leading to discouragement of employment.

If the Howard government had their way, the minimum wage would be \$50 a week lower than what it is currently. Australian families on the minimum wage would be down \$2,600 a year on what they get paid currently. Since the Howard government has been in power, the cumulative difference between the Australian Industrial Relations Commission's decisions and the Howard government's position on the minimum wage is \$50 per week. Had the Howard government's submissions won out, the current minimum wage would be \$434.40 instead of the \$484.40 that it currently is—\$50 per week less without the decision of the AIRC, which will no longer be part of the decision-making process.

In four of the years that this government has been in power, it proposed a minimum wage increase less than its own inflation forecast. Had it been successful, that would have resulted in a drop in the minimum wage in real terms on those occasions. Now, under the government's new system of Work Choices, the next national minimum wage increase that will be determined by the so-named Fair Pay Commission will be at least six months later than normal. This means

that Australia's 1.7 million lowest paid employees will have to wait more than a year for a pay increase even to be contemplated.

Award security is gone, too. The government's two-month award review task force to rationalise federal awards will result in employees' conditions being slashed. There is no obligation as part of the review process to consult with stakeholders. Just in case the recommendations are not what the government expects, it is not obliged to implement the recommendations. Job security gone, wages reduced, conditions and entitlements slashed and safety nets removed. The estimated cost associated with the introduction of the government's Workplace Relations Amendment (Work Choices) Bill 2005 is \$489.6 million. It is not a happy new year for Australian workers, Prime Minister Howard. We know that the laws will hurt Australian families. That is why Australians from all walks of life will attend a national day of protest planned for 15 November. (*Time expired*)

Question agreed to.

### COMMITTEES

#### Reports: Government Responses

**Senator VANSTONE** (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.40 pm)—I present seven government responses to committee reports as listed on today's *Order of Business*. In accordance with the usual practice, I seek leave to incorporate the documents in *Hansard*.

Leave granted.

Community Affairs References Committee—Nursing—The patient profession: Time for action;

Community Affairs References Committee—Forgotten Australians: A report on Australians who experienced institution or out-of-home care as children—First report;

Community Affairs References Committee—Protecting vulnerable children: A national challenge—Inquiry into children in institutional or out-of-home care—Second report;

Employment, Workplace Relations and Education References Committee—Office of the Chief Scientist;

Parliamentary Joint Committee on ASIO, ASIS and DSD—Review of administration and expenditure for ASIO, ASIS and DSD;

Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account—Effectiveness of the National Native Title Tribunal in fulfillment of the Committee's duties pursuant to subparagraph 206(d)(i) of the Native Title Act 1993; and

Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account—19th report—Native Title Act 1993—Inquiry under section 206(d)—Second interim report: Indigenous land use agreements

*The documents read as follows—*

#### **Australian Government Response Senate Community Affairs References Committee Report on the Inquiry into Nursing "The Patient Profession: Time For Action"**

##### **Introduction**

The Government Response to the Senate Community Affairs References Committee report on the Inquiry into Nursing, 'The Patient Profession: Time for Action' is presented. The response addresses each of the Senate Community Affairs References Committee's recommendations.

The responses detail a number of Australian Government initiatives aimed at addressing national nursing workforce issues. In keeping with the jurisdictional split of responsibilities between the Australian Government and the States and Territories, these initiatives are mainly education focused and incorporate incentives to attract and retain nurses in priority areas such as aged care and in rural and remote areas.

It is important to acknowledge that, alongside the Senate Inquiry into Nursing, the National Review of Nursing Education (2002) also examined cur-

rent issues in nursing and made a number of recommendations. This review was commissioned jointly by the Minister for Education, Science and Training and the Minister for Health and Ageing to examine the future nursing educational needs of the health, community and aged care systems and to advise on appropriate policy and funding frameworks. The table overleaf illustrates the common themes and similar recommendations of the two Reviews.

Due to the similarities, a large number of the recommendations of the Senate Inquiry are currently being dealt with by the activities of the National Nursing and Nursing Education Taskforce. The Taskforce was established by Australian, State and Territory Ministers for Education and Health in 2003, to implement recommendations of the National Review of Nursing Education. Information on the activities being undertaken by the Taskforce can be found at [www.nnnet.gov.au](http://www.nnnet.gov.au).

#### Common Recommendations—Senate Inquiry into Nursing and National Review of Nursing Education

Area of interest	Senate Inquiry Recommendation	National Review of Nursing Education Recommendation
Unregulated health workers	1 and 37	7 and 35
Workforce planning and data	5,6	31
National registration	9	4 and 6
Minimum level of qualification for registered nurses	10	22
Additional undergraduate places	12	33
Clinical education and development	13,16-17	15-16 and 24
Student nurse employment	14	13
Mentoring and preceptorship programmes	20	15
National framework and standards for transition programmes	21	14
Career pathways and opportunities	22 and 23	12 and 13
Quality nursing education programmes	24 and 25	19 and 21
National consistency for the education and training of enrolled nurses	26	21
Lifelong learning and continuing education	28 and 29	6 and 18
Specialty (postgraduate) and re-entry courses	32 and 33	18 and 25
Nurse Practitioners	35	5
Nursing research	42	8
Clinical education partnerships	44	24
Improving the image of nursing	50 and 77	9
Recruitment	51	31
Remuneration for practice and postgraduate course recognition	53	26
Accessible information on nursing	54 and 60	10 and 12
Multidisciplinary team approaches	55	27
Remuneration for practice and workplace culture	56 and 61	26 and 30
Nursing leadership and management	57 and 58, 67	36
Assistance for speciality and re-entry courses	59	25
Workplace safety	62 to 66	30
Documentation in Aged Care	68	29

**Chapter 1—Standard Nomenclature**

Recommendation 1: That standard nomenclature be adopted throughout Australia to describe level of nurse and their qualifications, and including unregulated nursing and personal care assistants.

The Australian Government notes that the authority to mandate minimum qualifications for different levels of nursing is the responsibility of State and Territory Governments.

The Department of Employment and Workplace Relations and the Australian Bureau of Statistics are currently working with Statistics New Zealand to review the Australian Standard Classification of Occupations and develop the Australian and New Zealand Standard Classification of Occupations (ANZSCO). This process includes an examination of occupation/job titles and it would be useful for any work on standardising nomenclature to involve continuing consultation with the ANZSCO group to ensure appropriate titles are reflected in ANZSCO.

**Chapter 2—Nurse Shortages and the Impact on Health Services**

Recommendation 2: That the Department of Immigration and Multicultural and Indigenous Affairs streamline visa arrangements and simplify the process of recognising overseas qualifications for nurses wishing to migrate to Australia on a permanent or temporary basis, and to publicise the capacity to extend and to change visa arrangements.

While the employment of overseas nurses should not be the primary mechanism for overcoming the shortage of nurses in Australia, immigration and temporary entry mechanisms can assist to ease shortages in the short term.

The Committee's recommendation is in three parts, and each will be dealt with in turn.

1. That the Department of Immigration and Multicultural and Indigenous Affairs streamline visa arrangements for nurses wishing to migrate to Australia on a permanent or a temporary basis.

There is a range of visa options which can be utilised by overseas trained nurses who wish to live and work in Australia.

**Temporary Residence Visas**

The subclass 457 Temporary Business (Long Stay) visa is most commonly used by Australian employers wishing to employ overseas trained nurses for periods of up to 4 years at a time. In the programme year 2003-04, 2458 subclass 457 nominations for registered nurses were approved, approximately double the number approved in year 2001-02 (1049).

Working Holiday Maker visa holders can work for up to three months with a single employer. Nurses on Working Holiday Maker visas may also apply for other visas, such as the subclass 457 Temporary Business (Long Stay) visa after arrival in Australia.

**Permanent Residence Visas**

Employers wishing to nominate overseas trained nurses to migrate or remain permanently in Australia can utilise the Employer Nomination Scheme, Regional Sponsored Migration Scheme or Labour Agreements. These migration visa classes require that the prospective migrant be nominated by an employer in Australia, under normal Australian conditions of employment. In 2003-04, 632 nominations for nurses were approved, compared with 390 in 2002-03 and 258 in 2001-02.

On 2 April 2005, changes were made to the Employer Nomination Scheme to further streamline processes, especially for those who have been working in Australia on the subclass 456 Temporary Business visa.

Nurses who wish to migrate independently of an employer can utilise the general skilled points tested migration categories. These visa classes require that the prospective migrant first has their qualifications assessed by the relevant Australian assessing authority (in the case of nurses, this is the Australian Nursing and Midwifery Council). If their qualifications are acceptable they may be eligible for the grant of a general skilled migration visa, subject to meeting other requirements such as English language proficiency and recent work experience. There were 947 nurses granted skilled migration visas in 2003-04, compared with 906 in 2002-03 and 576 in 2001-02.

On 14 April 2005, the Minister Immigration, Multicultural and Indigenous Affairs, Senator the

Hon Amanda Vanstone, announced an increase of up to 20,000 additional places in the Skill Stream for the 2005-06 Migration programme. Nurses are among the occupations listed on the Migration Occupations in Demand List (MODL) which are targeted by this increase.

#### **Enhanced Visa Arrangements**

Since 2002, nurses have received priority processing under all visa categories.

As part of DIMIA's Global Working strategy, processing of all employer-sponsored visa categories used by health professionals has been directed to DIMIA Business Centres in Australia. Similarly, the general skilled migration and working holiday visa programmes have also been centralised at dedicated processing centres in Australia. These measures have significantly enhanced efficiency and consistency in the processing of applications from nurses.

DIMIA has introduced an e-visa facility for subclass 457 and Working Holiday Maker visas, allowing applications to be lodged over the internet and processed electronically. DIMIA has also introduced provisions allowing for label free travel to Australia for nurses holding specified passports who are granted subclass 457 visas.

E-lodgement facilities will be available for those applying for some independent skilled migration visas from 1 July 2005. There are plans to extend this internet lodgement facility to employer-sponsored permanent residence applications in the future.

DIMIA Business Centres have substantially increased use of electronic communication with sponsors and visa applicants to facilitate faster resolution of outstanding requirements.

A number of State-specific and regional migration initiatives have also been implemented in conjunction with State and Territory Governments to attract nurses to their regions.

2. That the Department of Immigration and Multicultural and Indigenous Affairs simplify the process of recognising overseas qualifications for nurses wishing to migrate to Australia on a permanent or temporary basis.

3. Recognition of qualifications of overseas nurses is the responsibility of the Australian Nurs-

ing and Midwifery Council, and the State and Territory nurse regulatory authorities, neither of which fall under Commonwealth jurisdiction. An applicant for migration in the skilled independent (points tested) categories must first have their nursing qualifications assessed by the Australian Nursing and Midwifery Council before being able to lodge a migration application.

4. Applicants for visas in other migration or temporary residence subclasses are not required to have their qualifications formally assessed prior to visa application. DIMIA does, however, need to be satisfied that the applicant will meet the registration requirements of the relevant State or Territory registration board.

There are a number of bridging or pre-registration courses that are available in Australia for overseas trained nurses who cannot immediately register with the State or Territory registration boards. To enable them to undertake these courses in Australia, overseas trained nurses may apply for student, or short term temporary entry visas.

5. That the Department of Immigration and Multicultural and Indigenous Affairs publicise the capacity to extend and change visa arrangements.

DIMIA has a number of strategies to publicise existing visa arrangements and to encourage employers and State and Territory nursing authorities to take advantage of the options available.

On 15 July 2002, the then Minister for Immigration and Multicultural Affairs,

the Hon Philip Ruddock MP, wrote to State and Territory Health Ministers in those States/Territories that do not already have a Labour Agreement in place for the entry of overseas nurses. Mr Ruddock outlined the benefits of the Labour Agreement programme and recommended that the Ministers give consideration to concluding a Labour Agreement with the Australian Government to assist in streamlining the recruitment of overseas nurses. Labour Agreements enable Australian employers to recruit a specified number of workers from overseas in response to identified or emerging labour market (or skill) shortages in the Australian labour market. Employees may come to Australia on either a temporary or a permanent basis. A number of agreements now exist covering the entry of health professionals.

Staff of DIMIA Business Centres have been working with nursing authorities and recruitment agencies in their regions to explain the various visa options available and to assist them with expedited lodgement and processing.

DIMIA Business Centre staff have attended Nursing Expos to provide information on visa options to overseas nurses, employers and recruitment agencies.

Migration and Temporary Residence application booklets contain considerable information about DIMIA visa categories and application procedures, including qualifications assessment requirements. The booklets are available in hard copy and on the DIMIA website at [www.immi.gov.au](http://www.immi.gov.au).

DIMIA has developed information material specifically related to overseas nurses which can be provided to employers and nurses outlining the visa options available, including registration requirements. This information is available in hard copy and on the DIMIA website.

While recruitment is the responsibility of the employer, DIMIA supports business sponsors by providing information and advice about sponsorship and visa options, and undertakes to fast-track the visa applications of overseas nurses sponsored by Australian employers.

**Recommendation 3:** The Committee recommends that the Minister for Health and Ageing undertake an urgent national review of the charges and practices of nursing agencies, including their impact on costs to public and private providers of health services and their impact on the shortage of nurses in Australia.

The charges and practices of nursing agencies, including their impact on costs to public and private providers of health services is a matter for State and Territory Governments as the major employers of nurses.

**Recommendation 4:** The Committee recommends that the Australian Competition and Consumer Commission conduct a review of the practices of nursing agencies in the health care sector.

The Australian Competition and Consumer Commission advises that aspects of such a review would fall outside of its mandate.

**Recommendation 5:** That the Australian Government in cooperation with the States and Territories facilitate and expedite the development of a national nursing workforce planning strategy.

The Australian Government has a broad policy leadership role in national health systems and priorities and a strong interest in the supply, distribution and quality of the health workforce. The Department of Health and Ageing participates in the Australian Health Ministers' Advisory Council, which provides a mechanism for an integrated approach to health workforce planning through a number of committees such as the Australian Health Workforce Officials Committee (AHWOC) and the Australian Health Workforce Advisory Committee (AHWAC).

The Council of Australian Governments has commissioned a study on health workforce issues at its June 2004 meeting. This study, to be undertaken by the Productivity Commission, will examine supply of and demand for the broad range of health professionals, including nurses. The Productivity Commission expects to produce its report in December 2005.

The Department of Employment and Workplace Relations collects data on the labour market for nurses, including skill shortage research and Australian Bureau of Statistics labour force survey statistics. This research complements the work programme of the Australian Health Ministers' Advisory Council.

The Department of Health and Ageing in partnership with the Aged Care Workforce Committee have developed a National Aged Care Workforce Strategy. The Strategy will enable better planning for an adequate number of aged care workers—nurses and paid care workers with the appropriate skills and qualifications to meet the care needs of consumers of the Australian Government's aged care system.

**Recommendation 6:** That the Australian Government provide the Australian Institute of Health and Welfare with the resources required to establish a consistent, national approach to current data collection on the nursing workforce in Australia.

The Australian Government has provided the Australian Institute of Health and Welfare with the resources required for establishing a consis-



tent, national approach to current data collection on the nursing workforce in Australia. Improvements to the approach to national data collection have been made in recent years in consultation with AHWAC and AHWOC. For example, AHWOC has worked with the Australian Institute of Health and Welfare to establish central processing of the annual nursing labour force survey. This collates information on registered nurses from each state and territory nursing regulatory authority and forms the basis of an annual publication on the nursing labour force.

The Department of Employment and Workplace Relations also has in place a skill shortage research programme which uses a nationally consistent methodology to survey employers and collect statistical and qualitative data for occupations and skills including Enrolled and Registered Nurses. This programme underpins the National and State Skill Shortage lists, which are published on the Australian Workplace Internet site, and also feed into Australia's skilled migration programme.

Recommendation 7: That research be undertaken to examine the relationship between health care needs, nursing workforce skill mix and patient outcomes in various general and specialist areas of care, with a view to providing "best practice" guidelines for allocating staff and for reviewing quality of care and awarding accreditation to institutions.

Issues around health care needs, nursing workforce skill mix and patient outcomes are primarily matters for the State and Territory Governments who are the major employers and regulators of nurses.

The Government participates in the Australian Health Workforce Advisory Committee which oversees health workforce planning in Australia for the nursing, midwifery and allied health workforces.

Recommendation 8: That the Australian Government, as a matter of urgency, establish the position of Chief Nursing Officer within the Department of Health and Ageing.

The Australian Government does not support this recommendation as it does not believe there is a good rationale for taking this step.

Comparisons are often made between a position of Australian Government Chief Nursing Officer, and the appointment of the Australian Government Medical Officer. There is a statutory requirement for an Australian Government Medical Officer. There is no legislative authority or legislated role for an Australian Government Nursing Officer.

The Government does, however recognise the important role of nurses. The Department of Health and Ageing works with the nursing profession through a number of organisations like the Royal College of Nursing, Australia, the Association for Australian Rural Nurses, the Council of Remote Area Nurses of Australia, the Australian Nursing Federation, the Australian Practice Nurse Association and the National Nursing Organisations.

In the area of aged care funding and service provision, where the Government has a strong role, the Department has established the position of Clinical Adviser in Aged Care. The Clinical Adviser provides guidance on clinical and nursing issues in this programme, as well as coordination and liaison on a wide range of issues.

In recognition of the importance of the health workforce at the national level, there is a dedicated Health Workforce Branch within the Department which is responsible for the coordination of policy and programmes to address health workforce issues. This includes national nursing workforce issues relating to the education, supply and distribution of nurses within the broader health workforce.

The Department provides funding support to key nursing organisations for a range of nursing initiatives such as rural and aged care nurse scholarships, conferences, expositions and national meetings, which enable ongoing liaison between the Government and the nursing profession.

Recommendation 9: That national registration be implemented for registered and enrolled nurses.

This is a matter for State and Territory Governments that would require changes to State and Territory legislation that covers nurses, and to the role of State and Territory Nursing regulatory authorities.

**Chapter 3—Undergraduate Education**

Recommendation 10: That the current university-based system for the undergraduate education of Registered Nurses be continued.

This recommendation is supported.

Recommendation 11: That the Australian Government, in conjunction with the States and universities, implement improved mechanisms to determine the supply and demand for nursing places at universities and in determining how these targets are set.

The Australian Government, through the Department of Education, Science and Training (DEST), supports registered nurse education through the Commonwealth Grant Scheme (CGS). The CGS, introduced in 2005 as part of the Our Universities: Backing Australia's Future package of higher education reforms announced in the 2003-04 Budget, allows the Government to be more responsive to workforce shortages in areas such as nursing than the previous system of block grants to providers.

Under the CGS, higher education providers receive a contribution, set by discipline cluster, towards the cost of an agreed number of Commonwealth-supported places. The distribution of places between clusters is set out in an annual funding agreement between each provider and the Government. Providers must negotiate any major shifts between clusters with DEST.

The Government has already demonstrated its commitment to consulting with the States and Territories about course provision in Australian universities. The Government asked the States and Territories to provide input into the allocation process for the 9100 new university places that commenced in 2005 at the July 2003 meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA).

The Government will continue to consult States and Territories about the future allocation of new university places.

For the Health portfolio, the Australian Health Ministers' Advisory Council is coordinating a national approach to health workforce planning (including nursing) to standardise planning approaches where appropriate.

Recommendation 12: That the Australian Government provide funding for additional undergraduate nursing places to universities offering nurse education courses to meet the workforce requirements set by the States.

The Australian Government has designated nursing as one of two areas (the other is teaching) of National Priority. As a result, nursing was allocated around 2,000 additional university places commencing in 2004 and 2005, building to almost 5,000 by 2008 as students proceed through their courses. These places will support almost 6,500 students to study nursing (part-time and full-time) of whom some 1,600 will be focussing on aged care.

A further 6,700 places will also be provided to universities in 2007 and 2008, some of which may be allocated to nursing and allied health areas.

It is noted that as a necessary adjunct to any additional undergraduate nursing places, health systems will need to work with universities to support clinical placements for additional students.

Recommendation 13: That, while maintaining a balance between theoretical and practical training, undergraduate courses be structured to provide for more clinical exposure in the early years of the course and that clinical placements be of longer duration.

Decisions about the content of undergraduate nursing courses are for the nursing profession, the regulatory bodies, and the universities.

Recommendation 14: That hospitals and other healthcare agencies be encouraged to provide part-time paid employment for student nurses from the second year of undergraduate courses.

It is noted that the paid employment of student nurses is being progressed by State and Territory Governments.

Recommendation 15: That universities, as far as practicable, operate their clinical education programmes across the entire year.

It is not the role of the Australian Government to intervene in the management and administration of clinical education programmes in universities. It is noted that a number of universities currently

have programmes that are consistent with this recommendation.

Recommendation 16: That undergraduate courses provide additional theory and clinical experience in mental health, aged care and cross-cultural nursing.

It is noted that the content of university courses, including the clinical component of courses, is determined, with reference to the national competency standards set by the Australian Nursing and Midwifery Council, by both the State and Territory Nursing regulatory authorities and the university.

In relation to the aged care components of nursing curricula, the Queensland University of Technology (QUT) was engaged by the Department of Health and Ageing to develop and disseminate a Principles Paper outlining desirable aged care content for inclusion in undergraduate nursing curricula.

The Principles Paper outlines the core values and learning outcomes for aged care education within undergraduate nursing curricula and was publicly released in early 2004 at the meeting of the Australian and New Zealand Council of Deans of Nurses meeting in Perth.

With reference to Indigenous course content, the 'getting em n keepin em' Report of the Indigenous Nursing Education Working Group (INEWG), published in 2002, made 32 recommendations to ensure that all nursing curricula includes Indigenous content and that there is a concerted effort to recruit and retain Aboriginal and Torres Strait Islander people in the nursing workforce.

In 2003, the Australian Nursing and Midwifery Council (ANMC) endorsed the Position Statement for "Inclusion of Indigenous Health Issues in Nursing Undergraduate Programmes" to ensure that nursing courses include clearly identified units about Indigenous culture, history and health, to increase the capacity of all nurses to contribute competently to Indigenous health.

In 2004, an Interdisciplinary Workshop on Indigenous Curricula Development for Health Courses was held to share information and experiences across disciplines on Indigenous health curricula development and explore key issues for

the development of a multi-disciplinary undergraduate Indigenous curriculum framework. Participants at the workshop included Deans of medicine, nursing, health sciences, pharmacy, dentistry and Schools of public health, as well as range of educators, professionals and State, Territory and Australian Government representatives.

Recommendation 17: That the Australian Government provide specific funding to support the clinical education component of undergraduate nursing courses; and that this funding provide that the clinical teacher/student be maintained at a ratio of 1:4.

The Australian Government has increased the funding rate for nursing places in recognition of its status as a National Priority area. The higher funding rate will include an extra \$54 million over the next four years for universities offering nursing courses. The additional funding, which represents a 7 per cent increase in funding for nursing places, will provide significant additional support for the clinical component of nursing courses.

As part of their funding agreement with the Government, universities are required to ensure the funding provided to support the clinical component of nursing courses is used for the purpose for which it is provided.

The Government is unable to influence directly the clinical teacher/student ratio which is a matter for negotiation between universities and providers of clinical placements.

Recommendation 18: That the Australian and State Governments provide additional targeted scholarships for undergraduate nursing students based on merit directed at students from economically and socially disadvantaged backgrounds, NESB and ATSI backgrounds, and from rural and regional areas.

The Australian Government notes that significant work has already been undertaken in this area through the following initiatives.

- The Government established the Puggy Hunter Memorial Scholarship Scheme, with funding of \$2.07 million over five academic years (2002-2006) to address the underrepresentation of Aboriginal and Torres Strait Islander people in health professions and to

increase the number of Aboriginal and Torres Strait Islander Health Workers with qualifications. The Scheme provides undergraduate scholarships for Aboriginal and Torres Strait Islander students in medicine, nursing, allied health (except pharmacy) and Aboriginal and Torres Strait Health Worker courses. So far the Scheme has awarded 79 scholarships; 21 in nursing.

- From 2003, the Government has provided funding to the Australian Rotary Health Research Fund for 25 scholarships at \$5,000 each academic year. The Fund targets Aboriginal and Torres Strait Islander undergraduate health students including nursing.
- The Australian Rural and Remote Nurse Scholarship Programme: Undergraduate Scheme provides a minimum of 110 scholarships each year (including 10 Aboriginal and Torres Strait Islander-specific scholarships) at up to \$30,000 per scholarship, for undergraduate nursing education for rural and remote students. To date over 650 scholarships have been awarded under this Scheme.
- In 2002-03, the Government committed to invest \$47.5 million in the aged care sector to support the sector's need for improved skills, knowledge and training in its workforce. This commitment includes an allocation of \$26.3 million to provide up to 1000 aged care nursing scholarships valued at up to \$10,000 per annum for undergraduate, postgraduate and continuing professional development opportunities, particularly for rural and regional students through rural and regional university campuses. These scholarships were available from the commencement of the 2003 academic year.
- The Government's ABSTUDY scheme provides a means-tested living allowance and a range of supplementary benefits for eligible students undertaking tertiary courses, including nursing qualifications.
- The Commonwealth Learning Scholarships (CLS) were introduced in 2004 as part of the package of higher education reforms. The scheme comprises the Commonwealth Education Costs Scholarships (valued at ap-

proximately \$2,000 per year) and Commonwealth Accommodation Scholarships (valued at approximately \$4,000 per year). Both Scholarships are for up to four years and the value is indexed each year. The Government is committing approximately \$427 million between 2005 and 2009 to the CLS to assist students from low socio-economic backgrounds to meet some of the costs of higher education. Significantly, the CLS are for students from low socio-economic backgrounds who incur additional costs in moving from a rural or regional area specifically to pursue higher education studies. The income from these Scholarships, given to disadvantaged students who are in receipt of other income support from the Government, such as Austudy or ABSTUDY, will not affect their social security allowance or pension.

Recommendation 19: That the Australian Government provide general scholarships for undergraduate nursing students based on merit.

The Australian Government is supporting the nursing workforce by providing a range of targeted scholarships as outlined in the response to recommendation 18.

The direct responsibility for the management of the nursing workforce rests with State and Territory Governments as the major employers and regulators of this workforce.

Recommendation 20: That formal mentoring and preceptorship programmes be developed nationally, with enhanced training and the payment of allowances for nurses chosen to become preceptors.

Nurses are required, as part of their professional obligations, to provide support on the basis of seniority and competence. It is noted that most States and Territories have programmes in place which address this recommendation.

The payment of allowances for nurses chosen to become preceptors is an industrial consideration, and this recommendation will require the support of States and Territory Governments and other employers.

The Australian Government recognises that mentor programmes are important in ensuring retention of students throughout the nursing course and

in the transition to work. In rural and remote areas the Government has implemented a mentor programme as part of the support measures for scholarships recipients under the Australian Rural and Remote Nurse Scholarship Programme: Undergraduate Scheme. The programme provides a mentor in the workplace to encourage students to pursue a career in rural or remote nursing. Mentors also receive educational support to undertake this role.

As part of the Government aged care nursing scholarships scheme, financial assistance is being provided to the University of Tasmania and the Royal College of Nursing, Australia to provide pilot support programmes for aged care nursing scholarship recipients. The Minister for Ageing announced on 9 August 2005 that this project will be expanded to a national demonstration project, involving universities in Tasmania, South Australia, Western Australia and Queensland.

These projects will assist current scholarship recipients to access quality clinical placements in the aged care sector during their education and training to become an aged care nurse. These projects will also provide scholarship recipients with access to support programmes and aged care nursing mentors for the duration of their studies.

Recommendation 21: That graduate nurse programmes be available for all nursing graduates and that these programmes:

- concentrate on skills consolidation through a structured programme to enable professional development;
- be provided with appropriate supervision and support; and
- be jointly funded by the Australian Government and State Governments.

The Australian Government agrees in principle that graduate nurse programmes should be available for all nursing graduates. However, the funding of these programmes is the responsibility of State and Territory Governments as the major employers and regulators of the nursing workforce. It is noted that State and Territory Governments have progressed work in this area.

However, through the Aged Care Nursing Scholarships Scheme, the Australian Government does offer funding for Continuing Professional Development/Postgraduate nursing scholarships to people with a demonstrated commitment to the aged care sector to assist them to upgrade their skills and knowledge.

Recommendation 22: That formal articulation arrangements and recognition of prior learning between enrolled nurse courses and registered nurse courses by universities and enrolled nurse education providers be further developed nationally.

The Australian Government supports the ongoing development of articulation arrangements and the recognition of prior learning by nursing education and training providers.

Formal credit transfer and articulation arrangements have been developed with some universities and vocational education providers. At its May 2005 meeting, the Ministerial Council on Education, Employment, Training and Youth Affairs endorsed a number of initiatives to improve credit transfer and articulation from vocational education and training (VET) to higher education.

Recommendation 23: That formal articulation arrangements and recognition of prior learning be developed between Certificate III courses for unregulated healthcare workers and enrolled nurse courses, and between courses for ATSI health workers and enrolled nurse courses.

The Australian Government supports the ongoing development of articulation arrangements and the recognition of prior learning by the VET and higher education sectors.

During the development of nationally endorsed Training Packages, links between different qualifications and qualification pathways are documented, with common competencies for related work roles identified. This facilitates recognition of prior learning and vertical or horizontal articulation.

The Health Training Package, which covers a number of different VET qualifications in health service delivery, is currently being reviewed by the Community Services and Health Industry Skills Council, and will include further consideration of the qualification links and articulation arrangements outlined above.

Recommendation 24: That the Australian Nursing and Midwifery Council, in conjunction with key

stakeholders, including State regulatory bodies, the universities, professional nursing bodies and nursing unions, develop a national curriculum framework or guidelines for undergraduate nursing courses to ensure greater consistency in the interpretation of the ANMC competencies.

This is a matter for the Australian Nursing and Midwifery Council, State and Territory Governments and other relevant stakeholders.

#### **Chapter 4—Improving Other Aspects of Education and Training**

**Recommendation 25:** That the Australian Nursing and Midwifery Council, in consultation with major stakeholders, develop a national framework for the education of enrolled nurses in relation to course structure, duration and content.

The training of enrolled nurses takes place in the Vocational Education and Training sector. Courses are accredited by State and Territory regulatory bodies, based on the Australian Nursing and Midwifery Council (ANMC) enrolled nurse competencies.

The Australian Government funded Community Services and Health Training Australia, (now known as Community Services and Health Industry Skills Council) is working with ANMC and industry to develop competency standards and qualifications pathways in the Health Training package. The Community Services and Health Industry Skills Council is the recognised national body leading the development of an integrated approach to skills development for the community services and health industries.

**Recommendation 26:** That State and Territory Governments develop nationally consistent legislation in relation to the administration of medications by Enrolled Nurses.

Legislative changes to achieve national consistency in relation to the administration of medications by enrolled nurses is a matter for State and Territory Governments. Greater consistency will assist in providing better clarity around roles and responsibilities for enrolled nurses across both the acute care and aged care sectors.

In the 2004/05 Federal Budget, the Australian Government announced its commitment of \$7.5 million over 4 years to assist up to 5,250 enrolled nurses to access approved medication administra-

tion education and training programs. The Aged Care Enrolled Nurse Medication Administration Initiative is providing funding to Registered Training Organisations, who are authorised and approved by the relevant State or Territory Nursing Regulatory Authority, to deliver training in the administration and management of medications.

**Recommendation 27:** That the Australian Nursing and Midwifery Council, in conjunction with key stakeholders such as state regulatory bodies, professional nursing bodies, universities and unions, develop a national curriculum framework or guidelines for midwifery courses.

This is a matter for the Australian Nursing and Midwifery Council, State and Territory Governments and other relevant stakeholders.

**Recommendation 28:** That nurses be informed of their continuing education support and options, and encouraged to undertake continuing education courses.

Given the challenging tasks undertaken by nurses and the rapid changes that can occur, continuing education for nurses is an important strategy in the development and retention of a skilled nursing workforce.

Since 2001, the Government has sponsored the Nursing Careers, Educational and Employment Expositions conducted annually by the Royal College of Nursing, Australia to promote and support nursing and other health professions nationally.

The Government provides funding for up-skilling and postgraduate scholarships through the Australian Rural and Remote Nurse Scholarship Programme. These scholarships allow rural and remote nurses to undertake postgraduate study, attend conferences or participate in workshops and clinical placements to improve their knowledge base and further their professional development. To date over 700 postgraduate scholarships and over 400

up-skilling scholarships have been awarded under this Programme.

Through the Aged Care Nursing Scholarships Scheme, the Government offers funding for Continuing Professional Development/Postgraduate nursing scholarships to people in rural and re-

gional areas with a demonstrated commitment to the aged care sector to assist them to enter the aged care sector or to upgrade their skills and knowledge.

The Government has introduced a new income-contingent loan scheme called FEE-HELP from 1 January 2005. FEE-HELP, which replaces the Postgraduate Education Loans Scheme (PELS), assists eligible undergraduate and postgraduate students to pay their tuition fees. Students may borrow up to a maximum of \$50,000 to pay tuition fees over their lifetime.

Recommendation 29: That State nurse regulatory bodies examine the feasibility of introducing the requirement of continuing education and professional development as a condition for continuing registration.

Under existing State and Territory legislation the provisions do not require that the regulatory bodies make continuing education and professional development a condition for renewal of registration.

Recommendation 30: That research be undertaken into the costs of providing paid study leave entitlements for nurses.

As the largest employers of nurses, State and Territory Governments are best placed to conduct research into the costs of providing paid study leave entitlements for nurses.

Recommendation 31: That paid study leave arrangements for nurses be negotiated by the Australian Nursing Federation and employers.

This is a matter for negotiation between nurses and their employers.

Recommendation 32: That the Australian Government provide additional HECS places in postgraduate nursing courses currently attracting fees, especially in areas of national skills shortage.

As outlined in response to recommendation 12, the Australian Government has significantly increased the number of Commonwealth supported university places in nursing. The classification of courses as either undergraduate or postgraduate is a matter for individual universities and the nursing profession.

Domestic students in fee-paying postgraduate places can access an income-contingent loan un-

der the FEE-HELP scheme. This will ensure that fees do not pose a barrier to entry for students.

Recommendation 33: That the Australian and State Governments provide additional postgraduate scholarships in specialist areas, including midwifery.

The Australian Government acknowledges that there is a general need for specialised nurses, especially in rural and regional areas where shortages are most acute.

The Government provides funding for up-skilling and postgraduate scholarships through the Australian Rural and Remote Nurse Scholarship Programme. These scholarships allow rural and remote nurses to undertake postgraduate study, attend conferences or participate in workshops and clinical placements to improve their knowledge base and further their professional development. To date over 700 postgraduate scholarships and over 400

up-skilling scholarships have been awarded under this Programme.

The Government announced in the 2002-2003 Budget \$26.3 million over four years to provide a range of scholarships with a focus on aged care. As at mid 2005 329 Continuing Professional Development/Postgraduate and 17 honours nursing scholarships have been awarded.

It is also noted that some State and Territory Governments have progressed initiatives in this area.

Recommendation 34: That the Australian Government and State Governments promote and support the development and introduction of Nurse Practitioners across Australia as a viable component of healthcare services.

The development of the nurse practitioner role is predominantly a matter for State and Territory Governments, as the employers and regulators of the nursing workforce, in conjunction with the nursing regulatory authority in each State and Territory which administer the Nurses' Acts. It is noted that all State and Territory Governments have progressed work on the establishment of the nurse practitioner role.

The Minister for Ageing requested that the Aged Care Workforce Committee (ACWC) develop a pilot project to test how a nurse practitioner

model might be adopted in the aged care sector. The ACWC considered formal submissions from several organisations that indicated an interest in conducting a nurse practitioner trial within the aged care sector.

A funding agreement for conducting an Aged Care Nurse Practitioner Pilot was signed in June 2004 with the ACT Government through ACT Health. The pilot is being conducted across a range of health care settings (residential aged care, community care and acute care). The nurse practitioner trial in the ACT will provide more information about the effectiveness and efficiencies of nurse practitioners across a range of settings.

Recommendation 35: That the Royal College of Nursing and the NSW College of Nursing, in conjunction with the Department of Health and Ageing, the States and key stakeholders, develop a framework for nationally consistent standards and competencies for Nurse Practitioners.

The development of national standards and competencies for nurses (including nurse practitioners) is largely the responsibility of the Australian Nursing and Midwifery Council.

It is noted that the Australian Nursing and Midwifery Council is collaborating with the Nursing Council of New Zealand in progressing consistent standards and competencies for nurse practitioners. The recently released ANMC Nurse Practitioner Standards Report will provide the foundation for the establishment of educational and practice standards for this new and evolving role in Australian and New Zealand.

Recommendation 36: That the Royal College of Nursing and the NSW College of Nursing, in conjunction with the Department of Health and Ageing and other key stakeholders, such as nurse regulatory bodies, examine the feasibility of establishing a national approach to the credentialling of Advanced Practice Nurses.

The issue of establishing a national approach to the credentialling of Advanced Practice Nurses is a matter for State and Territory Governments, as the major employers of nurses, to consider in conjunction with the nursing regulatory authority in each State and Territory that administers the Nurses' Acts.

Recommendation 37: That State and Territory nursing regulatory authorities develop a framework for the regulation of unregulated healthcare workers.

The regulation of the health workforce occurs at the State and Territory level and this is a matter for the State and Territory Governments to consider.

The aged care sector is largely reliant on unregulated health care workers, who have no professional representation, to provide basic health care to the elderly. It is important that this group of workers has in place the appropriate skills to perform their role, mechanisms in place to ensure competency, professional support and leadership, and training that has consistent standards and outcomes.

Recommendation 38: That the relevant State and Territory legislation be amended to provide that unregulated healthcare workers not be permitted to administer medications.

This is a matter for the State and Territory Governments to consider. In terms of the safe delivery of health care, the Australian Government supports the development of competency standards rather than a regulatory approach.

Administration of medication by unregulated health care workers is established practice, but this practice must meet State and Territory Government legislation and regulatory requirements. Adequate training in administration and supervision is required (see also response to Recommendation 26). Greater consistency will assist in providing clarity around roles and responsibilities for a significant aged care workforce component.

Recommendation 39: That the standard minimum level of training required for unregulated workers before they can be employed in healthcare facilities be equivalent to Level III of the Australian Qualifications Framework (Certificate Level III).

While the Australian Government supports the provision of appropriate training for all health workers, the level of qualification required for unregulated workers is a matter for State and Territory Governments in the main. The former Minister for Ageing, the Hon Kevin Andrews MP, challenged the sector to embrace by 2008 Certificate Level III as the minimum level of training



required for health care workers working in aged care.

In the 2004-05 Budget, the Australian Government provided \$56 million over 4 years to assist 15,750 aged care workers to access recognised education and training opportunities such as Certificate Level III to Enrolled Nurse qualifications. This is in addition to the \$21 million provided in the 2002-03 Budget to help train personal care workers in smaller less viable aged care homes.

Recommendation 40: That universities continue to promote and develop IT in undergraduate nursing courses, in particular the training needs of mature aged undergraduates.

This matter is the responsibility of University Schools of Nursing.

It is noted that many of the universities in Australia already have compulsory computing courses for undergraduates.

Recommendation 41: That in-service training in IT skills be widely developed and promoted for graduate nurses.

The Australian Government recognises the merits of professional development in the IT area for nurses, particularly as they are the end users of a number of electronic health records systems and decision support systems. However, in-service training is largely an employer responsibility.

Recommendation 42: That the Australian Government, through the National Health and Medical Research Council, increase funding for nursing research as a matter of priority.

Under the National Health and Medical Research Council Act of 1992, the NHMRC is unable to be directed to undertake specific research. In the main, the NHMRC does not determine the topics of the research it funds: these are a function of the applications made each year to the NHMRC. Applications are assessed on the basis of the significance, approach and feasibility of the proposed research, and on the track record of the applicants. In addition, the NHMRC offers a wide range of support to researchers across both the research continuum (basic, clinical, population and health services research) and at different stages of an individual's career (scholarships to support individuals at undertaking PhD studies through to the most senior research Fellows).

Through these processes, the NHMRC already supports a range of research relevant to nursing.

A wide range of disciplines, including nursing, are involved in the NHMRC's implementation of the National Research Priorities, announced by the Australian Government in December 2002. One of the four agreed priorities, Promoting and Maintaining Good Health, provides opportunities for researchers from a variety of backgrounds and perspectives to contribute to maximising the Government's investment in research.

Recommendation 43: That the research funding provided by the Department of Education, Science and Training to universities be increased to facilitate additional university-based nursing research.

The Australian Government acknowledges the vital role Australian universities play in the national research and innovation system and is providing increased levels of funding for research through both of the Backing Australia's Ability packages announced in 2001 and 2004. Through Backing Australia's Ability- Building Our Future through Science and Innovation (2004), the Government will provide an additional \$1,189.2 million over seven years, to maintain the doubled level of funding provided to the Australian Research Council for the National Competitive Grants Programme under Backing Australia's Ability.

An additional \$554.5 million is provided over five years to the Research Infrastructure Block Grants Scheme to support project-based infrastructure and overhead costs for competitive grants in recognition of the continued importance of supporting universities to undertake competitively funded research projects. Each institution is responsible for allocating this funding to faculties and disciplines in line with internal processes. A specific allocation of \$200 million over seven years has also been made (through the Health and Ageing portfolio) to provide overhead infrastructure support for health and medical research.

To provide researchers with access to new major research infrastructure, \$542 million will also be provided over seven years through the new National Collaborative Research Infrastructure Strategy.

**Chapter 5—Interface Between the Education Sector and the Health System**

Recommendation 44: That partnership arrangements be further developed between the public and private health sectors and universities and the vocational education sectors to facilitate the clinical education and training of nurses.

The Council of Australian Governments commissioned a study on health workforce issues at its June 2004 meeting. This study, to be undertaken by the Productivity Commission, will be examining the health and education sectors and the interface between the two. Partnership arrangements in relation to the education and training of nurses already exist but could be enhanced at the State and Territory level with the assistance of the relevant regulatory authority.

Recommendation 45: That partnerships be developed between universities to facilitate the sharing of resources and expertise; and facilitate undergraduate student clinical placements in a range of metropolitan and regional clinical settings.

One of the key activities of the University Departments of Rural Health (UDRH) Programme is to provide opportunities for undergraduate health students to undertake clinical placements in rural and remote environments. Another core activity is to contribute to innovation in education, research and service development through collaboration not only with universities, but also health services, and professional and community organisations.

The Department of Health and Ageing also funds 18 university rural health clubs for medical, nursing, allied health and other health students, plus a National Rural Health Network (NRHN) of which these clubs are members. The primary aim of the NRHN is to provide a communication network between rural health clubs, for the sharing of ideas and information to assist the individual clubs in informing students about rural health issues and encouraging them to consider a career in rural health.

