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For searching purposes use http://parlinfo.aph.gov.au

**SITTING DAYS—2014**

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<td>December</td>
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- **MELBOURNE**: 1026AM
- **PERTH**: 585AM
- **SYDNEY**: 630AM

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FORTY-FOURTH PARLIAMENT
FIRST SESSION—FOURTH PERIOD

Governor-General
His Excellency General the Hon. Sir Peter Cosgrove AK, MC (Retd)

Senate Office holders
President—Senator Hon. Stephen Parry
Deputy President and Chair of Committees—Senator Gavin Mark Marshall
Temporary Chairs of Committees—Senators Christopher John Back, Cory Bernardi, Sam Dastyari, Sean Edwards, Alexander McEachian Gallacher, Susan Lines, Deborah Mary O’Neill, Nova Maree Peris OAM, Dean Anthony Smith, Zdenko Matthew Seselja, Glenn Sterle, Peter Stuart Whish-Wilson and John Reginald Williams
Leader of the Government in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Government in the Senate—Senator Hon. George Henry Brandis QC
Leader of the Opposition in the Senate—Senator the Hon Penny Wong
Deputy Leader of the Opposition in the Senate—Senator the Hon Stephen Conroy
Manager of Government Business in the Senate—Senator Hon. Mitchell Peter Fifield
Manager of Opposition Business in the Senate—Senator Claire Moore

Senate Party Leaders and Whips
Leader of the Liberal Party in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Liberal Party in the Senate—Senator Hon. George Henry Brandis QC
Leader of The Nationals in the Senate—Senator Hon. Nigel Scullion
Deputy Leader of The Nationals in the Senate—Senator Hon. Fiona Nash
Leader of the Opposition in the Senate—Senator the Hon Penny Wong
Deputy Leader of the Opposition in the Senate—Senator the Hon Stephen Conroy
Leader of the Australian Greens—Senator Christine Anne Milne
Leader of the Palmer United Party in the Senate—Senator Glenn Patrick Lazarus
Chief Government Whip—Senator David Christopher Bushby
Deputy Government Whips—Senators David Julian Fawcett and Anne Sowerby Ruston
The Nationals Whip—Senator Barry James O’Sullivan
Chief Opposition Whip—Senator Anne McEwen
Deputy Opposition Whips—Senators Catryna Louise Bilyk and Anne Elizabeth Urquhart
Australian Greens Whip—Senator Rachel Siewert
Palmer United Party Whip—Senator Zhenya Wang

Printed by authority of the Senate
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<tr>
<th>Senator</th>
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<tr>
<td>Abetz, Hon. Eric</td>
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Pursuant to section 42 of the Commonwealth Electoral Act 1918, the terms of service of the following senators representing the Australian Capital Territory and the Northern Territory expire at the close of the day immediately before the polling day for the next general election of members of the House of Representatives.

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(1) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice R. Carr), pursuant to section 15 of the Constitution.

**PARTY ABBREVIATIONS**

AG—Australian Greens; ALP—Australian Labor Party;  
AMEP—Australian Motoring Enthusiast Party; CLP—Country Liberal Party;  
DLP—Democratic Labour Party; FFP—Family First Party; IND—Independent;  
LDP—Liberal Democratic Party; LNP—Liberal National Party; LP—Liberal Party of Australia;  
NATS—The Nationals; PUP—Palmer United Party
Heads of Parliamentary Departments

Clerk of the Senate—R Laing
Clerk of the House of Representatives—D Elder
Secretary, Department of Parliamentary Services—C Mills
Parliamentary Budget Officer—P Bowen
# ABBOTT MINISTRY