Recommendation 46: That improved partnership arrangements be established between the universities and the health sector in relation to curriculum development, including the appointment of clinicians to university curriculum committees.

The Australian Government does not have a role in the appointment of clinicians to universities.

Recommendation 47: That the Australian Government provide funding for the establishment of more joint appointments between universities and health services.

While the Australian Government recognises that there are advantages in joint appointments between the academic and health sector, universities set their own staffing priorities. The establishment of joint chairs is a matter for universities and the health services.

Recommendation 48: That the Australian Government provide funding for the establishment of additional clinical chairs of nursing.

The Australian Government recognises the importance of clinical academic appointments. However, universities set their own staffing priorities. The establishment of additional clinical chairs of nursing is a matter for individual universities.

**Chapter 6—Recruitment, Retention and Return to Nursing**

Recommendation 49: That the Australian Government support the proposal by the Royal College of Nursing to conduct a pilot project in Australia on the Magnet Hospital Recognition Programme.

Australian, State and Territory Governments continue to consider the broad range of issues impacting on nursing and strategies for addressing nursing workforce issues.

Through the Australian Council for Safety and Quality in Health Care, the Australian Government has progressed a number of initiatives in relation to nursing with a focus on improving patient safety. In March 2004, the Council convened a national workshop, *Healthy Hospitals: Transforming the Work Environment for Patient Safety* which included discussion of the Magnet Hospital recognition in progress at Princess Alexandra Hospital. The workshop also highlighted the need to provide capacity and support to develop nurses' and midwives' leadership qualities and build on their professionalism and commitment, with particular focus on middle managers in the profession.

With the support of the Government, the Council has responded to the outcomes of this workshop by providing \$1.5 million over two years to enable all States and Territories to participate in the national implementation of a Clinical Leadership Programme for nurses and midwives at middle to senior levels. The Council also agreed to work with key stakeholders to examine the Magnet programme and how it might be applied in Australia.

Recommendation 50: That the Australian Government and States fund regular, sustained campaigns conducted on a nationally coordinated basis to promote the status and positive image of nursing.

The Australian Government already contributes funding for the promotion and support of nursing through the Australian Nursing Awards and the annual Nursing Careers and Educational Expositions.

Through the Aged Care Workforce initiatives announced in the 2002-03 Budget, the Government is working in partnership with the nursing and aged care sectors to promote and publicise not only the new initiatives, but also the opportunities and benefits of working in the aged care sector. The Aged Care Workforce Committee provides the Department of Health and Ageing with valuable advice and guidance on this activity including through its support of the National Aged Care Workforce Strategy which has as one of its objectives enhancement of the status and image of working in aged care.

The Minister's Awards for Excellence in Aged Care are designed to reward innovation and excellence in aged care and to encourage other providers to strive for best practice. Through the identification of 'champions' in aged care, it is hoped to enhance aged care as a career of choice. The Awards generate confidence in the quality of residential and community aged care and support the Government's vision of a world class system of aged care that is high quality, affordable and accessible, and meets the needs and preferences of older Australians and their families.

In particular, the Awards seek out examples of excellence in innovation, commitment, professional growth, participation and achievement.

Recommendation 51: That a national nursing recruitment strategy be developed by the Australian Government in consultation with the States and relevant nursing and employer bodies, with recruitment targets established through national workforce planning.

Nursing recruitment strategies are a matter for State and Territory Governments, as the regulators and major employers of the nursing workforce. Nursing recruitment campaigns need to be tailored to meet the differing needs of individual jurisdictions.

The National Aged Care Workforce Strategy provides the aged care industry with a strategic framework to attract, recruit and retain staff.

Recommendation 52: That any recruitment strategy and marketing campaigns specifically include encouragement for more males to adopt nursing as a career.

Recruitment and marketing are the responsibility of State and Territory Governments and other health and aged care employers.

Recommendation 53: That the current career structure be reviewed and revised to provide career pathways that include continued clinical practice, enhanced opportunities for postgraduate study and accelerated pathways through which nurses can move to an advanced practitioner status. The career structure needs to recognise the skills obtained through postgraduate study and remunerate them accordingly.

This is a matter for the nursing profession, nurse educators, and the peak nursing organisations. Further, remuneration for postgraduate studies is a matter for States and Territories to consider as part of their industrial relations frameworks.

The National Aged Care Workforce Strategy provides the aged care industry/sector with key actions to address the creation of career pathways for its workforce. It is important that the aged care industry/sector develop its own responses to address its workforce issues. These can be through the recognition of additional skills and the creation of financial and non-financial rewards.

Recommendation 54: That governments and professional nursing bodies provide detailed information to nurses on career pathways.

This is a matter for the State and Territory Governments, the nursing profession, nurse educators, and the peak nursing organisations.

In relation to career decision making in general, the website [www.myfuture.edu.au](http://www.myfuture.edu.au) is a joint initiative of the Australian, State and Territory Governments. Australia's new Internet based career information and exploration service contains a personal career decision-making tool which guides the user's career exploration process by matching interests and capabilities with potential occupations. It includes comprehensive information about occupations, including nursing, as well as labour market information, related jobs, earnings data, related courses and State and Territory specific information.

The Australian Government provides copies of Job Guide each year to schools to assist young people to identify career options and to provide helpful hints on how to choose their career. It describes nearly 600 occupations, including nursing, and explains how to choose a job, plan a career and look for work. It details what jobs involve, where the necessary training is available, and where to get future advice and information. The Job Guide is also available on the Internet at [www.jobguide.dest.gov.au](http://www.jobguide.dest.gov.au).

The Department of Education, Science and Training published, No Shame Job, a guide to careers in health for Indigenous students in 2002. This publication also includes an entry and contact information about careers in nursing.

Recommendation 55: That the Australian Government and States encourage providers of health care services to promote multidisciplinary team approaches to patient care which recognise all members of the team as valued and valuable.

The Australian Government recognises the valuable role of multi-disciplinary teams in patient care.

In 2004, as part of the Strengthening Medicare package, the Government introduced new Medicare rebates for practice nurses to provide immunisation and wound management services on behalf of a general practitioner (GP). In January 2005, the Government also introduced a Medicare rebate for practice nurses in regional, rural and remote areas to take Pap smears.

By supporting nurses in general practice, these initiatives will help to encourage a team-based approach to patient care in general practice. These initiatives recognise the important role that nurses play as a member of the general practice team, and help to free up GPs for other clinical matters that need their attention.

The Government also provides grants to general practices in rural areas, and certain urban areas of workforce shortage, to employ practice nurses under the Practice Incentives Programme (PIP). The potential for general practices to provide more effective health outcomes is enhanced where nurses work in the practice and can be further enhanced where the practice nurse works at an advanced level and the role is targeted to health priority areas.

In addition, Since 1 July 2004, Medicare rebates have been available for up to five allied health services a year for patients whose chronic conditions and complex care needs are being managed by their GP under an Enhanced Primary Care (EPC) plan. An EPC care plan is a multidisciplinary team approach prepared with collaboration by the GP and at least two other care providers.

Recommendation 56: That experienced, skilled and educated nurses be recognised and rewarded, both financially and through promotional opportunity, for the work they perform in decision making and the management and coordination of patient care across the continuum of care.

Recognition of, and remuneration for, experienced, skilled and educated nurses is a matter for industrial bodies, employers and State and Territory Governments to consider as part of their industrial relations frameworks.

See also response to recommendation 73 with respect to nurses working in aged care.

Recommendation 57: That the Australian Government and States encourage providers of health care services to support nursing leadership by integrating nurses into the organisational hierarchy through their appointment to and meaningful participation in management; and by promoting nurse involvement in decision-making relating to nursing practice and clinical patient care.

This recommendation is the responsibility of the employers of nurses, including State and Territory Governments.

The National Aged Care Workforce Strategy, which was prepared by the Aged Care Workforce Committee in partnership with the Australian Government, has good leadership and management as one of its objectives.

Recommendation 58: That the Australian Government and States ensure that nursing leaders are provided with the necessary in-service training and development to support them in their constantly evolving roles.

This recommendation is the responsibility of the employers of nurses, including State and Territory Governments.

Recommendation 59: That the Australian Government and States fund re-entry and refresher programmes in all States and Territories, including the employment and payment of salaries for nurses undertaking such programmes.

Ongoing education and training, including refresher and re-entry courses, play an important role in the retention of the workforce.

To this end, the Government provides funding for re-entry scholarships to assist former nurses in returning to the nursing workforce. Initially provided to former nurses in rural and remote areas, the scholarships were expanded in 2004 to support metropolitan nurses as well. To date over 300 rural and remote nurse re-entry scholarships and over 60 metropolitan nurse re-entry scholarships have been awarded.

Recommendation 60: That there be greater coordination of re-entry and refresher programmes provided through hospitals and tertiary institutions and of the content of these programmes.

This matter is the responsibility of individual tertiary institutions and the hospitals with which they collaborate.

Recommendation 61: That the following 'family friendly' practices be advocated by all levels of government as best practice for all providers of health care services and nurse employers:

- That flexible rostering be introduced or where appropriate developed further, to-

gether with the encouragement of greater use of part-time and job-share options.

- That paid maternity and paternity leave be available to all nurses.
- That adequate, affordable, quality childcare be provided over extended hours at the workplace, or through other forms of direct childcare assistance such as the procurement of places at nearby childcare centres.
- That adequate facilities to meet breastfeeding requirements be provided in the workplace.
- That work practices be established to encourage experienced older nurses to remain in the profession.

Employment conditions and industrial award issues, which are matters between staff and employers, should be addressed at the enterprise level under relevant industrial legislation.

In 2002, the Australian Government commissioned and released the Quality of Working Life for Nurses: Report on Qualitative Research. The primary objective of this research was to explore the reasons that influence the level of job satisfaction or dissatisfaction for nurses working in the aged care sector.

This report also contained ideas for practical, workplace-based interventions to improve the quality of working life for aged care nurses. The Quality of Working Life for Nurses report proposes a three-tiered strategy that identifies the important practical actions that the community, the industry, and the individual aged care services can take to address the quality of working life for aged care nurses. Copies of this report were provided to all aged care service providers to assist them in developing appropriate workplace practices and policies to assist them in the attraction and retention of nurses in the aged care sector. The report is also available on the Department of Health and Ageing website at [www.health.gov.au](http://www.health.gov.au).

Recommendation 62: That governments ensure that providers of health care services guarantee that education and other support measures for managing and responding appropriately to aggressive and violent behaviour are available to, and routinely provided for, nurses as continuing education in the workplace.

On the 11 August 2005 legislation to establish the Australian Safety and Compensation Council (ASCC) to replace the National Occupational Health and Safety Commission (NOHSC) was presented to Parliament.

The Australian Safety and Compensation Council will establish a national approach to workplace safety and workers' compensation. Under the new arrangements, it is expected that a commitment to the National OHS Strategy will continue however any new initiatives will need to be considered by the ASCC.

The Australian Government has referred recommendation 62 to the ASCC. National activity and guidance on occupational health and safety and workers compensation policy previously undertaken by NOHSC will now be coordinated by the ASCC. The National OHS Strategy 2002-12 will continue to provide a framework for activities to improve Australia's OHS performance. Its focus is initially on areas of high incidence/high severity risk to achieve material impact in reducing work-related fatalities and injuries. The Health & Community Services sector has been identified as a priority industry under this strategy.

Previously, NOHSC had commenced a collaborative research project with NSW Workcover which is investigating best practice initiatives in the prevention and management of work-related stress within the Health and Community Services. This work is being continued by the ASCC and the project is expected to be completed soon. In addition, a Watching Brief on violence and bullying is being undertaken which periodically provides members with information on recent research and prevention initiatives.

Recommendation 63: That the Australian Government introduce a national reporting system for violence and aggression toward nurses and other health workers in order to understand the factors which give rise to violent incidents, the extent of the problem, and to inform the development of strategies to prevent future violent incidents involving nurses and other health workers.

The Australian Government considers that violence towards nurses and other health workers is totally unacceptable. The Government encourages the industry and the States and Territories to set nationally consistent standards and codes.

Recommendation 64: That the National Occupational Health and Safety Commission urgently develop model uniform OH&S legislation and regulations for the Australian Government, States and Territories relating to the use of safe needle technologies in Australian hospitals and other health workplaces, and work cooperatively with the States and Territories to improve associated safety education and training programmes for health care workers.

The more effective prevention of occupational diseases (including infectious and parasitic diseases) is one of the national priority areas within the National OHS Strategy 2002-2012. Work in this area includes the revision of guidance material on HIV/AIDS and Hepatitis C. Previously the NOHSC Office staff have met and consulted with the Australian Government Department of Health and Ageing regarding the initiative and the new body, the ASCC, will continue to participate in the initiative as required.

The Australian Government will work closely with stakeholders to canvass opportunities to strengthen occupational health and safety regulations relating to the use of safe needle technologies and will work cooperatively with the States and Territories to improve associated safety education and training programs for health care workers.

Recommendation 65: That governments ensure that all nurse education curricula include occupational health and safety theory and practice covering aggression management training, use of safety equipment and devices, manual handling training, and competency assessment.

Under the National OHS Strategy, the National Education and Skills Development Action Plan 2004-1012 includes integration of OHS into vocational and tertiary education. The Community Services and Health Industry Skills Council is currently reviewing the Health Industry training package and the Office of the ASCC is working with them to enhance the OHS component of this package. The management of violence and aggression is one of the key industry hazards to be addressed in the review. The revised package is to include qualifications for enrolled nurses.

The curricula of undergraduate nursing courses and their clinical placements are a matter for de-

termination between the individual University Departments and the relevant State and Territory nursing regulatory authority. Nursing curricula are approved by each State and Territory nursing regulatory authority.

Recommendation 66: That the following 'occupational health and safety' practices be advocated by all levels of government as best practice for all providers of health care services and nurse employers:

- That all health and aged care facilities provide nurses with access to peer support, appropriate counselling, post-incident defusing and debriefing, and grievance handling.
- That providers of health care services support their nursing staff in the prosecution of violent offenders.
- That providers of health care services be required to ensure that nurses do not work alone in areas of high risk or where the level of risk is unknown. Where this is not possible, personal duress alarms or similar communications devices should be provided for personnel.
- That staff car parking should be accessible, well secured and well lit for access at all hours. In recurring problem areas, dedicated 24-hour a day security presence should be provided.
- That sufficient funding be available to ensure that hospital equipment, including safe lifting devices, are up to date, readily available for staff use and regularly maintained.
- That research be commissioned into the long-term effects of exposure to glutaraldehyde and that a process be put in place to eliminate the use of glutaraldehyde in health and aged care sectors.
- That alternative equipment be provided for those who are allergic to latex, with a view to eventually replacing the use of latex products by health care workers.

Most of the recommendation relates to the responsibility of the employers of nurses, and State and Territory Governments as their legislation governs occupational health and safety requirements. Employers have a responsibility to ensure

their workforce is appropriately skilled, trained and provided with equipment and other resources to ensure that optimum conditions are provided in a safe working environment.

The Australian Government will work closely with stakeholders to advocate best practices in occupation health and safety and will work cooperatively with the States and Territories to improve associated safety education and training programs for health care workers.

To assist the aged care industry meet its occupational health and safety responsibilities, the Australian Government has developed The Guide: Implementing Occupational Health and Safety in Residential Aged Care as a resource to all providers.

Recommendation 67: That governments ensure that all managers in health services receive training in:

- Management styles that promote leadership and consultation;
- Management skills to include conflict resolution and grievance management, improved human resource management, understanding industrial relations and awards, and information technology skills; and

Occupational health and safety responsibilities and risk management.

The provision of training in management skills is the responsibility of employers of the health workforce.

Under the National OHS Strategy the Education and Skills Development Action Plan 2004-12 includes integration of OHS into vocational and tertiary management education. The ASCC will continue to provide advice to Business Services Training Australia on the development of management competencies addressing both risk management, as well as the development and implementation of occupational health and safety systems.

On June 27 2005, the Australian Government announced that aged care homes across Australia would receive an extra \$1,000 per resident in a one-off payment to target specific issues that will help ensure they remain sustainable in the long term. One of the aims of these payments, totalling

\$152 million, was to help aged care providers improve their business practices.

#### **Chapter 7—Aged Care Nursing**

Recommendation 68: That the Australian Government review the level of documentation required under the RCS tool to relieve the paperwork burden on aged care nurses.

In 2002, the Australian Government commissioned the Resident Classification Scale (RCS) Review in response to dissatisfaction expressed by industry peak bodies, provider organisations and residential aged care staff regarding the documentation and accountability requirements for RCS funding. The Review Report, released in March 2003, made a primary recommendation that the Department of Health and Ageing support the development of a new model for residential aged care funding. Many of its recommendations, because of their cost implications, were referred for further consideration to the Review of Pricing Arrangements in Residential Aged Care. In the meantime, development projects were commissioned to reduce the number of RCS questions and to trial independent assessment for funding as an alternative to the current system of provider assessed funding and departmental validation of RCS funding claims against care documentation.

As an outcome of these processes a new funding instrument has been developed, called the Aged Care funding Instrument (ACFI). The ACFI has been designed to focus on those areas of care that are the best predictors of differences in the relative cost of care and to measure the need for care, not the care provided when determining funding. It has been designed to support a different model of accountability for funding. With the ACFI, validation would no longer be based upon the care plan and the record of care delivery. Rather it would focus on the resident and on the assessments of need required by the ACFI and completed by the aged care home. It has also been designed to be able to be used by either aged care home staff or external assessors to determine funding.

The ACFI is being tested in a national trial involving up to 750 aged care homes in 2005. The trial will also provide data to assist in decisions about the structure of a new funding model for residential aged care involving reduction in the

number of basic funding categories and the introduction of two new supplements for people with complex health and nursing care needs and challenging behaviours related to dementia.

Recommendation 69: That the outcomes of reviews and research be used to establish appropriate benchmarks for resources and skills mix in aged care nursing so as to support improved care for residents, workforce management, organisational outcomes and best practice and that Australian Government funding guidelines be reviewed in light of this research.

Since the 1997 reforms to the aged care system, the Australian Government has focussed on the outcomes for residents rather than on inputs.

The Aged Care Act 1997 requires that providers maintain an adequate number of appropriately skilled staff and have in place a skills mix appropriate to the care needs of the residents. Providers must also have in place arrangements for the ongoing development of staff skills to ensure that quality care continues to be delivered. Providers must be able to demonstrate the achievements of these outcomes for residents and this is done during the course of an accreditation audit directed by the Aged Care Standards and Accreditation Agency. The Quality of Care Principles were developed in consultation with, and supported by, the industry and consumers. To assist the industry meet its obligations, the Australian Government has provided over \$150 million since 2002 to assist with staff training and education.

A census and survey of the national aged care workforce was conducted in 2003 by the National Institute of Labour Studies, Flinders University to inform the National Aged Care Workforce Strategy. The census and survey identified the workforce profile of the residential aged care sector which will assist in facilitating strategic aged care workforce planning.

In addition, the Government has conducted research into nurses who left nursing, examined why qualified nurses are working in professions other than nursing and identified the factors that would encourage their return to the aged care sector. The result of this research was published in the report *Recruitment and Retention of Nurses in Residential Aged Care* and this has provided direction for the industry on areas for further de-



velopment to improve recruitment and retention of staff in aged care. Many of the recommendations in the Report are already being addressed by the Government.

The Aged Care Standards and Accreditation Agency's role extends to the promotion of high quality care and assistance to industry to improve service quality by identifying best practice, and providing information, education and training. The Agency provides education to industry about the accreditation process through a range of strategies including the website, publications and events.

In late 2002, the Agency established an Education Division to strengthen its focus on its education function, which is critical to encourage continuous improvement in the quality of life for older Australians.

An education industry needs analysis was conducted during the second half of 2003, through consultation with a sample of homes and industry association representatives. Staff and management were consulted about education initiatives and needs through staff meetings.

The analysis builds on the information the Agency already has from survey and feedback data, accreditation results, and discussions with approved providers and Agency staff.

Recommendation 70: That universities review the content and quality of clinical placements and experiences of students in aged care in their undergraduate courses and that clinical placements include a range of aged care settings.

The curricula of undergraduate nursing courses and the provision of clinical placements, are matters for determination between the individual university departments and the relevant State and Territory nursing regulatory authority.

Whilst nursing curricula is approved by each State and Territory nursing regulatory authority, and the courses are the responsibility of each university, the Government is working with academia to investigate how a more focused and appropriate aged care and ageing curricula component might be developed and implemented within the existing curricula frameworks.

The Queensland University of Technology developed principles setting out the core aged care

nursing curricula that should be demonstrable in undergraduate nursing courses. This framework has been provided to universities to help guide their course development.

In recognition of the importance of quality clinical experiences, especially in aged care, the Government has provided resources to several organisations to pilot a range of support systems that will assist scholarship recipients (particularly undergraduate students) to not only maintain their connection with the aged care sector, but also provide a possible network of mentors and preceptors to guide them during their training and education. It is also anticipated that these support systems will in some cases assist students to access quality clinical placements within the aged care sector.

Recommendation 71: That universities review and develop postgraduate programmes and courses, including the provision of courses by distance education, appropriate for the aged care sector.

While the Australian Government supports the development of appropriate post-graduate training in aged care, the content of post-graduate training is a matter for the universities.

Recommendation 72: That the Australian Government fund the expansion of re-entry/refresher programmes specifically targeted at aged care nurses.

The Australian Government provides funding for re-entry scholarships to assist former nurses in returning to the nursing workforce. Initially provided to former nurses in rural and remote areas, the scholarships were expanded in 2004 to support metropolitan nurses as well. To date over 300 rural and remote nurse re-entry scholarships and over 60 metropolitan nurse re-entry scholarships have been awarded. While not specifically targeting aged care, nurses with an interest in aged care are eligible to apply.

The Australian Government funded Aged Care Nursing Scholarship Scheme also includes nurse re-entry training and scholarship support systems, in partnership with the aged care sector. These systems provide support, not only to nursing students at the undergraduate level, but also to nurses re-entering the aged care workforce.

See also the response to recommendation 18.

Recommendation 73: That the Australian Government provide additional funding to implement wage parity between aged care and acute care nurses in each State and Territory.

The Australian Government does not have the jurisdiction to set wages for aged care staff through either the award or enterprise bargaining structures. Employment conditions and industrial award issues are matters for negotiation between staff and providers at the enterprise level or as determined by the Federal, State or Territory industrial tribunals, under the relevant Australian, State or Territory regulatory frameworks.

The Government indexes its payments to aged care providers annually in line with movements in the Consumer Price Index and with the Safety Net Decision of the Australian Industrial Relations Commission. Pay increases in aged care above those determined in the Safety Net Decision need to be funded through productivity improvement, as they are in the rest of the economy.

The Government provided an additional \$211 million over four years (\$50 million indexed each year) in the 2002-03 Budget to increase residential aged care subsidies to aged care providers. This assisted providers of aged care services to meet their labour force costs and address the disparity between wages in the aged care and acute care sectors.

In response to the Review of the Pricing Arrangements for Residential Aged Care, the Government provided a further \$877.8 million over four years in the 2004-05 Budget for a new Conditional Adjustment Payment (CAP). CAP is calculated at 1.75% of the basic subsidy amount in 2004-05, rising to 7% of the basic subsidy amount by 2007-08. CAP will raise subsidies to Approved Providers by an average of about \$500 per resident in 2004-05 rising to about \$2000 per resident by 2007-08. These CAP payments will also assist providers pay more competitive wages to their staff.

Recommendation 74: That strategies be implemented to improve the image of aged care nursing.

The Australian Government has supported a number of initiatives to raise the image of aged

care nursing in Australia. These initiatives have included highlighting aged care services and individuals that have demonstrated excellence in staff and professional development programmes through Minister's Awards for Excellence in Aged Care and Better Health and Safety awards (refer to the response to Recommendation 50 for further information).

The National Aged Care Workforce Strategy has a focus on improving the professional and community status and image of working in the aged care sector.

Recommendation 75: That the Australian Government take measures to reduce occupational injuries to nurses working in aged care, including the introduction of 'no lift' programmes across the aged care sector in conjunction with the provision of up to date safe lifting devices that are readily available for staff use and are regularly maintained.

This is the responsibility of all aged care service providers in their capacity as an employer. State and Territory Governments are also responsible for these matters as their legislation governs Occupational Health and Safety requirements.

The Australian Government assists the aged care sector to meet its occupational health and safety responsibilities through the provision of resources such as the Practical Guide to Implementing Occupational Health and Safety in Residential Aged Care.

#### **Chapter 8—Needs in Specialist Nursing**

Recommendation 76: That the Australian Government fund scholarships for psychiatric/mental health nursing for graduate year students wanting to specialise in the area, and for already qualified nurses wishing to undertake a mental health nursing course.

The Australian Government does not fund scholarships specifically for psychiatric/mental health nursing. However, the Government provides funding for up-skilling and postgraduate scholarships through the Australian Rural and Remote Nurse Scholarship Programme. These scholarships allow rural and remote nurses to undertake postgraduate study, attend conferences or participate in workshops and clinical placements to improve their knowledge base and further their pro-

fessional development. While not specifically targeting mental health, nurses with an interest in this area are eligible to apply.

The Australian Health Ministers' Advisory Council through the National Mental Health Working Group subcommittee and the Australian Health Workforce Officials Committee, has recently undertaken a project on issues related to the recruitment and retention of mental health nurses as well as pathways into the workforce and has made recommendations for the future.

At their meeting on 28 July 2005 Australian, State and Territory Health Ministers identified the mental health workforce as a key issue. They have asked the Australian Health Ministers Advisory Council to address a range of mental health workforce issues as part of an updated National Mental Health Policy and Plan.

Recommendation 77: That a targeted campaign be undertaken to improve the status and image of psychiatric/mental health nursing.

Through the work of the National Mental Health Working Group the Government will work with State Governments and other key stakeholders to explore appropriate activities which could be pursued in relation to promoting and improving the status and image of the mental health workforce including psychiatric/mental health nursing.

Recommendation 78: That funding be provided for the development of advanced practice courses in mental health nursing.

Education and training issues for mental health nursing are being considered through the work of the National Mental Health Working Group and the Australian Health Workforce Officials Committee. These findings will help to inform future directions.

Recommendation 79: The Australian Government provide additional funds to universities to extend clinical education in rural and remote regional hospitals.

The Australian Government provides funding to universities for this activity.

The University Departments of Rural Health Programme is a long-term strategy which aims to increase the recruitment and retention of rural health professionals and to improve the quality

and appropriateness of health care for rural and remote communities.

The Programme encourages students of medicine, nursing and allied health disciplines to pursue a career in rural practice. It also supports those health professionals who are currently practising in rural settings. One of the key activities of the University Departments of Rural Health Programme is to provide opportunities for health students, including nurses, to undertake clinical placements in a rural and remote environment.

The Government has created a separate, higher funding rate for nursing places in recognition of its status as a National Priority area. The higher funding rate will include an extra \$54 million over the next four years for universities offering nursing courses. The additional funding, which represents a 7 per cent increase in funding for nursing places, will provide significant additional support for the clinical component of nursing courses.

Recommendation 80: That the Australian Government increase the amount of funding of rural and remote nursing programmes, including scholarship programmes, in line with funding of medical programmes.

Over the past few years, the Australian Government has introduced a range of initiatives to address nursing shortages. These are mainly education focused and incorporate incentives to attract and retain nurses in rural and remote areas and the aged care sector, where shortages are most acute.

The Australian Rural and Remote Nurse Scholarship Programme offers incentives to nurses wishing to pursue or build on a career in rural or remote nursing. The Programme consists of four schemes—undergraduate, postgraduate, enrolled to registered nurse and re-entry/up-skilling. The Programme has awarded over 2000 scholarships to date and received continued funding of \$20.6 million over three years in the 2005-06 Budget. This represents a significant investment in nursing for rural and remote areas of Australia.

The Government is also committed to encouraging more people to enter or re-enter aged care nursing, especially in rural and regional areas. Additional funding of \$26.3 million will provide

up to 1,000 scholarships (valued at up to \$10,000 a year) for students from rural and regional areas, with a particular interest in caring for the aged, to undertake nursing studies at rural and regional universities. State and Territory Governments have also progressed similar initiatives in this area.

Recommendation 81: That the Australian Government and States provide funding for nursing relief programmes such as 'circuit nurse' programmes in rural and remote Australia.

This recommendation is the responsibility of the employers of nurses, including State and Territory Governments.

Recommendation 82: That all rural and remote area health services with the assistance of State governments offer additional incentives to nursing staff through employment packages including accommodation assistance, additional recreation and professional development leave, and appointment and transfer expenses to encourage nurse recruitment.

This recommendation is the responsibility of the employers of nurses, including State and Territory Governments.

Recommendation 83: That the Australian Government increase the number of scholarships for Aboriginal and Torres Strait Islander nursing students and health workers to increase their numbers and upgrade their qualifications.

The Australian Government established the Puggy Hunter Memorial Scholarship Scheme, with funding of \$2.07 million over five academic years (2002-2006) to address the underrepresentation of Aboriginal and Torres Strait Islander people in health professions and to increase the number of Aboriginal and Torres Strait Islander Health Workers with qualifications. The Scheme provides undergraduate scholarships for Aboriginal and Torres Strait Islander students in medicine, nursing, allied health (except pharmacy) and Aboriginal and Torres Strait Health Worker courses. So far the Scheme has awarded 79 scholarships; 21 in nursing.

From 2003, the Government has provided funding to the Australian Rotary Health Research Fund for 25 scholarships at \$5,000 each academic year. The Fund targets Aboriginal and Torres

Strait Islander undergraduate health students including nursing.

Under the Australian Rural and Remote Nurse Scholarship Programme: Undergraduate Scheme, at least ten scholarships are awarded each year to Aboriginal and Torres Strait Islander nursing students to assist them in undertaking undergraduate studies in nursing. Since 2001, over 40 of these scholarships have been awarded.

Under the Aged Care Nursing Scholarships Scheme up to 10 undergraduate aged care nursing scholarships are set aside each scholarship round for Aboriginal and Torres Strait Islander Students.

See also the response to recommendation 18.

Recommendation 84: The strategies for the Aboriginal and Torres Strait Islander nursing workforce proposed in the Health Workforce National Strategic Framework be implemented as a matter of urgency.

The Australian Health Ministers' Advisory Council endorsed the Aboriginal and Torres Strait Islander Health Workforce National Strategic Framework in May 2002. This is a ten year plan to improve the training, supply, recruitment and retention of appropriately skilled health professionals, health service managers and health policy officers in both mainstream and Indigenous specific health services.

The majority of the strategies in the Framework will be implemented by the Aboriginal Health Workforce Working Group which includes members from all States and Territories, nominees from the Congress of Aboriginal and Torres Strait Islander Nurses (CATSIN), the National Aboriginal Community Controlled Health Organisation and the Australian Indigenous Doctors' Association, as well as Government representatives.

The Working Group has endorsed the Workforce Strategic Framework Action Plan to drive the implementation of the Framework strategies. Most of the nursing strategies in the Framework are being implemented.

CATSIN is funded by the Government to provide advice to governments and professional support to Indigenous nurses, as well as collaboration with the education and employment sectors.

In addition to the base funding, CATSIN is currently being funded to manage the Indigenous Nurses Mentoring programme and the future response to the Indigenous Nursing Education Working Group final report.

Recommendation 85: That the Australian Government while examining medical insurance issues also consider the issue of professional indemnity insurance for nurses, including midwives and allied health workers.

The Australian Government believes that once the measures it has announced in relation to professional indemnity and public liability insurance are fully operational (in conjunction with the various actions being taken by the States and Territories) and these have had time to take effect, there will be improvement in the affordability and availability of professional indemnity insurance in Australia. Reports by the Australian Competition and Consumer Commission and the Australian Prudential Regulation Authority confirm that we are now seeing reductions in the cost of premiums relating to public liability and professional indemnity insurance.

It is important to note that the majority of Australia's midwives and nurses are directly employed by hospitals and are therefore covered under the professional indemnity arrangements of their employers.

In the meantime, a number of possible approaches to this issue have already been raised. The State and Territory Governments can choose to cover independent midwives as being employees or contractors in relation to their publicly funded services. Western Australia and South Australia have extended insurance coverage to independent midwives by effectively bringing them under the umbrella of Government employment. The Government encourages other State and Territory Governments to consider similar action as a simple and effective way of addressing this issue.

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#### **AUSTRALIAN GOVERNMENT RESPONSE TO:**

**Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children**

#### **The report of the Community Affairs References Committee, August 2004.**

The Government welcomes this report by the Community Affairs References Committee as a sensitive, insightful and moving revelation of the experiences of many children in the Australian institutional care system. The Government acknowledges the Committee's commitment to giving care leavers the important opportunity of telling their own stories and recognises and applauds the courage of those individuals who freely shared their experiences, speaking or writing of the trauma that still permeates their lives.

The report states that: "duty of care was lacking in several fundamental areas in relation to children in institutional care—in respect of the adequate provision for the basic needs of children, that is, adequate food, clothing and nurture; and the horrendous levels of physical, sexual and emotional abuse that were allowed to occur while these children were in care. Equally disturbing is the fact that such abuse was able to continue unchecked over so many years."

It must also be acknowledged that children from culturally and linguistically diverse backgrounds experienced the added dimension of the loss of cultural heritage.

The suffering experienced by so many children placed in institutional care is a matter of shame for this country. While past practices and attitudes were not always the same as those of today, there can be no excuse for the physical and emotional abuse and pain experienced by thousands of these children.

Their willingness to speak out gives us all the opportunity to appreciate the extent of the problems and also to move with them into a healing process.

It must be acknowledged that children formerly in institutional care are not an homogenous group, and their experiences varied considerably. Some found adults who supported and cared for them; many, unfortunately, found a lack of love and care and even extreme abuse. Their needs for support or assistance will vary considerably. To those whose experiences have scarred them indelibly, we as a nation need to respond with appropriate

help. This report offers some recommendations that will guide our progress to that end.

Some recommendations are clearly directed to state and territory governments or to those organisations that ran institutions where children were placed, and it must be recognised that some steps have already been taken by those responsible to address the issues raised. The Australian Government urges state and territory governments and the churches and agencies involved to respond positively to the report's recommendations. We look forward to working with these agencies co-operatively and to continue discussing these recommendations with state and territory governments where a united response is appropriate.

The report states that, while the Commonwealth was not directly involved in the administration of these institutions, "it has a moral obligation to acknowledge the harm done to many children and fellow Australians in institutional care settings. An acknowledgment in these terms will be an important part of the healing and reconciliation process for many care leavers".

The Australian Government acknowledges that all levels of government have responsibility for the well being of Australian children. All children have a right to care and protection, and all children deserve love and support. The policies that allowed these outrages to be perpetrated on innocent children were not only misplaced; they were inexcusable in any era.

Specific responses to the report's recommendations follow.

## **RECOMMENDATIONS**

### **Recommendation 1**

That the Commonwealth Government issue a formal statement acknowledging, on behalf of the nation, the hurt and distress suffered by many children in institutional care, particularly the children who were victims of abuse and assault; and apologising for the harm caused to these children.

#### **Response:**

The Australian Government has great sympathy for those children who suffered hurt and distress in institutional care. While it would not be appropriate for the Australian Government to issue an apology for a matter for which it does not have

responsibility, the Government expresses its sincere regret that these children were placed in situations where they did not receive the care they deserved. The Government appreciates that many of these unfortunate Australians and their families continue to experience the serious personal consequences of their experiences of abuse, assault and abandonment.

The Government urges state, territory and local governments, churches, institutions and community organisations to acknowledge their responsibilities and to take action, where appropriate, to alleviate the suffering of those who were in their care. In particular, the Government urges a collaborative approach to assistance, through improved information access as well as practical support for care leavers.

### **Recommendation 2**

That all State Governments and Churches and agencies, that have not already done so, issue formal statements acknowledging their role in the administration of institutional care arrangements; and apologising for the physical, psychological and social harm caused to the children, and the hurt and distress suffered by the children at the hands of those who were in charge of them, particularly the children who were victims of abuse and assault.

#### **Response:**

This is a matter for state and territory governments, churches and agencies to consider.

### **Recommendation 3**

That State Governments review the effectiveness of the South Australian law and consider amending their own statutes of limitation legislation to achieve the positive outcomes for conducting legal proceedings that have resulted from the amendments in the South Australian jurisdiction.

#### **Response:**

This is a matter for state and territory governments to consider.

### **Recommendation 4**

That in recognising the difficulty that applicants have in taking civil action against unincorporated religious or charitable organisations, the Government examine whether it would be either an appropriate or a feasible incentive to incorporation,

to make the availability of federal tax concessions to charitable, religious and not-for-profit organisations dependent on, or alternatively linked to, them being incorporated under the corporations act or under state incorporated associations statutes.

**Response:**

The Government does not support this recommendation. The Australian Government recognises that the requirement for charities to be incorporated, as a condition for receiving tax concessions, may be desirable in some cases; however, the Government considers that such a requirement would not be feasible on administration or equity grounds. In regards to charities, the Australian Government has already taken steps to safeguard against the potential abuse of the tax status of charities and has announced that it will provide for greater scrutiny of the taxation concessions available to charities. In addition, the Australian Taxation Office maintains a compliance program under which organisations' charitable status can be reviewed.

Compulsory incorporation of charities as a precondition to granting tax concessions will add significant compliance and financial costs to the sector as a whole. For example, not-for-profit organisations may need to consider maintaining a constitution, appointing a board of directors, holding annual general meetings and hiring a lawyer and an accountant to meet the requirements of incorporation. These requirements can impose prohibitive costs on smaller charities (such as locally based community organisations), which currently do not undertake activities that may warrant incorporation.

Confining tax concessions to incorporated not-for-profit organisations may draw public criticism that the Government's tax concessions favour larger not-for-profit organisations at the expense of the smaller ones. Furthermore, such a requirement may result in reduced levels of charitable activity across the community and community wellbeing more generally. In that regard, compulsory incorporation may also create a distortion in the sector by favouring those organisations that are sufficiently large or have the capacity to justify incorporation.

Placing further restrictions on the sector by using a tax policy instrument to achieve a non-tax policy outcome is likely to result in unintended consequences that would be difficult to address. Other non-tax options, such as requiring that certain governance arrangements be observed by charitable organisations of a certain size, may offer a more appropriately targeted means to achieve the desired outcome.

**Recommendation 5**

That the Commonwealth Government examine the desirability and feasibility of introducing whistleblower legislation for the not-for-profit religious and charitable sectors.

**Response:**

The Government supports this recommendation. In its examination of the desirability and viability of introducing whistleblower legislation to provide protection for those working in the not-for-profit religious and charitable sectors, the Australian Government will need to explore a number of issues, including the extent to which it is possible, practical and appropriate for the Australian Government to legislate in this area.

**Recommendation 6**

That the Commonwealth Government establish and manage a national reparations fund for victims of institutional abuse in institutions and out-of-home care settings and that:

- the scheme be funded by contributions from the Commonwealth and State Governments and the Churches and agencies proportionately;
- the Commonwealth have regard to the schemes already in operation in Canada, Ireland and Tasmania in the design and implementation of the above scheme;
- a board be established to administer the scheme, consider claims and award monetary compensation;
- the board, in determining claims, be satisfied that there was a 'reasonable likelihood' that the abuse occurred;
- the board should have regard to whether legal redress has been pursued;
- the processes established in assessing claims be non-adversarial and informal; and

- compensation be provided for individuals who have suffered physical, sexual or emotional abuse while residing in these institutions or out-of-home care settings.

**Response:**

The Government does not support this recommendation. The Government deeply regrets the pain and suffering experienced by children in institutional care but is of the view that all reparations for victims rests with those who managed or funded the institutions, namely state and territory governments, charitable organisations and churches. It is for them to consider whether compensation is appropriate and how it should be administered, taking into account the situation of people who have moved interstate.

**Recommendation 7**

That all internal Church and agency-related processes for handling abuse allegations ensure that:

- informal, reconciliation-type processes be available whereby complainants can meet with Church officials to discuss complaints and resolve grievances without recourse to more formal processes, the aim being to promote reconciliation and healing;
- where possible, there be independent input into the appointment of key personnel operating the schemes;
- a full range of support and other services be offered as part of compensation/reparation packages, including monetary compensation;
- terms of settlement do not impose confidentiality clauses on complainants;
- internal review procedures be improved, including the appointment of external appointees independent of the respective Church or agency to conduct reviews; and
- information on complaints procedures is widely disseminated, including on Churches' websites.

**Response:**

This is a matter for churches and agencies to consider. The Australian Government urges churches and agencies to respond positively and compassionately.

**Recommendation 8**

That the Commonwealth establish an external complaints review mechanism, such as a national commissioner for children and young people who would have the power to:

- investigate and mediate complaints received by complainants dissatisfied with Church processes with the relevant Church authority;
- review the operations of Church sponsored complaints mechanisms to enhance transparency and accountability;
- report annually to the Parliament on the operation of the Churches' complaints schemes, including data on the number and nature of complaints; and
- publicise the existence of Church-sponsored complaints mechanisms widely throughout the community.

**Response:**

The Australian Government does not support this recommendation. A Children's Commission or similar office may be appropriate for state and territory governments to establish, given the primary responsibility the states and territories have for child welfare, and that decision rests with them. NSW, Queensland and Tasmania have Children's Commissioners, and they are regarded as performing valuable functions. The ACT Government also plans to have a Children's Commissioner. However, the Australian Government does not believe there would be any benefit in having a National Children's Commissioner, as this would duplicate processes already in place. The Australian Government does not seek to influence state and territory governments regarding the establishment of state or territory children's commissions. This is a decision for each state or territory government.

**Recommendation 9**

That the Churches and agencies publish comprehensive data on all abuse complaints received to date, and then subsequently on an annual basis, and that this information include:

- numbers of complainants and type of complaints received;
- numbers of Church/agency personnel involved in complaint allegations; and



- amounts of compensation paid to complainants.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. Privacy considerations would be paramount.

**Recommendation 10**

That information on the above matters be provided annually (including any reasons for non-compliance) to the national commissioner for publication in a consolidated form in the commissioner's annual report.

**Response:**

See response to Recommendations 8 and 9. However, national consolidation of data is possible through existing departmental mechanisms. The Australian Government will discuss consolidation processes with state and territory governments, churches and agencies if they choose to establish data collection mechanisms.

**Recommendation 11**

That the Commonwealth Government seek a means to require all charitable and church-run institutions and out-of-home care facilities to open their files and premises and provide full cooperation to authorities to investigate the nature and extent within these institutions of criminal physical assault, including assault leading to death, and criminal sexual assault, and to establish and report on concealment of past criminal practices or of persons known, suspected or alleged to have committed crimes against children in their care, by the relevant authorities, charities and/or Church organisations;

And if the requisite full cooperation is not received, and failing full access and investigation as required above being commenced within six months of this Report's tabling, that the Commonwealth Government then, following consultation with state and territory governments, consider establishing a Royal Commission into State, charitable, and church-run institutions and out-of-home care during the last century, provided that the Royal Commission:

- be of a short duration not exceeding 18 months, and be designed to bring closure to this issue, as far as that is possible;

- be narrowly conceived so as to focus within these institutions, on the nature and extent of criminal physical assault of children and young persons, including assault leading to death; criminal sexual assault of children and young persons;

- and any concealment of past criminal practices or of persons known, suspected or alleged to have committed crimes against children in their care, by the relevant State authorities, charities and/or Church organisations.

**Response:**

The Australian Government urges state governments, charitable organisations and churches that managed or funded institutions to cooperate fully with authorities to investigate the nature and extent of criminal offences and to work in good faith to address outstanding issues.

The Australian Government considers that a royal commission into state government, charitable and church-run institutions is not appropriate. This inquiry has shown that there are a number of practical steps that can be taken to redress the experiences of children in institutional care.

The offences dealt with under Recommendation 11 are offences under state/territory law. Any investigation of the nominated institutions is, therefore, a matter for state and territory governments.

**Recommendation 12**

That government and non-government agencies holding records relating to care leavers, implement and fund, as a matter of priority, programs to find, identify and preserve records including photographs and other memorabilia.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government strongly supports the proposal in principle.

**Recommendation 13**

That all government and non-government agencies immediately cease the practice of destroying records relating to those who have been in care.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government strongly supports the proposal in principle.

**Recommendation 14**

That all State Governments and non-government agencies, which have not already done so:

- provide dedicated services and officers to assist care leavers in locating and accessing records, both government and non-government; and
- compile directories to assist in the locating and accessing of records relating to care leavers and the institutions into which they had been placed.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider.

**Recommendation 15**

That a dedicated information and search service be established in each State and Territory to:

- develop a complete register of all records held by government and non-government agencies;
- provide assistance to care leavers to locate and access records;
- provide advocacy and mediation services to care leavers accessing records; and
- ensure that all agencies holding records identify, preserve and make available all surviving records relating to care leavers and the institutions that housed them.

**Response:**

This is a matter for state and territory governments to consider.

**Recommendation 16**

That all government and non-government agencies agree on access guidelines for the records of all care leavers and that the guidelines incorporate the following:

- the right of every care leaver, upon proof of identity only, to view all information relating to himself or herself and to receive a full copy of the same;

- the right of every care leaver to undertake records searches, to be provided with records and the copying of records free of charge;
- the commitment to a maximum time period, agreed by the agencies, for the processing of applications for viewing records; and
- the commitment to the flexible and compassionate interpretation of privacy legislation to allow a care leaver to identify their family and background.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government supports the proposal in principle.

**Recommendation 17**

That all agencies, both government and non-government, which provide access to records for care leavers, ensure adequate support and counselling services are provided at the time of viewing records, and if required, subsequent to the viewing of records; and that funding for independent counselling services be provided for those care leavers who do not wish to access services provided by a former care agency.

**Response:**

The Australian Government notes that counselling services are already funded and widely available, including to care leavers, and would be appropriately used in these circumstances. The Australian Government has provided one-off funding to the Care Leavers of Australia Network (CLAN) of \$100,000 for counselling support. In the longer term, this is the responsibility of state and territory governments, churches and agencies.

**Recommendation 18**

That the Commonwealth request the Council of Australian Governments to review all Federal and State and Territory Freedom of Information regimes to ensure that they do not hinder access by care leavers to information about their childhoods and families.

**Response:**

The Australian Attorney-General will raise this proposal with his state and territory counterparts.

**Recommendation 19**

That the Commonwealth fund a national conference of service providers and advocacy and support groups with the aim being to establish a professional national support and advocacy body for care leavers; and that this body be funded by the Commonwealth and State Governments and the Churches and agencies.

**Response:**

The Australian Government supports in principle the proposal for a conference of service providers, but not with a pre-determined outcome. Such a conference could identify ongoing needs of care leavers and make recommendations about the most effective ways of meeting those needs. The Australian Government is prepared to work with states and territories to convene a meeting of service providers and will discuss cost-sharing arrangements with states and territories. The Government cannot commit to funding of any outcomes in advance.

The Australian Government acknowledges the important role played by service providers and advocacy and support groups for care leavers. The Government notes that it already provides significant funding for counselling and support in the areas of child abuse and/or sexual assault.

The Australian Government considers that the establishment of any national support and advocacy body for care leavers would need to ensure that it does not duplicate services already available in some states. A state-based approach to providing support and advocacy is beneficial as it provides care leavers with the opportunity to talk to others with similar experiences and with counsellors who are aware of the specific experiences of children in those locations.

If there were seen to be a role for a national body, a fair and transparent selection process would be appropriate.

**Recommendation 20**

That the Commonwealth and State Governments and Churches and agencies provide on-going funding to CLAN and all advocacy and support groups to enable these groups to maintain and extend their services to victims of institutional abuse, and that the government and non-government sectors widely publicise the avail-

ability of services offered by these advocacy and support groups.

**Response:**

The Australian Government acknowledges the work CLAN has done in bringing together the stories of the individuals and families who suffered abuse and neglect in institutions. The Government commends CLAN for effectively reshaping the country's history by drawing the nation's attention to these tragic events. It is now important for governments, churches and agencies to take responsibility for delivering positive and concrete responses, and it remains to be seen what role CLAN and other support groups now have to play in encouraging them to do so.

The Australian Government has committed \$100,000 to CLAN as a one-off grant for the provision of counselling services to care leavers. The definition of any ongoing role for CLAN, or another national support body, would be expected to emerge from the conference proposed in Recommendation 19. Appropriate structures and sources of funding would be determined following discussion of recommendations from that conference. There are other care leaver support bodies, specifically providing services in some states to people who were in care in each of those states.

While ongoing support for care leavers is primarily a role for state and territory governments, churches and agencies, the Australian Government will commit additional funding of \$100,000 to assist care leavers through support groups, to be determined in conjunction with the planning and holding of the national conference.

**Recommendation 21**

That all State Governments, Churches and agencies provide a comprehensive range of support services and assistance to care leavers and their families.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government strongly supports a process that is based on an assessment of need and an identification of gaps in existing services. These matters could be further discussed at appropriate Ministerial Councils.

**Recommendation 22**

That all State Government funded services for care leavers be available to all care leavers in the respective State, irrespective of where the care leaver was institutionalised; and that funding provisions for this arrangement be arranged through the Community and Disability Services Ministerial Council.

**Response:**

This is a matter for state and territory governments. The Australian Government supports the recommendation in principle and urges state and territory governments to continue to ensure access to services is provided for care leavers who have moved interstate.

**Recommendation 23**

That all State Governments, Churches and agencies fund counselling services for care leavers and their families, and that those currently providing counselling services maintain and, where possible, expand their services including to regional areas. The counselling services should include:

- the extension of specialist counselling services that address the particular needs of care leavers;
- their provision to clients on a long-term or as required basis; and
- the provision of external counselling as an option.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government supports this recommendation in principle.

**Recommendation 24**

That specialist higher education courses be available for the training of health professionals in areas related to the particular psychological and psychiatric effects of institutional abuse.

**Response:**

Universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government. Under the new funding framework that commenced in 2005, there will be Funding Agreements with each University, specifying the num-

ber of places across the discipline mix to be supported by the Australian Government. In reaching these agreements, every year the Department of Education, Science and Training will meet with each University to discuss their strategic directions and plans for course offerings. This would be the stage at which the possibility of offering this training might be discussed, assuming that they are to be included in a health related degree. However, Universities decide how the funds they receive from the Government and the tuition fees they receive from their students will be used internally, as they are in the best position to allocate funds in a way that furthers their strategic direction in the provision of higher education.

The Australian Government will ensure that the Australian Vice-Chancellor's Committee is aware of the recommendations of the Senate Community Affairs Committee in this regard.

Other higher education providers are autonomous institutions, which determine their own teaching arrangements and course curricula.

The Medical Specialist Training Steering Committee, commissioned by the Australian Health Ministers' Advisory Council, is currently looking at providing training for medical specialists, including psychiatrists, which is more applicable to the range of health care settings within which they will practice as professionals. This work is being done in conjunction with the Royal Australasian and New Zealand College of Psychiatrists who are responsible for the development of training programme content. It will ensure that training provided to the future psychiatry workforce is more applicable to the needs of the community, including those members of the community who present to a range of community based and acute settings for psychiatric treatment.

**Recommendation 25**

That the Commonwealth and State Governments in providing funding for health care and in the development of health prevention programs, especially mental health, depression, suicide prevention and drug and alcohol prevention programs, recognise and cater for the health needs and requirements of care leavers.

**Response:**

The Australian Government, through the Department of Health and Ageing, funds a range of health care, health promotion and support programs, which are accessible to all Australians. While not targeted at care leavers, these programs are accessible to this group. These include the National Suicide Prevention Strategy, National Mental Health Strategy and the Better Outcomes in Mental Health Care Initiative.

**Recommendation 26**

That the Department of Health and Ageing fund a pilot program under the Aged Care Innovative Pool to test innovative models of aged care services focussing on the specific needs of care leavers.

**Response:**

The Australian Government, through the Department of Health and Ageing, acknowledges the potential scope to develop a pilot proposal under the Aged Care Innovative Pool that would aim to test innovative models of aged care services for older people with specific needs, such as care leavers, whose care needs are not adequately met through existing aged care services. Consistent with Program Guidelines that specify the arrangements for developing innovative pool pilot proposals, stakeholder agencies can develop an outline of a proposed model and project parameters and make contact with the Department. More information about the Innovative Pool, including program guidelines, is available from the Department of Health and Ageing's website.

**Recommendation 27**

That the Home and Community Care program recognise the particular needs of care leavers; and that information about the program be widely disseminated to care leaver support and advocacy groups in all States.

**Response:**

This is a matter for state and territory governments. The Australian Government, through the Department of Health and Ageing, provides funding for the Home and Community Care (HACC) program, which is accessible to all Australians. The dissemination of information about state and regional specific programs funded under the

HACC program is a state and territory government responsibility.

**Recommendation 28**

That the Supported Accommodation Assistance Program recognise the particular needs of care leavers; and that:

- data on the usage of the Program by care leavers be collected; and
- information about the Program be widely disseminated to care leaver support and advocacy groups in all States.

**Response:**

The Government supports this recommendation in principle. Data collection on the use of the Supported Accommodation Assistance Program (SAAP) by care leavers is currently being investigated by the SAAP program's Information Sub Committee.

Information on SAAP services may be of interest to care leaver support and advocacy groups, and such information will be made available through the Department of Family and Community Services. However, SAAP is a crisis response program for people who are homeless or about to become homeless. Support groups should familiarise themselves with the range of programs available for this particular client group which aim to prevent them from falling into crisis.

**Recommendation 29**

That the Commonwealth and State Governments widely publicise the availability of adult literacy and numeracy services and associated adult education courses to care leavers and care leaver support groups.

**Response:**

The Australian Government supports this recommendation. While funding of Adult and Community Education (ACE) provision is a State and Territory Government responsibility, from 1 July 2005 the Australian Government (through the Department of Education, Science and Training) will provide \$1.105 million to Adult Learning Australia (ALA) to undertake activities associated with adult learning. Part of this funding (\$730,000) supports the promotion of adult learning, research and other activities. An additional \$375,000 is provided to ALA to distribute to the

States and Territories for activities associated with Adult Learners' Week.

The Commonwealth Department of Education, Science and Training liaises with State Training Authorities and with peak bodies, such as the Australian Council for Adult Literacy (ACAL) and ALA, and will seek their support to further publicise the availability of adult literacy and numeracy courses and associated education courses to care leavers and care leaver support groups. The Department of Education, Science and Training also funds the Reading Writing Hotline which directs callers to their nearest literacy training provider and will ask ALA to further publicise it.

State and Territory Governments also provide general education courses, which largely consist of literacy and numeracy training. The two Australian Government programmes which focus on literacy and numeracy, the Language, Literacy and Numeracy Programme (LLNP) and the Workplace English Language and Literacy Programme (WELL), target quite specific groups—jobseekers and those in employment respectively—and are not programmes that care givers or care agencies can refer people to. These two programmes are, however, widely publicised through several different methods and are well known throughout the adult and vocational education fields.

#### **Recommendation 30**

That State Governments investigate options for alternative entry pathways to higher education courses for ex-residents of institutions and their children.

#### **Response:**

This is a matter for state and territory governments to consider.

#### **Recommendation 31**

That the Commonwealth, in conjunction with the States, develop procedures for the collection of data on people who have been in care on forms that are already used to elicit client information such as Medicare and Centrelink forms and admission forms to prisons, mental health care facilities and aged care facilities.

#### **Response:**

The Australian Government will examine what the possibilities are of collecting information on existing forms. Not all situations will be appropriate. Collection of this type of information on Medicare forms is not supported. Access to such information through Medicare forms would infringe the Privacy Act 1988, as such collection is not a legislated purpose nor covered in the Information Privacy Principle 2 pathway as printed on the Medicare claim form. Further, section 130 of the Health Insurance Act 1973 would prevent any such disclosure. The inclusion of specific questions on Centrelink forms would only be appropriate if programs were specifically tailored for, or offered particular services to, care leavers. This recommendation will be revisited if specific programs or services are developed in the future that target care leavers as a distinct group.

This is a matter for state and territory governments to consider also.

#### **Recommendation 32**

That Commonwealth and State programs across a range of social policy areas, including health and aged care and social welfare services generally, explicitly recognise care leavers as a sub-group with specific requirements in the publications and other material disseminated about programs.

#### **Response:**

The Australian Government recognises the issues faced by care leavers but does not endorse the recommendation to explicitly recognise care leavers as a sub-group with specific requirements in publications and public information materials. Australian Government departments will consider and address, where appropriate, the special needs of care leavers with regard to information and programs that specifically address the needs and circumstances of that group.

#### **Recommendation 33**

That the Commonwealth and the States commit, through the Council of Australian Governments, to implementing a whole of government approach to the provision of programs and services for care leavers across policy areas such as health, housing and welfare and community services and other relevant policy areas.

**Response:**

The Australian Government believes that these issues are worthy of further discussion but does not support referral to COAG. The Australian Government will commit to a whole of government approach through relevant Ministers' Conferences, including the Community Services Ministers and the Health Ministers Councils. Appropriate strategies will be developed for government consideration.

**Recommendation 34**

That the Commonwealth and State Governments, in conjunction with the Churches and agencies, provide funding for the erection of suitable memorials commemorating care leavers. Where possible, memorials could take the form of:

- memorial gardens constructed in conjunction with local councils;
- the placement of plaques at the site of former institutions; and/or
- the construction of heritage centres on the site of former institutions.

The Committee further recommends that the appropriate form and location of memorials should be determined after local consultation with care leavers and their support and advocacy groups.

**Response:**

The Government supports the concept of memorials to commemorate the experiences of children in institutional care as an appropriate way to acknowledge past injustices. The Government will contribute funding of up to a total of \$100,000 towards any suitable proposals for memorials initiated by state or territory governments.

**Recommendation 35**

That the National Museum of Australia be urged to consider establishing an exhibition, preferably permanent, related to the history and experiences of children in institutional care, and that such an exhibition have the capacity to tour as a travelling exhibition.

**Response:**

While the Australian Government has responsibility for the National Museum of Australia, the management of Australian Government institutions is at arm's length from the government of

the day. The Council and Management of these institutions form their own policies on acquisitions, exhibitions and all collections issues. The Museum has advised that while similar social issues, in particular those that affect the lives of children, have been represented in its temporary exhibitions program, it would be unable to commit to a permanent exhibition on this theme.

**Recommendation 36**

That the Commonwealth Government provide funding for the National Library of Australia to undertake an oral history project to collect the life-stories of former residents in institutional and out-of-home care.

**Response:**

While the Australian Government has responsibility for the National Library of Australia, the management of Australian Government institutions is at arm's length from the government of the day. The Council and Management of these institutions form their own policies on acquisitions, exhibitions and all collections issues. The National Library has advised that it would be unable to undertake a project of this scale at this time.

**Recommendation 37**

That the Commonwealth Government fund research either through the Australian Institute of Family Studies or other relevant research body or university into the following areas:

- historical research into institutional care, including the role of institutional care in Australia's social history; the history of institutions and the commissioning of personal histories of former residents;
- the social and economic impact and cost of institutional care; and
- inter-disciplinary research into the relationship between child welfare/child protection and areas such as welfare dependency, social problems such as drug and alcohol abuse and family relationship breakdowns.

**Response:**

The Australian Institute of Family Studies is an independent entity, and the Australian Government has no capacity to determine its research priorities. However, the Government will explore, through the Department of Family and Commu-

nity Services, possibilities for engaging other research partners to examine issues relating to the social impacts of institutional care, the ongoing needs of care leavers, service delivery ramifications and specific issues around family relationship effects. Historical research, if undertaken, would not be a primary focus. Any research should be tailored to improving outcomes for this group of care leavers. The National Child Protection Clearinghouse is contracted to the Department of Family and Community Services and can be funded to carry out additional research as required. This avenue will be pursued.

**Recommendation 38**

That the Australian Institute of Family Studies National Child Protection Clearinghouse be funded by the Commonwealth Government to collect publications related to historical studies of institutional and other forms of out-of-home care and that this information be widely disseminated.

**Response:**

See response to Recommendation 37.

**Recommendation 39**

That the Commonwealth, in co-operation with State Governments, establish courses of study at selected tertiary institutions that focus on child protection and related issues, especially early childhood and family studies, psychology, conflict management, the impact of institutional care and social policy to address issues in these areas.

**Response:**

The Australian Government supports this recommendation in principle but notes that universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government. Under the new funding framework that commenced in 2005, there will be Funding Agreements with each University, specifying the number of places across the discipline mix to be supported by the Australian Government. In reaching these agreements, every year the Department of Education, Science and Training will meet with each University to discuss their strategic directions and plans for course offerings. This would be the stage at which the possibility of offering this training might be discussed. However, Universities decide how the funds they receive from the Government

and the tuition fees they receive from their students will be used internally, as they are in the best position to allocate funds in a way that furthers their strategic direction in the provision of higher education.

Other higher education providers are autonomous institutions, which determine their own teaching arrangements and course curricula.

Agencies that employ child protection workers could seek to work with individual Universities (or other higher education providers) to develop courses that meet their needs. Funding is being provided through the Higher Education Support Act 2003 under Section 41-45 (Other Grants), for a Chair in Child Protection at the University of South Australia. The Chair was announced by the Minister for Education, Science and Training on 19 March 2004. Ten million dollars has been committed over ten years from 2004, to provide a special focus on research into child protection issues. The position of the Chair, currently held by Professor Dorothy Scott, is to lead and promote research into child protection and assist researchers working to combat child abuse across the disciplines of early childhood and family studies, psychology, education and literacy, conflict management, Indigenous communities and cultures, service delivery and social policy. The Australian Government has agreed with state and territory governments to write, as a group, to Professor Scott and seek her input and guidance on these issues.

The Australian Government will ensure that the Australian Vice-Chancellor's Committee is aware of the recommendations of the Senate Community Affairs Committee in regard to this recommendation.

Additionally, in vocational education and training, the Community Services and Health Industry Skills Council will be developing a national competency framework for workforce planning for Family Counsellors, Family Dispute Resolution Practitioners and workers in Children's Contact Services. This project, to be undertaken during 2005-2006, was funded by the Attorney General's Department (Family Pathways Branch).

Vocational/job outcomes for workers will be achieved by developing competency standards and qualifications, and supporting their work



under a national structure. The competency standards/qualifications are planned to be included in the Community Services Training Package.

Further, the Certificate IV in Mental Health Work (Nonclinical), in the current Community Services Training Package, was developed for health workers who provide a range of community services and community interventions to clients with mental health issues and/or implement health promotion and community interventions. Their work may take place in a range of contexts such as community based organisations, residential rehabilitation services and outreach services. This qualification refers to specific knowledge of a "clients with mental health issues" group and appropriate intervention processes applied in residential and community settings.

Also in the Community Services Training Package are three child protection qualifications: Certificate IV in Community Services (Protective Care), Diploma of Community Services (Protective Intervention) and the Diploma of Statutory Child Protection. These are delivered by TAFE and other Registered Training Organisations. The Community Services Training Package also provides national Certificate, Diploma and Advanced Diploma qualifications in the areas of children's services, residential support services, and non-residential services. In 2006-07 the Department of Education, Science and Training plans to fund the Community Services and Health Industry Skills Council to review the Community Services Training Package. Extensive stakeholder consultations occur during development and review to ensure that the Training Package is relevant to industry's needs and usable. Before the Training Package is endorsed for use, the developer must validate it with all relevant stakeholders and provide evidence of broad industry support.

Note that States and Territories are responsible for the quality of training and assessment, and for prioritising the allocation of funding for New Apprenticeships and other VET courses.

#### **AUSTRALIAN GOVERNMENT RESPONSE TO**

#### **Protecting Vulnerable Children: A National Challenge**

#### **Second report on the inquiry into children in institutional or out of home care**

#### **Senate Community Affairs References Committee**

The report of the Community Affairs References Committee, March 2005.

The Australian Government welcomes the second report by the Community Affairs References Committee following its inquiry into children in institutional or out-of-home care. The *Protecting Vulnerable Children* report follows on from the Committee's *Forgotten Australians* report and focuses on contemporary child protection issues, including foster care, and the government and legal framework in which child welfare and protection issues operate. The second report also considers children and young people with disabilities in care, and children and young people in juvenile justice and detention centres.

The report's recommendations are directed at the Australian Government and the state and territory governments. Those recommendations directed specifically at the Australian Government have been considered, along with those recommendations that are directed at both levels of government. The Australian Government's response to these recommendations is attached.

With its focus more on contemporary child protection and welfare issues, the *Protecting Vulnerable Children* report makes some recommendations that will assist governments in developing a child welfare and protection framework that is capable of providing a safe and caring environment for children and young people and protecting their rights, including the right to their cultural heritage.

The report acknowledges that child protection is the primary responsibility of the state and territory governments. However, the importance of all governments working closely together to bring about a safe, secure and caring environment for all children and young people cannot be over emphasised.

The safety and welfare of children is the responsibility of all Australians: governments; communities; families; and individuals. It is the responsibility of all to ensure that the system works effectively for children and their families.

**RECOMMENDATIONS****Recommendation 1**

That the Commonwealth Government consider the designation of a year as the National Year Against Child Abuse in Australia.

**Response:**

The Australian Government agrees with the Senate Community Affairs References Committee that child protection issues must be paramount in general public debate and the public consciousness.

The Australian Government supports and promotes a number of ongoing initiatives, which focus on the prevention of child abuse and neglect. These include funding National Child Protection Week through the National Association of Child Abuse and Neglect (NAPCAN), and supporting the biennial National Child Protection Awards administered by the Australian Council for Children and Parenting. The Australian Government also provides support for Children's Week (which incorporates Universal Children's Day) and Families Week. In light of these initiatives, the Government does not believe that the designation of a year as the National Year Against Child Abuse in Australia would provide any further tangible benefits.

To assist in raising the public consciousness and in developing a national approach to child protection in Australia, the Australian Government will convene a National Summit on Child Protection to be held in Melbourne in the first half of 2006. The National Summit will bring together child protection practitioners, researchers, and policy makers from all jurisdictions to identify a practical way forward in developing a national approach to child protection in Australia.

**Recommendation 2**

That State and Territory Governments consider reviewing the effectiveness of mandatory reporting in protecting and preventing child abuse, and in conducting such a review, they particularly focus on the successes of the various options used in care and protection systems, in comparison with mandatory reporting.

**Response:**

This is a matter for state and territory governments to consider.

**Recommendation 3**

That, as recommended in *Forgotten Australians*, the Commonwealth, State and Territory Governments establish courses of study at selected tertiary institutions that focus on child protection and related issues, especially early childhood and family studies, psychology, conflict management, the impact of institutional care and social policy, to address issues in these areas (recommendation 39 in *Forgotten Australians*).

**Response:**

The Australian Government supports this recommendation in principle but notes that universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government. Under the new funding framework that commenced in 2005, there will be Funding Agreements with each University, specifying the number of places across the discipline mix to be supported by the Australian Government. In reaching these agreements, every year the Department of Education, Science and Training will meet with each University to discuss their strategic directions and plans for course offerings. This would be the stage at which the possibility of offering this training might be discussed. However, Universities decide how the funds they receive from the Government and the tuition fees they receive from their students will be used internally, as they are in the best position to allocate funds in a way that furthers their strategic direction in the provision of higher education.

Other higher education providers are autonomous institutions, which determine their own teaching arrangements and course curricula.

Agencies that employ child protection workers could seek to work with individual Universities (or other higher education providers) to develop courses that meet their needs. Funding is being provided through the *Higher Education Support Act 2003* under Section 41-45 (Other Grants), for a Chair in Child Protection at the University of South Australia. The Chair was announced by the Minister for Education, Science and Training on

19 March 2004. Ten million dollars has been committed over ten years from 2004, to provide a special focus on research into child protection issues. The position of the Chair, currently held by Professor Dorothy Scott, is to lead and promote research into child protection and assist researchers working to combat child abuse across the disciplines of early childhood and family studies, psychology, education and literacy, conflict management, Indigenous communities and cultures, service delivery and social policy. The Australian Government has agreed with state and territory governments to write, as a group, to Professor Scott and seek her input and guidance on these issues.

The Australian Government will ensure that the Australian Vice-Chancellor's Committee is aware of the recommendations of the Senate Community Affairs Committee in regard to this recommendation.

Additionally, in vocational education and training, the Community Services and Health Industry Skills Council will be developing a national competency framework for workforce planning for Family Counsellors, Family Dispute Resolution Practitioners and workers in Children's Contact Services. This project, to be undertaken during 2005-2006, was funded by the Attorney General's Department (Family Pathways Branch).

Vocational/job outcomes for workers will be achieved by developing competency standards and qualifications, and supporting their work under a national structure. The competency standards/qualifications are planned to be included in the Community Services Training Package.

Further, the Certificate IV in Mental Health Work (Nonclinical), in the current Community Services Training Package, was developed for health workers who provide a range of community services and community interventions to clients with mental health issues and/or implement health promotion and community interventions. Their work may take place in a range of contexts such as community based organisations, residential rehabilitation services and outreach services. This qualification refers to specific knowledge of a "clients with mental health issues" group and appropriate intervention processes applied in residential and community settings.

Also in the Community Services Training Package are three child protection qualifications: Certificate IV in Community Services (Protective Care), Diploma of Community Services (Protective Intervention) and the Diploma of Statutory Child Protection. These are delivered by TAFE and other Registered Training Organisations. The Community Services Training Package also provides national Certificate, Diploma and Advanced Diploma qualifications in the areas of children's services, residential support services, and non-residential services. In 2006-07 the Department of Education, Science and Training plans to fund the Community Services and Health Industry Skills Council to review the Community Services Training Package. Extensive stakeholder consultations occur during development and review to ensure that the Training Package is relevant to industry's needs and usable. Before the Training Package is endorsed for use, the developer must validate it with all relevant stakeholders and provide evidence of broad industry support.

Note that States and Territories are responsible for the quality of training and assessment, and for prioritising the allocation of funding for New Apprenticeships and other VET courses.

#### **Recommendation 4**

That awareness of child protection issues, the effects in the longer term for a child or young person in care and related issues be included as components of teacher education courses conducted at the tertiary level.

#### **Response:**

Universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government. Under the new funding framework that commenced in 2005, there will be Funding Agreements with each University, specifying the number of places across the discipline mix to be supported by the Australian Government. In reaching these agreements, every year the Department of Education, Science and Training will meet with each University to discuss their strategic directions and plans for course offerings. This would be the stage at which the possibility of offering this training might be discussed. However, Universities decide how the funds they receive from the Government and the tuition fees they receive

from their students will be used internally, as they are in the best position to allocate funds in a way that furthers their strategic direction in the provision of higher education.

The Australian Government will ensure that the Australian Vice-Chancellor's Committee is aware of the recommendations of the Senate Community Affairs Committee in this regard.

Other higher education providers are autonomous institutions, which determine their own teaching arrangements and course curricula.

In June 2004 the Minister for Education, Science and Training established the interim National Institute for Quality Teaching and School Leadership (NIQTSL), to raise the status, quality and professionalism of teachers and school leaders in Australia. The NIQTSL is undertaking the scoping of a national accreditation system for teacher education courses, which may include requirements for course content. The Department of Education, Science and Training will make NITQSL aware of the recommendation that teacher education courses should raise awareness of child protection issues, and the long-term effects of care. The House of Representatives Standing Committee on Education and Vocational Training is holding an inquiry into teacher education. This issue has been referred to that inquiry.

The Australian Government is committed to continuing working with the States and Territories wherever possible to support all children to receive an education in a safe and supportive environment. The Australian Government led the development of the *National Safe Schools Framework* (NSSF), which was endorsed by all Ministers of Education in July 2003. The NSSF is framed around six key elements providing a consistent national approach to countering bullying, harassment, violence, abuse and neglect in schools. In particular, it notes the importance of appropriate pre-service and in-service training for all staff about child protection issues, including: recognising and responding to indicators of child abuse; understanding the effects of abuse and neglect on the development of children and young people; and complying with agreed policies and procedures related to child protection.

#### **Recommendation 5**

The Commonwealth review the level of the Transition to Independent Living Allowance (TILA) to ensure that it is adequate to meet the needs of young people leaving care.

#### **Response:**

The Australian Government has recently expanded the eligibility criteria for the Transition to Independent Living Allowance (TILA) to include some young people transitioning from informal care arrangements including Indigenous Kinship Care and juvenile detention centres. As a result of the expansion of the eligibility criteria, it will be necessary to collect data on the uptake of TILA under the new criteria prior to considering any changes to the amount of TILA to be paid. It is anticipated that sufficient data on the uptake of TILA under the new criteria may be available in 2006. The Australian Government will consider the adequacy of the amount of TILA to be paid once that data is available.

#### **Recommendation 6**

The Commonwealth, State and Territory Governments consider new models for the schooling and education of children in out-of-home care, particularly children who have been classified as high-risk children, for example, schooling by specialist teachers trained in both education and child psychology.

#### **Response:**

The administration of schools and teachers is a matter for State and Territory Government and non-Government education authorities, who bear legal responsibility for the duty of care of students. Accordingly, the Government considers this to be primarily a matter for States and Territories given their constitutional responsibilities for schooling for all children and for child welfare. However, the Australian Government is committed to continuing working with the States and Territories wherever possible to support all children to receive an education in a safe and supportive environment. The Australian Government led the development of the *National Safe Schools Framework* (NSSF), which was endorsed by all Ministers of Education in July 2003. The NSSF is framed around six key elements providing a consistent national approach to countering

bullying, harassment, violence, abuse and neglect in schools. In particular, it notes the importance of relevant additional training to be provided for staff with specific roles in child protection, to provide support to students who are the subject of concerns about abuse or neglect.

In vocational education and training the Community Services Training Package provides qualifications with child psychology and child development competency units for people working in the child care in schools, community settings and out of home care. These qualifications include the Certificate III in Children's Services, Certificate IV in Out of School Hours Care, Diploma of Out of School Hours Care, Diploma of Children's Services, and the Advanced Diploma of Children's Services.

Support for teacher professional learning and development in relation to the NSSF is available to all jurisdictions under the Australian Government Quality Teacher Programme (AGQTP). The AGQTP could further provide particular professional learning for teachers of students with target learning needs such as children in out-of-home care, should the State and Territory education authorities identify a need.

The Australian Government also makes a very significant contribution to support the most educationally disadvantaged students through the Schools Grants element of the Literacy, Numeracy and Special Learning Needs (LNSLN) Programme. Over the 2005-08 quadrennium, the LNSLN Programme will provide an estimated \$2.1 billion to support the most educationally disadvantaged students. The School Grants element will contribute over \$1.87 billion nationally over the quadrennium and targets students with disabilities, students from a language background other than English and socio-economic disadvantage. State and Territory Government and non-Government education authorities are responsible for the administration of the Schools Grants element of the LNSLN Programme in their systems and schools. They have the flexibility to determine which students and schools have the greatest need and to allocate funds accordingly, while ensuring principles of equity, effectiveness and efficiency.

The Australian Government has provided \$5.3 million for the Partnership Outreach Education Model Pilot (POEM) to date and has agreed to provide a further \$2.6 million to extend the Pilot until December 2006. POEM provides an education and personal development programme targeting young people (aged 13 to 19) who are disconnected from mainstream schooling. POEM offers flexible accredited education and training options delivered in supported community settings and places emphasis on the acquisition of appropriate life skills. POEM is underpinned by partnerships and positive relationships between young people and their families, community service agencies, schools, government at all levels and business.

An evaluation of the Pilot released in 2004 found that POEM projects are strengthening the resilience and building the capacity of very troubled young people who, for a range of reasons, have disconnected from important social institutions such as family, schools and communities. Following the evaluation, the pilot projects will receive additional funding up till December 2006.

For the period 2002-2004, 4,110 young people were engaged in education, training and/or life skills programmes through the POEM Pilot.

#### **Recommendation 7**

That the strengthening of case management under the National Plan be progressed as a matter of priority, in particular to attempt to limit the turnover of caseworkers for children in out-of-home care.

#### **Response:**

As acknowledged in the Committee's Report, the National Plan for Foster Children, Young People and their Carers (the National Plan) already includes key areas for action such as the strengthening of case management through the sharing of best practice and the implementation of national standards for the transition planning for young people and children in foster care (see also Recommendation 8 below).

The development and implementation of the National Plan is a matter for all jurisdictions. Implementation is occurring over a two-year period, and a Community Services Ministers' Advisory Council working group led by the Australian Capital Territory is developing national standards

in the areas of recruitment, training, assessment, transition planning and core information available at placement. The Australian Government will continue to work actively with state and territory governments on the implementation of the National Plan.

**Recommendation 8**

That the introduction of national standards for transition planning, particularly when leaving care, under the National Plan be implemented as a matter of priority.

**Response:**

See the response to Recommendation 7 above. The Australian Government will continue to work actively with state and territory governments on the implementation of the National Plan.

**Recommendation 9**

That the National Plan for Foster Care, Young People and their Carers be extended to include the following:

- Training—  
investigate the implementation of national carer specific accredited training qualifications, for example, through Vocational Education Training;
- Uniform Data Collection—  
collection of data on the carer cohort;
- Support—  
examine ways of improving carer support including national standards for reimbursement of costs to cover the real costs of caring and payment of allowances;  
examine ways of improving foster carer retention; and  
develop models of response to allegations of abuse against foster carers and workers based on international best practice including articulation of carer's rights.

**Response:**

The development and implementation of the National Plan is a matter for all jurisdictions and is led by the Australian Capital Territory. The key areas for action and proposed outputs were agreed by all Community and Disability Ministers in 2004. The Australian Government will continue to work actively with state and territory govern-

ments on the implementation of the National Plan. Proposed outputs already include agreement on core competencies and nationally agreed training standards. The Australian Government has allocated \$50,000 for a scoping study, which will be undertaken by the Australian Institute of Health and Welfare, to evaluate the possible development of unit record based national data collection about foster carers.

**Recommendation 10**

That the State and Territory Governments consider the information in this report and use as a base on which to assist in providing more flexibility in accommodating and caring for children with disabilities, particularly where families can have their children at home. Such considerations would include an examination of a mix of living arrangements such as institutional care combined with options for children to return to families at particular times; week-day residential schools; and other options including various combinations of living at home with families, residential and respite care and foster care, along with a mix of carers and support. Where required, options could include the use of high-level residential care facilities and highly-trained professional staff and with an emphasis on ensuring that where necessary, the quality of care and actions of the staff are monitored.

**Response:**

This is a matter for state and territory governments to consider.

**Recommendation 11**

That State and Territory Governments enlist the expertise of policymakers in disability and other areas of social policy when formulating laws for children and young people with disabilities, so that legislative provisions take account of the special needs of children and young people with disabilities and are broad ranging in their application, including in relation to residential facilities and services for children with a disability as well as to the actions of advocates and advocacy services.

**Response:**

This is a matter for state and territory governments to consider.

**Recommendation 12**

That the Commonwealth, State and Territory Governments examine ways to break down the barriers to legal assistance for children and young people with disabilities and their families; make the law more easily understood for such groups; and harness the expertise of practitioners in social policy and other disciplines to formulate laws to better serve all people with disabilities.

**Response:**

This recommendation is similar to one made by the Productivity Commission following its review of the *Disability Discrimination Act 1992*. Recommendation 9.1 from the Commission's report was that:

The Attorney-General, in consultation with state and territory governments, should commission an inquiry into access to justice for people with disabilities, with a focus on practical strategies for protecting their rights in the criminal and civil justice systems.

The Government accepted this Productivity Commission recommendation in principle and referred to the Federal Civil Justice System strategy paper released in March 2004. The strategy paper includes strategies for improving access to the civil justice system for people with disability.

Many of the issues relating to access to justice for people with disability in the civil and criminal justice systems are matters that fall within the jurisdiction of the states and territories. Therefore the Attorney-General agreed to write to his state and territory counterparts to draw their attention to the Productivity Commission report and its recommendations.

**Commonwealth legal aid**

The Australian Government funds state and territory legal aid commissions to provide legal assistance to disadvantaged Australians in matters which arise under Commonwealth law. The services provided include information, community legal education and publication, legal advice and minor assistance, duty lawyer, primary dispute resolution and legal representation. Applicants for a grant of legal representation must satisfy the eligibility criteria, which include meeting the relevant Commonwealth legal aid guideline and means and merits tests. The Commonwealth pri-

orities for legal aid, which are outlined in clause 6 of the legal aid agreements between the Australian Government and state and territory governments and legal aid commissions, include a special circumstance provision. This enables legal aid commissions to treat, as a Commonwealth priority, matters where the applicant has an intellectual, psychiatric or physical disability or is a child.

Under the Commonwealth family law, legal aid guidelines commissions must give the highest priority to matters where a child's safety is at risk. In addition, the family law legal aid guidelines provide for commissions to make grants of legal assistance for the separate representation of children in court proceedings.

The Government notes that assistance for young people is also a priority for legal aid commissions, with some having specialist youth legal services. The Under 18s Hotline is a legal advice line which has been set up by Legal Aid NSW. Qualified, experienced criminal lawyers with expertise in juvenile justice are available to provide advice to all young people who have committed, or are suspected of committing, a criminal offence. This service operates Monday to Friday, 9 am to midnight, and provides 24-hour coverage on weekends and public holidays.

Legal aid commissions in Victoria, Queensland and Western Australia provide specialist services for children and youth who have to appear before the courts or are involved in legal cases. In Queensland, applicants who are 17 years or younger are not subject to a means test to qualify for legal aid. In a number of other jurisdictions, the means test is not applied to the income and assets of parents of applicants under 18 years of age unless the applicant is still financially dependent on his/her parents.

**Commonwealth community legal services program**

The Australian Government funds a number of services through the Community Legal Services Program which are targeted at meeting the legal needs of young Australians. In 2004–05 the Australian Government provided funding of \$0.527million to six youth law centres, including the National Children's and Youth Law Centre.

**Indigenous legal aid**

With respect to young Indigenous Australians, the Government funds a number of Indigenous-specific providers of legal aid services. Given that the Indigenous population has a much younger age structure than the non-Indigenous population, a significant part of their work involves providing legal assistance to Indigenous youth. The locations of Indigenous-specific providers (across a range of rural and remote as well as urban settings) helps ensure that their services reach Indigenous communities. Providers are required to give priority to Indigenous individuals—including children and youth—whose physical safety or cultural or personal well-being is at risk, or who would be significantly disadvantaged if assistance was not provided.

**Recommendation 13**

That the Australian and/or State Law Reform Commissions conduct research among legal practitioners to ascertain their knowledge and expertise in areas of disability and the law. The outcome of such research would highlight the need to introduce measures to educate lawyers so that they are better able to advise clients about laws affecting the lives of people with a disability, particularly in explaining the impact of certain legislative provisions and common law decisions for children and young people with disabilities. Such investigation might also include examining ways to encourage legal practitioners to offer pro bono services to children and young people with disabilities, who cannot afford legal fees.

**Response:**

The Australian Law Reform Commission's role is to make recommendations for legislative change. Its functions are set by statute and involve reviewing laws for the purpose of systematic development and reform. It can consider proposals for making, consolidating or repealing laws, and for making the law uniform across Australian jurisdictions.

The Senate Committee's recommendation is focused on education and changing attitudes, which are outside the Australian Law Reform Commission's functions. It would be more appropriate for these tasks to be undertaken by bodies such as the Law Society in each state and territory.

**Recommendation 14**

That, where applicable, all jurisdictions amend their *Disability Services Acts* to ensure that terms relating to people with a disability, specifically include children and young persons, as well as adults. This may require additions to legislation to include principles and applications for children and young people with a disability.

**Response:**

One guiding principle in commenting on Recommendations 14 and 15 is that of human rights, and the understanding that Australians of all ages can reasonably expect their human rights to be fully observed and that they will be treated equally and without discrimination. This expectation is supported in law, both at home and internationally. A second guiding principle is that the presence of a disability should in no way reduce the application of human rights—either in terms of the individual's expectation, or in terms of a third party's responsibilities towards the individual.

The Australian Government supports Recommendation 14 in seeking to ensure that relevant jurisdictional legislation is amended so that it relates to all people with disability—not only to adults, but to children and young persons as well.

**Recommendation 15**

That the Commonwealth Government encourage the NSW Government to take note of the evidence presented to this inquiry and proclaim ss.155 and 156 of the *Children and Young Person's (Care and Protection) Act 1998*, so that all children with disabilities in care, including those who have been voluntarily placed, have broad-ranging legislative protection and monitoring of their care.

**Response:**

For the reasons (principles) stated in support of Recommendation 14, the Australian Government supports Recommendation 15 in that it seeks to extend to all children with disability in care the legislative protection and monitoring of their care.

**Recommendation 16**

That the Commonwealth Government take note of the merits of restorative justice programs in



helping to keep young people out of the juvenile justice system (and later gravitation to the adult prison system), and increase its involvement, support and funding for such programs, to ensure that the coverage of such programs across Australia is wider than is presently the case. It is recommended that the Commonwealth Government introduce restorative justice programs that would assist in reducing the high numbers of indigenous youth in juvenile justice centres.

**Response:**

Criminal justice and corrections is primarily a state and territory responsibility. In accordance with the principles agreed to by all governments at the Council of Australian Governments (COAG) in June 2004, the Australian Government is committed to working with the states and territories and with Indigenous people to address the over-representation of Indigenous youth in the juvenile justice system.