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<tr>
<td><strong>Prime Minister</strong></td>
<td>The Hon Tony Abbott MP</td>
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<tr>
<td><strong>Minister for Indigenous Affairs</strong></td>
<td>Senator the Hon Nigel Scullion</td>
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<tr>
<td><strong>Minister Assisting the Prime Minister for the Public Service</strong></td>
<td>Senator the Hon Eric Abetz</td>
</tr>
<tr>
<td><strong>Minister Assisting the Prime Minister for Women</strong></td>
<td>Senator the Hon Michaelia Cash</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Prime Minister</strong></td>
<td>The Hon Josh Frydenberg MP</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Prime Minister</strong></td>
<td>The Hon Alan Tudge MP</td>
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<tr>
<td><strong>Minister for Infrastructure and Regional Development</strong></td>
<td>The Hon Warren Truss MP</td>
</tr>
<tr>
<td>(Deputy Prime Minister)</td>
<td>The Hon Jamie Briggs MP</td>
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<tr>
<td><strong>Minister for Foreign Affairs</strong></td>
<td>The Hon Julie Bishop MP</td>
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<tr>
<td><strong>Minister for Trade and Investment</strong></td>
<td>The Hon Andrew Robb AO MP</td>
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<tr>
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<td><strong>Minister for Employment</strong></td>
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<tr>
<td>(Leader of the Government in the Senate)</td>
<td>The Hon Luke Hartsuyker MP</td>
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<tr>
<td><strong>Attorney-General</strong></td>
<td>The Hon Michael Keenan MP</td>
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<tr>
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<td>The Hon Bruce Billson MP</td>
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<tr>
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<td>The Hon Steven Ciobo MP</td>
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<td>Senator the Hon Richard Colbeck</td>
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Each box represents a portfolio. **Cabinet Ministers are shown in bold type.** As a general rule, there is one department in each portfolio. However, there is a Department of Human Services in the Social Services portfolio and a Department of Veterans' Affairs in the Defence portfolio. The title of a department does not necessarily reflect the title of a minister in all cases.
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Thursday, 4 December 2014

The PRESIDENT (Senator the Hon. Stephen Parry) took the chair at 09:30, read prayers and made an acknowledgement of country.

DOCUMENTS

Tabling

The Clerk: Documents are tabled pursuant to statute. Details will be recorded in the Journals of the Senate and on the Dynamic Red.

Details of the documents also appear at the end of today’s Hansard.

COMMITTEES

Meeting

The Clerk: Proposals have been lodged as follows: by the Select Committee on Certain Aspects of Queensland Government Administration related to Commonwealth Government Affairs for a private meeting today at 3 pm; by the Legal and Constitutional Affairs References Committee for a private meeting today at 11 am; and by the Select Committee on the National Broadband Network for a public hearing today from 4.15 pm.

The PRESIDENT (09:31): I remind senators that the question may be put on any proposal at the request of any senator.

BILLS

Family Tax Benefit (Tighter Income Test) Bill 2014

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator LEYONHJELM (New South Wales) (09:32): The Family Tax Benefit (Tighter Income Test) Bill 2014 cuts government spending by more than $270 million a year by means-testing family tax benefit part A more rigorously. Both the coalition and Labor recognise that welfare payments should be means tested. This may seem an uncontroversial idea, but we should remember that some countries have welfare payments that are not means-tested, like universal age pensions, and we should remember that Labor have a troubled relationship with means-testing. They are proud of their changes in recent years to more rigorously means-test family payments and the private health insurance rebate, but they do not want to means-test access to Medicare, and they defend concessional loans for high-income beneficiaries of higher education. The coalition too have a troubled relationship with means-testing. They have loosened means-testing for the age pension and want the private health insurance rebate to be universal. And both sides have continued tied funding to the states that bans state owned hospitals and schools from imposing fees, even on high-income users of these services.

Thanks to this inconsistency on means-testing, I have no great hope of support from either the coalition or Labor. But let me go through the process of making the case for the bill. Family tax benefit part A is a welfare payment. Do not be fooled by the mention of tax in the
It goes to families regardless of whether or not they pay tax. Current and previous governments have decided that families with the least income need this welfare payment of up to $6,723 per child but that a family's need for it reduces when family income exceeds around $50,000. For each dollar earned over that amount, the welfare payment is reduced by 20c. This arrangement is unremarkable and is unaffected by my bill.