The Australian Government Attorney-General's Department (AGD) supports a range of Indigenous justice initiatives, several of which target the needs of Indigenous youth. The Government recognises the importance of supporting restorative justice initiatives. The Prevention, Diversion and Rehabilitation Program (PDRE), administered by the Indigenous Law and Justice Branch, currently funds around 130 community level projects that are intended to help reduce Indigenous people's adverse contact with the justice system. In addition to night patrols and prisoner support services, the program funds a range of projects for at-risk children and youth as well as restorative justice initiatives.

The Government recognises that improved outcomes for Indigenous youth in areas such as health, education and employment are likely to lead to improved justice outcomes as well. AGD is therefore working with other departments and agencies under the Government's new arrangements for the administration of Indigenous affairs to promote developments across all these areas.

**Recommendation 17**

The Commonwealth establish a national commissioner for children and young people to drive a national reform agenda for child protection. In doing so, that national commission should:

- bring together all stakeholders, including States and Territories, child protection professionals and researchers and peak organisations, to establish an agenda for change including the identification of key areas of concern;
- encourage the development of innovative models within the child protection system; and
- encourage State and Territory Governments to work toward harmonising child protection legislation, including agreement on common definitions.

**Response:**

As advised in response to Recommendation 8 in the *Forgotten Australians* report, the Australian Government does not support the establishment of a National Children's Commissioner. A Children's Commission or similar office may be appropriate for state and territory governments to establish, given the primary responsibility the states and territories have for child welfare, and that decision rests with them. NSW, Queensland and Tasmania have Children's Commissioners, and they are regarded as performing valuable functions. The ACT Government also plans to have a Children's Commissioner. However, the Australian Government does not believe there would be any benefit in having a National Children's Commissioner, as this would duplicate processes already in place. The Australian Government does not seek to influence state and territory governments regarding the establishment of state or territory children's commissions. This is a decision for each state or territory government.

The Australian Government considers that the best outcomes for children will be achieved if the Australian Government and the states and territories all work together. On 28 July 2004, the Community and Disability Services Ministers' Conference (CDSMC) endorsed a new dialogue between the states and territories and the Australian Government to examine a national approach to protecting vulnerable children. Under the auspices of the CDSMC, a Community Services Ministers' Advisory Council (CSMAC) working group is currently exploring a National Approach for Child Protection. The national approach will

facilitate the development of common frameworks, definitions and terminologies for child protection and prevention and early intervention.

In addition, as noted in the response to Recommendation 1 of this report, the Australian Government will convene a National Child Protection Summit. The National Summit will bring together child protection practitioners, researchers, and policy makers from all jurisdictions to identify a practical way forward in developing a national approach to child protection in Australia.

#### **Recommendation 18**

That the Commonwealth engage the Productivity Commission to undertake an evaluation of out-of-home care to better determine the real costs to the community of out-of-home care.

#### **Response:**

As the state and territory governments have primary responsibility for providing out-of-home care services, the Australian Government will consult with them on this proposal. The issue of an evaluation and review body would need to be considered as part of this consultation.

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### **GOVERNMENT RESPONSE TO THE SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE REPORT ON THE INQUIRY INTO THE OFFICE OF THE CHIEF SCIENTIST**

#### **INTRODUCTION**

The Government welcomes the acknowledgement in the Senate Employment, Workplace Relations and Education References Committee Report that the inquiry “has not questioned Dr Batterham’s standing in Australia and overseas as a highly respected research scientist. Dr Batterham’s professional record is beyond reproach” (p xvi) and further, the finding that “The committee does not believe there is any evidence to demonstrate either a direct or indirect pecuniary conflict of interest, or a real conflict of interest arising from the Chief Scientist’s role in PMSEIC” (p 16).

#### **RECOMMENDATIONS**

##### **Recommendation 1:**

The committee recommends that the conflict of interest guidelines included in the Australian Pub-

lic Service Code of Conduct should be reviewed to ensure that the broader conflict of interest concepts examined in this report can be addressed more transparently and rigorously.

The Government does not support this recommendation.

The Australian Public Service Code of Conduct, in subsection 13 of the *Public Service Act 1999* (the PS Act), does not include guidelines. Rather, it sets out the obligation that APS employees have to disclose and take reasonable steps to avoid conflicts of interest. The relevant provision states that:

an APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment (subsection 13(7) of the PS Act).

*APS Values and Code of Conduct in Practice: Guide to official conduct for APS employees and Agency Heads* (<http://www.apsc.gov.au/values/conductguidelines.htm>) was published in August 2004 and contains guidance on managing conflict of interest (specifically, Chapter 9). The guide lists a range of issues that agency procedures on managing conflicts of interest could cover, and makes clear that it is the Agency Head’s responsibility to determine what action should be taken where there is a conflict. It notes that, while avoiding a conflict is best, it is not always practical.

The guide is not prescriptive. As stated in the introduction, it is intended to be a guide not a rulebook. There will always be a need for judgement on what is reasonable in seeking to avoid conflicts of interest and deciding on the best approach is often not straightforward. Agency Heads are responsible for determining what action should be taken where there is a conflict of interest and need to tailor solutions to the specific circumstances.

##### **Recommendation 2:**

The committee recommends that in view of the responsibility and potential workload attached to the Office of the Chief Scientist, and in the light of the potential for conflict of interest associated in particular with a part-time Chief Scientist, the position of the Chief Scientist should be full time.

The Government does not support this recommendation.

The solution to the problem of any potential conflict of interest is effective management. There are a number of provisions in the Chief Scientist's contract with the Australian Government to manage the potential for conflict of interest. The Chief Scientist is also required to comply with the rules of the various bodies of which he is a member.

The Government determines whether the appointment of the Chief Scientist should be full-time or part-time in light of the requirements of the position at the time of the appointment and the best arrangements for the chosen appointee from time to time.

**Recommendation 3:**

The committee recommends that guidelines, codes of conduct and procedures on dealing with potential and actual conflicts of interest, applying to holders of public office in the Australian Government, should be similar and consistent across all government agencies and bodies.

The Government supports the underlying objective of this recommendation.

There should be effective arrangements for dealing with conflict of interest for all holders of public office that are appropriate to each body or office. Consistent with the response to Recommendation 1, the Government considers that procedures should be tailored to the circumstances of each agency or body.

In relation to statutory authorities, the Government has endorsed the relevant recommendations of the report on the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig Review), including that the Government "should clarify expectations of statutory authorities by Ministers issuing Statements of Expectations to statutory authorities; by statutory authorities responding with Statements of Intent for approval by Ministers; and by Ministers making public Statements of Expectations and Intent". The Government has endorsed the recommendation that Statements of Expectations and Intent should "include those values central to the success of the authority, including those relating to its relationships with outsiders". The Values and Code of Conduct for the APS should be seen

as a useful starting point for the development of such statements.

**Recommendation 4:**

The committee recommends that the position of Chief Scientist should be appointed under public service conditions. In doing so, it also recognises the public education role of this position, and the possibility, given that science and scientific research is contestable, that the occupant of the position may express controversial views. The terms of the appointment should be such that the Office of the Chief Scientist will be subject to public accountability equivalent to that applying to other senior public servants.

The Government does not support the basis for this recommendation.

The contract between the former Chief Scientist and the Minister required the Chief Scientist to act in accordance with the APS Values and Code of Conduct contained in sections 10 and 13 of the PS Act. The former Chief Scientist, Dr Robin Batterham, gave evidence to, and answered questions at, the Committee's public hearings. The Chief Scientist has been fully accountable to the Minister for Science for his actions. Appointment of the Chief Scientist under the PS Act may be appropriate in some circumstances and the Government may consider it as an option in the future.

**SUPPLEMENTARY**

**RECOMMENDATION—Senator Natasha Stott Despoja**

That the position of the Chief Scientist is a statutory appointment and criteria for the appointment and the role of Chief Scientist are further developed in consultation with the science community.

The Government does not support this recommendation.

The Chief Scientist is appointed on the basis of knowledge, skills and experience. There has been no question about the relevance of the knowledge, skills and experience of any Chief Scientist appointed to date.

The Government sees no advantage in the appointment of the Chief Scientist on a statutory basis.

**Review of administration and expenditure for ASIO, ASIS and DSD (Number 3)****Government Response****Recommendation 1**

That the Government give consideration to alternative mechanisms to address the Committee's concerns regarding separate financial statements by DSD which underpinned the Committee's recommendations in the first review of administration and expenditure.

**Government response:**

This proposal has been considered but the conclusion is that it is not practical for DSD to provide a separate full set of audited financial statements. DSD is an administratively integrated component of the Defence portfolio. Australia's defence capability is based upon the interdependencies of many component capabilities, including the intelligence capabilities of DSD. The Defence budget is managed to maintain the flexibility to direct, and redirect, resources to meet Government directions and maximise operational effectiveness.

DSD is not a separate Commonwealth entity. Unlike ASIO and ASIS which are statutory bodies, it is a part of the Department of Defence and, as a result, is unable to provide a complete set of separate financial statements to the Australian National Audit Office for audit, in accordance with the Finance Minister's Orders made under the Financial Management and Accountability Act 1997. To meet the requirements of the Committee to review the administration and expenditure, however, DSD provided the Committee with a copy of its annual financial information for 2002-2003, and intends to do so for 2003-2004 and subsequent years. The financial information submitted to the Committee by DSD is an accurate depiction of the resources managed within DSD on behalf of Defence.

**Recommendation 2**

That the Government give further consideration to providing the Committee with the classified annual reports of ASIO, ASIS and DSD.

**Government response:**

The Government has reviewed the question of access by the Committee to the classified annual reports of the intelligence and security agencies.

These reports contain very sensitive details on the agencies' operational activities. Access to these classified reports would be inconsistent with the functions of the Committee as set out in s.29 of the Intelligence Services Act 2001. The Government recognises the Committee's need for documentary material to assist in reviews of agencies' administration and expenditure, and has agreed that extracts from annual reports covering administration and expenditure will, in future, be provided to the Committee. In the case of ASIO, such information is already provided in that organisation's unclassified annual report tabled in parliament. It needs to be noted that classified briefings and information have been, and will continue to be, provided to the Committee on a case-by-case basis in relation to specific issues.

**Recommendation 3a**

The Committee recommends that appropriate legislation be enacted that would require the Auditor-General to provide the Committee with the annual audits of ASIO, ASIS and DSD and further, that there be a requirement for the Auditor-General to provide any additional information that may be relevant to the Committee's review of administration and expenditure.

**Government Response**

The Auditor-General undertakes financial statement audits of ASIO and ASIS under Section 11 of the Auditor-General Act 1997 ('the Act'). DSD is not a prescribed agency and the financial operation of DSD is incorporated as part of the financial reporting of the Department of Defence. In undertaking the financial statement audit of the Department of Defence, the ANAO broadly considers DSD's financial matters.

The Government notes that, in relation to the Committee's review of administration and expenditure, the Auditor-General is already available, when required, to respond to parliamentary committee questions in relation to audit work ANAO has undertaken. In this context, the Committee is free to request, from the Auditor-General, details for the agencies' annual audits as well as any additional information that may be relevant to its review of administration and expenditure, consistent with the provisions of Section 37 of the Act.

The Act specifies the type of information that the Auditor-General can provide in a public report or at a parliamentary committee meeting. Section 37 of the Act provides for the Auditor-General not to include particular information in a public report if:

- he is of the opinion that disclosure of the information would be contrary to the public interest; or
- the Attorney-General has issued a certificate to the Auditor-General stating that, in the opinion of the Attorney-General, disclosure would be contrary to the public interest for any one of a number of specified reasons.

Sub-section 37 (2) specifies that it would not be in the public interest to disclose information that '... would prejudice the security, defence or international relations of the Commonwealth'. The issue of providing information to parliamentary committees is similarly limited by sub-section 37 (3) of the Auditor-General Act. This provision states that if the Auditor-General is not able to include particular information in a public report because it would be contrary to public interest, then it cannot be required, and is not permitted to, disclose the information to, among other bodies, a joint committee of both Houses of Parliament.

In view of the above, the Government considers that legislative amendments along the lines proposed by the Committee are unnecessary because under the arrangements currently in place, the Committee is at liberty to request annual audits and any additional relevant information.

#### **Recommendations 3b and 3c**

The Committee recommends that, in consultation with ASIO, ASIS and DSD and with the Committee, the Auditor-General should develop a rolling program of performance audits. Such a program of performance audits should provide comprehensive coverage of agency administration.

In view of the special requirements relating to scrutiny of ASIO, ASIS and DSD by this Committee, the Committee further recommends that consideration be given to amendment of Section 10 of the Auditor-General's Act to reflect the importance of the ANAO in assisting this Committee to discharge its responsibility to review the expenditure and administration of ASIO, ASIS

and DSD through an on-going program of performance audits.

#### **Government response:**

These two recommendations are inter-related. With regard to recommendation 3b, the Auditor-General selects audits for inclusion in the performance audit work program having regard to the audit principles of the Parliament, as required by Section 10 of the Act, and the key risks and challenges facing the Commonwealth public sector, within the context of the resources available to the ANAO. The audit work program is also developed on the basis of materiality and sensitivity, which allows ANAO resources to be allocated to priority topics. The Government considers that a rolling program, on a standing basis, of audits of ASIS, ASIO and DSD is likely to undesirably constrain the flexibility of ANAO's audit program.

In developing its performance audit work program for the subsequent financial year (recommendation 3a), the ANAO is required by legislation to consult with the Joint Committee of Public Accounts and Audit (JCPAA) which, in turn, consults with the other parliamentary committees for their views which the JCPAA takes into account in finalizing its guidance for this element of ANAO's work program. The current process, consequentially, already provides a standing mechanism for all parliamentary committees to convey their priorities to the Auditor-General through the JCPAA. The Government believes that an amendment to the Audit Act as proposed is, accordingly, unnecessary and could disrupt the established and well-functioning mechanism for ANAO engagement with the Parliament, primarily through the JCPAA.

The issue of not disclosing information that would be contrary to the public interest, as discussed above in relation to recommendation 3a, also applies in relation to recommendation 3b and 3c.

#### **Recommendation 3d**

The Committee further recommends that appropriate legislative provision should be made to require the Auditor-General to provide the Committee with copies of classified performance audits in relation to ASIO, ASIS and DSD.

**Government response:**

Under the arrangements currently in place, which enable the Auditor-General, when required, to respond to parliamentary questions in relation to audit work the ANAO has undertaken, the Committee is at liberty to request copies of classified performance audits consistent with the provisions of Section 37 of the Auditor-General Act 1997. Accordingly, the Government does not consider that any legislative amendments, along the lines proposed, are required.

**Recommendation 4**

The Committee recommends that consideration be given, as appropriate, to greater liaison between the IGIS and the Commonwealth Ombudsman (and State Ombudsman), including the development of a memorandum of understanding or protocol governing possible joint reviews of combined ASIO/police operations.

**Government response:**

The Government is favourably disposed to settling an MOU between IGIS and the Ombudsman which would deal with the issue of abutting responsibilities. Such an MOU would be negotiated in the context of a planned amendment to section 16 of the IGIS Act, to enable the Inspector-General to consult formally with the Ombudsman.

**Recommendation 5**

The Committee recommends that the Government provide the Committee with a copy of the report on the outcomes of the ASIO polygraph trial as soon as it is completed.

**Government response:**

The Government expects to receive from ASIO, during 2005, a classified report on the outcomes of the polygraph trial. Favourable consideration will be given to the option of ASIO providing the Committee with a briefing on the outcome of the trial.

**Recommendation 6**

It is the view of the Committee that the Chair of the Committee or members nominated by the Chair should be invited by ASIO, ASIS and DSD to attend orientation sessions with new recruits thereby gaining a greater understanding of the orientation process and to provide opportunities

for new recruits to be advised of the Committee's role and responsibilities.

**Government response:**

The Government agrees that new recruits to the intelligence and security agencies be briefed on the Committee's role and responsibilities through the participation of the Committee Chair or other members in AIC training sessions.

**Recommendation 7**

The Committee recommends that ASIS produce an unclassified version of its Code of Conduct and that this be tabled in Parliament by the Minister for Foreign Affairs, be sent out to all ASIS applicants, and be made publicly available on request.

**Government response:**

The Government does not agree that the ASIS Code of Conduct should be tabled in Parliament. The Code of Conduct is currently being reviewed with a view to an unclassified version being placed on the ASIS website for public access.

**Recommendation 8**

The Committee would like to encourage all intelligence agencies to undertake regular staff surveys and, if they are not already doing so, to make use of suggestion boxes that allow for anonymous feedback by staff. The Committee recommends that at each review of administration and expenditure, the results of staff surveys are made available to the Committee for examination.

**Government response:**

It is already standing policy in the intelligence and security agencies to conduct regular staff surveys. The Government agrees that the Committee be briefed on outcomes, relevant to its mandate, from these surveys during each review of administration and expenditure. Because of the operational sensitivity of some information, it would not be appropriate to provide the survey results in full.

**Recommendation 9**

That a review be undertaken on the extent of public reporting across all the intelligence agencies overseen by the Committee.

**Government response:**

The need for a Committee-resourced review into public reporting and accountability is a matter for the Committee to determine. The Government would be prepared to have agencies contribute any details relevant to the Committee's inquiry, subject to operationally-sensitive information not being disclosed.

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**REPORT OF THE PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND: EFFECTIVENESS OF THE NATIONAL NATIVE TITLE TRIBUNAL IN FULFILMENT OF THE COMMITTEE'S DUTIES PURSUANT TO SUBPARAGRAPH 206(d)(i) OF THE NATIVE TITLE ACT 1993****Government Response**

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (the Committee) is required under subparagraph 206(d)(i) of the *Native Title Act 1993* to inquire into and report to both Houses of the Parliament on the effectiveness of the National Native Title Tribunal (the Tribunal).

The Committee's Report on its inquiry into the effectiveness of the National Native Title Tribunal was adopted unanimously by the Committee and was tabled in both Houses of Parliament on 4 December 2003.

The Australian Government welcomes the Report.

**The Committee's recommendations**

The Committee's Report makes nine recommendations, the majority of which relate to the manner in which the Tribunal and the Native Title Registrar carry out statutory functions under the Native Title Act. Accordingly, this response to the Report incorporates advice provided to the Government by the Tribunal and the Registrar in relation to those recommendations.

**Recommendation 1**

**The Committee recommends that the Registrar or his delegate, in the written reasons for decisions taken in the registration tests include for unsuccessful applications, a brief plain**

**English explanation as to the decision making process for the application.**

The Government accepts this recommendation. The Native Title Registrar has advised that a plain English explanation as to the decision-making process is now being provided in the written reasons for applications that are unsuccessful under the registration test. This information is being provided in addition to all information currently provided to unsuccessful applicants. A similar explanation of the decision-making process is now being provided to applicants who are successful in having their native title claim registered as a result of the registration test.

**Recommendation 2**

**The Committee recommends that the Registrar, in consultation with the Native Title Representative Bodies, should give consideration to notifying the native title parties of outcomes from the Tribunal.**

The Native Title Registrar has considered this recommendation but notes that section 203BG of the Native Title Act places specific statutory obligations on Native Title Representative Bodies with respect to notification. These obligations would continue to exist as a matter of law, even if the Native Title Registrar were to assist. The Government is not presently minded to accept this recommendation.

**Recommendation 3**

**The Committee recommends, that at the completion of the terms of the current members of the Tribunal, the Government gives consideration to the appointment of an increased number of indigenous members in accordance with the provisions of the Act.**

The Government notes this recommendation. The Government recognises the benefit of having indigenous people involved in the work of the National Native Title Tribunal and welcomes applications for Tribunal membership from indigenous people. However, the essential criterion for appointment to the Tribunal has been and should continue to be one of merit, having regard to the criteria for appointment in the Native Title Act.

In August 2004 Mr Robert Faulkner, an Anaiwon man from northern New South Wales, was ap-

pointed as a part-time member of the Tribunal. His term will not expire until August 2009. Dr Gaye Sculthorpe, also an Indigenous member, was appointed to the Tribunal in February 2000. Originally a part-time member, Dr Sculthorpe was appointed as a full-time member on 2 February 2004. Dr Sculthorpe's term will not expire until February 2008.

#### **Recommendation 4**

**The Committee recommends that ATSIIS, to assist Native Title Representative Bodies to implement a performance based assessment scheme, consult with them to develop templates as models for their 2005-2006 (and out years) budget proposals and the management of work priorities.**

The Government accepts this recommendation. On 1 July 2004 the ATSIIS Native Title and Land Rights program was incorporated into the then newly created Office of Indigenous Policy Coordination (OIPC) within the Department of Immigration and Multicultural and Indigenous Affairs. OIPC advises that it has consulted with Native Title Representative Bodies and developed the relevant template.

#### **Recommendation 5**

**The Committee recommends that the National Native Title Tribunal continue to explore partnerships to develop programs aimed at capacity building within organisations involved in the native title process.**

The Government notes this recommendation and the importance of the Tribunal achieving its core statutory functions. Capacity building is not a role solely for the Tribunal. For example, OIPC runs a capacity building program for Native Title Representative Bodies. Capacity building programs involving the National Native Title Tribunal must be complementary to the work of OIPC and other organisations to ensure the greatest benefit for the native title system. The Tribunal has advised that, consistent with its statutory functions, it will continue to look for partnership opportunities to develop capacity-building programs within organisations involved in the native title process. Those capacity-building programs will be linked closely to assisting parties and their representatives to

take an effective part in processes involving the Tribunal.

#### **Recommendation 6**

**The Committee recommends that a further inquiry be conducted into the work demands and funding needs of Native Title Representative Bodies.**

The Government notes that the Committee has initiated an inquiry into the capacity of Native Title Representative bodies to discharge their responsibilities under the Native Title Act. The Government looks forward to the Committee's report from the inquiry.

#### **Recommendation 7**

**The Committee recommends that within the next 12 months and on both a national and state/territory basis, the National Native Title Tribunal should develop a broad framework for setting priorities that includes consultation with each of the "stakeholders".**

The Government notes this recommendation. The Government supports the Committee's wish to see the development for broad frameworks for setting priorities in dealing with native title matters and notes that the Federal Court has the primary role in the management of applications and the setting of priorities with respect to cases. The Tribunal has advised that it participates in forums in every State and Territory where it discusses priority setting with the Federal Court and principal parties to the proceedings. The Tribunal will continue to take part in, or initiate, these discussions.

#### **Recommendation 8**

**The Committee recommends that the National Native Title Tribunal should, within the time limits set by the Native Title Act 1993, seek to reduce the time lines associated with the registration of Indigenous Land Use Agreements.**

The Government accepts this recommendation. The Tribunal advises that it is seeking to improve its performance standards for registration of Indigenous Land Use Agreements (ILUAs). The Tribunal is considering a proposal to revise its current performance indicator from 70 to 90 per cent of ILUA applications registered within six months of lodgement (including the three month



notification period) where no objection or bar to registration is lodged.

#### **Recommendation 9**

**The Committee recommends that the National Native Title Tribunal amend the guidelines on acceptance of expedited procedure objection applications to include a provision that a registered native title party wishing to lodge an objection may discuss, within the time limits set by the Native Title Act 1993, issues related to compliance with the appropriate tribunal member.**

The Government accepts this recommendation. The Tribunal advises that it is already common practice for registered native title parties to discuss objections and requirements for acceptance with the Tribunal. For example, when an objection is lodged before the closing date and is not in a suitable form to be accepted, then the Tribunal contacts the objector to point out the defects and to provide an opportunity for rectification. The Tribunal has accepted the Committee's recommendation and amended its guidelines to reflect the current practice that discussions may be held with a Tribunal member.

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### **NINETEENTH REPORT OF THE PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND: SECOND INTERIM REPORT FOR THE SECTION 206(d) INQUIRY: INDIGENOUS LAND USE AGREEMENTS**

#### **Government Response**

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (the Committee) is required under paragraph 206(d) of the *Native Title Act 1993* (the NTA) to inquire into and report to both Houses of the Parliament on a range of issues related to the workings of the native title system, including the operation of the NTA on land management.

The Committee indicated in its fifteenth report that it would inquire into the operation and effectiveness of the Indigenous Land Use Agreement (ILUA) provisions of the NTA (as amended by the *Native Title Amendment Act 1998* (the 1998

amendments)), in carrying out its duty to report on the effect of the operation of the NTA on land management. The Committee's Nineteenth Report, *Indigenous Land Use Agreements* (the Report), was adopted unanimously by the Committee and tabled in both Houses of the Parliament on 26 September 2001.

The Australian Government welcomes the Report, and notes with appreciation the valuable contribution made by the Committee in its analysis of the ILUA provisions in the NTA. The Report provides a wide-ranging consideration of the rationale, structure and function of those provisions and the experiences of parties to date in negotiating such agreements.

#### **The Committee's conclusions**

The principle that agreements provide the most effective way of achieving lasting outcomes is of central importance to the NTA. This consensus-based approach was manifest in the processes for the recognition and future protection of native title established by the NTA as originally enacted and carried on in the amendments made to the NTA in 1998, most of which came into effect on 30 September 1998.

Prior to the 1998 amendments there was general consensus among government, Indigenous groups and other land users on the need to improve the agreement provisions in section 21 of the original Act to provide more flexibility and certainty in agreement-making. The ILUA provisions were included in the 1998 amendments to address these objectives.

The Report recognises the inadequacy of the provisions in the original Act and the support for the new ILUA provisions. After examining evidence of the first three years of experience with the new regime, the Committee concludes with a strong endorsement of the ILUA system:

The ILUA system was developed after broad consultation and enjoyed widespread support at the time of its introduction in September 1998. ILUAs were seen to offer a practical, quicker and more cost-effective means of resolving competing land uses in the native title context at a local level. About three years of experience have demonstrated that ILUAs have the capacity to live up to their promise,

with a number of agreements now registered, and many more in the process.<sup>1</sup>

The Government welcomes this conclusion. It also notes the Committee's specific findings, notably that ILUAs<sup>2</sup>:

- offer greater certainty to all parties
- are cost-effective
- engage stakeholders in a positive dialogue, laying a positive groundwork for future relationships between all relevant groups<sup>3</sup>
- offer the potential to address numerous practical issues that litigation cannot resolve, such as the provision of jobs, improved infrastructure or better services, and
- allow local communities to develop their own solutions, thereby acting to strengthen local communities in the process.

These conclusions are complemented by other positive findings within the main body of the Report. For instance, the Committee considers concerns about the provisions in the NTA for the registration of ILUAs. On examination of the evidence, it finds that:

The Committee is of the view that the registration provisions for ILUAs contained within the NTA provide a fair and workable balance between the needs of parties to complete commercial transactions, and the need to ensure Indigenous interests have been adequately secured; this is the case, given that, upon registration, an ILUA binds all native title holders in relation to the area the subject of the agreement.<sup>4</sup>

Similarly, on the mechanism for deregistration in the NTA, the Report concludes:

Given that successive native title parties are bound by the terms of an ILUA about which they potentially had no say, the Committee is of the view that the process of deregistration in the NTA provides a fair balance between the interests of non-native title parties and native title parties.<sup>5</sup>

The Government endorses these findings.

Since the Committee finalised the Report, the ILUA regime has continued to mature. As at 10 October 2005 there were 215 registered ILUAs with a further 21 having been lodged or in the

notification and registration process. This compares with the 26 registered agreements and 13 in the notification or lodgement stages reported by the Committee as at 20 July 2001<sup>6</sup>. Such figures reflect the growing support which the ILUA process enjoys from those involved in native title negotiations, offering an effective way of achieving lasting outcomes through agreement.

### **The Committee's recommendations**

The Report depicts an emerging and maturing system that is 'able to deliver consensual, certain and flexible outcomes for parties'<sup>7</sup>. Consequently, the Committee's recommendations reflect problems of a technical rather than substantive nature. It is notable that, apart from resourcing concerns, the recommendations touch less upon actual problems experienced with the operation of the ILUA regime than hypothetical problems that could arise in the future.

It should also be noted that several of the areas of concern highlighted in the Report, such as the *Guidelines for the Provision of Financial Assistance by the Attorney-General in Native Title Cases* and the effectiveness of Prescribed Bodies Corporate are being further explored in the Government's recently announced package of reforms to the native title system.

The response deals with the Report's eight recommendations under three headings: ILUAs as contracts; funding issues; and the National Native Title Tribunal (NNTT).

### **1. ILUAs as Contracts**

The Committee examined the interaction of contract law principles and the statutory regime for ILUAs under the NTA, identifying areas in which it considered there to be need for statutory clarification. The focus of this examination was on the registration and deregistration provisions contained in Division 3 of Part 2 and Part 8A of the NTA.

The Government is mindful of the need to monitor the operation of the relatively new ILUA provisions and the way they interact with the general law. The Committee's Report and recommendations will assist in providing direction for this process.

**The policy objectives underlying the ILUA amendments**

The ILUA provisions must be viewed in the context of the shortcomings that they were designed to address. As noted in the Attorney-General's Department's submission to the Committee, section 21 of the original Act could not guarantee the validity of acts authorised by an agreement. Furthermore, as section 21 agreements were subject to the ordinary principles of privity in contract law, it was not possible to guarantee that all native title holders would be bound by an agreement.

The ILUA provisions of the 1998 amendments that addressed these shortcomings were informed by the four policy objectives of providing certainty, flexibility, fairness and transparency. The provisions relating to negotiation, notification, registration and deregistration were designed specifically to provide an appropriate balance between these objectives.

**Principles reflected in the negotiation, notification and registration of ILUAs**

Certainty is achieved by prescribing specific legal outcomes from the act of registration of an ILUA. Notably, the NTA provides that a future act done under an ILUA while it is registered is valid, and that a registered agreement is binding on all native title holders, whether or not they are parties to the agreement<sup>8</sup>. The parties to the ILUA are therefore able to carry out activities to which they agreed in the knowledge that the validity of the act is guaranteed by the registration of the agreement.

Added certainty is provided by ensuring that the validity of a future act carried out under a registered ILUA will not be affected by later deregistration, whatever the ground or reason. For instance, any licence or permit granted pursuant to a registered ILUA will not be invalidated if the ILUA is subsequently removed from the register through the operation of section 199C. Nor will the validity of the future act be affected by the contract being rescinded or terminated at general law. This interpretation of the operation of the provisions reflects Parliament's intentions<sup>9</sup>, and is accepted by the Committee as the 'most likely' outcome<sup>10</sup>.

The certainty that registration provides is balanced by provisions ensuring fairness to all parties. In particular, fairness to native title holders is an important underlying objective in the NTA, given the beneficial nature of the legislation. As upon registration an ILUA binds all native title holders in the relevant area, the ILUA provisions are designed to ensure that every opportunity is made available to native title holders to participate in its negotiation.

The negotiation and registration procedures were specifically designed to reduce potential inequalities in negotiating power between parties. For instance, the NTA provides that the Native Title Representative Body (NTRB) for an area may be a party to the ILUA or, if not, must at least be notified of the native title parties' intention to enter into the agreement, thus affording an opportunity for the NTRB to offer advice and support<sup>11</sup>. All parties to an agreement must indicate expressly that they agree to the registration of the agreement and thus to the consequences that will flow from registration<sup>12</sup>. Public notification of the application is required to register an agreement. Those who hold or may hold native title in the relevant area have rights to object or to take other steps to oppose the registration of the agreement<sup>13</sup>. These procedures secure transparency of the agreement and provide protection against any exploitation or perception of exploitation<sup>14</sup>.

**Principles reflected in the deregistration provisions**

The deregistration process is similarly designed to provide an appropriate balance between certainty and fairness. For example, an ILUA may be deregistered if a determination of native title in the relevant area identifies as native title holders persons who have not authorised the agreement<sup>15</sup>. This provides an added incentive to negotiating parties to ensure that all native title holders and claimants authorise the agreement.

Further protection is provided by the provision for deregistration of an agreement where a party has been induced to it through fraud, duress or undue influence<sup>16</sup>. It is notable that these provisions apply whether or not such conduct was engaged in by a party to the agreement. Certainty is provided by ensuring that any future act performed under a registered ILUA will be valid.

The NTA also provides that the ‘non-extinguishment principle’ applies to such acts, unless native title is expressly surrendered in the agreement<sup>17</sup>.

The registration, notification and deregistration provisions therefore protect against potential abuses, ensuring equality and fairness while providing certainty and security for actions done under a registered agreement. Further protection is provided by preserving parties’ ability to avail themselves of appropriate remedies under common law and equity including damages, injunctions and specific performance<sup>18</sup>.

These policy considerations are relevant to the Government’s response to the Committee’s specific recommendations set out below.

#### **Recommendation 1**

**That, firstly, section 24EA be amended to clarify the circumstances and matters of fact regarding defects that do not of themselves affect the contract status of an ILUA; that secondly, the section be amended to clearly outline the grounds for and means by which a party can seek termination of the registration of an ILUA.**

The Government understands the first part of the recommendation to refer to the Committee’s concerns about the extent to which registration cures common law defects, and the retention of contractual remedies<sup>19</sup>. In relation to the second part of the recommendation, the Government notes that registration is not ‘terminated’ under the NTA, and removal from the Register is dealt with in section 199C rather than section 24EA. The second part of the recommendation is therefore addressed in the discussion of the operation of section 199C below.

#### **Section 24EA: a deemed contract and the operation of the general law**

Section 24EA provides that a registered ILUA has effect as if it were a contract among the parties to the agreement, regardless of whether it would have operated independently as a contract under the general law. It provides certainty in relation to the validity of acts undertaken pursuant to a registered agreement, as discussed above. Fairness in the formation of the agreement is provided by the negotiation, notification and registration proce-

dures, and complemented by the removal provisions in section 199C as well as the retention of applicable general law remedies by subsection 24EA(1).

#### **The balance achieved by sections 24EA and 199C**

The Government considers that any amendment qualifying the operation of section 24EA by reference to general law concepts of estoppel, misrepresentation, mistake or unconscionability could undermine the careful balance between certainty and fairness achieved by the 1998 amendments.

Firstly, the Government considers that the existing legislation has sufficient safeguards to protect against the registration of an agreement that has been concluded unfairly. For instance, an agreement that is the subject of dispute between the parties at time of registration will not meet the requirement of consensus for registration. Furthermore, the NTA requires that all parties agree to an ILUA being lodged for registration<sup>20</sup>. The certification and authorisation procedures further protect against such an eventuality. Consequently, the Government is not satisfied that an amendment to provide the Registrar with the authority to determine whether an agreement is affected by a general law defect before registration is necessary.

Secondly, the ILUA system is also carefully designed so that at registration there will be specific and certain legal outcomes on which all parties can rely. The requisite certainty is primarily provided by the operation of sections 24EA (discussed above) and 24EBA (which provides for the validity of future acts agreed to by parties on a registered ILUA). Without this legal certainty, the ILUA regime would be less effective and less utilised. If the legal concepts of estoppel etc were introduced into the provision they would potentially undermine the statutory effect of registration and the certainty that it provides, creating confusion rather than clarity or fairness, and threatening the viability of the ILUA regime.

Finally, it is unclear how an amendment to section 24EA that restricted the contractual operation of an ILUA affected by particular defects at general law would operate in relation to the ILUA removal provisions in section 199C.

In light of the hypothetical nature of the concerns of the Committee, and the risk which amendments pose to the careful balance struck in the 1998 amendments, the Government does not consider it necessary or appropriate to amend section 24EA at this time. However, the Government will continue to monitor the operation of these provisions.

### **Recommendation 2**

**That section 199C be amended to broaden the grounds which the Federal Court may consider in ordering the Registrar to remove an ILUA from the Register.**

The Committee notes that where an agreement no longer has effect as a contract at common law, it may nonetheless remain on the Register until deregistered under the NTA. It suggests that a party may therefore find itself in the situation where it has the option available to rescind or terminate a contract, yet is unable to have the ILUA deregistered because of the limited circumstances in which the Federal Court can order the Registrar to deregister an ILUA under section 199C. The Committee consequently recommends that the Federal Court be given the power to order the removal of an ILUA from the Register where a contract has lost contractual effect through operation of the common law, for whatever reason<sup>21</sup>.

### **The availability of certain remedies at common law**

As noted above, in providing that the agreement will have effect as a contract among the parties, in addition to any effect that it may have apart from registration, the ILUA provisions do not displace remedies that may be available for contracting parties under the general law. Consequently, parties may be able to continue to avail themselves of certain general law remedies while an ILUA is registered, notably for damages and specific performance. Importantly, in appropriate cases an injunction will also be available to enforce rights obtained under a contract and those conferred by a statute such as subsection 24EA(1)<sup>22</sup>.

Furthermore, upon deregistration (or if an agreement fails registration) an agreement may continue to have contractual effect under the general law. This is reflected in the words of section 199C: on removal from the Register 'the agree-

ment will cease to have effect *under this Act*' (emphasis added). These words leave open the possibility that a contract may continue to exist at common law and be the source of enforceable rights and obligations. The agreement will not, however, continue to bind all native title holders in the area who had not authorised the agreement or successive native title parties. Nor will the agreement ensure the validity of future acts not yet performed that would have relied on registration for validity.

### **Expanding the grounds**

Subsection 199C(3) restricts to fraud, duress and undue influence the grounds upon which the Court can order the removal of an ILUA from the register. Again, providing limited grounds reflects the need to create certainty on registration.

However, the NTA also allows considerable flexibility to parties in negotiating terms of an agreement. It is therefore open to parties to broaden the scope for deregistering an ILUA within the terms of the agreement itself, relying on the provisions of paragraph 199C(1)(c). For instance, parties could agree that where an agreement is terminated or rescinded, it will be taken to have 'expired' for the purposes of subparagraph 199C(1)(c)(i), thereby mandating its removal by the Registrar.

The Government considers that section 199C provides the requisite balance between certainty and fairness envisaged when the ILUA provisions were introduced, while allowing parties the flexibility to look after their own interests. The experience of parties so far reflects general satisfaction with the operation of these provisions and in the absence of evidence that problems have arisen, it would seem premature to make any changes. However, the Government will continue to monitor the operation of these provisions.

### **2. Funding issues**

Several of the Report's recommendations relate to the funding of the native title system. Specifically, Recommendation 3 concerns assistance for non-native title parties, Recommendation 4 concerns financial resources for native title representative bodies, and Recommendation 8 concerns funding for prescribed bodies corporate. The

Government considers it appropriate to address these three recommendations together.

**Funding and the interdependence of constituent parts of the native title system**

A comprehensive evaluation of native title workloads undertaken in the second half of 2000 found that the component parts of the native title system are mutually interdependent, so that a matter which impacts on the work of any one element has implications for the effective operation of the whole system. The inter-relationship between the various elements of the system means that the funding and priorities for each element of the system must be correlated to other elements. The need for an integrated approach to resourcing militates against any approach that looks exclusively at one element of the native title system.

The Government keeps the funding of the native title system as a whole under regular review. As a result of the 2000 review, the Government committed an additional \$86 million to native title over four years in the 2001-02 Budget. A further review of native title system funding in 2004 resulted in the commitment of an additional \$72.9 million to the system over four years in the 2005-06 Budget.

The inter-relationship of the various elements in the system has also led to the development of a number of ongoing formal consultative mechanisms to consider issues of common interest including resourcing. This consultation is primarily conducted by the Native Title Coordination Committee and the Native Title Consultative Forum.

The Native Title Coordination Committee is the mechanism by which Australian Government agencies with native title responsibilities keep each other informed about native title developments and improvements to services to participants in the native title system. The Native Title Consultative Forum (previously the Native Title (Legal Aid) Consultative Committee), was established in 1998 with a focus on legal aid issues but developed into a broader forum that looks at native title issues generally with representatives of industry peak bodies, local government and Australian Government agencies. In line with its broader focus, representation at the Forum has been expanded to include the Human Rights and

Equal Opportunity Commission, State and Territory governments, and a number of Native Title Representative Bodies in order to better facilitate communication between key stakeholders in the system.

**Recommendation 3**

**That the Attorney-General's Department review the Guidelines for the Provision of Financial Assistance by the Attorney-General in Native Title Cases to ensure non-native title parties are receiving adequate assistance to facilitate their participation in the negotiation of ILUAs.**

The Committee's third recommendation relates to the funding of non-native title parties and specifically recommends a review of the Attorney-General's Department's *Guidelines for the Provision of Financial Assistance by the Attorney-General in Native Title Cases* (the Guidelines). Evidence before the Committee suggested that funding available through the Department had enabled local councils to participate in the negotiation of ILUAs, but failed to meet all of the associated costs.

**The Guidelines**

Financial assistance for some of the costs arising in relation to ILUAs is available to non-native title parties through the financial assistance scheme administered by the Attorney-General's Department<sup>23</sup>. To assist with the provision of financial assistance, the Attorney-General approved Guidelines in November 1998 in accordance with subsection 183(4) of the NTA. The Guidelines regulate the way in which assistance is granted.

Under the Guidelines, assistance is available for legal costs and fees for relevant experts such as anthropologists and native title consultants, as well as for travel and other reasonable expenses associated with the ILUA negotiations<sup>24</sup>.

The concerns of the Committee regarding funding under the Guidelines appear to stem primarily from technical and financial resourcing problems experienced by two local councils that made submissions to the Committee<sup>25</sup>. These particular issues have now been resolved by clarifying the level of assistance available under the Guidelines.

Additionally, on 7 September 2005 the Attorney-General announced a package of reforms to the

native title system, including reform of the native title non-claimants (respondents) financial assistance program to encourage agreement making rather than litigation.

#### **Additional monies in recent budgets**

The 2001-02 Budget made available additional monies to respondents and potential respondents to native title claims and to non-claimant parties to ILUAs under the section 183 financial assistance arrangements.

#### **Recommendation 4**

**That more financial resources should be made available to native title representative bodies for the negotiation of ILUAs.**

The Committee received submissions that inadequate funding of Native Title Representative Bodies (NTRBs) is hindering the process towards resolving native title issues. The resolution of this issue was considered by the Committee to be a prerequisite to ensuring the ILUA provisions fulfil their potential<sup>26</sup>. The Report therefore recommends an increase of funding to NTRBs for the negotiation of ILUAs.

#### **Increased funding and capacity building**

The Government recognises the central role played by the NTRBs in the native title system, and the consequent importance of ensuring that they are properly equipped to manage funds provided to them and to fulfil their functions under the NTA. It also notes the evidence gathered by the Committee indicating that resourcing strains on NTRBs has affected their capacity to participate in ILUA negotiations. On 7 September 2005 the Attorney-General announced that the Government is reviewing arrangements for assistance to native title claimants through NTRBs, with a view to improving the performance of NTRBs.