However, in what is a bizarre and completely unwarranted quirk, when the welfare payment reaches $2,204.60, further rises in income do not prompt further reductions in the welfare payment. The welfare payment for a family with one child remains at $2,204.60 whether their income is around $70,000 or $90,000. So, once your family income exceeds around $50,000, you are sufficiently beyond the reach of poverty that your welfare payment can fall as your income rises, but, once your income exceeds around $70,000, somehow you are back in the clutches of poverty and it would be unjust for your welfare payment to fall as your income rises. You are finally considered to be free from this spasmodic grasp of poverty only when your income exceeds around $90,000, after which the welfare payment is reduced by 30c for each additional dollar earned. This arrangement is ridiculous.

My bill will get rid of the pause in the withdrawal of family tax benefit part A when the payment reaches $2,204. Instead, once your income exceeds around $50,000, so that the withdrawal arrangement has started, it continues until your payment reaches zero. There is no policy reason for a pause in means-testing arrangements. The only reason we have such a pause in current law is that, when John Howard rejigged tax and welfare arrangements as part of the introduction of the GST, he wanted to make sure that he could say there would be no losers and, in particular, he wanted to buy off the middle class so that they would vote for him in the 2001 election and beyond. So he put them on welfare. My bill essentially starts generating losers when family income reaches around $70,000, with most of the impact concentrated on families with incomes over $90,000. This means the impact of my bill falls on middle-income families and upper-income families. Those families who are earning these amounts but who think that they are low-income families do not realise that many people are worse off than they are. It may come as a shock, but at least a third of Australian families are worse off than they are. Low-income families are best served through rigorous means-testing, as this concentrates assistance where it is needed most, and middle- and upper-income families are best served through rigorous means-testing, as any welfare they receive is paid for by the taxes they pay now—or the taxes they will pay in the future when government debt is finally repaid—and any welfare they receive arrives only after they have spent hours listening to Centrelink's crummy hold music and after the bureaucracy has taken its cut.

The economic figures released yesterday are a grim reminder of the problem we face in Australia and that the budget is not going to repair itself. Recent estimates suggest the deficit will be $40 billion this year. Despite what some in Labor and the Greens suggest, this is not a problem of insufficient taxation; it is a matter of excessive expenditure. Paying welfare to people who are capable of looking after themselves is simply unsustainable. It also deprives those who genuinely need welfare to have a decent standard of living. If welfare can be limited to the truly needy, it will be possible to be more generous.

This bill is in the interests of all Australians, but it will take leadership for it to pass into law. I commend the bill to the Senate.
Senator CORMANN (Western Australia—Minister for Finance) (09:38): The government recognises that there are fundamental issues with the current design of the family tax benefits system which need to be addressed to ensure that the system can be sustainable into the future. That is why we have announced a number of reforms in the 2014-15 budget to better target those benefits. Reforms like those we announced in the budget are a necessary and important part of bringing the budget back under control and helping to rein in the fiscal gap between revenue and expenditure growth.

In 2014-15, the government will provide around $19 billion in family tax benefits. Family tax benefits should provide assistance to families who need it most while encouraging everyone who can work to do so. In the budget, we announced that we want to tighten eligibility for family payments to ensure they support those most in need of assistance. For example, families will continue to receive family tax benefit part B until one parent earns $100,000 per annum, families will receive family tax benefit B until their youngest child turns six and existing recipients would continue to receive payment for a further two years—the thinking here being that once the youngest child turns six the opportunity is there, when the child goes to school, for both parents to rejoin the workforce. Of course, if the choice is for that not to happen then it is not the taxpayers who should be asked to subsidise that choice. Low-income single parents will receive a new supplement of $750 per annum for each child aged between six and 12.

I applaud the work of senators like Senator Leyonhjelm who have serious and positive ideas on how to contribute to the budget repair challenge and how to help rectify Labor’s debt and deficit disaster. Senator Leyonhjelm and Senator Day deserve strong credit for laying out a number of savings proposals of their own that are wide-ranging and serious contributions to our debate about the budget. Senators do share a general responsibility to all Australian taxpayers to help with budget repair, and we welcome the kind of debate that we are having today.