The Report identifies three key factors that have contributed to resourcing pressures on NTRBs: the processes of re-recognition of NTRBs; the re-registration of native title determination applications; and the litigation of initial test cases in the Federal and High Courts<sup>27</sup>. The Government notes that there are other significant factors that may contribute to the capacity of NTRBs to participate in ILUA negotiations such as a shortage of professionally qualified people with the neces-

sary expertise to assist NTRBs with their caseload.

Adequate resourcing of NTRBs was considered to warrant particular attention after the 1998 amendments to the NTA expanded their statutory functions. These considerations informed the Government's decision in the 2001-02 Budget to direct \$17.4 million of the additional \$86 million committed to the native title system over four years for the development of the NTRB capacity building program and the strategic priority claims resolution program. A further \$15.7 million was committed over four years to these programs as part of the additional \$72.9 million dedicated committed to the system over four years in the 2005-06 Budget. The additional funds are being used to assist NTRBs to increase the overall efficiency of NTRBs with a view to improving the performance of their functions under the NTA. The additional funds are also intended to be used to target the resourcing to final determination by the courts of nationally significant native title applications that were unlikely to be resolved through mediation and negotiation, and which would be of significant value in establishing precedents. The Government notes that the Committee is currently inquiring into the capacity of NTRBs to discharge their responsibilities under the NTA.

As with all resourcing issues in the native title system, the Government recognises that monitoring of the funding of NTRBs is important, particularly during this change of focus within the system. Following the 1998 amendments, the Government continues to monitor the adequacy of NTRB funding and is considering the findings and recommendations of a number of reviews into the efficiency and effectiveness of NTRBs. Feedback from the 'capacity building' program will also provide valuable information regarding resourcing of NTRBs generally.

As a result of the recommendations of the October 2002 Review of the Native Title Representative Body System (Miller Review), which was commissioned by the Aboriginal and Torres Strait Islander Commission at the request of the then Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs, better performance data will be provided by NTRBs, which in turn

will allow the Government to make more informed decisions about the allocation of funding between individual NTRBs. Over the next two to three years the performance data provided by NTRBs, in accordance with Miller's recommendations, should provide the Government with a more comprehensive basis from which to analyse the mix (and priority) of factors affecting NTRB performance, including the role that funding plays in that mix. The performance data and other information will be able to be used by the Government in evaluating future needs for NTRBs.

NTRBs are required to provide output/outcomes based operational plans in support of their 2004-05 funding submissions.

NTRBs are now represented in the Native Title Consultative Forum, providing them with an opportunity to liaise directly with the agencies that make up the Native Title Coordination Committee.

#### **Recommendation 8**

**That prescribed bodies corporate receive adequate funding to perform their statutory functions and that they receive appropriate training to meet their statutory duties. This training to include directors' duties, accounting procedures and land management.**

The Report notes the burden on Prescribed Bodies Corporate (PBCs) arising from their involvement in negotiating and implementing ILUAs and recommends adequate funding and training to meet their statutory obligations.

The NTA reflects the principle that, once there is a determination of native title, all dealings with the common law native title holders in relation to their native title interests will be conducted through an incorporated body. As more determinations of native title are made under the NTA, PBCs are likely to become increasingly important in negotiating ILUAs on behalf of native title holders and responding to the obligations placed on native title holders under agreements.

In this context, the Government recognises the importance of monitoring the situation of PBCs in order to facilitate the effective operation of the native title system as a whole. The Government has an ongoing interest in ensuring the effectiveness of PBCs and recognises that the PBC process

is still at an early stage in its development. Accordingly, on 7 September 2005 the Attorney-General announced that the Government will be undertaking an examination of current structures and processes of Prescribed Bodies Corporate (PBCs), including targeted consultation with relevant stakeholders.

However, the Government considers that it is not solely responsible for funding PBCs. The States and Territories have primary responsibility for the day-to-day management of land, and it is usually the States and Territories, and proponents of activity, that benefit from land development. It is therefore appropriate that the States and Territories, and proponents of activity, contribute to the costs of that development, including contributing to the costs of PBCs with whom they negotiate about those developments.

#### **3. The National Native Title Tribunal**

Recommendations 5, 6 and 7 concern the role, function and powers of the National Native Title Tribunal (NNTT).

##### **Recommendation 5**

**That the Native Title (Notices) Determination 1998 be amended to require the Tribunal, where possible, to notify the Indigenous community about the proposed registration of an ILUA by way of advertisement on local Indigenous radio or television programs. This would be in addition to the current requirement that the Tribunal advertise in relevant newspapers.**

Clause 6 of the *Native Title (Notices) Determination 1998* (the Notices Determination), which governs the notification of registration of an ILUA, requires that a notice be published in one or more newspapers that circulate generally throughout the area to which the notice relates, and in a relevant special-interest publication. The Report notes concerns that such an approach to notification is based upon the twofold assumption that all Indigenous communities have access to newspapers, and that they read English.

The Committee concludes that it would be desirable for the NNTT to use electronic media as well as newspapers when notifying the public about an application for the registration of an ILUA. In particular, the Report recommends that the NNTT



be required to notify Indigenous communities about the proposed registration of an ILUA through advertisements on local Indigenous radio or television programs, where possible<sup>28</sup>.

**Government consideration of the operation of the Notices Determination**

The Government is considering whether the Notices Determination should be amended in light of the Committee's recommendation and discussion of the notification procedures in decisions by the Federal Court and the NNTT<sup>29</sup>.

In considering any amendments, the Government will take into account the need to ensure that those potentially affected by an act are in fact notified, and the additional cost that may be involved in giving notice on local Indigenous radio and television.

**Recommendation 6**

**That the NTA be amended to grant to the Tribunal powers to assist with dispute resolution (following registration of an ILUA) in circumstances where relevant parties to the ILUA request it.**

The Report notes that the NTA makes no provision for the NNTT to assist the parties to reach agreement when a dispute arises following registration of an ILUA. It recommends that the NTA be amended to grant to the NNTT powers to assist with dispute resolution post-registration in circumstances where relevant parties to the ILUA request it.

The express functions of the NNTT under its enabling legislation do not include the function of assisting parties in the resolution of disputes arising under ILUAs. As the Attorney-General's Department noted in its submissions, parties would be wise to consider the inclusion of mediation and/or arbitration clauses in the agreement, and should make provision in the agreement for how the costs of mediation and arbitration processes will be met.

However, the Government is considering the Committee's suggestion in the context of the recently announced independent review of the claims resolution processes, which will consider how the NNTT and the Federal Court can work more effectively in managing and resolving native title claims. Such a role would complement

the NNTT's existing mediatory powers, and would be appropriate in light of the expertise and experience that the NNTT possesses in relation to the areas where it does have mediation powers under the NTA.

**Recommendation 7**

**That the NTA be amended to include a provision that shows how an amendment can be made to a registered ILUA.**

The Committee notes that the NTA does not state how an ILUA can be amended and that this creates a lack of clarity for parties wanting to review and amend a registered ILUA. The Report recommends that the NTA be amended to provide guidance about the way that an amendment to an ILUA would be handled, including the circumstances in which parties would be required to go back to the Registrar. The Committee suggests that there should be an obligation on parties to inform the Registrar when changes are made to the ILUA (unless particularly minor and typographical) and that major changes may require another notification and objection process, similar to that required for initial registration<sup>30</sup>.

The Government recognises that the NTA is silent on the subject of how registered ILUAs can be varied. Whilst the Government considers that the registration and deregistration provisions in the NTA provide certainty, flexibility and autonomy to parties who wish to vary agreements, it will consider the matter further in the context of the technical amendments to the NTA recently announced by the Attorney-General.

**The registration of varied agreements**

As noted above in relation to recommendations 1 and 2, an ILUA is also an agreement at general law. Consistent with common law rules, the arrangements established by an ILUA may be varied by an agreement between the parties embodied in a new agreement.

In deciding whether to register any agreement, including where the sole objective of the agreement is to vary a previous ILUA, parties would consider the purpose and statutory effect of registration. Where parties intend to rely upon the benefits in relation to certainty provided by a registered ILUA, then the agreement would need to be registered.

The main purpose, and the statutory effect, of registering an ILUA is to bind native title holders who are not parties to the agreement, and to ensure the validity of future acts consented to under the agreement<sup>31</sup>. Consequently, any agreement that seeks to ensure the validity of an act that 'affects' native title or which seeks to bind native title holders who are not parties to the agreement, must be registered as an ILUA in order to attract these protections. Where parties to an agreement do not need the agreement to bind non-parties, or where the agreement does not involve additional consent to the doing of a future act, registration is arguably not necessary.

The Government considers that the NTA currently allows parties the flexibility to amend parts of the ILUA without imposing further procedural requirements. The question of whether to register a new agreement or not is therefore a matter for the parties to decide. Parties can, of course, draft clauses in their agreements that allow for reviews and variations. Such clauses merely provide a process for the creation of a new agreement. The Government will however keep the issue under review.

<sup>1</sup> Report, paragraph 8.8.

<sup>2</sup> These findings are derived from the Report, paragraphs 8.17-8.22.

<sup>3</sup> Report, paragraphs 8.10-8.16.

<sup>4</sup> Report, paragraph 7.70.

<sup>5</sup> Report, paragraph 7.39.

<sup>6</sup> Report, paragraph 4.1, National Figures as at 20 July 2001, citing submission from the NNTT.

<sup>7</sup> Report, paragraph 8.46.

<sup>8</sup> See subsections 24EB(1) and (2).

<sup>9</sup> The Explanatory Memorandum explains at pp 242-243 that "future acts which have already taken place under the agreement will remain valid."

<sup>10</sup> Report, paragraphs 3.36-3.45.

<sup>11</sup> See subsections 24BD(3) and (4), 24CD(2) and (3), (4) and (7), and 24DE(2).

<sup>12</sup> See subsections 24BG(1), 24CG(1) and 24DH(1) and also the *Native Title (Indigenous Land Use Agreement) Regulations*

*1999*, regulations 6, 7 and 8.

<sup>13</sup> See section 24BH, subsection 24BI(2), sections 24CH, 24CI, 24CL, 24DI and 24DJ; and the *Native Title (Notices) Determination 1998*.

<sup>14</sup> Also relevant to ensuring fairness are the NTRB certification functions in paragraph 24CG(3)(a); see also paragraph and subsections 203BE(1)(b), (5) and (6); and the authorisation provisions such as paragraph 24CG(3)(b).

<sup>15</sup> See subparagraph 199C(1)(b).

<sup>16</sup> See subsections 199C(2) and (3).

<sup>17</sup> See subsection 24EB(3). The non-extinguishment principle is defined in section 238.

<sup>18</sup> This is discussed in more detail below.

<sup>19</sup> See Report, paragraphs 3.32 and 3.47.

<sup>20</sup> See subsections 24BG(1), 24CG(1) and 24DH(1) and also the *Native Title (Indigenous Land Use Agreement) Regulations 1999*.

<sup>21</sup> See Report paragraph 3.48, and the discussion from paragraphs 3.35-3.45.

<sup>22</sup> See *Fejo v Northern Territory* (1998) 195 CLR 96, 123 per Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ, 139-140 per Kirby J.

<sup>23</sup> See subsection 183(2).

<sup>24</sup> Under paragraph 2.2 of the Guidelines, assistance is available to a person to negotiate an ILUA, or in relation to any inquiry, mediation or proceeding in relation to the agreement or to resolve a dispute about rights of access for traditional activities.

<sup>25</sup> See Report, paragraphs 6.31-6.32. This contrasts to the Australian Local Government Association submission, which makes no mention of the lack of financial assistance for local government, instead focusing on the 'high level of ignorance and misunderstanding in the community about native title matters generally' (see Submission No. 4).

<sup>26</sup> Report, paragraph 6.81.

<sup>27</sup> Report, paragraphs 6.16-6.20.

<sup>28</sup> It should be noted that clause 7 of the *Native Title (Notices) Determination 1998* authorises radio and television broadcasting.

<sup>29</sup> *Holt v Manzie* [2001] FCA 627 (Olney J, 5 June 2001); *Roy Dixon and Ors and the Northern Territory and Ors* (Application No. DO00/1-DO00/7, National Native Title Tribunal, The Hon EM Franklyn QC, Perth, 23 April 2001).

<sup>30</sup> Report, paragraph 7.42.

<sup>31</sup> Paragraph 24EA(1)(b) and subsection 24EB(2).

### Community Affairs References Committee

#### Reports: Government Response

**Senator McLUCAS** (Queensland) (3.41 pm)—I seek leave to move a motion in relation to the government's response to the report *Nursing: the patient profession*.

Leave granted.

**Senator McLUCAS**—I move:

That the Senate take note of the document.

Nurses have had to be very patient waiting for the government's response to this report, *Nursing: the patient profession*, tabled in June 2002. Three years and four months later, that is 40 months later, the government finally has responded. A midwife could have delivered four babies to the same mother in the same time. It flies in the face of the last few sentences of the overview of the report:

It is time for the nursing profession to be recognised as an equal player in Australia's health care system.

It is time for the voice of nurses to be heard.

The patient profession is running out of patience!

It is time for action.

Action is what the government has taken. It has taken 40 months for this government to respond to a very significant and important report that the Senate Community Affairs References Committee released in June 2002.

It is timely to see what has happened in nursing since this report was first tabled. In August 2005, the Productivity Commission's draft report into the health work force emphasised that increasing the number of education and training places was critical for an effective work force into the future. If the baby boomer cohort of nurses leaves the work force at the same rate as previous generations, significant numbers will retire in the next 15 years. In 1986, 30 per cent of nurses were aged over 40 years. In 2000, it was 60 per cent.

In the 2004-05 federal budget the Australian government allocated an additional 400 nursing places annually to universities. However, the government's own figures show that this is not nearly enough. In August 2004, the report by the Australian health work force advisory committee, *The Australian nursing work force: an overview of work force planning 2001-04*, said that for supply to meet demand, over 10,000 new graduate nurses were required to enter the work force in 2006 and even more in 2010. Currently, we have less than 5,000 nurses graduating each year. The compounding effect of being 5,000 nurses short annually is going to hit this community in such a way that I do not think this government has even contemplated. For there to be an adequate supply of nurses into the future we need additional undergraduate places of around 1,000 a year.

There are plenty of people wanting to undertake nursing but there are just not enough places for them. Figures from the Australian Vice-Chancellors Committee show that over 2,700 eligible nursing applicants missed out on an undergraduate place this year, representing about 20 per cent of applicants. The Senate Community Affairs Committee report *Quality and equity in aged care*, released in June this year, states categorically that there are not enough undergraduate nursing places and that the federal government needs to

implement a mechanism to ensure that nurses working in aged care are paid the same as those working in the public sector.

Let us go to the question of nurses' wages. In the 2002-03 budget, the Howard government increased residential aged care subsidies by '\$211 million over four years to assist employers of aged care workers provide for increases in wages and improved work force conditions'. In 2002, the wages gap between nurses working in residential aged care and those working in the public sector was \$84.48 per week. In the 2004-05 budget, Minister Bishop announced an extra \$877.8 million over four years through the conditional adjustment payment to improve the financial position of aged care providers and allow them to pay more competitive wages to staff. The wages gap in 2005 is \$191.83 per week. These are very important statistics. For a nurse in residential aged care compared to a nurse working in the public sector, in 2002 the wage disparity was \$84.48 and in 2005 it is \$191.83 per week. The government's response has been absolutely inadequate to allow that disparity in wages to grow at the rate that it has.

We want to know what the minister is going to do to ensure pay equity for nurses in aged care so that those nurses currently working in aged care will be encouraged to remain there. The sector requires leadership from the Howard government in order to encourage providers to close the wage disparity gap. Ms Julie Bishop has been awfully quiet on the issue of wage parity. There has been an ongoing debate in the residential aged care sector about the capacity to bridge the wages gap. Professor Hogan, who conducted the inquiry into the funding of residential aged care, said in his report:

There is a secondary market in bed allocations. Its existence is evidence of the profitability of residential aged care and the willingness of some to

bid for beds at prices reflecting net present values of expected future income streams.

Professor Hogan believed that there was a capacity to close the gap of nurses' wages between the residential aged care sector and the public sector.

In 2001, the respected aged care commentator Professor Gray said the industry as a whole was fundamentally healthy and viable and able to achieve a 12 per cent return on investment, even if substantial rebuilding toward the 2008 certification standards was required. But, repeatedly, the sector says to me, and in many and various publications, that it is unable to afford lifting nurse wages to the acute care parity.

Ms Julie Bishop is the Minister for Health and Ageing. Why is she so timid to participate in this debate? She should, in my view, show some leadership and provide some clarity to the debate about the capacity of aged care providers to bring nurses' wages into parity with those in the acute care sector. Before we lose more valuable aged care nurses, Ms Bishop should do what she is, in fact, paid to do and engage with the sector on this fundamental issue.

The Australian Nursing Federation, which represents 145,000 nurses, has condemned the Howard government's industrial relations bill, saying it will have a negative effect on the working lives of nurses and their capacity to provide nursing care. The Federal Secretary, Ms Jill Iliffe, said that if the legislation were passed it would have a significant negative effect on nurses' working conditions, career paths, wages and entitlements. Nurses face the potential loss of penalty rates for evening and night duty, weekends and public holidays, as well as the loss of classification based rates of pay and access to a meaningful career path. If the government think that these harsh industrial relations laws will do anything to relieve the shortage of nurses in

this country, especially in aged care, they have rocks in their head. It is imperative that the community's value of nursing is reflected in how we pay our nurses.

Having read through the government's response to this significant report, the only thing I can say is that it is pathetic. So many of the recommendations by the committee have been responded to by saying, 'That's the responsibility of the states'. I have to say that our community is a bit sick and tired of hearing this government continually saying: 'It's not our job. Go and ask the states.' Let us look at some collaborative effort, especially on the issue of wages for residential aged care nurses, and let us get on with the job. Our community is demanding it. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

#### **Community Affairs References Committee**

##### **Reports: Government Response**

**Senator MURRAY** (Western Australia) (3.51 pm)—I seek leave to move a motion in relation to the government's response to two reports, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* and *Protecting vulnerable children: a national challenge: Inquiry into Australians who experienced institutional or out-of-home care*.

Leave granted.

**Senator MURRAY**—I move:

That the Senate take note of the document.

This long awaited response to the recommendations of *Forgotten Australians* and *Protecting vulnerable children: a national challenge* is warmly welcomed by me, and I suspect by many. There are hundreds of care leavers out there who have been patiently waiting for this day. The tabling of the *Forgotten Australians* report in particular was a momentous day for these people, as well as for their families and friends, and one I per-

sonally will never forget. They had waited many decades for their stories to be heard and believed, and they were now on the public record. It was a significant day for the Senate. Never before in my experience and knowledge had this chamber borne witness to such emotional outpourings.

The demand for this report has been such that the Senate Community Affairs References Committee has had multiple reprints done—a first for any inquiry by this committee, I am told. Needless to say, this report means so much to so many people. My office has received numerous calls, letters and emails of thanks. One care leaver even told us of how for months *Forgotten Australians* accompanied her no matter where she went. It is very important that people understand just how important that report is to the very ordinary people who describe themselves as 'the forgotten Australians'.

I acknowledge that the delay from the government is not surprising, as the government had two inquiry reports separated by some months to respond to, which meant a total of 57 recommendations requiring consideration. In its response to *Forgotten Australians*, the government rightly acknowledges that the suffering experienced by so many children placed in institutional care is a matter of shame for Australia—indeed, it is a matter of great national shame. In its response to the inquiry's second report, *Protecting vulnerable children*, the government again rightly acknowledges that children deserve a safe, secure and caring environment. In doing so, the government emphasises that child protection is primarily the responsibility of the state and territory governments and that all governments need to work together to ensure the systems work effectively for children and their families.

Herein, though, lies a major problem. As *Forgotten Australians* clearly suggests, his-

torically, child protection systems have failed children—one cannot read this report and come to any other conclusion. Currently, child protection systems across Australia are under stress, and some are in crisis. They are under-resourced, understaffed and face the problem of having a high turnover of staff and they often have inexperienced staff. All too quickly, child protection workers become burnt out with the ever-increasing numbers of reports of child abuse and neglect. Many of these reports can never be attended to because of the staff problems, which has sadly even resulted in the loss of the lives of some children.

The point I am making here is that if ever there was a matter of national importance crying out for the Commonwealth to take a moral and a political lead on, it is the area of child abuse and neglect. In its response to both reports, there is a general tendency for the government to defer to the states and territories and, in the case of the *Forgotten Australians* report, to the churches and agencies that were not just the past providers of institutional care but also often the causes of harm. Constitutionally, this is not surprising, as most of the matters raised in the recommendations are the responsibilities of the states and territories. That said, though, these reports together certainly indicate that the government needs to show the political will to tackle these problems head on—and I mean the kind of strength of political will it is currently displaying with the implementation of its national workplace relations system. If only it could have such passion and determination when it came to children.

What could be of more vital importance to a nation than the health, safety and wellbeing of all its children? After all, with them lies the nation's future. And it is not just that—there is the point that I have consistently made that if you harm a child you end up with a harmed adult, and a harmed adult

causes great social and economic cost to this nation. Therefore, it is in the political interest of the Commonwealth to take a lead. Political will and the courage to tackle the public health issues around the scourge of child abuse and neglect in Australia is sadly lacking in this government. Individual ministers and individuals within the government try hard in their spheres of influence. But, on a whole-of-government basis, their general approach is poor.

This is evident in the government's refusal to agree to recommendation 8 of *Forgotten Australians* and its counterpart in *Protecting vulnerable children*, recommendation 17. These recommendations call for the establishment of a national commissioner for children and young people. Such an office would have the power to investigate, mediate and review complaints and operations, and importantly would drive a national reform agenda for child protection. Fundamentally, this is what is urgently required in Australia. These two reports testify to this, as do the long line of reports that precede them—not to mention the extensive body of academic and other associated literature. I recently circulated a paper on this topic to all members and senators. I can tell by the number and the nature of the responses I have that most people have not read it. Admittedly, it is a long paper and we are all busy people. But that is a sign of how difficult it is to break through on this issue.

On this issue, everyone in this parliament knows I am an honest broker. A paper I recently circulated concluded by stating:

Something is terribly amiss if the federal government continues to ignore the extensive body of knowledge that reveals just how widespread the problem of child abuse is and has been, and just how tragic and costly the consequences are.

I called for a three-pronged approach: first, that concerted and targeted research to measure the scale of costly lifespan effects of

child abuse be carried out; second, that the government display the political will to translate this research into long-term policy reform that can really make a difference; and third, that for optimal effect these reforms should be implemented under a national approach that is sufficiently funded and has adequate resources. With the government's refusal to acknowledge the need for a national commissioner, it appears now that our children at risk will not have the benefit of a nationally coordinated approach—at least for the present.

Having said this, though, I commend the government on responding positively to recommendation 1 of *Protecting vulnerable children*, which suggests the designation of a year as the national year against child abuse in Australia. The government has agreed to convene a national summit on child protection in Melbourne in the first half of 2006. Perhaps this event will lead to a revolutionary—or should I say evolutionary—change for child protection in Australia. I also commend the government for all those recommendations it has responded positively to. I commend the government for agreeing in principle to recommendation 19 of *Forgotten Australians*. This proposes that a conference of service providers and advocacy and support groups be held to establish a professional national support and advocacy body for care leavers. I remind the chamber that we are not talking about a few thousand people here; we are talking about half a million people. I urge the government to ensure that this occurs sooner rather than later. The establishment of such a body is urgently required by the many disadvantaged care leavers who deserve to have their needs taken more seriously.

The only national body currently addressing care leavers' needs that I understand is available is the Care Leavers of Australia Network, known as CLAN. I applaud the

government's generous one-off grant, facilitated by Minister Kay Patterson, to CLAN for counselling services. I am disappointed that this grant will not be ongoing as suggested in recommendation 20 of *Forgotten Australians*, because in the scheme of things \$100,000, whilst it means a huge amount to CLAN, is a rather paltry sum.

Overall, the response to the two reports has generally been positive. There appears to be a general willingness to meet the challenges, but too much depends on the states and territories and there is too little sign that the government is going to provide political will and leadership. It is true, too, that when you read these responses, you find that the government is not really prepared to put its hand in its pocket—always a sign as to whether a government is really serious about matters.

Apart from the magnificent \$10 million in funding for the Chair of Child Protection at the University of South Australia—and I sincerely thank you for that, Minister Nelson—the government has incurred no significant cost in its response. I am particularly disappointed by its failure to respond to recommendation 6 of the report. Recommendation 6 covered a national reparations fund and paid attention to the precedents in Canada, Ireland and Tasmania. It is essential that such a fund be reconsidered. I would ask the Labor Party members sitting here to take on board a response yourselves to this and to perhaps consider bringing it forward as a policy for when you are in government. Then you can show the leadership that is required in this matter.

**Senator McLUCAS** (Queensland) (4.01 pm)—I too wish to speak on the government's response to the two reports that our committee brought down, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as*

*children and Protecting vulnerable children: a national challenge.* I have just received the responses and, therefore, have not had an opportunity to read them in full. But I want to make comment about the delay in responding. Unlike the delay in responding to the report on the inquiry into nursing, which I commented on earlier, I recognised that responding to the enormity of this report was a huge challenge. Many care leavers urged me to urge the government to respond in a more timely way. I said to those care leavers that, given the enormity of this report, I accommodated the delay in responding to it.

The first report came down about 14 months ago and the second report came down earlier this year, so the government was tardy in responding. My reason for saying that I was not too critical of the government for its delay was that many of the recommendations went not only to Commonwealth government responsibilities but also to state and territory government responsibilities, as well as to those of other institutions, such as churches, which provided institutional care to people. So I suggested, in speaking to care leavers about the delay, that I thought the government would take the opportunity to show a national leadership role on this issue and confer with the state and territory governments and with the churches and other institutions so that a proper and sensible response to our reports could have been given.

From a quick reading of these responses, that has not occurred. In looking at them, I see that the response to recommendation 2 is: 'This is a matter for state and territory governments.' The response to recommendation 3 is: 'This is a matter for state and territory governments to consider.' The response to recommendation 9 is: 'This is a matter for state and territory governments to consider.' The responses to recommendations 15, 16

and 17 are all: 'This is the responsibility of state and territory governments.'

This is an extraordinary lost opportunity. It would have been fantastic for the government to work with the state and territory governments and the churches to provide a consolidated response to our report, rather than simply say, 'It is not our responsibility.' What a lost opportunity. What a chance gone begging, in that this government has not delivered. I now feel angry that I have been saying to care leavers, 'Be patient, because the government will do the right thing here.' They have not done that, in my view. That is as far as I have been able to read in the time I have had the response. I am only up to recommendation 17. As I recall, there were some 60-odd recommendations in the first report.

Recommendation 17 asks for the federal government to ensure that support and counselling services are made available to care leavers. Yes, I applaud the government for giving CLAN \$100,000 late last year, following this report being tabled, to deal with the massive number of people who were contacting them for support. But the government has responded to the recommendation by saying, 'This is a responsibility for state and territory governments.' I say it is a national responsibility. I have dealt, in the last 12 months, with many care leavers. Many care leavers, because of my involvement in the inquiry, have taken the opportunity to contact my office seeking advice, assistance and support.

For those care leavers who are living in a state in which they were not given care, it is extraordinarily difficult for them to receive support. The state governments, in most cases, have established some support structures. I commend the Queensland government for the funding of HAN and the Esther Centre and those services for the excellent



work that they do. But their charter only allows them to provide support for people who were cared for as children in the state of Queensland. It is the same in New South Wales, Victoria and Tasmania. When people who were cared for in that state are supported by the arrangements that the state has put in place, it means that many people do not get the support they require. I have seen too many people hurt again because they cannot get assistance.

These are people who are very vulnerable. They are still recovering from the experiences that they had as children. They need our help; they need a hand up. They do not want to be shunned, yet again, when they are seeking assistance. This would have been a great opportunity for the federal government to step up to the plate and say, 'Yes, we recognise that the states have their responsibilities, but there are gaps in the system.' It has not done that. I am only up to recommendation 17 in reading this response. I seek leave to continue my remarks, and I hope the report gets better as I go along.

Leave granted; debate adjourned.

**TAX LAWS AMENDMENT (LOSS RECOUPMENT RULES AND OTHER MEASURES) BILL 2005**

**Report of Economics Legislation Committee**

**Senator McGAURAN** (Victoria) (4.08 pm)—On behalf of the Chair of the Senate Economics Legislation Committee, Senator Brandis, I present the report of the committee on the provisions of the Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Bill 2005 together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**ENERGY EFFICIENCY OPPORTUNITIES BILL 2005**

**Report of Economics Legislation Committee**

**Senator McGAURAN** (Victoria) (4.08 pm)—On behalf of the Chair of the Senate Economics Legislation Committee, Senator Brandis, I present the report of the committee on the provisions of the Energy Efficiency Opportunities Bill 2005 together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**COMMITTEES**

**Economics Legislation Committee**

**Report**

**Senator McGAURAN** (Victoria) (4.08 pm)—On behalf of the chair of the Senate Economics Legislation Committee, Senator Brandis, I present a report of the committee on the examination of annual reports, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**Membership**

**The ACTING DEPUTY PRESIDENT (Senator Ferguson)**—The President has received letters from party leaders seeking variations to the membership of certain committees.

**Senator ABETZ** (Tasmania—Special Minister of State) (4.09 pm)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

**Community Affairs Legislation Committee—**

Appointed—Substitute member: Senator Fifield replace Senator Barnett for the committee's inquiry into the provisions of the Employment and Workplace Relations Legislation Amendment

(Welfare to Work and Other Measures)  
Bill 2005 and a related bill on 23 November 2005

**Employment, Workplace Relations and Education Legislation Committee—**

Appointed—

Participating member: Senator Allison

Substitute members: Senators Crossin and McEwen replace Senators Marshall and George Campbell, respectively, for the committee's inquiry into the provisions of the Commonwealth Radioactive Waste Management Bill 2005 and a related bill

**Legal and Constitutional Legislation Committee—**

Appointed—Participating member: Senator Allison

**National Capital and External Territories—Joint Standing Committee—**

Discharged—Senator Lundy from 8 December 2005 to 12 March 2006

Appointed—Senator Carr from 8 December 2005 to 12 March 2006.

Question agreed to.

**WORKPLACE RELATIONS  
AMENDMENT (WORK CHOICES)  
BILL 2005**

**First Reading**

Bill received from the House of Representatives.

**Senator ABETZ** (Tasmania—Special Minister of State) (4.09 pm)—I move:

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

Question agreed to.

Bill read a first time.

**Second Reading**

**Senator ABETZ** (Tasmania—Special Minister of State) (4.09 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

Today I am introducing the Workplace Relations Amendment (Work Choices) Bill—a bill that moves Australia towards a flexible, simple and fair system of workplace laws.

Australians have come a long way by improving the way they work. Because of this, we now have one of the strongest economies in the world. We have created over 1.7 million new jobs. Australia's unemployment rate has been markedly reduced, reaching a 30 year low and interest rates are at historically low levels.

But we must not make the mistake of assuming that our future prosperity is assured and inevitable. Now is not the time for self-congratulation or back-slapping. Now is the time to secure the future prosperity of Australian individuals and families.

That is what Work Choices is all about—securing the future prosperity of Australian individuals and families.

Work Choices does this by accommodating the greater demand for choice and flexibility in our workplaces. It continues a process of evolution, begun over a decade ago, towards a system that trusts Australian men and women to make their own decisions in the workplace and to do so in a way that best suits them.

This is economic reform the Australian way—evolutionary and in a manner that advances prosperity and fairness together. As the Prime Minister has said, these are big reforms, but they are fair reforms.

They rest on the simple proposition that the best guarantee of good jobs, high wages and a decent society is a strong and productive economy. No system of industrial regulation can protect jobs and support high wages if our economy is not strong and productive.

That is the central lesson of a hundred years of industrial relations history in Australia. It was the bitter lesson of Labor's recession in the early 1990s. Yet it is a lesson that the Labor Party refuses to learn.

The key to advancing prosperity and fairness together is higher productivity. Australia's economic strength and the living standards of our people depend, ultimately, on the productivity of our workplaces.

When productivity is higher the whole economic pie is bigger. Individuals and families benefit from more jobs, better jobs and higher living standards. Society as a whole has more resources to devote to services like health and education, as well as to a strong social safety net.

A central objective of this bill is to encourage the further spread of workplace agreements in order to lift productivity and hence the living standards of working Australians. It is no coincidence that those industries with the most workplace flexibility also enjoy the highest productivity growth and the highest wages.

We need more choice and flexibility for both employees and employers, so we can work smarter, reward effort, and find the right balance between work and family life.

At the same time, we need to ensure that a fair and robust safety net of working conditions is protected by law. Work Choices does this. It also provides extra help for employees and employers to understand their rights and obligations under the new system.

Work Choices is not simply about raising the living standards of those Australians in jobs. It is also about getting more Australians into jobs.

A good society is one where those who have the capability to work can work. With a job comes dignity, skills, a steady income and the chance of a better job.

In the end, this is not an economic argument. It is a moral argument. Australia can and should be a country where those who are able to work can find work.

In the last decade, we have made good progress in reducing unemployment to a thirty year low. But we can and should do better.

Today too many Australians are not participating in the labour force. Too many Australians still struggle to find work. And too many Australian children are growing up in households where no parent is working.

These fellow citizens deserve a brighter future. Work Choices will give them a brighter future.

A nation of 20 million people, on the edge of the world's most dynamic region, cannot afford to sleepwalk through the 21<sup>st</sup> century with a workplace relations system mired in the thinking of the 19<sup>th</sup> century.

Australia has more than 130 different pieces of employment-related legislation, more than 4000 awards and six different systems of workplace regulation.

This tangle of regulation creates enormous cost and complexity for employers and employees alike.

When the Commonwealth first proposed our workplace reforms, we requested that State governments refer their powers, in the same way that they have accepted the logic of national systems for taxation law, for corporate law and for financial institutions law.

Because the States have not done so, the Commonwealth will use the corporations power in the Constitution to move towards a national system.

This is the Government that intends to fix the problem and reform the system, notwithstanding opportunistic resistance of those opposite which is contrary to the best interests of the nation.

A unified, national system of workplace relations laws is an idea whose time has come. And the time to turn this idea into law is now.

Let me turn to the key elements of the bill.

#### **Single national system**

We live in an integrated national economy and it makes no sense whatsoever to adopt anything other than a national approach to workplace relations. By using a combination of constitutional heads of power, Work Choices will cover up to 85 per cent of employees across Australia.

While employers and employees covered by Work Choices will not be subject to regulation by state employment laws, state laws will continue to cover such matters as occupational health and safety, workers compensation, trading hours and public holidays.

**Transitional arrangements**

These are substantial changes and so to provide an orderly change over there will be comprehensive transitional arrangements.

Current state agreements applying to employers entering the new system from the state systems will continue to apply as transitional agreements. State awards applying to employers entering the new system will be preserved as transitional agreements for three years.

Employers currently in the federal system who, for constitutional reasons, cannot be covered by Work Choices in the longer term, will have a transitional period of five years during which current agreements and awards can continue to operate.

Unlike other states, Victoria has referred powers with respect to workplace relations to the Commonwealth. Because of this, employees in Victoria subject to the terms of the referral will continue to be covered under Work Choices.

Other less significant transitional arrangements will be established in regulation along with necessary consequential amendments to Commonwealth legislation. Following its passage the Act will be consecutively numbered for the first time in decades.

**Australian Fair Pay Commission**

Work Choices will move away from the adversarial and legalistic nature of the current wages setting process. It will establish a new independent wage setting body—the Australian Fair Pay Commission—charged with promoting the economic prosperity of the people of Australia.

The Fair Pay Commission will set and adjust minimum and award classification wages, minimum wages for juniors, trainees, apprentices and employees with disabilities, minimum wages for piece workers, as well as casual loadings.

Minimum and award classification wages will be protected at the level set after the increase from the 2005 Safety Net Review by the Australian Industrial Relations Commission (AIRC). Minimum and award classification wages will not fall below this level.

The Fair Pay Commission will take a wider-ranging, proactive and consultative approach to

this issue which will help all those affected to have a say.

**The Australian Industrial Relations Commission**

The role of the Australian Industrial Relations Commission will change to keep pace with the needs of the modern economy.

The AIRC will focus on its key responsibility—dispute resolution. In addition, the AIRC will have a role to further simplify and rationalise awards, as well as regulating industrial action, right of entry, unfair dismissal and registered organisations.

The AIRC will retain its powers to resolve disputes arising under agreements but only where those functions are expressly conferred on it by the parties.

Under the new system the AIRC will no longer exercise compulsory powers of conciliation and arbitration, but instead will provide voluntary dispute resolution services with limited exceptions (such as terminating a bargaining period where industrial action is threatening life or causing damage to the economy or under new essential services provisions).

It will also retain its role in providing an initial conciliation service for termination claims.

**The Australian Fair Pay and Conditions Standard**

For the first time at a federal level the Government will enshrine in law minimum conditions of employment: annual leave, personal leave (including sick leave and carer's leave), parental leave (including maternity leave) and maximum ordinary hours of work.

These conditions, together with the minimum and award classification wages set by the Fair Pay Commission, will make up the Fair Pay and Conditions Standard.

All new agreements will be required to meet the Fair Pay and Conditions Standard throughout the life of the agreement.

Award provisions dealing with annual leave, personal/carer's leave and parental leave which are more generous than the equivalent provisions in the Fair Pay and Conditions Standard will con-

tinue to apply for existing and new employees covered by those awards.

### **Workplaces Agreements**

This Government believes in encouraging the further spread of workplace agreements.

With Work Choices, there will be provision for collective agreements negotiated directly between employers and their employees and between employers and unions that represent employees in a workplace. There will also be provision for collective agreements in which persons other than unions can be employee representatives.

Work Choices will provide agreement making options where an employer is establishing or proposing to establish a new business in areas such as the economically important resources and construction sectors. As well as existing greenfields agreements between employers and unions, Work Choices will introduce greenfields agreements that do not require the involvement of a union.

AWAs will be available to employers and employees at all times and will exclude both collective agreements and awards.

Instead of the complex, time consuming and legalistic certification and approval processes Work Choices will introduce a streamlined, lodgement-only system for all agreements with the Office of the Employment Advocate (OEA). All collective agreements and Australian Workplace Agreements (AWAs) will take effect from the date of lodgement.

The process for varying or terminating agreements made under Work Choices will be simplified and will be similar to that for lodging new agreements. Agreements can be extended (up to a maximum of five years), varied or terminated by agreement.

There will be an improved compliance regime with financial penalties for employers who fail to meet the rules for negotiation, lodgement or content of agreements.

The Government is committing an additional \$ 141 million over 4 years to ensure appropriate compliance by employers and assistance to employees.

### **Protection of key award conditions in bargaining**

To help in the process for making agreements Work Choices will protect certain matters currently dealt with in awards when new workplace agreements are negotiated. These conditions will be deemed to be part of an agreement unless it specifically modifies or excludes them.

These matters are public holidays, rest breaks (including meal breaks), incentive-based payments and bonuses, annual leave loadings, allowances, penalty rates and shift/overtime loadings.

To change or remove these conditions in a workplace agreement under Work Choices, the agreement must address these matters. The agreement will need to identify the particular award conditions that are being changed or removed. In this way these conditions will be protected, unless employers and employees agree to vary them.

### **Content of agreements**

All new agreements will need to meet the Fair Pay and Conditions Standard, include a nominal expiry date (up to a maximum of five years) and a dispute settling procedure.

Certain matters such as restricting the use of independent contractors will be prohibited from being included in new agreements. The inclusion of prohibited content may attract financial penalties but will not render the agreement invalid.

### **Awards**

Under Work Choices federal awards will not be abolished. Employees not covered by a workplace agreement will continue to work under their federal awards. However, awards will be simplified to ensure that they provide minimum safety net entitlements. The legislation will set out matters that will no longer be allowable award matters and a number of other matters will be removed from awards because they will be protected by the Fair Pay and Conditions Standard.

A Taskforce has been established to recommend ways of reducing the duplication and complexity of current federal awards. The Taskforce's recommendations will need to be consistent with the Government's commitment that award classification wages and benefits will not be cut.

Under Work Choices, long service leave, superannuation, jury service and notice of termination will not be included in new awards because they are provided for in other existing legislation. However these provisions in current awards will continue to apply to existing and new employees covered by these awards.

**Transmission of business**

Part and parcel of a modern economy is that businesses are bought and sold. When this happens it is important the entitlements of employees are protected. Where this does occur, and employees accept employment in the new business, the awards, collective agreements and AWAs that covered the employees of the old business will transfer to the new employer for a maximum of twelve months.

However, if no employee accepts employment with the new employer, then the awards or agreements from the old employer will not transfer.

Employees who do transfer must be provided with information in writing about their terms and conditions of employment. The new employer and employees will be able to negotiate agreements to override the transferred agreements and awards.

**Reforming dismissal laws**

Whatever their intended purpose, unfair dismissal laws have acted as a brake on job creation. They have fostered a culture of complaint and litigation that has developed to the point where some firms will go to any lengths to avoid hiring extra staff.

Work Choices will take the unfair dismissal monkey off the back of Australia's small and medium-sized businesses.

Businesses that employ up to and including 100 employees will be exempt from unfair dismissal laws. For businesses with more than 100 employees, an employee must have been employed for six months before they can pursue an unfair dismissal claim.

In addition, no claims can be brought where the employment has been terminated because the employer genuinely no longer requires the job to be done.

Just like today, only employees of businesses that are constitutional corporations will have access to the unfair dismissal laws. And just like today, employees will continue to enjoy a range of protections against unlawful termination.

It will remain unlawful to dismiss an employee on the grounds of race, colour, sex, age, union membership, pregnancy, family responsibilities, refusing to agree to an Australian Workplace Agreement and a range of other grounds.

The Government will provide financial assistance to eligible employees who have made an unlawful termination application to apply for up to \$4,000 towards independent legal advice on the merits of their claim.

**Industrial Action**

The Government recognises the need to carefully balance the legal immunity given to industrial action in bargaining for workplace agreements against the needs of the community.

The Government will protect the right to lawful industrial action when negotiating a new collective workplace agreement. However, Work Choices will make a number of improvements to the remedies for unprotected industrial action.

These include requiring the Australian Industrial Relations Commission to provide a remedy for unprotected industrial action within 48 hours and removing impediments to access to common law tort remedies for unprotected industrial action.

A secret ballot will be required before protected industrial action can be taken. This will ensure that protected action is not taken unless the employees involved genuinely wish to take this serious step. Work Choices will also make it clear that industrial action is prohibited during the life of an agreement.

New provisions will be introduced similar to those in state essential services legislation. These new provisions will allow a declaration to be issued by the Minister for Employment and Workplace Relations where protected industrial action threatens life, personal safety, health or welfare of the population or is likely to cause significant damage to the economy.

Finally, under Work Choices third parties directly affected by protected action will be able to seek a suspension of the bargaining period.

### **Freedom of association**

Just as we have done since 1996 this Government will ensure all Australians have the right to join—or not to join—a trade union.

Freedom of association laws will be strengthened to ensure that employees and employers can choose whether or not to join a union or an employer association free from direct or indirect pressure.

Work Choices will cover the field so that right of entry can only be exercised under the new legislation and the circumstances under which it can be exercised will be clarified and the remedies for abuse strengthened.

The right of entry provisions will still allow a union permit holder entry for OHS purposes under state legislation where the union official has a federal right of entry permit and has complied with all requirements of the relevant state OHS legislation.

### **Registered organisations**

Unions and employer organisations provide important services to their members. There will continue to be a legitimate role for unions and employer organisations in the national system.

State registered organisations will be able to apply to the Industrial Registrar for transitional status as a registered federal organisation provided they meet certain minimum requirements. They will then have three years to meet the full requirements of the Workplace Relations Act. The 'conveniently belong' rule will not apply to the registration of state registered organisations that are transferred into the federal system.

### **Improved protection**

Work Choices will put in place strong and practical measures to ensure all parties abide by the awards, collective agreements, AWAs as well as the Fair Pay and Conditions Standard, state awards and agreements that are to be brought into the new system

The Office of Workplace Services (OWS) will have increased powers. This includes the power to enforce compliance with the WR Act, awards

and agreements, the freedom of association provisions and the rules for agreement making.

The compliance regimes applying to unprotected industrial action, abuse of right of entry laws and contraventions of freedom of association provisions will also be strengthened.

When negotiating individual agreements, young people will be protected by the requirement that an appropriate adult sign the agreement. As well, when setting wages for juniors, the Fair Pay Commission will be obliged by legislation to take into account the need to secure their competitiveness in the labour market.

Work Choices will also increase opportunities for school-based and part-time apprenticeships and traineeships by implementing the Government's commitment to remove industrial relations barriers by filling current gaps in award coverage for part-time and school-based apprenticeships and traineeships.

### **Work and family issues**

This Government has delivered a decade of rising living standards for Australian families. With Work Choices we will build on this record.

This bill provides both protection and flexibility to help Australians meet their work and family responsibilities.

Work Choices will protect Australian families by making it unlawful for a workplace agreement to have pay and conditions that are less generous than the Fair Pay and Conditions Standard of up to 52 weeks of unpaid parental leave at the time of the birth or adoption of a child.

The terms of the Australian Fair Pay and Conditions Standard will be protected by law.

Award reliant employees will not lose current entitlements to family-friendly working arrangements and will continue to receive any penalty rates, loadings for overtime or shiftwork, allowances, incentive-based payments and bonuses that they are currently entitled to under their award.

It will remain unlawful for an employer to terminate an employee's employment on certain grounds, including marital status, family responsibilities or pregnancy, or because of absence of work during maternity or other parental leave,

regardless of the size of the business they work for.

Nothing is more important to family security than a strong Australian economy.

These are reforms which will strengthen our economy and will secure better opportunities for all Australians into the future.

### Conclusion

The reforms I have outlined are comprehensive and necessary. They are big but fair changes.

We should never take strong economic growth and prosperity for granted. To secure our future prosperity into the new century, we must work smarter and seize this opportunity to create a new wave of productivity growth.

For a long time, Australia tried to make do with an industrial relations system born of the bitter disputes of the 1890s. This was a system founded on conflict and an 'us' and 'them' mentality. It was a system shot through with pessimism about the capacity of Australian men and women to shape their working lives.

The Liberal and National Parties believe in the capacity of Australians to exercise choice and to work together. We believe that cooperation, not conflict, is the path to prosperity and fairness.

That is why, with Work Choices we are moving to give more Australians the chance of a job.

We are moving to guarantee in law a fair and balanced safety net of conditions for Australian working men and women.

And we are moving to what any modern, competitive nation needs in the 21st century—a single set of workplace relations laws.

With Work Choices, Australia is on the move towards a better workplace relations system that allows Australia's employers and employees the freedom and the choice to sit down and work out the arrangements that best suit them.

This bill makes the necessary changes to move away from an outdated and inefficient system that no longer meets the needs of a modern Australian economy.

Work Choices moves to a system that gives employers and employees a tangible stake in what happens at their workplaces. Because at the end

of the day a fair society relies on a strong economy with productive workplaces.

For it is a strong economy which enables employers to pay their workers more; it is a strong economy which reduces unemployment; and it is a strong economy that delivers, just as it has done over the last decade, more jobs and higher wages for all Australians.

Work Choices is founded on the principle that the best arrangements are those developed by employees and employers at the workplace.

This Government recognises that the time to turn this idea into law and move to a better system is now.

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

### BORDER PROTECTION

**Senator O'BRIEN** (Tasmania) (4.10 pm)—I move:

That the Senate notes the incompetence of the Howard Government in its failure to protect Australia's border security, quarantine and environmental integrity and its fishery resource in northern Australia and northern Australian waters.

Let me commence by saying that, over the next few weeks, we are going to hear a lot about national security. This parliament and this nation will be engaged in debating a new set of laws for dealing with the threat posed by terrorists to this country. I am absolutely sure that much will be heard from senators opposite during this debate about the supposed strength of the government in national security matters and in laws dealing with terrorists, but right now we are debating one of the Howard government's serious failures in security matters.

How do we know that the Howard government's failure to stem the flood of illegal foreign fishing vessels poses a serious threat to our national security? We know it because a senior official of the Department of Agriculture, Fisheries and Forestry, Mr Daryl Quinlivan, who I believe is now a deputy secretary, said just that in a briefing to Indo-



nesian officials in August. In that briefing about the impact of illegal fishing by foreign vessels in Australia's northern waters, Mr Quinlivan told Indonesian officials:

This activity, if it continues at its present levels, poses a serious threat to our border security.

I will be quoting extensively from Mr Quinlivan's presentation today, because it blows the whistle on claims by the government and by the minister opposite that they are 'winning the war on illegal fishing'. We are plainly not winning the war, and Mr Quinlivan's frank and detailed presentation to the Indonesian government clearly set out the true situation we face right along our northern coast.

Just about every time a foreign boat is captured, the fisheries minister issues a triumphal press release. The minister likes to give the impression that the government's efforts to deter illegal incursions are bearing fruit. Unfortunately, the truth is that illegal fishing in our northern waters is out of control. At last week's supplementary estimates hearings, officials confirmed that Coastwatch reported 8,108 sightings of possible illegal incursions into Australia's northern waters last financial year. That is an average of 22 a day. I accept that this figure will include some multiple sightings of the same vessel and will include some sightings of vessels legally transiting Australian territory but, nonetheless, this is an alarming figure. Even if the real figure is a half or a quarter of that amount, we have real cause for concern, and the 400 or so apprehensions are not making much of a dent in it. I will say more about those apprehensions a bit later in this speech.

Of greater concern is the admission in Mr Quinlivan's presentation that the actual rate of incursions is increasing. For all the publicity and triumphalism from the minister that accompanies every apprehension, the situa-

tion is actually getting worse. Mr Quinlivan told the Indonesian government in August:

Not only are we seeing a greater rate of incursions but also a significant shift east towards and into the Torres Strait Protected Zone (an area of joint jurisdiction with PNG), penetrating deep into the Gulf of Carpentaria, often landing on mainland Australia, and further south-west targeting Rowley Shoals.

That is Mr Daryl Quinlivan, deputy secretary of the Department of Agriculture, Fisheries and Forestry, speaking. Now we know the truth. There are more boats and they are becoming more audacious. They are penetrating further along Queensland's shores and further down the Western Australian coast. The issue is not just one of border security; illegal fishers bring other threats as well. Let me quote Mr Quinlivan again, in case you think that I am exaggerating. In the same presentation, he said:

Another significant concern to Australia are the quarantine risks posed by the possible introduction of marine and terrestrial pests as well as human and animal diseases.

Many vessels have been sighted along river beds and mangroves on the Australian mainland. Some have been known to establish hidden storage sites on land where additional stores of fishing equipment and resupply are kept.

From a quarantine and national security perspective, this is obviously not acceptable and the Australian Government is gravely concerned about this activity and the potential for this activity to be used for other activities such as people smuggling, terrorism and the trafficking of weapons and narcotics.

They are not my words; they are the words of the deputy secretary of the department, Mr Daryl Quinlivan. Contrast those frank and alarming words from Mr Quinlivan with the arrogant and dismissive words used by the Minister for Agriculture, Fisheries and Forestry, Senator Ian Macdonald, in an answer to a question on these matters from me only a month ago, on 5 October. I asked the min-

ister about reports that illegal fishers had set up camps on the mainland and that they were carrying animals that posed a quarantine risk. In his answer, Minister Macdonald said:

Senator O'Brien asked me about the setting up camps on the mainland. There have been reports of that. I have to say that a lot of those reports have not been confirmed.

They were confirmed for Mr Quinlivan, and they have been confirmed for all Australians now. They have been confirmed by a deputy secretary in the minister's own department—someone who works very closely, I might say, with that minister. But the minister went further in his answer to me on 5 October. He said:

Senator O'Brien further asked me about animals and serious quarantine risk. I have heard reports about monkeys and fowls and all sorts of things, but I am not sure that those rumours have ever actually been confirmed.

It is inconceivable that the information Mr Quinlivan was able to provide to the Indonesians in August had not also been provided to Senator Macdonald, the fisheries minister, with whom Mr Quinlivan closely works. The dismissive answer provided to me by this minister has unfortunately become a hallmark of this arrogant government and, frankly, it leaves me very concerned about the accuracy of the answer the minister gave me. This government is prepared to provide accurate and factual information to the Indonesian authorities but is not prepared to provide the same information to the Australian parliament, this chamber and the Australian people. The fact is that these out-of-control illegal fishing activities do provide a substantial human and animal quarantine threat. The minister knows it, his department knows it and his department admits it. Unless these illegal incursions are brought under control, the door is open to the introduction of exotic diseases in both the marine and terrestrial environments.

Mr Quinlivan goes beyond the quarantine threat; he also talks about the links or potential links between illegal fishing and people-smuggling, terrorism and trafficking in weapons and narcotics. There is already strong evidence of links between illegal fishers and people smugglers. The failure of the Howard government to control access to our northern waters and shores has left us wide open to terrorists and drug smugglers. So much for the Prime Minister's oft repeated statement that:

We decide who comes to this country and the circumstances in which they come.

In the case of these illegal fishers, it is they who decide who comes to this country. It is they who decide if they want to set up a base camp on the Australian mainland. It is they who decide if they are going to bring their dogs and monkeys ashore as well. It is they who decide if they are going to store their fishing equipment in those camps. We know that they have already been having a significant detrimental impact on our environment and on our fish stocks. Again, I refer to Mr Quinlivan's presentation to the Indonesian government in which he stated:

The intensity and sustained pressure of illegal fishing activity by Indonesian nationals in Australia's northern waters are having significant detrimental effects on our shark, finfish, trochus and trepang stocks—not to mention the effects on the marine environment.

Mr Quinlivan is particularly concerned about the impact of illegal fishing by foreign vessels within the so-called MOU box. He is not talking about fishing activities by traditional Indonesian fishers; he is talking about highly organised illegal fishing activities we see elsewhere in Australia's northern waters, much of it now allegedly linked and controlled by criminal gangs with their roots in countries to the north of Indonesia. In relation to the impact of illegal fishing in the MOU box, Mr Quinlivan stated:

Intense fishing pressure is placed on stocks within the MOU Box and this is quite simply not sustainable. Stocks in the MOU Box cannot and will not survive the current levels of fishing in the MOU Box.

This is an environmental and economic disaster waiting to happen. The failure of the Howard government to adequately police and protect fish stocks in the MOU box has led to key target species of shark, trochus and trepang being depleted and threatened with local extinction, placing further pressure on stocks elsewhere.

From all of that, you must reach the conclusion that the government's efforts to date have not deterred illegal fishers. Why else would Mr Quinlivan be making those statements to the Indonesian authorities? He is obviously seeking their assistance because the Australian government is failing to deter them.

I have spoken in this place previously about the failure of this government's and this minister's tag-and-release policy towards illegal fishers, yet the government persists in using tag and release—also known as legislative forfeiture—in most cases where a foreign vessel operating illegally is caught in our fishing zone. It still does. In the first seven months of this year, 227 vessels were caught and, of these, 117 were the subject of legislative forfeiture. This policy has plainly not been effective in deterring illegal fishers, and the use of this policy, or at least the frequency of its use, should be reviewed. The government and the ministers opposite have not only failed in their efforts to stem the tide of illegal foreign fishers; they have presided over the situation getting worse and worse.

We in the opposition understand that it is not an easy problem to solve. We acknowledge that there are significant economic factors driving illegal fishing activity. We do understand that the high price that shark fin attracts in a number of markets is a driving

factor. But, equally, there are absolutely no signs from the fisheries minister or his colleagues that they are willing to acknowledge that the strategies they have been using to tackle this problem have failed to halt not the trade but the increase in these incursions—they have failed to halt the increase. The number of incursions is growing at a time the government claims to be applying more effort to stemming them. We are waiting for an acknowledgment from this minister that the government has failed to protect our northern waters and that he is open to new ideas and new strategies to deal with the problem that these incursions pose.

Labor has put a strategy on the table. Labor does believe that the best way to protect the waters and shores of an island continent such as ours is to—

**Senator McGauran**—Don't say it.

**Senator O'BRIEN**—yes, Senator McGauran, establish an Australian coast-guard service. One of the peculiarities that I noticed during the recent estimates round when discussing this issue with the fisheries minister, Senator Ian Macdonald, was that he talked about the additional resources that have been applied for—four additional boats. I asked, 'Are they Australian Fishing Management Authority boats?' No, they are Customs boats. What is the problem? Is it people bringing in illegal goods or is it a fishing problem? Doesn't this government trust the fisheries minister to have charge of additional resources? I note your facial reaction, Senator McGauran, to indicate that they do not!

**Senator McGauran**—That was to you!

**Senator O'BRIEN**—And I know, Senator McGauran, that your brother in the other place is the senior minister in the portfolio; I look forward to your contribution, to let us know what Mr McGauran proposes to do in relation to this significant responsibility.

Given that Mr McGauran is the senior minister, if the junior minister is failing, perhaps he should take over the responsibility—heaven forbid! The National Party has enough trouble with its portfolio responsibilities, let alone taking on another one.

We do believe that the best way to protect the waters and shores of an island continent such as ours is to establish the Australian coastguard, a service whose No. 1 job would be to patrol our territorial waters to stop illegal incursions and to protect the vast economic resources in our seas. We do need a cop on the beat 24 hours a day, 365 days a year. We do need to know that there are priorities. We need a coastguard whose priorities are the security of our waters and our borders. We need a coastguard that does not become preoccupied with counting birds and flowers on our coastline while illegal fishing goes on around the members of the service involved because they have been hired out to another department to perform another task and taken off the important task of securing our waters and our borders.

Any smart business operator knows, frankly, that if one strategy fails then you look for another one. Yet every time the opposition raise the coastguard proposal it is greeted with howls of derision from those on the other side. Now, they are trying to emulate it in some way. Every time we talk about this problem, they talk about how additional vessels are being put into service under different guises—it is Navy vessels, it is Customs vessels. The vessel that was engaged to patrol the waters south of Australia is now being used in northern Australian waters and, as I understand it, is being upgraded so that when it apprehends people it can hold more of them on board, because they realise that the problem is getting too big.

I suppose in a way the government are moving towards a coastguard, but it is a pol-

icy that dares not speak its name, because they would then be admitting that the policy that they have been shrieking about, the policy that they have been complaining is unreal, is the policy that they are adopting. And more strength to your arm: adopt a decent policy, solve the problem, admit that, yes, the Labor Party got it right, admit that at last we are going to have a coastguard, at last we are going to have a cop on the beat. If we need to put more boats into the area, we will. We will talk to the Indonesians, of course; there is nothing wrong with that.

The good thing about that is that it has belled the cat on the government's dismissive attitude towards the failure of its policies that it portrays to the Australian people. It shows us that in fact the problem of illegal fishing in northern Australian waters is a great problem. It is a problem for our border security. It introduces people to our continent who may bring disease and it introduces animals onto our continent that may bring disease or harbour pests. It introduces boats into our estuaries and onto our beaches which may bring disease and pests. These are very serious problems for our agricultural industries. They may also bring all sorts of contraband. They may bring illegal immigrants. They may bring terrorists.

These are problems which warrant serious attention by this government and not the dismissive attitude that we see in this chamber from Senator Macdonald, who obviously has not been entrusted with the responsibility for the vessels necessary to carry out the task. Having seen that they have been entrusted to Senator Ellison, and having seen what has happened with the wharves around this country and the build-up of containers—the absolute mess he has presided over in terms of the new computer system—I would have to say that I do not have great confidence that we are going to see a solution to the problem under the control of that minis-

ter. So perhaps it is time for the government to admit that we need a department of homeland security. We need a specialist minister. We need to give that minister the responsibility and we need to admit there is a problem and apply the resources to solve it. In the meantime, we will keep holding this government to account and showing up its incompetence.

**Senator SCULLION** (Northern Territory) (4.30 pm)—I rise today to talk about and—perhaps in contrast to those on the other side—to actually inform this place and the Australian public about the wider virtues of and benefits from our excellent border control processes. I note with some concern the lack of confidence that the senator opposite has in regard to these matters. In a marine context, when you are hanging on to some particular piece of driftwood—or policy in this particular case—and it is continuously sinking, the advice from a mariner is: let it go, and hang on to something that has a bit of substance and is floating.

Let me talk about a bit of substance: our policies have substance. We have had an unprecedented attack—in international fishing arrangements—on our border security, and the outcome has been that we have resisted across a large number of fronts and ensured that our border integrity is absolutely iron-clad.

**Senator Webber**—Rubbish! Why do we keep finding Indonesian fishermen?

**Senator SCULLION**—I will take that interjection from a West Australian. It is because we have a comprehensive border security system that absolutely ensures that we can not only detect these people early—

*Senator Webber interjecting—*

**The ACTING DEPUTY PRESIDENT** (Senator Ferguson)—Order!

**Senator SCULLION**—and make sure it is continuously in the newspapers that we detect them, but we also have such a compliance regime that it ensures that they do not return.

**Senator Webber**—Rubbish!

**Senator SCULLION**—Perhaps we can look briefly at some other luminaries across time and opposition senators, rather than looking across the hall and quoting their own people, can have a look at some of these absurdities about the Labor policy. Independent think tank Future Directions International's Lee Corder has said that, 'Labor's coast-guard policy will only burden another agency at a greater cost and detract from the flexibility we now have.' That is an independent viewpoint. We have a whole range of strategic affairs experts at Curtin University, one of whom recently said that in the US, Russia and Japan, the coastguard comes under the command of the navy during times of conflict. They are effectively a navy reserve, which means crew must be trained by the navy to navy standards. That means that you effectively retain them as navy boats anyway, so why set up another authority? Well, I think we have got it right.

I actually spend a bit of time with those people in the Australian Navy. I have spent a lot of time with those people in the Australian Customs, because, effectively, Darwin is the hub of the compliance base of Northern Australia. They believe, as I do, that they are doing an absolutely fantastic job.

But as a member of this government, I have to say that we have to accept that the presence of foreign fishing vessels in our northern waters is a real, immediate and a multidimensional threat. This is a very sophisticated challenge, and the answer: 'Let's slip down to Bunnings and get some different colour paint. We'll paint Customs, we'll paint parts of the Navy; we'll find some

other boats and we'll give them a new coat of paint, a new uniform and off we go' absolutely flies in the face of the sophistication of this challenge. 'We'll have a new name and a badging session' is a pathetic answer to that challenge. It might work for letterheads in parliament. It might work for street signs. But this is a much more sophisticated issue and needs a serious approach.

It definitely has an impact on fisheries, and we all understand that. It can also have an impact, as has been suggested by the other side, on immigration. There is no doubt about that. It can also have an impact on human health, and, of course, those on the other side have suggested that we have menageries coming over; that we have got monkeys, dogs and all those things. Just for the record, in 1985 two macaque monkeys arrived on a yacht in Nhulunbuy and were seized and put down by quarantine staff. Just for the record, they are the only monkeys—and I am sorry we are getting away from the Tarzan story—on record, irrespective of any illegal fishing vessels. They are the only monkeys on record that have actually been spoken about.

So it is okay to continue the fear processes, but I think you have got to have a little bit of substance. That is our constant advice to the Labor Party: try to get a bit of substance in your policy and you might not end up constantly coming second. We have clearly a more sophisticated issue before us involving quarantine, marine pests. I think they are all very, very important issues, and they need a sophisticated policy outcome.

In terms of fishing, we have Operation Clearwater and Clearwater II. I think the planning took place some six months ago. We have had 31 apprehensions of vessels, four forfeitures and a warning of somebody who was just inside the border. We have 187 crew in custody and 56 have been charged. Let me tell you, that is a lot of people, and it

has a huge impact on an industry. We talked today about 8,000 sightings, and of course Labor conceded for a moment, 'Yes, there were 8,000 sightings—one or two of them might have been Australian vessels.' 'Might have been Australian'—the Australian reporting process includes every Australian vessel, every visiting yacht and every Australian fishing vessel, and every time they fly over one they record it. I am not surprised it is 8,000. It is an accurate indication of exactly every vessel within our waters. And there should not be anything sinister or suspicious about that number. It just shows the dedication and the sophistication of our Coastwatch processes.

If we look over the last four years, we have had 155 vessels—that is 155 businesses, and they are quite big businesses, as the senator herself would recognise—they are big businesses over there. They employ a number of people. And to have 155 destroyed is a huge impact on an industry, because it is an economic impact. They do not come over here on a tourist visa. They come over here to make money. When you have a 155-vessel fleet—a fleet the size of which Napoleon would have been proud—which gets destroyed over a four-year period it sends a clear signal. We have had over 1,200 administrative seizures over that time, and I do not know how many crew there are in that, but it must be umpteen thousand.

It sends a very clear and concise signal. And that is very important, because our policy not only needs to protect us, but in the future our policies also need to send a clear signal. And the signal clearly is, in this regard: 'If you come to fish in Australia, don't take the risk, because you will be caught, your boat will be burnt and you will lose money. So go home and tell your friends.' I know these incursions continue but there are not as many recidivists. A clear message is getting out there: if you want to come and

steal from Australia, it is not a good economic idea.

The sophistication of fisheries is very important. We need to recognise that one of our wonderful northern neighbours, the Indonesians, have a very big role to play in this and they can assist us very much. As part of Operation Clearwater, Indonesian officials from fisheries and customs were observers on board some of the patrol boats and were able to learn much about the cooperative arrangements that can happen between Australia and Indonesia in these matters.

I have been informed that apprehensions have been going up and they have increased, obviously as a consequence of a range of measures, including substantial funding increases. We have provided \$25.2 million over the next four financial years for the arming of Customs vessels to ensure some compliance. More and more, they know the penalty. The penalty will be: 'It's all over. You'll lose your boats, you'll be incarcerated in Australia and you'll be returned to Indonesia with huge debts.' They know that is going to be the penalty. They have had that signal so they are less inclined to stop. If they think they can get away because we do not care anymore, they should know that a high level of compliance arrangements has been put in place.

There is an additional \$77.4 million over four years to double the number of days at sea for the Customs fleet—more compliance on the water ensuring that we send that message consistently. There is \$28.5 million over three years to increase Coastwatch surveillance hours—an extra 1,600 hours. There is \$12.8 million over four years to trial, in conjunction with DSTO, surface wave radar technology, which is technology that Australia is driving in the detection of vessels and aeroplanes a long way out to sea. I think that the most comprehensive change that has

taken place in this area is the working together of all the different groups and the sophistication of the integration between Navy, Quarantine, Customs and Fisheries. They know what each other is doing. Their levels of skills in other people's areas have increased. All of them need to be congratulated on the seamless transfer between all of those vessels.

I spoke briefly about the four-year budget. On October 11 this year, \$88 million was provided for 34 new Customs officers and four new tactical response vessels. Those response vessels are in direct response to a change in the demographic. The demographic now decides to use very small vessels to do 14 knots and to roar over in the hours of darkness close to the Australian coastline because they know there are such high levels of compliance. Well, that did not last long. We are on to them. There have been a few embarrassing photos where they are a bit close to Australia, and we have all made a bit of hay about that. But we are onto it. We have made a dedication. Those people have been apprehended and they are back in their villages as I speak telling people that it is not such a wise idea after all. These new tactical response vessels will be smaller. They can go in shoal waters. They are able to patrol closer to our littoral zone and our coastline. We have provided another \$57 million over the four years for those particular vessels.

As most things are in government, this comprehensive and sophisticated task is actually the management of risk. There is a great deal of risk in a quarantine sense regarding foreign fishing vessels. There is the marine biota, which includes things like black stripe mussels, congera sallai and the Asian green mussel. In this place, I and others have reported just how bad this can be for the marine environment. So it is absolutely essential that, as part of capturing these ves-

sels and moving them down, we are not introducing any increased level of risk to our border security. In fact, when we bring one of these vessels in, we surround it in a microcosm of border control. We ensure that it is treated as a high-risk vessel.

Before the vessels come into harbour, they are dived on. The hulls are inspected to ensure that the only marine activity that is on those hulls is commensal and will not hurt Australians. We have seen literally billions of dollars of damage done in India, Hawaii and certainly in America by the zebra mussels and those sorts of marine organisms, which have just destroyed economies and communities around the coastline. We work very hard to ensure that these are not introduced into Australia.

We actually moor these vessels 1.5 kilometres out to sea. This is particularly because there is a possibility of erupting *Mastotermes* ants. We know that ants cannot possibly fly that far with the best wind behind them. Even in the event where we fumigate and do all these things to vessels, we take a very tight precautionary approach to ensure our border security. It is a very sophisticated issue. It is not just about saying, 'We'll get these fishermen and deal with them.' There are a whole range of issues that actually go along with that task, and it is a very sophisticated task. It needs some sophisticated outcomes, not just another visit to Bunnings and the painting of a few boats. It is very sophisticated and, as I said, it needs a sophisticated outcome. That is exactly what these policies have dealt with.

We do, in fact, get a number of animals on these vessels. We have had some dogs in the past. It is not uncommon for seafarers around the world to have a caged bird. The dogs or the parrots on a vessel from overseas are taken into quarantine. We take a blood test of the dogs. We are very interested in the sorts

of disease that are overseas because of our proximity. So we test the dogs and the parrots for a whole range of diseases. If the vessel is returned to the owners under a bond or it steams to sea again, the animals are returned, as they would be in any event. If that is not the case then they are put down. This is a very sophisticated process and it is a policy approach that ensures that there are no leaks in our border control system.

I was listening the other day to Senator Sterle, who was talking about an incident. I understand he referred to the ACV *Storm Bay*. I am pleased you are here, Senator Sterle. There are those in this place who would say that what he said was outrageous and mischievous. I am not going to do that. I am simply going to say that he was obviously misled. It is very hard, sometimes, to get information in this place. You cannot be everywhere. You cannot be in the ocean off north-west Australia yourself so you have to take it from other people.

On 9 November 2005 Senator Sterle came to this place and requested confirmation that on 14 March 2005 the ACV *Storm Bay* was counting birds and flowers at Rowley Shoals instead of responding to reports of Indonesian vessels. We need to confirm a couple of things. You really need a good source of information. This government certainly does. I am happy to confirm that the ACV *Storm Bay* on 14 March was actually in Fremantle. In terms of clarification of some facts, that is a start. I accept that we can get the names wrong. I am not belting up about that, Senator Sterle. But the nature of these issues is that someone can say, 'This happened,' and it can be construed in a completely different way. Around 14 March, *Corio Bay* was actually at Ashmore Reef. It was a different place, but it was up there somewhere. I accept that is possibly what it was. I have no problems that.



**Senator Sterle**—Wrong boat, still taking photos. Is that right?

**Senator SCULLION**—Indeed. The senator has interjected to say taking photos of birds and flowers. In 1989 I was very proud to have mastered the ship that took the very first NAQS expedition around the Kimberley. We were not looking at birds and flowers, Senator; we were ensuring that the border control that kept the integrity of this country free from disease had a benchmark. That is exactly what they were doing.

**Senator Sterle**—Maybe you should go back because it's not working now.

**Senator SCULLION**—If you let me finish, Senator, without interjecting you will not embarrass yourself any further. Let me tell you what they were doing. The people on board are the North Australian Quarantine Strategy quarantine officers. They have set a benchmark about the sorts of diseases that are around the place. You may not have heard but there is in fact a disease called avian influenza. It is actually the focus for a lot of people. You should check the newspaper about that one, Senator Sterle. It is the focus for a number of people in Australia who are fairly concerned. One of the things about benchmarking viruses, particularly avian influenza, is that it is very important to know the range of unidentified viruses that exist commensally that are not hurting this country at the moment. We need to go out there. We are not looking at, primping and patting birds. We are using cannon nets and we are taking blood from them. I will get onto the issues associated with the flowers in a minute and perhaps make some connectivity with the productivity of agriculture in Western Australia. But that is what they are doing there. They are not playing games. We have vets on board to ensure that we have a library of titers for viruses across the top of Australia.

We also go to Indonesia and Papua New Guinea. This task force has been there as recently as in the last three months. It is difficult. Everybody asks us to build them a boat. We are not into that. We do not want to build Fisheries a boat. We have Customs and the Navy. They have a wonderful level of amenities and a huge local knowledge of these places. They ensure that these other agencies ride upon the vessels for free. They give them that level of amenity to protect Australian borders. It is not to have a look at the birds and the bees and the flowers, Senator. I have to say that putting it in that way is just an outrage. It is simply an outrage. This is not a reaction to avian influenza. We cover a whole range of factors.

I am not sure how well you know north-west Australia but on West Montalivet Island in 1989 they discovered a grass there from a tyre of a US vehicle while they were servicing the radar station. That grass is supposed to belong in Tennessee. This organisation can forensically look at our plants and animals across north Australia. They will find that that is exactly there. They find the needle in the haystack. That is because they put the time in scientifically, with good process, examining what is happening up there. If they find a dead or sick bird, they test the bird. From the 30-odd viruses that are in the bird, which the bird is quite healthy with, they will find the one that they do not know about, so they do not have to waste months and months identifying it.

In terms of scientific experimentation and scientific process, I think we have to take this opportunity to commend the Australian government, the North Australian Quarantine Strategy and the Customs officers on the absolutely fantastic job they do. We have to commend Coastwatch and the people in the Australian surveillance section of Coastwatch. We have to particularly commend those men and women who every day go out

in the Australian Navy and are part of our fundamental process in terms of our coastline. Every Australian can have complete confidence while this government is at the helm that this border control policy will continue to be adjusted against changes in the demographics and changes against the compliance regimes as they are attacked. I can tell you right now that any change in that will throw us into a position where the only alternative is to simply change the colour of some votes, add a new uniform and a new name. Australians deserve better than that and that is why they voted for the coalition government.

**Senator STERLE** (Western Australia) (4.50 pm)—I rise today to speak in support of the motion moved by Senator O'Brien. The motion calls on the Senate to note the incompetence of the Howard government in its failure to protect Australia's border security, quarantine and environmental integrity and fishery resources in northern Australian waters. This motion asks the Senate to note what is a simple statement of fact and, as such, I would assume that it would have the full support of all senators.

Honourable senators may have noticed that I am deeply concerned about Australia's border security and the problem of illegal fishing in Australian waters. I will use this debate to expand on some of the themes I have raised previously in the Senate. As I have said before in this chamber, the neglect of border security is a whole-of-government approach for the Howard government, from the Prime Minister down. But, today, I will limit my contribution to comments made by Senator Ellison, Senator Ian Macdonald and the Prime Minister.

In question time yesterday, I asked Senator Ellison, the Minister for Justice and Customs, whether tasking the ACV *Storm Bay*—or whatever boat it was—to count birds and

flowers was a part of the Howard government's strategy to protect our maritime borders against illegal fishing. The minister told me that before he could give me an answer he would have to go back and recheck the issue of weather conditions, so he would have to take my question on notice. Senator Ellison then went on to tell me that I was trying to slur the good men and women of the Australian Customs Service and the ADF.

It seems that I will need to read my questions slower in the future so that the minister can understand them because I can assure the Senate that the only person I was trying to slur was the minister and his incompetent grasp of his portfolio. It does not inspire in me much confidence that Minister Ellison would have to consult weather charts before he could confirm or deny whether tasking any boat to count birds and flowers was a part of the Howard government's strategy to protect our maritime borders against illegal fishing. I look forward to the minister's complete answer once he has had time to consult the Bureau of Meteorology or whatever it is he needs to do.

Honourable senators might remember Senator Ian Macdonald's comments when Jon Ford, the Western Australian Minister for Fisheries, dared to criticise the Commonwealth Minister for Agriculture, Fisheries and Forestry. Senator Ian Macdonald told the media:

The WA Government needs to take a dose of reality and if there are problems in WA waters then they should be policing them ...

West Australians know that Jon Ford is doing his best to care for the fragile marine ecology of Western Australian waters by creating sanctuary zones in marine parks and adjusting bag limits. But Jon Ford's efforts have been undermined time and again by the Howard government's inability to keep looting foreign fishermen out of Western Australia.

lian waters. I pointed out to the honourable minister that if he knew anything about his portfolio, he would know that WA waters are surrounded by Commonwealth waters and that the only reason that there would ever be a problem in WA waters would be if the Howard government had failed in its responsibility to police Commonwealth waters.

But the minister has not budged and he has not recanted his petulant comments. In fact, the minister has gone on to make even more petulant comments since that time. The minister is quoted in the *Australian* newspaper as saying that he was so disappointed with the level of co-operation he was getting from Jon Ford that he was still considering whether to offer him an invitation. Well, boo-hoo! Instead of getting on with the job, the minister seems to spend his days sooking about the states and fretting over who he will invite to his parties, like some capricious princess.

I must confess that I was pleasantly surprised the other day by some comments that Senator Ian Macdonald made in relation to the problem of illegal fishing. I draw honourable senators' attention to a press release that Senator Ian Macdonald issued on 3 November titled 'New report exposes flag of convenience countries'. When I read the title, I thought to myself that the *Ships of shame* report released by former Labor member Peter Morris was not that new. But as I read the press release, I saw that the report he was referring to was not the *Ships of shame* report, but a report jointly commissioned by none other than the International Transport Workers Federation and the World Wildlife Fund. I would have thought that Senator Ian Macdonald would have been cautious about being publicly enthusiastic about reports commissioned and funded by trade unions and environmentalists. His colleagues on that side of the chamber might start picking on him and telling him that he too is beholden to

the trade union movement and the environmental lobby.

Senator Ian Macdonald's press release details how flag of convenience shipping registers are assisting international fishing pirates. The press release details how Senator Ian Macdonald told international representatives attending the 24th meeting of the Commission for the Conservation of Antarctic Marine Living Resources earlier this month that flag of convenience registers are:

... turning a blind eye to their international responsibilities and making a quick buck at the expense of the world's fisheries and marine life.

I put it to the Senate that the world's fisheries and marine life are not all that is being put at risk in the name of a quick buck. The minister would do well to talk to his mate the Minister for Transport and Regional Services and his chums in the National Farmers Federation. He might learn that they are happy to turn a blind eye to their Australian responsibilities and put Australia's coastal security and the jobs of hardworking Australians at risk satisfying their addiction to flag of convenience registered shipping.

Time and again we have seen the Howard government sacrifice Australia's national interest and risk our national security with their anti-Australian shipping policies that favour foreign flag of convenience vessels and crews in the name of cheap shipping costs. The Howard government have a record of breaching the Navigation Regulations and their own ministerial guidelines regulating coastal shipping by failing to establish if a licensed Australian vessel is available before issuing a single voyage permit to a foreign ship. If Senator Ian Macdonald enjoyed reading the International Transport Workers Federation report so much then I highly recommend that he reads Peter Morris's *Ships of shame* report, released a decade ago, which exposed not only how flags of convenience

shipping registers were assisting international fishing pirates but also how they were endangering our marine environment and undermining labour standards world wide.

If senators opposite do not believe me then I would remind them of a vessel formerly known as the *Wallarah*. The *Wallarah* was an Australian coastal ship, registered in Australia and proudly crewed by Australian seafarers, one of the last of the '60 milers' which, for 16 years, carried coal from the mines at Catherine Hill Bay to Newcastle. In 2002, the *Wallarah* was renamed the *Iluka*, registered by its owners under the Tongan flag, a notorious flag of convenience shipping registry, and the Australian crew was replaced with Russians and Tongans. The *Iluka*, as it was then known, was then used to carry grain between Australia and New Zealand under the single voyage permit system operated by the Howard government.

If the Howard government are happy to use cheap foreign guest labour to move our cargo, I wonder how long it will be before they introduce guest labour, paid one-tenth of what Australian workers are paid, to drive our buses, teach our children, work in our hospitals or work at the Port Kembla Grain Terminal. I am sure it is only a matter of time. Senator Ian Macdonald might also be interested in reading the Australian Maritime Safety Authority annual report of 2004-05. The report details that, during 2004, the average number of deficiencies per inspection was 2.3. That is, every single time an AMSA inspector boarded a flag of convenience vessel, they found an average of 2.3 deficiencies. This statistic is unacceptable, but it is a statistic that the minister for transport seems happy to let slide in pursuing the Howard government's maritime policy, which is designed to destroy the Maritime Union of Australia by allowing poorly paid foreign guest workers on foreign ships to move cargo around Australia's coasts.

The fact is our borders leak like a sieve. Illegal fishing by foreign vessels is out of control, and the Howard government has clearly failed to protect our northern borders. You only have to look at recent failures in border protection in my home state of Western Australia this year to know that this is true. Just the other day seven boat people from West Timor landed on the Australian mainland near Kalumburu in the north of Western Australia and asked the locals for directions to the nearest town.

Then there was the time that the government had to rely on a schoolteacher, his family and members of a local community on a sightseeing and diving trip to raise the alarm about a group of illegal foreign fishers landing in Western Australian near Brue Reef, which is about 50 kilometres north of Cape Leveque in the Kimberley. I am sure Senator Scullion would know Brue Reef. I know Cape Leveque well. I have driven trucks on the dirt roads up there a number of times, delivering furniture, so I am quite familiar with that part of the world, as is, I am sure, the honourable senator, who has now escaped from the chamber. These illegal fishers not only breached the Howard government's border protection measures and were poaching trochus shell; they actually landed on Australian soil. But these isolated examples I have just mentioned are only the tip of the iceberg. Last year 8,000 illegal vessels—not Australian boaties and yachties out looking around the north-west—were sighted operating in Australian waters and only 400 of them were intercepted.

We all remember the Prime Minister's assessment of the state of our border security when he was asked on talkback radio about the plunder of Australian waters by illegal fishers. He said:

... what you're seeing at the moment is the system working.

I can tell you, Mr Acting Deputy President, I watched *60 Minutes* on the weekend and I did not see a system that was working. What I saw was the might of the Australian Navy being routed by a single pirate with a bamboo stake. Now before the senators opposite jump up, scream and carry on about what I am talking about and try to accuse me of being un-Australian or trying to slur defence personnel, let me make this clear: I, and my colleagues on this side of the chamber, have the greatest respect for the hardworking men and women of the Australian Navy, who are doing the best they can to deal with illegal fishing incursions into Australian waters with the resources that have been given to them by the Howard government.

These hardworking Australians who put their lives on the line every day to protect our quality of life deserve purpose-built vessels that will not be fended off by bamboo-stake-wielding bandits. The men and women who work to protect Australia's coast deserve to be given the tools they need to get on with the job.

**Senator Johnston**—What are they?

**Senator STERLE**—The reality is—I will inform you, Senator Johnston, right now—that this government talks about border protection but when it is put to the test it surely misses out. I would like to conclude my comments by making it clear that this government's policy failures on border security are placing our commercial fishermen in danger, are undermining the integrity of Australian quarantine—

*Senator McGauran interjecting—*

**Senator STERLE**—and are leading to the rape and plunder, Senator McGauran, of Western Australian fish stocks and our fragile marine ecology.

The Howard government's policy failures on border security are allowing droves of Indonesian fishermen, who may have tuber-

culosis, may be carrying hens which may have been exposed to the avian flu and may be accompanied by dogs which may have been exposed to rabies, into Australia's quarantine zone and onto our shores. But don't worry! The Prime Minister assures us that the system is working. I put it to the Senate that the Prime Minister is wrong. I put it to the Senate that there is a lot more this government can and should do to protect Australia's seas.

After nine long years of the Howard government, maritime security is still split between eight government departments administering 11 separate pieces of legislation. It is about time the Howard government realised that political spin will not protect Australian fishing stocks or secure our borders. Unlike the government, Labor have a plan. Our plan is for an Australian coastguard. Labor know that Australia needs purpose-built vessels which will not be fended off by bamboo-stake-wielding bandits. If the Prime Minister were fair dinkum about border protection, he would swallow his pride and admit that Labor's proposal for a coastguard is the best answer to the problem we have with border security and illegal fishing in Australian waters.

**Senator JOHNSTON** (Western Australia) (5.05 pm)—The first thing I want to say is: how much does Labor care about our fisheries; how much is Labor really interested in them? A fascinating reflection of that concern—those crocodile tears—can be seen in Western Australia where the state minister Jon Ford said that he was going to take the state funded vessel away from patrolling northern waters because the Commonwealth would not pay \$2 million to the state. So he is going to, allegedly, leave Western Australian fishermen in the lurch for \$2 million. Do you know what the state government of Western Australia's surplus this budget year is? It is \$1.3 billion—\$1,300 million—and

for two million bucks Minister Ford, in his own words, is going to leave Western Australians in the lurch. That type of contempt for border protection and fisheries is reflected by Senator Sterle today.

He asked a question the other day in the house about *Storm Bay* and *Corio Bay*. He wanted to know whether the minister could confirm that *Storm Bay* was not at Rowley Shoals on 14 March 2004. Guess what? It was actually in Fremantle on 14 March. So, lo and behold, Senator Sterle's information was completely and utterly wrong. A new senator needs to learn one thing about this chamber: get your facts right. When you come in here wanting to lay assertions, we expect you to at least have carefully read the stuff that helps you prepare the questions. The underlying point about that is that you should understand what you read. Senator Sterle wants to come in here and pretend that he is some sort of authority on border protection. He cannot even read instructions.