There are some very commendable objectives in this bill, including the objective to improve the sustainability of social security; the objective of reducing the long-term taxation burden; and the objective of reducing the level of welfare churn, where cohorts of families are in a situation where they are both paying tax and getting some of it back in welfare payments. We believe that there are already good and viable reforms in the budget and that these should be considered and supported by the Senate in the first instance. There are approximately $11 billion worth of savings in the Social Services portfolio currently before the Senate. Approximately $4.8 billion of those savings relate to the family payments area within the Social Services and Other Legislation Amendment (2014 Budget Measures No. 4) Bill. The government believes that the Senate should first deal with the reforms in the budget bills—in particular, those reforms in budget bill No. 4—before pursuing any further reform proposals. To help ensure the long-term sustainability of supports for families, the Social Services and Other Legislation Amendment (2014 Budget Measures No. 4) Bill makes changes to the way in which family payments are made by continuing to support those most in need.

The cost of changes to payment systems can be significant due to IT complexities and the need for significant customer interactions. The Department of Human Services is already working on a large number of significant ICT projects with similar scheduled start dates to those envisaged in this bill. These measures will ensure that the social security system in
Australia is sustainable into the future. The long-term savings from these measures will help pay down the massive debt left by the previous Labor-Green government and ensure that the next generation is not left to pay off the Labor-Green debt. The government will continue to work constructively with senators across party lines to design solutions that have broad support, but, for the reasons that I have just outlined, the government will not be in a position to support this bill.

Senator MOORE (Queensland) (09:43): I rise to speak on the Family Tax Benefit (Tighter Income Test) Bill 2014. At this time, as Senator Leyonhjelm knows well, people who are not going to support his bill get up and say, 'Thank you very much for bringing your bill to us, and we appreciate your interest in this matter.' That is like a kiss of death to getting the positive votes, Senator Leyonhjelm, and I am going to be consistent. We do think that it is important these issues are discussed in terms of the process, but, as I have said, Labor is not supporting the bill, which comes at a time, as we know, when the Abbott government has already launched a full-scale attack on the cost of living of ordinary Australian families.

This bill is simply an extension of the Prime Minister's attack on low- and middle-income Australian families, and we will not be supporting that. The bill itself proposes to tighten the income test for family tax benefit part A, which people call FTB A, from 1 July 2015. Family tax benefits are modest payments that help low- and middle-income parents with the cost of raising children. Currently around 1.6 million Australian families will receive FTB A payments this financial year. We believe, on the current data, that that will be helping more than three million children. We are not talking about families defined as rich and certainly not families who definitely do not self-define in that way. They are honest, hardworking parents doing the best they can to care for their children and, therefore, are investing in our country's future.

Under the current FTB A income tests, the maximum rate of FTB A is reduced by 20c in every dollar earned above what is known as the income-free area. The current income-free area is $50,151. Payments continue to be reduced until an eligible family's payment reaches the base rate of FTB A, which is currently $2,204.60 per year. The bill before us today proposes to remove the base rate so that FTB A families continue to have their payments reduced by 20c in every dollar until their payment reaches nil.

The Parliamentary Budget Office estimates that 247,600 families will be adversely affected by this bill. That means 89,700 families will no longer receive any FTB payments at all under this proposal. That is almost 100,000 families to have their FTB A completely cut. Under this bill, the Parliamentary Budget Office also estimates that more than 5,000 families will have their FTB A payment rate fall below the base rate. The almost 2,000 Australian families on $60,000 to $65,000 a year will lose on average more than $1,500 a year.

These families cannot afford to take another hit and yet another attack on their cost-of-living pressures, certainly not after the pain that the Prime Minister and the Treasurer handed down in May this year. The budget has caused general concern across every level of the Australian community. All of us in this place know how many emails, visitations and letters we have received from people across the board. In fact, in many ways, it has been a unifying budget because the attacks have been on young people, people on the pension or about to go on the pension, ex-veterans and families. Groups under all those headings have been
concerned by what this year's budget has proposed for them, their future and their current payments.

In this environment we are looking at another bill which has an even more significant cut for one sector. I have read out the figures that the Parliamentary Budget Office has helpfully provided. There are a range of statistics. But, as I have said many times, when these figures just roll off the tongue the important thing is then to meet with the families and parents and find out what their concerns and worries are. For them, these discussions are not academic. They are real. That 20c reduction that we are talking about is very real for them and part of their daily budget.

The general budget is one that, as with so many things before the election, we did not know was going to happen. Before the election, the Prime Minister promised that he would 'reduce cost of living pressures and help families with the cost of raising children'. Of course, since the election, all we have seen from the Prime Minister and his government are cuts and broken promise after broken promise, all of which, as we have talked about in this place, make it harder for families to pay bills, pay school fees and see a doctor when they are sick. Then, on top of that, there are the extra costs of any other tests and medications.

Families have even had an increased fuel tax imposed on them by the Prime Minister. We know that we did not have a chance to debate that in this place. I am talking about this range of things because they are important in creating the environment in which this bill has come forward. There have already been so many other attacks. The fuel tax proposal came through. It will not come up for parliamentary discussion until sometime in the future when the 12-month period for the regulation is up.

At the moment, when we have an all-time-low oil price and are talking generally about fuel prices lowering across the board, the true impact of this increased cost may well be hidden because people will probably see, if the oil prices continue where they are at, that fuel is cheaper. So they will not know that this increase in the fuel process will go on whether the fuel prices are lower or they go up again. We have heard the saying that what is most certain in this world is taxes and death; I think another is that fuel prices go up and down and that they will go up again.

The government's budget is nothing short of a full-scale attack on the living standards of Australian families, who, if the Prime Minister gets his way, will have their family benefits and parenting payments slashed at the same time as they are hit with a new GP tax and a new fuel tax. The social services budget bills currently before the parliament, to which the minister referred in his contribution, contain more than $5 billion in cuts to families. Nearly $2 billion is cut from family tax payments as a result of the freeze to the rates of family payments for two years—the same family payments that this bill will also reduce with the changed income test arrangements—a cut to the real value of family payments.

According to the Department of Social Services, a freeze to the low-income free area for FTB A alone—and this is a freeze area that is linked in with Senator Leyonhjelm's bill—will see more than 370,000 families around $750 a year worse off in 2016-17. A further nearly $2 billion will be cut when families are kicked off of FTB B when their youngest child turns six. That alone would leave families around $3,000 worse off each year when they lose their payments. These things are cumulative, and every dollar counts. The Department of Social Services revealed at Senate estimates—after a lot of questions, Mr Deputy President—that
around 700,000 families will lose their FTB B if the government gets its way and kicks families off payment when their youngest child turns six. I suspect there is more than a little bit of unease from National Party members and senators as a result of the cuts to families, but there should be more protests, and there should be more questions. Many of the low- and single-income families hit hardest by these cuts, including the proposal in the bill today, live in country and regional Australia. The budget will also see a billion dollars cut from the end-of-year supplements, which will be reduced to their original rates.

The Abbott government's budget will put more pressure on the budgets of millions of families, and low-income families will be hit most of all. Earlier this year, the independent modelling agency NATSEM, once described by the Prime Minister as 'Australia's most respected modelling outfit', put to shame the government's claims that the burden of this budget is shared by everyone. Overwhelmingly, expert analysis has demonstrated that those on the lowest incomes are hit the hardest, while those at the top are spared—and the top is not the group to which this bill relates. The sphere of the attacks already in the budget extends from people on very low incomes to people on the highest incomes; this bill that we have before us today is looking right in the middle, so these people are being hit from both sides.

We believe the Abbott government is arrogant and out of touch. I also think there is a genuine concept that they do not care, that talking about the cuts is a mathematical exercise, an academic exercise, and that no-one looks at or listens to the people who can tell you to a dollar exactly what they do with their weekly and monthly budgets. For these payments that are being frozen or reduced or where in this case, in the proposal put forward to us, there is an extra added taper rate and a reduction, they can tell you what impact that will have on daily living and, particularly in this area of family payments, what activities for their families are offset by the money they receive through their family payments. That goes down to things like school fees and the added things that happen in the school curriculum.