The *Corio Bay*, not the *Storm Bay*, was in fact stationed at the Ashmore islands on this date to conduct strategic patrols for fishing vessels and to complete an augmented security patrol of oil and gas installations on the North West Shelf. Guess what? Senator Sterle asked his first question in this chamber—a rather inauspicious commencement to his six-year career, if I may be so bold—based entirely on a false premise. He got the name of the boats wrong. I see he has a point of order. I love it. I must have drawn blood.

**Senator Sterle**—Mr Acting Deputy President, I rise on a point of order. If the senator opposite wants to talk about getting facts right, I think I have made about six or seven speeches in the Senate and asked about four or five questions.

**The ACTING DEPUTY PRESIDENT (Senator Murray)**—Resume your seat. There is no point of order.

**Senator JOHNSTON**—The *Storm Bay* was tasked to support the Western Australian Department of Conservation and Land Management with the tagging of red tailed tropic birds for three days at Rowley Shoals in April 2005. Senator Sterle, I hope you are listening, because this could be a bit of an educational experience for you. The real facts are dawning, I trust. Given your past demonstration of capability in reading and understanding facts, I am wondering. *Storm Bay* was carrying out this tagging whilst conducting strategic patrols for foreign fishing vessels.

Whilst en route to Rowley Shoals, the *Storm Bay* detected two foreign fishing vessels, which separated on approach of the Customs vessel. One foreign fishing vessel was apprehended and destroyed, with the crew of the vessel embarked on the *Storm Bay*. Despite a continued search of the area, *Storm Bay* was unable to relocate the second foreign fishing vessel. The crew from the destroyed vessel were subsequently transported to Broome. There are the facts. There is the true story. I hope you are listening, because, when you come in here and ask questions of ministers based entirely on false facts, you should be assured that what goes around will come around to educate you as to the true story.

Whilst these Customs vessels are Customs assets, they support government agencies. They support the Navy and the aerial patrols that are being carried out under the auspices of Coastwatch. These taskings are regarded as strategic in nature and are always given a lower priority than tactical situations such as foreign fishing vessel response, which is a Navy concern. I hope you are listening to my instructions on this.

**The ACTING DEPUTY PRESIDENT**—Senator Johnston, please address your marks through the chair.

**Senator JOHNSTON**—Thank you, Mr Acting Deputy President, but it is tempting to divert.

**The ACTING DEPUTY PRESIDENT**—Do not be tempted.

**Senator JOHNSTON**—I will certainly try harder. Client agency representatives are embarked on Australian Customs vessels free of charge on the understanding that their task will not be completed if a higher priority task is received. Customs vessels are, obviously, diverted to deal with foreign fishing vessels in Australian waters.

Can I say, with respect to the Labor Party, that, unfortunately, their understanding of the North West Shelf and its security has been demonstrated on numerous occasions in this place. The level of ignorance is quite staggering. Senator Sterle lives up to our every expectation in that regard. I will talk about the Labor Party's coastwatch policies. Labor has released not one, not two, not three, but four coastwatch policies since 2001—each one different and each one erroneously costed. The first was under Kim Beazley's leadership in 2001; the second was under Simon Crean in 2002; the third was under Mark Latham in 2004; and the fourth was under the current leader—back to Kim Beazley. I had to think who it was for a minute; I was a bit confused because there has been such a merry-go-round. The fourth was under Kim Beazley in June 2004.

**The ACTING DEPUTY PRESIDENT**—Sorry about this, Senator Johnston, but you must refer to the Leader of the Opposition as the Leader of the Opposition or Mr Beazley.

**Senator JOHNSTON**—Or Mr Latham or Mr Crean, as the case may be, depending on which particular time of the year you are talking about. With great respect, these policies are a mishmash of ignorance, cobbled together on misinformation, poor costing and a total misunderstanding of what is required

to properly manage the national security of our northern borders.

Of all of Labor's coastguard policies, the most entertaining and erroneous was the third, by Mr Robert McClelland, the former defence spokesperson for the opposition, which was released on 9 March 2004. It was an uncoded, unfunded response in support of Labor's criticism of the government's handling of border protection. This policy involved three boats—one for every 12,000 kilometres of coastline. It is very hard to find a boat that will do 24,000 kilometres on the trot. Anybody who knows anything about boats, endurance, distance and our northern coastline knows that three boats, each to cover 12,000 kilometres, would simply not be able to do the task. This is the credibility the opposition bring to the party. This is the credibility the ALP in this country bring to the table in terms of the protection of our northern borders. Their credibility is a round number that comes before one: absolute zero.

In addition to the three 80-metre patrol boats proposed by the then spokesperson for defence in the opposition, Mr McClelland, a further 10 patrol boats were to be purchased. The original three boats were to have a helicopter capacity, and here is the important part—this is the sort of responsibility and adherence to international covenants and treaties that the opposition bring to the party—enabling coastguard snipers to shoot out, from a helicopter, the engines of suspected vessels. This is what the policy actually proposed. Can you imagine this type of conduct on our northern waters with Indonesian fishing boats? This was the policy that the Labor Party sought to credibly put before the Australian people as their third version of a coastguard—helicopters flying around with a man strapped to the side with a high-powered rifle and a telescopic sight to shoot out the motors of the invading fishermen.

**Senator Marshall**—I think that was Mr Tuckey's idea.

**Senator JOHNSTON**—I pause to say—and I note that many senators on the other side of the chamber are laughing and guffawing—that, if my party had proposed such an outrageous policy, humour would be my resort too in the face of this embarrassment. To put it bluntly, it really is—

**Senator McLucas**—Mr Acting Deputy President, I rise on a point of order. The senator has misdescribed the response on this side of the chamber. I would like that to be in the *Hansard*.

**Senator Patterson**—Mr Acting Deputy President, on the point of order: we have now had two totally irrelevant points of order. If people are going to make points of order, they should be relevant to the point. If there has been misrepresentation, there is an appropriate time to mention that, and it is not in a point of order. If they want to do this and have our speakers interrupted, then we will find other ways of doing something to them. It is ridiculous having them get up here on such points of order. Doing something about points of order might be a thing we can do. But it is out of order for them to get up like this, on two occasions now—once on a point of order that was not a point of order and now for something that could have been dealt with in some other way. I ask you to ask them to desist.

**The ACTING DEPUTY PRESIDENT**—There is no point of order, and the speaker makes the point that it is not desirable to repeat the practice.

**Senator JOHNSTON**—I want to take us all back to the visual image of the ALP's policy with respect to border protection in our northern waters: a small helicopter flying around with a gunman strapped to the side, leaning out with a high-powered rifle and a telescopic sight designed to shoot out the

engines of the suspect vehicle. This is the policy they put forward. In all my days, I have never heard of anything so outrageously ridiculous, so insulting to the Australian people or so misrepresentative of all of the good things that Australia does in the world as putting a person with a high-powered rifle on the side of a helicopter to shoot out the motors of these fishermen. This is a disgraceful, stupid policy—a policy dripping in ignorance—yet Senator Sterle wants to come in here and lecture the government on how to conduct border protection.

**Senator Sterle**—You are not doing it. I am trying to help you.

**Senator JOHNSTON**—Hell would have to freeze over before anyone in the government listened to Senator Sterle or any of the people in the opposition, given their policy and track record on border protection.

Apparently, 10 extra boats were to be financed from \$32 million originally earmarked for a fixed seabed radar system. The most cursory examination of the costs involved in purchasing, maintaining and crewing patrol boats reveal that the figure of \$32 million would barely pay for the fuel per annum. It was astonishingly inaccurate. The level of ignorance that pervades this very technical and important area is astonishingly amazing, given that the opposition want to get hold of it and try and talk about it. It is amazing and astonishing. I believe the Australian people know who can be trusted and relied on to do the right thing, to conduct themselves properly in the face of international covenants and treaties when dealing with fishermen in our fishing zones in the northern waters of Australia, and it is not the opposition; it is not the Labor Party. They are not to be trusted. They do not know what they are talking about. The amount of ignorance they bring to the debate is astonishing.



Labor seem to suggest that these new additions to their policy would not alter the overall cost of the policy. The policy cost some \$612 million. As the government demonstrated at the time, \$612 million would probably only cover the support infrastructure, the crewing and the training involved in Labor's third coastguard. It would not leave any money for actual vessels. Again, the Labor Party brings to the debate a policy which is simply about the process. It is not realistic, dinkum or credible. Yet they come to the Senate on a Thursday afternoon thinking: 'What can we talk to the Senate about? What can we tell the Australian people about? Oh, the front page of the *West Australian* the other day had a story about some West Timorese people arriving near Kalumburu mission. I think we can beat that up into a political story.' That is the Labor Party's attitude: 'Let's beat that up into a political story. Let's pretend we know something about it. Let's go through the motions of knowing something about northern protection, border security and the patrolling of our northern coastline.'

Let me say to the Australian people: do not ever believe anything anybody says. And may I say, with great respect to him, this has been a very inauspicious commencement for Senator Sterle. He has been sucked into running this line, bathed in ignorance. He knows nothing about the subject, has no capacity to talk on it and has no policy. That is the problem: no policy, as usual. In other words, every time they raise an issue, the poor old senators opposite have not a feather to fly with, because anything they put forward is so half-baked and incredible that it is astonishingly unbelievable. So Senator Sterle has to stand up here—and I really have some sympathy for him—and has to try and pretend that there is some sort of policy from the opposition when there is simply a black hole of nonsense.

Under Labor's fourth coastguard policy, the new coastguard would comprise three 55-metre vessels with helicopter capacity and a further five 35-metre vessels. All would have 25-millimetre cannons. The helicopters proposed for the three larger vessels would be twin-engine marinised civilian helicopters. Media commentators have estimated the cost at between \$400 million and \$500 million. But Labor, surprisingly enough, ultimately costed this grandiose plan out at \$303.6 million. So in the fourth attempt to get together a policy that meant something, that had some vessels and that had some capability, they costed it out at \$100 million or \$200 million less than what was required.

You have to ask: what sort of a half-baked, cowboy policy is this from people who have no understanding? I know they are casting around for a defence spokesman. That is the tragedy, with great respect and to be serious for a moment. The tragedy is that the opposition have no real knowledge of defence or border security. They draft some poor devil—some poor senator—into the task. He does not have a clue what goes on in these organisations. He comes along to estimates and to the Senate to ask questions and does not have an idea. He does not have an understanding of the subject matter to save his life. But he is drafted to go ahead, has questions written for him by the tactics committee and stands up and makes an utter fool of himself in the Senate. It is a tragedy. I think they need to go home and do their homework properly. The Australian people want a opposition that know what is required.

**Senator Sterle**—We've got a very good defence spokesman!

**Senator JOHNSTON**—Senator Sterle, I am saying to you: go home and do your homework, because you have an opportunity

in the opposition. The opposition is wide open for someone to pick up the reins and study defence and border security. You could go far in your party if you had even a modicum of understanding.

**Senator Patterson**—Don't mislead the Senate!

**Senator JOHNSTON**—I said 'go far in their party'! Can I say, on the credibility of the opposition: in the lead-up to the last election, they costed their fourth version of a coastguard at \$303.6 million. But do you know how confident they are? You can always tell how confident a party is in the lead-up to an election when the Charter of Budget Honesty has to be confronted. You have to put your policy into the Charter of Budget Honesty. We put all our policies in. The whole world knows we did. But, when it came to the coastguard policy, the Labor Party had their policy for \$303.6 million—and guess what? They missed the deadline to put it in for scrutiny. Shock and horror! They missed the deadline. What does that tell you? What sort of a message does that send to the Australian people about border security? They have a policy, it is half-baked and they dared not show it to anybody because it would have been exposed for what it is—a half-baked, questionable policy made on the run so that Labor apparently has something to say about border security.

If there were any credibility opposite—any credibility in the Australian Labor Party—this very important piece of policy would have been willingly and urgently submitted for costing, pursuant to the Charter of Budget Honesty, so that they could stand up in clear conscience in this place and say, 'We have a policy.' They have such a long way to go that it is really, sadly, an embarrassment when they get up to speak about border protection and national security.

**Senator WEBBER** (Western Australia) (5.26 pm)—Before I commence my remarks, I would like to place on the record how interesting it is that, whenever we seek to discuss in this place the challenges confronting us about illegal fishing, particularly in the north-west of Western Australia, all the Minister for Agriculture, Fisheries and Forestry in this place can do is personally attack Jon Ford, who is the Western Australian minister. It would seem that all Senator Johnston can do is personally attack Senator Sterle rather than actually comment on the impact that this significant problem is having on our industry in Western Australia.

To start, I would like to remind the Senate of the motion that we are actually debating rather than who may or may not be the defence spokesperson for the Australian Labor Party—and that is one Mr Robert McClelland, who is doing a magnificent job. The motion actually reads:

That the Senate notes the incompetence of the Howard Government in its failure to protect Australia's border security, quarantine and environmental integrity and its fishery resource in northern Australia and northern Australian waters.

So it is to the impact on the Western Australian fishing industry that I will seek to address most of my remarks today. At the outset, I would like to congratulate Jon Ford, the Western Australian Minister for Fisheries, for the enormous attention and effort that he is putting into combating this problem. Before that, his predecessor was Kim Chance. I know the Western Australian fishing industry has a great deal of confidence in both of them. Whilst Senator Ian Macdonald may have a few personality difficulties with both of those gentlemen, it would seem that the Western Australian fishing industry does not.

Only as recently as 1 June this year, Jon Ford announced that he had been forced to approve new measures to protect shark stocks in the waters off the Pilbara and the

Kimberley in the north-west of Western Australia. When making that announcement, Mr Ford said that the package was designed to address significant scientific concern over the impact that fishing was having on the sustainability of our shark stocks in Western Australia. He announced that the shark fishery would be closed for up to 20 years between the North West Cape and Broome to allow this species of shark to recover. That should highlight for everyone the significance of the problem that we are confronting in Western Australia. Rather than get into petty personal debates, let us actually focus on the significance of the problem. If there was one thing that Senator Scullion said before that was quite right, it was that this is a significant problem that is confronting us and we all need to work together to find a solution.

The closure of that area between the North West Cape and Broome apparently represents up to 80 per cent of the north coast shark fishery. That, combined with existing closures—there were some earlier ones—will actually mean that vast parts of Western Australia's northern waters will be off limits now for shark fishing. That is, of course, for legal fishing. That is a direct consequence of the illegal fishing that has taken place up in the north-west.

It has been revealed—we explored this issue in estimates and Senator Ian Macdonald did not dispute it—that illegal Indonesian fishermen could be taking more than 5,000 tonnes of shark each year from our northern waters. Our commercial fishers only take 2,000 tonnes, so that should highlight the significance of the problem. That is why we have had to close some of the shark fisheries. When illegal fishermen come and take at least twice as much as the licensed commercial catch, we have a problem of enormous proportions. The illegal fishermen take more than 5,000 tonnes of shark each year but they

throw most of it overboard. They keep just the shark fins, which, as most senators are aware, are highly sought after in the Chinese market. I am told that that 5,000 tonnes represents as many as 250,000 sharks being slaughtered just for their fins. That is the illegal catch in the northern waters of Australia each year. That should help people realise the extent of the problem.

What has the government's response been? As Senator Johnston was alluding to earlier, the Western Australian government has had to disband some of its contribution. The Western Australian government was forced, in September this year, to announce that it had disbanded its highly trained international operations unit, which helped to combat illegal fishing incursions by foreign boats. It helped to do that on behalf of the Commonwealth. The state government had to disband it because the Commonwealth announced that it would end the funding for it. From March next year, there will be no more Commonwealth contribution to help meet the cost of that important unit that was helping to combat illegal fishing in our northern waters. That is not much of a contribution from the Commonwealth. This has happened at a time when, I am told, in the month of August there were two or three foreign boats sighted every day, on average, just off the Kimberley coast. That is just one part of the Western Australian coastline, never mind the waters in the Northern Territory that Senator Scullion was talking about or those further south in the Pilbara. To withdraw funding for a significant operation that helped combat the problem at this time is misguided, to say the least.

In August this year, the Western Australian government announced that it had been forced to approve new bag and size limits for fishing in Western Australia, even for recreational fishers. It had to do that to ensure a sustainable future for recreational fishers in

the Pilbara and the Kimberley and because of the impact that illegal fishing is having in those fishery areas. So illegal fishing is not just impacting on the commercial sector, which I will come to more extensively later, but it is also having a significant impact on an important recreational activity in Western Australia. There was an extensive review about the sustainability of each of the species. The new bag and size limits were all reductions, and some species have had bag and size limits placed on them for the first time ever. That is because there is increasing pressure on all species of fish in those northern waters.

After the Western Australian government had highlighted the impact this fishing is having, had to close significant areas of our coast to shark fishing and had to reduce bag and size limits on some species of fish and to begin to impose them on other species, imagine our shock when, on 29 September, Prime Minister Howard went on ABC talkback radio and said that, as far as he is concerned, there is no crisis with illegal fishing and that the system is working. When you have 5,000 tonnes of shark being taken from northern Australian waters every year—that is at least 3,000 tonnes more than is legally taken—and you have to place new or more restrictive bag and size limits on recreational fishers, the system is patently not working. Illegal fishers are not being prevented from accessing our waters and helping themselves to the fish stock and we are therefore now having to take these steps. So the Prime Minister has got it dead wrong.

Most Western Australians are aware of this issue but, in helping people to become more aware, I would like to place on the record the responsible role that has been undertaken by WAFIC, the Western Australian Fishing Industry Council. They have been most responsible in their endeavours to try to work with the state government. They seem

to have managed to have a good working relationship with Mr Ford and, before him, with Mr Chance—it only seems to be Senator Ian Macdonald who cannot manage that. WAFIC have been also been working with the federal government. They have been to see me on a number of occasions and they have a very responsible approach to finding a sustainable management solution for our northern fisheries.

WAFIC have highlighted to me—and the federal member for Kalgoorlie has also raised this problem—the issue of the MOU in the Australian fishing zone. There is a triangle, if you like, taken out of the Australian fishing zone in which we allow supposed traditional Indonesian fishers to access Australian waters so they can conduct their traditional fishing. It is, of course, pretty hard to police a triangle in the middle of Australian waters, so there are lots of incursions outside that triangle. It has got me beat as to how there are so many traditional fishers coming from Indonesia. But this seems, as far as the industry is concerned, to be the main part of the problem. I know they have been appealing to the federal government, to Mr Haase and others, about reviewing that MOU with Indonesia and perhaps just having an exclusive Australian fishing zone with no area excised for those people to access.

Senator Johnston alluded to the sightings in Kalumbaru, where the West Timorese were found earlier. We have had sightings off One Arm Point, where people have come ashore, and a number of other places up in the Kimberley. The fact that those people have been found has not been due to any significant Customs or AFMA patrol or anything else up in that area; those people have been found mainly due to the good work of the local Indigenous community, who come across people that they know are not from the area and they therefore alert authorities. So it is thanks to the good work of the local

Indigenous communities that we know that these people exist and there have been these incursions to our borders. It is not due to any fancy coastal protection from the federal government. After all, they have made it to land, so it would seem that our borders are indeed breached.

WAFIC have recently had discussions with the minister for fisheries and have placed on record a number of things that they would like this federal government to address. They are simple strategies that they think will help us address this problem, strategies that they as an industry have sat down and held stakeholder forums about and that they think might work. They are trying to take a responsible approach and help the federal government find a solution to this problem. One of the issues that they have raised is the need for Australian vessels to be able to direct incidents they see when they are out at sea to just the one agency—that is, to just have the one telephone number that they can ring 24 hours a day, seven days a week. They want just the one agency, not Customs one day, AFMA on another and whomever else depending on who is up there. They propose to have one point of call, which we seem to manage for other emergencies but do not seem to have managed with regard to this. They have suggested that that could be a role that Coastwatch could take on.

They have also highlighted with the minister that they would like to see better coordination between the various Commonwealth agencies and between Commonwealth and state agencies. The industry say that one of their greatest concerns at the moment is the apparent lack of coordination between those various agencies. They are also concerned about the apparent lack of established agency protocols to deal with the various types of incidents that can occur. Not only do they want the one point of contact when an inci-

dent does occur, they want some established protocols about what kind of information they need to hand over, what their role will be in dealing with that agency and what they can expect of that agency in return. The final point they have made with the minister is the apparent lack of communication between agencies and subsequent feedback to industry, particularly following a reported incident. If you are lucky enough to ring the right phone number and talk to an agency that is on call at the time, they say you are not necessarily guaranteed of any feedback of what is going to happen next. When you are on an Australian fishing vessel out there and there are some perhaps hostile illegal fishing vessels which you have reported, I am sure you would want that kind of reassurance.

The industry say that they have an extreme concern that, unless those four key points are addressed, a future unauthorised boarding of a legal Australian fishing vessel, as has happened north-west of Western Australia, may lead to an international incident. They consider that those four points deserve urgent attention. As I said, rather than the minister playing the man, if you like, it might be nice if he actually concerned himself with working with people to come up with a solution.

Industry members have expressed to the minister their concerns about the problem of expensive fishing gear being interfered with and stolen when their vessels are boarded by illegal fishermen. They are concerned about the entanglement of marine protected species with discarded and lost gear, particularly when there is an incursion onto a legal Australian fishing boat or when illegal boats are trying to escape the area in a hurry. They are concerned about the translocation of marine pests, which could have a significantly detrimental effect on our environment, on the ecosystems and on the fish and pearling

stocks in the north-west. As has been highlighted by Senator O'Brien and Senator Sterle, they are particularly concerned about the introduction of human disease, such as yellow fever, malaria and tuberculosis. I am sure they now also share people's concerns about the bird flu epidemic.

I would like to close my remarks on this by addressing some points to Senator Ellison. As I said, WAFIC know that there is no one agency that deals with this problem. One day it is Customs, one day it is AFMA. We are never quite sure who is going to deal with what; it seems it depends on who is in the area. But every time we come into this place and we ask the minister for customs what Customs vessels are doing in the waters of the north-west of Australia and what role they are taking in helping to combat illegal fishing and incursions into Australian waters, the only defence he can offer up is to attack those of us on this side for not supporting the work of Customs officers. I find that a pretty shallow and offensive approach. What we want is a greater commitment from the minister and a greater understanding of the problem. It is churlish, to say the least, for him to say that, because we dare to ask a question about what he is up to and what he knows about the issue, we do not support the Customs officers. We do. I personally do, and I know a great number of the Customs officers in Western Australia, which I am sure will come as a surprise to him. They do a fine job. They are absolutely committed to defending Australian waters in every way possible and doing their job to the utmost of their ability. What they need is support from all of us, not personal denigration from one side to the other about which officer is doing what when. If he would just focus on trying to answer the questions about what role they are undertaking at the moment, he might actually get some support on this side of the chamber for expanding their role so that we

can all work together to stop this illegal fishing and help combat it in a diplomatic and appropriate way, considering most of them come from Indonesia, and work together to keep our quarantine systems and our borders secure.

**Senator RONALDSON** (Victoria) (5.44 pm)—At this late hour, it is a real pleasure to be addressing the chamber on this matter today. On this side of the house, we are very proud of our endeavours in relation to border protection. It is quite an extraordinary spectacle to watch the Labor Party preaching to us about border security and how to combat fish piracy. The history of the Labor Party in relation to this matter is worth going through again to take a further look at it. Basically, what the Labor Party have said in 4½ policies in relation to this area is, 'We will create a new layer of bureaucracy, call it something fancy like a coastguard, waste millions upon millions, probably hundreds of millions, of taxpayers' dollars, and that is our answer to it.' That is the Labor Party's answer.

If we look back through this, we find they have released four coastguard policies. I gather the Leader of the Opposition has committed to a fifth policy, but we do not have any details yet in relation to the costing or what is intended. I notice that, incrementally, the Labor Party's commitment in financial terms to the so-called coastguard has been dropping rapidly. In fact, Mr Beazley's first policy was costed at between \$800 million and \$900 million, I think, and the costing of the last policy was down to about \$365 million. The financial commitment is heading south at a very rapid rate.

As I said before, their first policy was under Kim Beazley's leadership, the Leader of the Opposition's leadership, in October 2001. The second policy was under the member for Hotham in November 2002. The third was under Mark Latham in March 2004. The then

Leader of the Opposition was very strongly supported by some in this chamber—as Senator McGauran, who is in the chamber, alluded to before—but, suddenly, he is forgotten; suddenly, he is no longer wanted. He was very much wanted at one stage, if my memory serves me correctly.

**Senator McGauran**—Senator Webber supported him to the hilt.

**Senator RONALDSON**—Yes, Senator Webber did. The fourth policy was announced in June 2004—a policy formally released during the 2004 election campaign. As I said before, the Leader of the Opposition recently enunciated a further policy. I know that Senator Scullion has a very great interest in this matter and, as we speak, he is very hard at work in relation to issues affecting the Northern Territory. I wish him well in those endeavours.

Of all Labor's coastguard policies, probably the most entertaining was their third one. It was released by Robert McClelland—and the name of his seat escapes me at the moment. This was a hasty, uncostered, unfunded response to criticism that Labor's second policy involved just three boats—or one for every 12,000 kilometres of Australia's coastline. Presumably the first was going to be called 'the good ship Lollipop' and the other two were probably for spare parts. It was a very silly policy and, quite rightly, it was pilloried around the country.

In addition to the three 80-metre patrol boats proposed in Labor's second policy, Mr McClelland announced that a further 10 patrol boats would be purchased. I gather he was fresh from a fact-finding tour in Florida and ready to take this issue on by the scruff of the neck. He came back and started adding a bit more meat to the bone, apparently. In a very exciting announcement, he said that the original three boats—'the good ship Lollipop' and the two others—would have a heli-

copter capacity, enabling coastguard snipers to shoot out the engines of suspect vessels. Apparently these 10 boats were going to be financed to the tune of \$32 million—money originally earmarked for a fixed seabed radar system. The most cursory look at the costing of this showed that the \$32 million was astonishingly inadequate—totally inadequate. Indeed, Labor seemed to suggest at the time that these new additions to their policy would not increase the overall cost of some \$612 million.

As was indicated at the time by the coalition government, the \$612 million, very excitingly again, would have covered support infrastructure, the crewing and the training involved in Labor's third coastguard. However, one vital ingredient was missing. Apparently, we already had the training, the support infrastructure and the crewing and only one thing was missing—the boats. They had no money for the boats. Everyone was trained up, ready to go out and take on the world—we knew that 12,000 kilometres of coastline would be covered by 'the good ship Lollipop'. They did not actually have the money for 'the good ship Lollipop'. They did not factor that into it. They got it organised but, regrettably, there were absolutely no boats at all. This has been a farcical policy from the Labor Party. This so-called coastguard has come under quite remarkable scrutiny from people who know a lot more about this than the Australian Labor Party will ever know.

I have some quotes here. One is from the then AFP Commissioner, Mick Palmer, who told the Joint Committee of Public Accounts and Audit in January 2001:

My unqualified experience in looking at arrangements in countries where there are coastguard type arrangements ... is that I would gain no comfort at all from those arrangements. Those arrangements have caused a division through the investigative focus and it has caused competition

between investigative agencies in a very counter-productive way.

Defence expert and managing director of independent think tank Future Directions International, Lee Cordner, has said:

Labor's Coastguard policy will only burden another agency, at greater cost and detract from the flexibility we now have.

Alexey Muraviev, a strategic affairs expert at Curtin University, has questioned the very logic of Labor's coastguard, saying:

In the US, Russia and Japan, the coastguard comes under the command of the navy during times of conflict.

They are effectively a naval reserve which means crew must be trained by the navy to navy standards.

That means you're effectively retaining them as navy boats anyway, so why set up another authority?

If Labor wanted to buy three more boats of the same size as the ADF's new patrol boats and five more boats of the same size as the existing Customs vessels, why set up an entirely new bureaucracy to manage them—another bureaucracy to manage something that these other agencies are quite capable of doing themselves?

I want to speak briefly about what this government has done. Since 1997, the government has provided almost \$600 million in additional funding to Customs for offshore border protection activities. No matter how long Mr Beazley sings, 'I am the very model of a modern major-general,' like Major-General Stanley in the *Pirates of Penzance*—who admitted that his knowledge was a mere 100 years out of date—the opposition's coastguard policy is a model for utter disaster. In the 2002 budget, the government provided additional funding of \$9.5m per annum over three years, from 2002-03 to 2004-05, to increase the Dash 8 flying hours by 20 per cent or 1,600 hours per year.

On 15 December 2004, the Prime Minister announced the formation of the Joint Offshore Protection Command. The JOPC comes out of the National Security Committee consideration of the prime ministerial Taskforce into Offshore Maritime Security, including oil and gas facilities and ship interdiction. The JOPC is responsible for the implementation, coordination and management of offshore maritime security. The new command links the Defence Force responsibility with that undertaken by the Coastwatch division of Customs. When operational, the RAN Armidale class patrol boats will significantly improve Australia's capability to intercept and apprehend vessels suspected of illegal fishing or quarantine, customs and immigration offences, and will patrol the oil and gas installations in waters off Australia's north-west coast.

Coastwatch conducts surveillance missions through a fleet of 15 fixed wing and two rotary wing aircraft. These aircraft carry a range of sophisticated electronic and visual surveillance technology and communications equipment. Coastwatch flights operate primarily from bases in Cairns, Thursday Island, Darwin and Broome. On average, 12 to 15 surveillance missions are flown daily, generating more than 4½ thousand surveillance missions in a typical year.

The effect of the additional government funding that I referred to before and other government initiatives has been to significantly increase the surveillance coverage provided by Coastwatch. In 1999-2000, Coastwatch flew 90 million square nautical miles of surveillance coverage. In 2003-04, Coastwatch surveillance covered nearly 143 million square nautical miles, which involved mainly flights by Coastwatch aircraft, 138 million square nautical miles; surveillance by RAAF P3 Orions, 150,000 nautical square miles; and satellite, 4.47 million square nautical miles.



I want to turn now to Coastwatch technology. In the 2002 budget, the government announced funding for a joint Customs-Defence trial of a high-frequency surface wave radar system. The trial is assessing the ability of this system to improve surveillance coverage of offshore high-threat approaches to Australia by allowing detection and tracking of targets of ranges well in excess of conventional microwave radar. The radar trial is being conducted in the Torres Strait. As part of its 2004 election commitments, the government has allocated additional funding for an associated trial of a small long-endurance unmanned aerial vehicle which will enhance border security capabilities by identifying, verifying and validating target data derived from the high-frequency surface wave radar. The combined use of these innovative technologies has the potential to provide increased surveillance and protection of our borders. And we are getting results.

In response to increased fish piracy activity, Customs and the Australian Defence Force recently mounted Operation Clearwater II off the north-west Australian coast. An operation of this size requires considerable planning to bring together all the assets and personnel. Planning for Clearwater II began almost six months ago, immediately after the successes of Operation Clearwater in the waters to the north of Australia. Operation Clearwater II delivered 31 apprehensions of foreign fishing vessels, four legislative forfeitures and one warning. One hundred and eighty-seven crew were taken into custody, and 56 charges were laid. This is just one more example of how concentrated operations are just one aspect of the government's approach to illegal fishing. I would remind honourable senators that in this year's budget the government provided \$25.2 million over the next four financial years—and I know that Senator McGauran, who is to speak after

me, is going to refer to those in some detail and I do not wish to impact on what he is going to say.

In finishing, I am reminded of the lyrics from the song I mentioned before, from the *Pirates of Penzance*:

For my military knowledge, though I'm plucky and adventury,

Has only been brought down to the beginning of the century;

But still in matters vegetable, animal, and mineral,

I am the very model of a modern Major-General.

**Senator Webber**—Sing it!

**Senator RONALDSON**—No, I will not sing it. Sadly, the coastguard option is like Major-General Stanley's 100-year-old military knowledge. It is about time the Labor Party and the Leader of the Opposition saw the fallacy of their coastguard policy and enabled this government to go on and adequately protect Australia's borders and our fisheries by supporting the matters that we have put forward in earlier budgets and this government's commitment to that protection.

Debate interrupted.

## DOCUMENTS

**The ACTING DEPUTY PRESIDENT (Senator Barnett)**—Order! The time allotted for the debate having expired, the Senate will now proceed to the consideration of government documents.

### **Australian Industrial Relations Commission and Australian Industrial Registry**

Debate resumed from 9 November, on motion by **Senator Marshall**:

That the Senate take note of the document.

**Senator STEPHENS** (New South Wales) (6.03 pm)—I rise to take note of the Australian Industrial Relations Commission and Australian Industrial Registry Report

2004-05. This is a report that could almost be described as kryptonite to those senators opposite—kryptonite for a rampaging government that has put itself out as an industrial relations Superman, if I might put it that way. This is quite an interesting and informative document, as always. The commission has considered some very important cases during the year, and significant cases are outlined here. But there are important messages for the role of the Industrial Relations Commission that we need to make sure are understood, both by this parliament and by the government more broadly because, as you know, the Australian Industrial Relations Commission—if this government manages to actually get its 1,252 pages of legislation through this parliament—will disappear under the new arrangements, to be replaced by the deceptively named Fair Pay Commission. The modus operandi of that Fair Pay Commission will be to drive down the minimum wage. We know that that is the case. We have been hearing about it all week. We have been analysing the legislation since we have, finally, seen it, and we understand now exactly what the role of the Fair Pay Commission will be.

This is a very important document for us to register, and it is important because the industrial relations reforms, that we are challenged with and confronted by in both houses of this parliament at the moment, are quite extraordinary and quite revolutionary. I have to say that the Australian public are not idiots. As recent public opinion polls have shown, they have seen through \$55 million of brainwashing advertising trying to convince them that the laws are fair and balanced. They know that the reforms are the greatest threat that faces working Australians, and we all know that the government knows it too. They know that the purpose of the reforms is to tip the balance overwhelmingly in favour of the employer, and to strip

the word 'fair' from Australian industrial relations.

The government knows this quite implicitly because there has been a series of local industrial relations forums around the country. In my home state of New South Wales the no-show list is something of a who's who. The people who were not prepared to come and defend the government's industrial relations reforms and the change from the Industrial Relations Commission to this new Fair Pay Commission include: Gary Nairn from Eden-Monaro; Alby Schultz from Hume; Sussan Ley; Kay Hull; John Cobb; Mark Vaile; Ian Causley; Senators Nash, Macdonald and Fierravanti-Wells; Louise Markus and Gary Hardgrave. And there are many, many more—people who were not prepared to go and defend the actions of this government, and the ideas that are to be presented in the Fair Pay Commission, to the constituents in their own electorates.

In some way, I understand why they would prefer the safety of their \$55 million taxpayer funded campaign as opposed to the open scrutiny of a forum. Their absence was noted, I have to say. There is a plethora of local media detailing just how disappointed people were. There have been numerous letters. One, for example, from the *Blacktown Sun* noted the absence of their local member, Ms Markus, the member for Greenway. It said:

Meetings are organised by community members, and elected representatives should accommodate the community's needs and not force them to accommodate your wants.

It just sounds like the mantra of this government. I am sure that Labor and minor party members and senators can attest that this is their experience as they have been attending the forums around the country. Whether it is guillotining or gagging or one-day inquiries, everything this government is doing is by

force. I want to finish with a comment from page 35 of this commission's report, which says that while the Commonwealth had criticised the Commission's past decisions because of their— (*Time expired*)

**Senator MARSHALL** (Victoria) (6.08 pm)—I also rise to take note of the document. It is an important document that is being discussed tonight in this debate in the Senate, because the AIRC has been a uniquely Australian institution. It is over 100 years old and it has served the Australian public very well. It is uniquely Australian and it has recognised the unique Australian trait of having a fair go all around, which is, of course, the underpinning policy position that the AIRC has always taken.

But, unfortunately, with the introduction of the new Work Choices legislation, we are, in effect, seeing the demise of this uniquely Australian institution. Why are we seeing its demise? Because, in effect, the government is replacing one of the major roles and functions of the Australian Industrial Relations Commission with its so-called Fair Pay Commission. Why is it doing this? Because the Australian Industrial Relations Commission has taken its role very seriously. In fact, when determining the minimum wages for all Australians, it has considered those determinations in the context of being fair, in the context of living standards generally and in the context of inflation. It is instructive to note that the new so-called Fair Pay Commission has those words deleted from it.

The Australian Industrial Relations Commission has frustrated this government because, over the life of the Howard conservative government, which has always argued against any reasonable and fair minimum wage increase for Australian workers, the commission has applied what it has viewed to be a fair increase across the board. One only has to look at the figures. If the gov-

ernment had achieved what it had submitted in all the minimum wages cases through the life of this particular government, minimum wages would be \$70 a week less than they are now. That, of course, has been a frustration for this government, whose intention is to drive down wages and conditions of Australian workers and to lower the minimum rate that workers need to be paid.

It is unfortunate that, because the government cannot get what it wants out of the AIRC, it effectively sends it into demise and gives it virtually no role under the new Work Choices legislation. This is not an uncommon position for the government. All critics of the government—all institutions or people who do not comply with what the government expects in its ideological approach to industrial relations—get attacked. In the case of the AIRC, it is simply effectively dismantled.

We saw an extraordinary attack by Senator Abetz in question time this week when Professor David Peetz, who happens to be the head of a department and professor of industrial relations at Griffith University, was attacked for merely presenting an academic paper that criticised the government's reform agenda in the Work Choices legislation. He did so on the basis that there was no academic, economic or rational grounds for the Work Choices legislation actually delivering what the government wishes to achieve out of the legislation.

Instead of actually presenting an argument against the academic work of Professor David Peetz, Senator Abetz attacked him personally. He said that because, he had done research that had been sponsored by the ACTU, he could certainly not be considered to be independent in any way. It was quite a bizarre approach considering academics are often engaged by all sides of the political debate to do academic work to study the ef-

fects of different policy. The fact that people work for both sides from time to time does not discredit their academic work. He went on to accuse him of being a singer in a trade union choir. He accused him of writing poetry. What a terrible offence it must be. He accused him of writing 'tasteless and infantile material' and went on to accuse him of engaging in 'moral equivocation about terrorism'. But not once did he challenge the academic work that Professor David Peetz submitted.

Question agreed to.

#### **Industrial Relations Court of Australia**

Debate resumed from 9 November, on motion by **Senator Marshall**:

**Senator MARSHALL** (Victoria) (6.16 pm)—This document has a direct correlation with the industrial relations legislation that was tabled in the Senate today. The role of the industrial relations court under the new proposed Work Choices legislation is something that is going to change. The full extent of those changes is something that, hopefully, the Senate inquiry into this legislation will be able to identify, even though we are somewhat frustrated on this side of the chamber about the commitment this government has to due and proper Senate processes.

This legislation, significant as it is, if you include the explanatory memorandum, is well over 1,000 pages. It has far-reaching effects which go to the working conditions and working arrangements of every working Australian in this country. Yet the government has allowed this Senate the opportunity to look at this very substantial and far-reaching piece of legislation for a mere five days. What is more, those five days will be spent entirely in Canberra. Five days to examine this complicated legislation with far-reaching consequences, but we are not even going round to the main capital cities, the main places where employment is—we are

going to hide it away here on Capital Hill and have a minor inquiry. It is really a week since the government announced that it would allow us to have such an inquiry, where the date for submissions closed.

From the time the legislation was tabled in the House, people had a week to read the over 1,000 pages in conjunction with the existing Workplace Relations Act, to read it in the absence of the regulations, which will be substantial, and which will also need to be introduced in order to make the legislation workable and to enable people to understand it fully. It is really a process whereby we in the Senate are being denied the opportunity to properly scrutinise this legislation and do what the Senate is supposed to do: review the legislation and enable the members of the public who are going to be affected by this legislation to have some real input into it and to talk about the adverse effects this legislation will have on them.

Let us contrast that with the last major reforms in 1996. The Senate moved on 23 May 1996 that the bill be referred to the Senate Economic References Committee for inquiry and report by 22 August 1996. That committee received 1,431 submissions from groups and individuals. It held a total of 18 public hearings, which were held over 21 working days, commencing in Melbourne on 4 July and ending in Canberra on 1 August 1996. The committee met in 13 cities, including five regional centres, taking a total of 2,225 pages of evidence. Oral evidence was taken from 69 unions, 29 community organisations, 24 employer groups and individual employers, 14 government representatives or members of parliament, seven academics and 62 individuals. That is a proper inquiry on substantial pieces of legislation. As a result of that inquiry, the Senate amended this legislation 176 times because the committee inquiry enabled the Senate to identify sub-

stantial flaws in the legislation and to put in proper balance.

One of the things this government absolutely objected to as a result of that Senate inquiry was the no disadvantage test. The old legislation was amended by the Democrats and the Labor Party in this chamber to give it fairness and a proper balance. One of the things we insisted upon was the no disadvantage test so when workers were faced with the choice of take it or leave with an individual contract they could not have their conditions, which would globally be less than what they were entitled to, taken away under the award. Of course, it should be no surprise to anybody that, under the Work Choices legislation, the no disadvantage test has been removed completely. No more scrutiny by the Office of the Employment Advocate—simply that an individual contract will be registered by the employer and it will come into force. That is the end of the scrutiny.

**Senator FERGUSON** (South Australia) (6.21 pm)—I have been provoked by Senator Marshall to make a couple of brief comments. Senator Marshall is not a very good student of history; otherwise when his researcher was doing all that research he would have realised what happened when the industrial relations changes were mooted in 1996. The inquiry was at such a length and had a caravan all over Australia, because, of course, the government did not have the numbers and was forced to do that by the Labor Party and the Democrats.

The 176 amendments to that bill were not as a result of the inquiry. Those amendments were all put in place before the inquiry by those people deciding amongst themselves—except for some by the Democrats. I have to say that their opposition to the bill, and the amendments that they were able to get through, were not as a result of the inquiry. They were a result of negotiations between

the two parties, regardless of what evidence we took during those 18 days of inquiry. I think I was present at every one of them, which meant that I heard the continual repetition. We would have the same union representing the same workers appearing in every state and putting forward exactly the same propositions. In fact, it was a farce.

That inquiry was forced on the government because the government did not have the numbers in the Senate. Let me contrast that with the previous major changes to industrial relations, which I think were brought in by Minister Laurie Brereton in the early 1990s. The government of the day decided that the legislation committee—although there was only one committee in those days, legislation and references—could have, I think, two days of hearings. They decided there could be two days of hearings to look at those important changes in legislation, because they had the numbers, together with the Democrats. So we had this very minimal inquiry into the change of laws when the Labor Party was in government and were bringing forward what were probably, to that stage, the biggest changes in industrial relations that had taken place in decades.

If the Labor Party are going to complain about this government allowing only five days of inquiry for these changes to the workplace relations legislation, I think they ought to look at their own historical record of how much they let people inquire into legislation when they were in government. Because many of the senators in the chamber are new, they only remember the time when the government was forced to send legislation to references committees. In fact, the committee structure was designed so that legislation could go to legislation committees and the references committees could look at inquiries of a different and broader nature. But oh, no. Since 1996, when the combination of the Labor Party and the Democrats

wanted to refer pieces of legislation to a committee where they knew they would have a majority and control the destiny of that committee, they referred legislation to references committees.

I think the Labor Party ought to look at their record and see how they used their numbers to force inquiries on the government which then turned out reports which were totally political. That was the situation that arose during that period. We often hear senators opposite talk about abusing power and abusing the use of numbers. It is a strange thing. When the House of Representatives debates a bill for 10 or 12 hours and then restricts the debate, it is called 'using the numbers.' When a bill comes to the Senate and there is a restriction on the debate, it is called 'abusing power'. I cannot quite work out why, when you have the numbers in one house you are using your numbers, but when you bring it to another house it is called 'abusing your power'.

Whether Senator Marshall or those opposite like it or not, the people who made the judgment were the people who voted in the election not yet 12 months ago. They decided they wanted to give this government the numbers in both houses, and the government has every right to make use of those numbers to pass the legislation that any government would want to do when they have been democratically elected by the people.

We do not hear people complaining in Queensland about Peter Beattie passing legislation because he has the numbers. He has the numbers and there is no upper house to worry about. Senator Mason knows what goes on there: whatever Mr Peter Beattie wants, he gets. But if it happens in the federal parliament, it is considered by those opposite to be an injustice. I think that Senator Marshall and the others on that side should

look a bit closer at history and see what they did when they were in government.

**Senator HOGG** (Queensland) (6.26 pm)—Having heard from Senator Ferguson trying to give us a limited history—

**Senator Ferguson**—I only had five minutes.

**Senator HOGG**—I know you had only five minutes, and I know we would all like longer than five minutes. As far as this business of abusing your power, it is quite correct. This place has been looked upon as being a place of review. In terms of the way in which this place has operated in the almost 9½ years that I have been here, whilst the government has not always enjoyed a majority, it has nonetheless taken on the role of being a house of review and applying very good scrutiny to the legislation that is passed in the other place.

In many instances, committees of this parliament have found shortcomings in legislation as it has been passed in the other place. The appropriate changes have been made through this Senate and then accepted in the other place. I think that is a matter of fact, and I do not think anyone would deny it. There was never a belief in the minds of the Australian people, in my view, that when they went to the polls last October they went there with a deliberate, premeditated view that they were going to deliver the government a majority in the upper house. To make that claim is not correct.

**Senator Ferguson**—I did not say it was deliberate, but they still gave it to us.

**Senator HOGG**—They gave it to you, but at the end of the day it was more by good luck rather than good management.

**Senator Ferguson**—Senator Mason would not agree with that.

**Senator HOGG**—Senator Mason would not, but Senator Mason is an honourable per-

son, so I am not going to get into that debate at this moment. But there is nothing that says that.

My concern tonight, in rising to speak on the report of the Industrial Relations Court of Australia for 2004-05, is to express the same concerns that my colleague Senator Marshall has raised with the new Work Choices legislation that was tabled in this house this afternoon—687 pages of it. I believe it is a document that should be subject to major scrutiny indeed. I do not believe that the scrutiny of this legislation that has been made available will, at the end of the day, prove to be sufficient. I do not believe that the scrutiny will pick up the faults and the failings that will be inherent and implicit in the legislation that has been drafted, I understand, in a fairly rushed manner.

I think we will find that the role of the Industrial Relations Court of Australia may well be enhanced by the passage of this legislation rather than diminished—that is provided the Industrial Relations Court of Australia is not going to suffer at the hands of this government. One of the problems that the Work Choices legislation provides is that it has the emphasis on Australian workplace agreements, which are currently being sold mainly by the Employment Advocate to Australian businesses as an alternative form to the existing industrial relations system. Those documents are secret. They are not in the public purview. They are not able to be challenged, and people do not know or understand the import of what appears in some of those Australian workplace agreements.

Those agreements currently are subject to, as my colleague rightly pointed out, a substantial no disadvantage test, which involves 20 allowable matters. All they will be subject to under the new regime is a pitiful five, which will have very little or no major impact on the day-to-day working conditions of

these people. When we come to an actual debate of the industrial relations bill itself, we will find that, with the cutting of many of the allowable matters, the ability of people to plan their family life and lifestyle will be limited. There will be need for scrutiny of the legislation to see the impact, to see where the faults and the failings are and to overcome the need to rely on an industrial relations court. I seek leave to continue my remarks later. (*Time expired*)

Leave granted; debate adjourned.

### Consideration

The following orders of the day relating to government documents were considered:

*Ombudsman Act 1976*—Inquiry into the circumstances of the Vivian Alvarez matter—Report by the Commonwealth Ombudsman of an inquiry undertaken by Mr Neil Comrie, AO, APM. (Report no. 3 of 2005)

Reports to the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) from the Secretary, Department of Immigration and Multicultural and Indigenous Affairs—

Implementation of the recommendations of the Palmer report of inquiry into the circumstances of the immigration detention of Cornelia Rau, dated September 2005.

Response to the recommendations of the report of the Commonwealth Ombudsman of the inquiry into the circumstances of the Vivian Alvarez matter, dated October 2005.

Motion of Senator Bartlett to take note of documents called on. On the motion of Senator Webber debate was adjourned till Thursday at general business.

Department of Foreign Affairs and Trade—Report—Weapons of mass destruction: Australia's role in fighting proliferation: Practical responses to new challenges. Motion of Senator Siewert to take note of document called on. On the motion of

Senator Marshall debate was adjourned till Thursday at general business.

*Housing Assistance Act 1996*—Report for 2003-04 on the operation of the 2003 Commonwealth-State Housing Agreement. Motion of Senator Kirk to take note of document agreed to.

National Water Commission—Report for the period 17 December 2004 to 30 June 2005. Motion of Senator Siewert to take note of document called on. On the motion of Senator Stephens debate was adjourned till Thursday at general business.

NetAlert Limited—Report for 2004-05. Motion of Senator Kirk to take note of document agreed to.

Northern Territory Fisheries Joint Authority—Report for 2002-03. Motion of Senator Siewert to take note of document called on. On the motion of Senator Marshall debate was adjourned till Thursday at general business.

Employment Advocate—Report for 2004-05. Motion of Senator Siewert to take note of document called on. Debate adjourned till Thursday at general business, Senator Marshall in continuation.

Treaty—*Multilateral*—Text, together with national interest analysis and annexures—Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, done at New York on 25 May 2000. Motion of Senator Kirk to take note of document called on. On the motion of Senator Stephens debate was adjourned till Thursday at general business.

Australian Broadcasting Authority—Online content co-regulatory scheme—Report for the period 1 January to 30 June 2005. Motion of Senator Bartlett to take note of document agreed to.

Department of Family and Community Services—Report for 2004-05. Motion of Senator McLucas to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Department of Immigration and Multicultural and Indigenous Affairs—Report for 2004-05. Motion of Senator Crossin to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Commissioner for Complaints [Aged care]—Report for 2004-05. Motion of Senator McLucas to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Australian Nuclear Science and Technology Organisation (ANSTO)—Report for 2004-05. Motion of Senator Crossin to take note of document called on. On the motion of Senator Stephens debate was adjourned till Thursday at general business.

Department of Health and Ageing—Report for 2004-05. Motion of Senator McLucas to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Supervising Scientist—Report for 2004-05 on the operation of the *Environment Protection (Alligator Rivers Region) Act 1978*. Motion of Senator Crossin to take note of document agreed to.

Aged Care Standards and Accreditation Agency Limited—Report for 2004-05. Motion of Senator McLucas to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Australian Radiation Protection and Nuclear Safety Agency—Report for 2004-05. Motion of Senator Crossin to take note of document called on. On the motion of Senator Stephens debate was adjourned till Thursday at general business.

Department of Education, Science and Training—Report for 2004-05. Motion of Senator Crossin to take note of document agreed to.

#### PERSONAL EXPLANATIONS

**Senator MARSHALL** (Victoria) (6.32 pm)—Under standing order 191, I wish to



make an explanation of the speech that I made earlier, given that Senator Ferguson directly responded to my contribution and I think he misunderstood.

**The ACTING DEPUTY PRESIDENT (Senator Barnett)**—The honourable senator may proceed.

**Senator MARSHALL**—I am not going to take up much time on this, but Senator Ferguson says we should look at some of the history, and he is correct. I have just entered my fourth year in the Senate and I do not have his detailed knowledge—

**Senator Mason**—Four good years.

**Senator MARSHALL**—Four good years; thank you, Senator Mason—of past practice. But, if there were previous governments that behaved in such a way as to not allow this chamber proper scrutiny of legislation, that is a position I would criticise. I think the Senate has a very important role and, when we are in government—very soon but not soon enough for most of Australia's people—I will also argue if the Labor Party tries to deny the Senate proper scrutiny of bills. I will be arguing that the Senate should have proper and adequate ability to scrutinise all legislation that is put before it.

What Senator Ferguson fails to address is that the test is: what do they do now? The test is not how people behaved in previous governments, whether they were conservative or whether they were ALP governments—

**The ACTING DEPUTY PRESIDENT**—Order! Senator Marshall, could you please explain which part of the senator's speech you are currently addressing under standing order 191?

**Senator MARSHALL**—He misunderstood my position about Senate scrutiny of the Work Choices legislation. I will finish with this point: the test of any government is

how they behave now. The test is not how other governments or the Senate behaved on previous occasions. The test for this government is how they behave right now.

## NOTICES

### Presentation

**Senators Humphries, McLucas and Murray** to move on the next day of sitting:

That the Senate requests the Government of the Australian Capital Territory:

- (a) to note the response of the Commonwealth Government of 10 November 2005 to the Community Affairs References Committee's reports:
  - (i) *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, and
  - (ii) *Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care*; and
- (b) in view of the fact that a number of the recommendations affect the states and territories, to advise the Senate of its response to the recommendations in the reports.

**Senators Humphries, McLucas and Murray** to move on the next day of sitting:

That the Senate requests the Government of the Northern Territory:

- (a) to note the response of the Commonwealth Government of 10 November 2005 to the Community Affairs References Committee's reports:
  - (i) *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, and
  - (ii) *Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care*; and
- (b) in view of the fact that a number of the recommendations affect the states and ter-

ritories, to advise the Senate of its response to the recommendations in the reports.

**Senators Humphries, McLucas and Murray** to move on the next day of sitting:

That the Senate requests the Government of the New South Wales:

- (a) to note the response of the Commonwealth Government of 10 November 2005 to the Community Affairs References Committee's reports:
  - (i) *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, and
  - (ii) *Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care*; and
- (b) in view of the fact that a number of the recommendations affect the states and territories, to advise the Senate of its response to the recommendations in the reports.

**Senators Humphries, McLucas and Murray** to move on the next day of sitting:

That the Senate requests the Government of the Queensland:

- (a) to note the response of the Commonwealth Government of 10 November 2005 to the Community Affairs References Committee's reports:
  - (i) *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, and
  - (ii) *Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care*; and
- (b) in view of the fact that a number of the recommendations affect the states and territories, to advise the Senate of its response to the recommendations in the reports.

**Senators Humphries, McLucas and Murray** to move on the next day of sitting:

That the Senate requests the Government of the South Australia:

- (a) to note the response of the Commonwealth Government of 10 November 2005 to the Community Affairs References Committee's reports:
  - (i) *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, and
  - (ii) *Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care*; and
- (b) in view of the fact that a number of the recommendations affect the states and territories, to advise the Senate of its response to the recommendations in the reports.

**Senators Humphries, McLucas and Murray** to move on the next day of sitting:

That the Senate requests the Government of the Tasmania:

- (a) to note the response of the Commonwealth Government of 10 November 2005 to the Community Affairs References Committee's reports:
  - (i) *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, and
  - (ii) *Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care*; and
- (b) in view of the fact that a number of the recommendations affect the states and territories, to advise the Senate of its response to the recommendations in the reports.

**Senators Humphries, McLucas and Murray** to move on the next day of sitting:

That the Senate requests the Government of the Victoria:

- (a) to note the response of the Commonwealth Government of 10 November 2005 to the Community Affairs References Committee's reports:
  - (i) *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, and
  - (ii) *Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care*; and
- (b) in view of the fact that a number of the recommendations affect the states and territories, to advise the Senate of its response to the recommendations in the reports.

**Senators Humphries, McLucas and Murray** to move on the next day of sitting:

That the Senate requests the Government of the Western Australia:

- (a) to note the response of the Commonwealth Government of 10 November 2005 to the Community Affairs References Committee's reports:
  - (i) *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, and
  - (ii) *Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care*; and
- (b) in view of the fact that a number of the recommendations affect the states and territories, to advise the Senate of its response to the recommendations in the reports.

## COMMITTEES

### Electoral Matters Committee

#### Report

Debate resumed from 13 October, on motion by **Senator Mason**:

That the Senate take note of the report.

**Senator HOGG** (Queensland) (6.36 pm)—I am not going to speak at length on this this evening—I have just noted it on the *Notice Paper*—but I would like to make some remarks on this at a future time, having just joined the Joint Standing Committee on Electoral Matters. I wish to study the report in further detail. I think, obviously, it is a very worthwhile report, from the brief access I have had to it to date. I seek leave to continue my remarks.

Leave granted; debate adjourned.

### Consideration

The following orders of the day relating to committee reports and government responses were considered:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Australia's free trade agreements with Singapore, Thailand and the United States: progress to date and lessons for the future. Motion of the chair of the committee (Senator Ferguson) to take note of report agreed to.

Corporations and Financial Services—Joint Statutory Committee—Report—Corporate insolvency laws: A stocktake—Government response. Motion of Senator Wong to take note of document agreed to.

Economics References Committee—Report—Consenting adults deficits and household debts: Links between Australia's current account deficit, the demand for imported goods and household debt. Motion of the chair of the committee (Senator Stephens) to take note of report called on. Debate adjourned till the next day of sitting, Senator Stephens in continuation.

Rural and Regional Affairs and Transport References Committee—Report—The operation of the wine making industry. Motion of the chair of the committee (Senator Murray) to take note of report agreed to.

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Review of the Defence Annual Report 2003-04. Mo-

tion of Senator Bishop to take note of report agreed to.

Finance and Public Administration References Committee—Report—Regional Partnership and Sustainable Regions programs. Motion of the chair of the committee (Senator Forshaw) to take note of report called on. On the motion of Senator Stephens debate was adjourned till the next day of sitting.

Foreign Affairs, Defence and Trade References Committee—Report—Mr Chen Yonglin's request for political asylum. 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—Report—Quality and equity in aged care. Motion of the chair of the committee (Senator Marshall) to take note of report agreed to.

Community Affairs References Committee—Report—The cancer journey: Informing choice—Report on the inquiry into services and treatment options for persons with cancer. Motion to take note of report agreed to.

#### **AUDITOR-GENERAL'S REPORTS**

##### **Consideration**

Orders of the day Nos 1 to 5 relating to reports of the Auditor-General were called on but no motion was moved.

#### **ADJOURNMENT**

**The ACTING DEPUTY PRESIDENT (Senator Barnett)**—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.

##### **Townsville City Council**

**Senator MASON** (Queensland) (6.48 pm)—Sadly, once again the Townsville City Council is being officially investigated by the authorities. Tonight I intend to expose

unlawful behaviour at the highest level of the Townsville City Council. This is a matter that must be placed in the public domain, as the ratepayers of Townsville have a right to know how their mayor is running their city. Tonight I am making public the fact that the Australian Competition and Consumer Commission, the ACCC, are conducting an investigation into unlawful dealings between the Townsville City Council and NQ Water.

The ratepayers of Townsville have a right to know that the Mayor of Townsville, Councillor Tony Mooney, is currently the subject of an investigation by the ACCC into price fixing. Councillor Mooney asked NQ Water to artificially increase their bulk water price so as to make NQ Water's price higher than the council's price. Councillor Mooney wanted to sell water to Enertrade, a state government owned corporation who had, until recently, proposed to establish a new gas-fired power station in Townsville. The new gas-fired power station, if it were to go ahead, would require a large bulk water supply. In order for the Townsville City Council's public-private partnership to be able to supply bulk water to the proposed new power station at a competitive price, NQ Water's prices would need to go up.

Councillor Mooney apparently had no qualms about using a heavy-handed approach to some members of NQ Water. He sought to manipulate NQ Water's pricing so that Enertrade would be forced to buy water from the Townsville City Council's proposed public-private partnership plant at Cleveland Bay. The real rub for the Townsville community is that, if NQ Water lifted its prices, it would mean that all North Queensland industry and the ratepayers of Townsville would have to pay more for their water. Higher water prices would mean that Townsville would be a less attractive place for new industry to establish. What Tony Mooney was secretly doing was putting up the water

charges in Townsville in order to make his own public-private project more viable. The mayor has gone so far down the track with this public-private partnership and invested so much political capital that he is prepared to sacrifice what is right for his community to serve his own base political ambitions.

This is price fixing and is illegal under the Trade Practices Act. Indeed, to aid, abet, counsel or procure a person to price fix or to conspire with others to price fix is an offence under the Trade Practices Act. Unfortunately, there are still people like Councillor Mooney who are prepared to break the rules—to collude with competitors and divide up markets so that they can stifle competition and inflate profits.

There are significant penalties for corrupt behaviour. Of course, such penalties only apply if you are caught. But anyone who has paid even the slightest attention to the media in recent months will now know that that is a very real risk. If the ACCC mounts a successful prosecution, the Townsville City Council faces fines of up to \$10 million and Councillor Mooney faces personal penalties of \$500,000. This is therefore a very serious matter.

Take George Weston Foods, for example, where a former divisional chief executive telephoned a competitor seeking to fix the wholesale price of flour. Even though the competitor did not agree to the scheme, the intent alone was enough to earn George Weston Foods a \$1.5 million fine. The ACCC were alerted to this failed scheme by an anonymous tip-off, as they were in the case of the Townsville City Council. The Australian Competition and Consumer Commission administers the Trade Practices Act, legislation that embodies competition law and continues to evolve to deal with evolving processes and practices of businesses, both good and bad. Local authorities and public utilities

are not immune to the requirements of the act.

The ACCC has been undertaking an investigation into this matter for some months now. I understand that both the Townsville City Council and the Thuringowa City Council have been required to supply the ACCC with information concerning their involvement in NQ Water's water pricing decisions. I can reveal here tonight that the Thuringowa City Council sought legal advice as to the legality of being involved in a decision to lift water prices and declined to have anything to do with it on the advice that they received from their lawyers, who said that the Thuringowa City Council's two directors on NQ Water should not attend the meeting where this decision was proposed to take place. Lawyers correctly advised that what Tony Mooney and the Townsville City Council were suggesting was illegal. The mayor's conduct threatens to cost the Townsville community millions of dollars in long-term benefits for very short-term political gain.

NQ Water is currently considering a request from Enertrade to sell bulk, raw water for Enertrade's new power station. At the same time, NQ Water is conducting a review of its pricing structure. Not only is this price fixing but it is to the detriment of the city. Without cheap water, Townsville will never attract the industry needed to see it continue to grow. Councillor Mooney is so keen on ensuring that his water plant at Cleveland Bay stacks up so he is vindicated in his decision to commit so much money to it that he is prepared to sacrifice the long-term economic viability of the region. I am told that TCC's price could be as much as double that of NQ Water's price if this collusion is not highlighted and a spanner thrown in the works at this early stage.

NQ Water has the potential to produce water for industry that is competitive with Gladstone water board's price. That means loss of jobs in the twin cities—jobs that Councillor Mooney is apparently prepared to sacrifice for his own political gain. NQ Water's agenda and minutes also show that it was recommended to sell water to Enertrade last year, but this was not accepted at the board meeting. Instead, they are getting the AEC group, which is also doing the pricing report, to develop a report on the costs and relative advantages and disadvantages of the project. Tonight, I call on the mayor to justify to the ratepayers of Townsville why he has secretly attempted to lift their water charges and jeopardise jobs growth for the sake of a project that does not stack up.

#### Remembrance Day 2005

**Senator JOYCE** (Queensland) (6.47 pm)—It is a great pleasure to rise today to talk about Armistice Day tomorrow. At the 11th hour of the 11th day of the 11th month, we should all stop and remember those in our country who have fallen. On 11 November 1918, the guns fell silent over the Western Front. Across the world, there was cause for celebration, but it was strongly mixed with feelings of sadness and loss as families had to deal with the death and destruction that had occurred. There was hardly a town or family in Australia that escaped the effects of the war. More than 416,000 people joined up, and more than 330,000 men and women served overseas with Australian forces in World War I. Of these, more than 60,000 paid the ultimate price for their service to the nation. It is for that reason that we remember those who have fallen with a red poppy, such as those that have been seen around here today.

In our own reflection, tonight I thought it would be good to give an example of a family's involvement in that war, and I chose my

own family. My mother's father, Thomas Roche, served in the Great War from 1914 to 1918. He put up his age to do so, as he was only 16, joined the Flying Corps and served on the northern battlefields of France. He served at Messines Ridge as a radio operator. He sailed from Australia in the *Marathon* in July 1916, going first to Blenheim Barracks. Then he spent 14 months on the front line under heavy fire. That brought on an attack of double pneumonia, which took him back to England. Then he was returned to Australia on a hospital ship.

My other grandfather, John Patrick Joyce, 2/512, was with the 6th Battery of the 2nd Army Brigade in the New Zealand field artillery. He received a citation under special order No. 200/1920. His service commenced on 7 September, when he was seconded to the New Zealand expeditionary forces as a gunner. On 12 October, he embarked for Egypt with the main body of the New Zealand expeditionary forces. He met up with the Australians at Albany in Western Australia. They left Albany and were escorted by *HMS Sydney* and a Japanese cruiser called the *Obuka*. They went through the Indian Ocean, and whilst they were there the *Sydney* engaged the *Emden*, which it sank off the Cocos Islands.

On 25 April, he arrived at Gallipoli—he arrived on the first day. On 21 October, he was appointed a battery sergeant major. On 22 December, he returned to Egypt, which was the end of the campaign—so he arrived on the first day and he left on the last. On 7 April 1916, he embarked for France. On 15 January 1917, he was detached to Aldershot for courses in gunnery and physical training. On 10 February 1918, he embarked for France again and was there until the end of the war. He returned to England on 24 January 1919 after being part of the occupation forces.

In the next war, on 8 February 1942 he was seconded to the New Zealand expeditionary forces for the Pacific section. On 4 September 1942, he returned to New Zealand. On 14 January 1943, he was detached to special duties in the Pacific. On 14 July, he returned to New Zealand. On 31 October, in about 1944, he ceased secondment to the 2nd New Zealand expeditionary forces. His total service was 36 years and 233 days. His war service in the First World War was four years and 250 days. His war service in the Second World War was one year and 261 days. He was awarded a Distinguished Conduct Medal and a military OBE. His permanent rank at discharge—and he started as a gunner—was Lieutenant Colonel.

During operations in April near Messines, he carried out his duties under very difficult circumstances in a capable and gallant manner. Owing to casualties amongst officers, he was several times in charge of the wagon lines and always maintained the ammunition supplies under heavy shellfire. In the operations near Bapume during August and September 1918, on several occasions when the lines were shelled, his courage and coolness largely helped to avoid serious loss.

My grandfather married a lady he met in a munitions factory in the Midlands of England. All of my grandmother's brothers—there were seven of them—were killed, from the Boer War through to fighting the communists and in the Crimea. We knew that the second to last one starved to death. The final one was brought back and made an air-raid warden. He too died, after a direct hit. It goes to show their involvement and how lucky we are to live in the days that we do. My other grandmother's two brothers both fought. One fought with the Light Horse in Palestine. The other one was in the Air Force.

Many of those people carried the scars for the rest of their lives. It was a well-known

fact that people who went away to war never came back quite the same. Now in every town and in every hall stands an honour roll showing the names of families who have long been forgotten by schoolchildren. Many will not have the benefit of a descendant remembering them in an adjournment speech, so it is very important that we remember them here tonight. Australia's population was approximately five million, yet 53,993 people were killed, 137,013 were wounded, 16,496 were gassed, there were 7,727 non-battle deaths and 109 died as prisoners of war.

We acknowledge all those who have served, those who died, those who were maimed, those who were left widowed, those who were left orphaned, those who had their whole lives changed and those who left opportunities behind to serve their country, as people continue to do today. We acknowledge that, on their sacrifice, our nation—the nation we so proudly represent tonight here in this parliament—was born. We are blessed that, hopefully, our lot will not be as monumental as theirs. We are blessed that we can stay at home with our families, follow our careers and plan for our dreams. We have a duty to stop and appreciate the names on the memorials in every small town, school hall, large town monument or city monument.

We acknowledge those who now continue on in our Defence Force, and we pray for their safety and their families' peace. It is fitting that, with poppies in buttonholes, as we sit row on row in this chamber, we remember the significance of that gesture as seen through the eyes of John McRae, in his poem *In Flanders Fields*:

In Flanders Fields the poppies blow  
Between the crosses row on row,  
That mark our place; and in the sky  
The larks, still bravely singing, fly  
Scarce heard amid the guns below.

We are the Dead. Short days ago  
We lived, felt dawn, saw sunset glow,  
Loved and were loved, and now we lie  
In Flanders fields.  
Take up our quarrel with the foe:  
To you from failing hands we throw  
The torch; be yours to hold it high.  
If ye break faith with us who die  
We shall not sleep, though poppies grow  
In Flanders fields.

### World Diabetes Day

**Senator BARNETT** (Tasmania) (6.56 pm)—I stand tonight to commemorate World Diabetes Day, which is on 14 November each year. Next Monday is 14 November. Today in this parliament we had a special event to commemorate World Diabetes Day. I wish to acknowledge the sponsors and hosts of the event today: Diabetes Australia, together with the Parliamentary Diabetes Support Group, with the support of Novo Nordisk and the International Diabetes Federation. The global theme for World Diabetes Day 2005 is diabetes and foot care: 'Put feet first: prevent amputations.' The International Diabetes Federation, of which Australia is a member—and I will speak more about our membership shortly—and the World Health Organisation have issued a call to action for health care decision makers to take diabetes seriously as a chronic disease and to make a cost-effective investment now in care, education and prevention.

According to Diabetes Australia, approximately 1.5 million Australians have diabetes, with half of these being undiagnosed and at very high risk of developing irreversible complications. Diabetes is Australia's fastest-growing preventable chronic disease. It is the fastest-growing chronic disease in Australia. Foot related complications of diabetes are common and life threatening and place an increasing burden on the health

care sector, people with diabetes, their families and society as a whole.

What are the costs? There are four main costs. There are the direct costs to the health system, there are the community resources used by people with diabetes, there are out-of-pocket expenses borne by people with diabetes and their carers and there is the impact of diabetes on quality of life. All of these costs directly impact on Australians as a whole and contribute to an average annual cost of over \$5,000 for an individual with diabetes each year. The total annual cost of diabetes to Australia is approximately \$6 billion. This is consistent with a report—the *AusDiab report*—which was prepared and released a year to 18 months ago.

Today the Hon. Tony Abbott, the Minister for Health and Ageing, launched World Diabetes Day, with the support of the Parliamentary Diabetes Support Group. I want to place on record the strong support and leadership given by the Hon. Tony Abbott for people with diabetes in the country and thank him for his important role and his leadership in that respect.

The Hon. Judi Moylan MP is Chair of the Parliamentary Diabetes Support Group, and I acknowledge and place on record her leadership in that regard over the last 3½-odd years since the group was formed. I am a foundation member of the executive of the Parliamentary Diabetes Support Group. I am joined by a bipartisan group including Cameron Thompson MP, Dick Adams MP, from my home state of Tasmania, and Dr Mal Washer MP, from Western Australia. We jointly hosted the event today and the group gave out pedometers to all those who were there, together with socks to highlight the ways to care for our feet. In Australia each year there are more than 2,600 lower limb amputations as a result of nerve damage and poor circulation. Sadly, in Tasmania last year



69 individuals lost their legs below the knee as a result of diabetes. It is with great sadness that I share such statistics.

I acknowledge the fantastic work and the leadership role of the Diabetes Australia community. Diabetes Australia President, Dr Peter Little, was today represented by the vice-president, Dr Gary Deed, from Queensland, who was very active today and is very active in his home state of Queensland. My local president in Tasmania, Fred Howard, presented today on behalf of his home state. And Brian Conway has been doing a fantastic job as Executive Director for Diabetes Australia.

The president-elect of the International Diabetes Federation is Professor Martin Silink. Professor Silink was there today to provide support and encouragement to all of us in the parliamentary arena and those in the diabetes community. It is a great credit to Australia that a man such as Professor Silink holds that position. He was elected in September 2003 in Paris. I had the privilege of being there to provide support for Professor Silink in that election. The Australian delegation lobbied successfully, with the support of so many others. Professor Silink will take up the presidency at the South Africa IDF meeting in December next year.

I acknowledge the work of the Juvenile Diabetes Research Foundation for its role in supporting, in particular, people with type 1 diabetes. I place on record that I have type 1 diabetes and am one of two members of the federal parliament with juvenile diabetes. Susan Alberti is just incredible in her leadership of the JDRF. She has an amazing story to tell and she is a tremendous fighter for people with diabetes, not to mention her fundraising skills and support for diabetes research. I also acknowledge Michael Wilson for his work in supporting the JDRF as its executive director.

I also place on record my thanks again to Tony Abbott for his role in the leadership in organising what is called the Pollie Pedal. It is an event in which politicians get on a pushbike and ride for a charity or cause. Last year, it was from Sydney to Tamworth and back again over 10 days. It was led by Tony Abbott but was a bipartisan event, with other politicians—federal and state—and members of the community. Last year we raised funds for childhood leukaemia. Following discussions with me, Tony has agreed that the funds raised in the coming 2006 event will be for diabetes research. That is wonderful news. That event will have the full support of the whole diabetes community, not just Diabetes Australia and the JDRF in different states.

This time we will be riding from Brisbane to Sydney over a 10-day period. Tony Abbott is an excellent rider and he will be joined by other hack riders like me, who will do the best we can to keep up with him—perhaps not for the entire 10 days but at least for part of the time. The other part of the Pollie Pedal event will be in Tasmania. We will have a special one-off event in which Minister Abbott will go to Tasmania, at a date to be agreed, in February or March next year, to again support diabetes research. It will be supported by Diabetes Australia in Tasmania and, again, funds raised will be for diabetes research. So I want to thank in advance all those involved in the Pollie Pedal, all of the supporters and all of the sponsors.

Finally, I want to highlight an event that will be held in this parliament on Friday, 2 December. It is a national obesity forum. It will be opened by the Hon. Tony Abbott, the Minister for Health and Ageing, and will have as the keynote speaker Professor Stig Pramming, the Executive Director of the Oxford Health Alliance, who will fly out from England. There will be a group of key stakeholders involved in the obesity epi-

demic working to address that problem and saying, 'We have this problem and this is what we can do as key stakeholders to help fix the problem.' Hopefully, we will come up with a vision for the future. We have an organising committee which includes Ruth Colagiuri and Professor Stephen Leeder from the University of Sydney and Professor Jennie Brand-Miller, President of the Nutrition Society of Australia. Speakers will include Peter Bush of McDonald's Australia and Ian Alwill of the Australian Association of National Advertisers, together with Professor Paul Zimmet of the International Diabetes Institute. It will be sponsored by Novo Nordisk Australasia. I am proud to be able to help with and host that event, and I hope that it helps in prevention of diabetes and addressing the obesity epidemic. I believe it will have great merit and I commend it to the Senate. (*Time expired*)

#### **Mrs Joanna Gash**

**Senator STEPHENS** (New South Wales) (7.06 pm)—I rise to make a brief explanation and correction to a comment that I made during discussion about the Australian Industrial Relations Commission and the Australian Industrial Registry annual report 2004-05. In that discussion, I suggested that Mrs Joanna Gash, the member for Gilmore, did not attend the workers' industrial relations forum. I have realised that she did attend that forum; I was there. It was a momentary error and I would like to correct the record.

#### **Senate adjourned at 7.07 pm**

#### **DOCUMENTS**

##### **Tabling**

The following documents were tabled by the Clerk:

*[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]*

Acts Interpretation Act—Exercise of powers and duties under subsection 33(3)—

Repeal of *Grevillea williamsonii* (Williamson's Grevillea) Recovery Plan made under the Environment Protection and Biodiversity Conservation Act, dated 18 August 2005 [F2005L03454]\*.

Auslink (National Land Transport—Consequential and Transitional Provisions) Act 2005—Determination under item 2 of Schedule 2, dated 12 October 2005—Approvals of Auslink National Projects [F2005L03437]\*.

Australian Meat and Live-stock Industry Act—Australian Meat and Live-stock Industry (Sheepmeat and Goatmeat Export to the European Union—Quota Year 2006) Order 2005 [F2005L03341]\*.

Civil Aviation Act—

Civil Aviation Regulations—  
Instruments Nos—

CASA 404/05—Instructions—use of Global Position System (GPS) [F2005L03432]\*.

CASA 456/05—Instructions—specifying minimum runway width for an aeroplane [F2005L03462]\*.

Civil Aviation Safety Regulations—  
Airworthiness Directives—Part 105—

AD/BELL 412/45—Emergency Flootation Reservoir Adapter [F2005L03435]\*.

AD/DH 84/4—Streamline Wires [F2005L03459]\*.

AD/DH 89/4—Streamline Wires [F2005L03460]\*.

Customs Act—Tariff Concession Orders—

0510723 [F2005L03438]\*.

0510729 [F2005L03439]\*.

0510730 [F2005L03440]\*.

0510731 [F2005L03441]\*.

0510888 [F2005L03442]\*.

0510890 [F2005L03443]\*.

0511022 [F2005L03444]\*.

0511033 [F2005L03445]\*.

Environment Protection and Biodiversity Conservation Act—Adoption of State Plans as Recovery Plans, dated 21 October 2005 [F2005L03453]\*.

Financial Management and Accountability Act—

Financial Management and Accountability Net Appropriation Agreement (Department of the Environment and Heritage) Variation (2005) [F2005L03367]\*.

Financial Management and Accountability Net Appropriation Agreement Variation (No. 2) 2005 [F2005L03366]\*.

Therapeutic Goods Act—Therapeutic Goods (Listing) Notice 2005 (No. 6) [F2005L03451]\*.

\* Explanatory statement tabled with legislative instrument.

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**QUESTIONS ON NOTICE**

The following answers to questions were circulated:

**Minister for Small Business and Tourism**  
**(Question No. 894 supplementary)**

**Senator Chris Evans** asked the Minister representing the Minister for Small Business and Tourism, upon notice, on 6 May 2005:

- (1) For each of the financial years 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05 to date, can details be provided of all privately or commercially sponsored travel, including cost and sponsor for: (a) the Minister; (b) the Minister's family; (c) the Minister's personal staff; and (d) officers of the Minister's department.

**Supplementary Answer**

**Senator Abetz**—The Minister for Small Business and Tourism has provided the following answer to the honourable senator's question:

- (a) and (b) The Special Minister of State will respond to parts (a) and (b) on behalf of all ministers.
- (c) I was appointed as Minister for Small Business and Tourism in October 2004. My personal staff did not undertake any privately or commercially sponsored travel over the period from October 2004 to June 2005.
- (d) Details of privately or commercially sponsored travel undertaken by Departmental officers over the period from 2000-01 to 2004-05 are not held in a central location. Each case is dealt with on a case by case basis and records of the occasions on which sponsored travel has been undertaken are not available and could not readily be created.

The Department's Code of Conduct policy notes many Departmental officers are involved in decisions which can have a major impact on individual firms and people, and emphasises the importance of maintaining a reputation for professionalism, fairness and impartiality in making such decisions. Employees are required to avoid situations which may give rise to any actual or perceived conflict of interests. This could include the acceptance of gifts or other benefits.

The policy states that "Employees must not use their official position to obtain a benefit for themselves or anyone else. Benefits include gifts, sponsored travel, personal benefits under frequent flyer schemes, substantial hospitality and entertainment. Where employees are offered a gift or benefit, it may be accepted if they have the written approval of the CEO (Secretary) or delegate."

The Secretary has delegated his powers in relation to the acceptance of gifts and other benefits to Deputy Secretaries, Heads of Divisions, General Managers, and State Managers.

**Minister for Veterans' Affairs**  
**(Question No. 896 supplementary)**

**Senator Chris Evans** asked the Minister for Veterans' Affairs, upon notice, on 6 May 2005:

For each of the financial years 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05 to date, can details be provided of all privately or commercially sponsored travel, including cost and sponsor for: (a) the Minister; (b) the Minister's family; (c) the Minister's personal staff; and (d) officers of the Minister's department.

**Senator Hill**—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

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**QUESTIONS ON NOTICE**

- (a) and (b) The Special Minister of State will respond to these parts on behalf of all Ministers.
- (c) The Minister's personal staff have not undertaken any sponsored travel.
- (d) The Department does not maintain a central record of sponsored travel and is therefore unable to provide the information sought without considerable effort and resources. However, sponsored travel is rarely undertaken. Any such travel must be approved at a senior level in the Department and would only be acceptable where it is in the Commonwealth's interests and there exists no real or perceived conflict of interest.

### **Cairns Search and Rescue**

#### **(Question No. 1070)**

**Senator McLucas** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 9 August 2005:

- (1) Is it the case that the tender documents for the Australian Maritime Safety Authority (AMSA) Search and Rescue (SAR) contract for Cairns, ask whether the tenderer, in this case Trans Air's partner airline Aero Tropics, has achieved in Australia or New Zealand appropriate quality system certification to AS/NZS9000, ISO9000, AS/NZS1300 or ISO1400 series standard.
- (2) Did Aero Tropics have the above accreditation at the time the contract was let; if not, has Aero Tropics made progress towards appropriate quality system certification to the above series standards.
- (3) Has the company been able to nominate a firm timetable for future implementation of a quality process; if so, can details be provided; if not, can details be provided of any other quality management systems accreditation held by Aero Tropics.
- (4) Is it a requirement of the contract that the holder have the accreditation mentioned above.
- (5) What is the minimum quality accreditation for an SAR contract acceptable to the Minister and the department.
- (6) Has the holder of the contract demonstrated a satisfactory level of commitment to quality issues; if so, can details be provided, and how was any such commitment demonstrated.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) Yes.
- (2) (a) No. (b) No.
- (3) Not applicable.
- (4) No.
- (5) Commonwealth search and rescue contracts require contracted operators to be fully compliant with aviation regulatory requirements, including certificates and approvals issued and monitored by the Civil Aviation Safety Authority.
- (6) AMSA audit of the contracted operator has demonstrated that it can meet its search and rescue contractual obligations.

### **Transair Pty Ltd**

#### **(Question No. 1075)**

**Senator McLucas** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on August 9 2005:

- (1) Is the Minister or the department aware of a facsimile received by the Safety and Security Manager at Cairns Airport on 31 March 2005 in relation to the operation of Fairchild Metroliner VH-TFU at the airport.
- (2) Is the Minister or the department aware of the following allegations contained in the facsimile: (a) 'that the aircraft is taxied through lines of parked aircraft at "relatively high speed"'; (b) 'that this poses a potential risk to people, other aircraft and buildings and equipment'; (c) 'that the aircraft is parked outside its designated position, causing obstruction to taxiing aircraft'; (d) 'that the airline's luggage tug has been seen operating in reverse, towing baggage trolleys within 5 metres of this aircraft while the aircraft was moving'; and (e) 'that this aircraft is not fitted with the required locking devices while unattended'.
- (3) (a) Is the department investigating these claims; and (b) can details be provided on the outcome.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) and (2) Following Senator McLucas' question, the Civil Aviation Safety Authority (CASA) became aware of the facsimile received by the Cairns Port Authority and the allegations it contained.
- (3) (a) and (b) The Department is not investigating these claims, however CASA will be seeking comment from Transair Pty Ltd (the operator of Fairchild Metroliner VH-TFU at the time) concerning the safety matters contained in the facsimile.

#### **Aviation: Night Vision Goggles**

##### **(Question No. 1220)**

**Senator O'Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 15 September 2005:

- (1) Has the Civil Aviation Safety Authority (CASA) issued a Compliance Management Instruction (CMI) in relation to the use of NVG in non-military aviation in Australia; if so: (a) when was the CMI issued; (b) what minimum training requirements are contained in the CMI for: (i) pilots, and (ii) other crew; (c) how do these minimum training requirements differ from the minimum training requirements of the Federal Aviation Administration in the United States of America; and (d) how do these minimum training requirements differ from the minimum training requirements of the Civil Aviation Authority in New Zealand.
- (2) Which organisations have submitted modified draft CMI to CASA and when was each draft CMI lodged.
- (3) What, if any, undertakings were given by CASA or the Minister to those organisations which submitted modified draft CMI regarding: (a) the likely response; and (b) the likely date of that response.
- (4) Have these undertakings been met; if not, why not.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) Yes. A copy of the Compliance Management Instruction (CMI) is available from the Senate Table Office (Attachment A). (a) The CMI was issued in December 2004. (b) (i) and (ii) Refer to the attached CMI. (c) and (d) The Civil Aviation Safety Authority (CASA) has not reviewed the minimum training requirements, for the use of Night Vision Goggles (NVG), developed and implemented by the Federal Aviation Administration or the New Zealand Civil Aviation Administration. The CMI was based on the operational standards and requirements developed and implemented by the Australian Defence Force for the use of NVG in a military context.

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- (2) Following discussions between the Helicopter Association of Australia (HAA) and the Deputy Chief Executive Officer and Chief Operating Officer of CASA, the HAA submitted a 'Revised Instruction of the use of Night Vision Goggles in Civil Helicopter Operations in Australia' on 20 July 2005. There have been no other submissions to CASA.
  - (3) CASA has undertaken to review the revised instructions and to collaboratively work with the HAA to progress the introduction of 'Night Vision Goggles for Civil Helicopter Operations in the Australian Environment'. CASA expects to substantially complete this issue by the end of 2005, with a view to full implementation in early 2006.
  - (4) Refer to (3).

### **Coal Exports**

#### **(Question No. 1269)**

**Senator Bob Brown** asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 29 September 2005:

- (1) When, how much and from which Australian ports has coal been exported to Thailand.
- (2) Is the Government aware of plans to export more coal to Thailand; if so: (a) from which ports will the coal be exported; and (b) in what quantities.

**Senator Minchin**—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator's question:

- (1) The last recorded Australian exports of coal to Thailand were 136,000 tonnes of steaming coal in 2000. No port details are available.
- (2) Press reports in 2004 by the Asian Development Bank announcing its financial support for the 1400 MW Map Ta Phut coal-fired power station project, indicated "high quality coal will be shipped to the plant from Australian Coal Holdings Pty Ltd under a 25 year agreement". I understand that this power station is due to come on line in 2006-07 and will eventually support several million tonnes of annual coal shipments.