Particularly in this case—through you, Mr Deputy President, to Senator Leyonhjelm—people in the bracket to which he is referring have told me that things like the family payments are used in the family budget to pay for things like school camps, which in many schools now are becoming very expensive. When you are budgeting for mortgages, rents and other ongoing credit costs, things like an added payment give your child a chance to travel and be involved in extra things like science camps and sport. These are the kinds of exercises to which the money in the family payments is often allocated. In the history of family payments, this was indeed the intent: providing money to families for the cost of raising children.

The concept from when these payments were first introduced was to support families in the responsibilities they have to raise children. In the process that we have before us, these things are under attack, and families are being forced into making decisions about support for families that they had not thought they would have to make, because the issues of cuts were not discussed openly in the community before the election.

Labor will stand up for the low- and middle-income families who are so savagely cut by the proposals in the Commonwealth government's budget legislation and indeed in the bill today. I have made the comparison before about the messaging that is in the community around this area. As we have said many times in this place, the Commission of Audit process, which was introduced by the government at about this time last year to look at what could be
made as savings across the board, was actually a bit of a taste of what proposals could become real in government policy—not all, of course, and certainly we do accept absolutely that the Commission of Audit was not a decision-making body; it was a body to make suggestions to the government around policy. But, when these suggestions are made, and when they are made in an environment where we have been built up to the need for massive savings and cuts, you have to think that this could be a taste of what will be moving forward.

The measure before us from Senator Leyonhjelm is a recommendation made by the Prime Minister and the Treasurer's National Commission of Audit. It too recommended that the base rate of family tax benefit A be abolished. Of course, the Commission of Audit was the first indication of what was to come in the year's budget. Released in March, it proposed a range of cuts to families, including exactly this proposal—that the base rate of family tax benefit A be reduced—and also the abolition of family tax benefit B. It also suggested slashing the indexation of the age pension, and there is a very long list, of which we have kept a record, of the other suggestions by this Commission of Audit. We look with interest to see what will pop up in future budget proposals from the government and also whether Senator Leyonhjelm has taken some more ideas out of that area about how we can be more careful with our budget into the future.

Indeed, this is the place where these suggestions should come. In terms of process, we need to understand what the background is. We need to have the debate and also look at the real impact on the people whose budgets will be affected by government changes. The blueprint of the Commission of Audit continues to be part, I think, of decision-making processes. It is important to link that to other proposals that have come forward from the government and also to the other review that is looking into the whole area of Commonwealth payments in the sphere: the McClure report. The Commission of Audit is positively moderate when compared to the extreme cuts that the government included in the May budget. We had the document that put forward all these proposals, and we thought, 'Oh, some of those are just flying in the wind,' but then, when the budget came up, it was even more extensive in the cuts that it was proposing and the expectation that they would all be able to be overlooked in this place and in the wider community because of fears about the budget situation.

I think it has been extraordinarily telling for all of us to see the way that the wider community has responded to the budget. It is not the Labor Party that is saying that this budget and the proposals that have been in it are cruel and have undue impact on people who have the most vulnerability, looking at their futures. We raise the issues; of course, because that is our job. But the people who are raising the concerns and talking to us, saying, 'We want you to raise these concerns,' are the people who are in the community looking at their weekly budgets, and the organisations that support them. A range of organisations have the best day-to-day knowledge of people's concerns about their financial security. I acknowledge the work they have done to bring forward those concerns and issues to us—and, of course, that continues. We see now that, with the cuts to the ABC and the SBS, those people are raising concerns about the impact on their daily plans. We know that it does not matter how loudly and how often you say that the reductions that are in the budget—and, indeed, the proposed reductions that are in Senator Leyonhjelm's bill—are reductions; people understand that they are cuts, and that is the only way that they can result in the savings to the
government. You cannot make savings if you are not cutting an entitlement, and that is what we are seeing today.

We know that Australian families feel as though they are under siege from the Abbott government's savage cuts to family payments. I am not sure whether the wider Australian community, Australian families and those people who are currently receiving family tax benefit A are aware of Senator Leyonhjelm's proposals. I do not think Senator Leyonhjelm had quite the same media exposure and discussion around committee processes for this proposal as, perhaps, for some of the other areas of the budget. But, should they become aware that this particular proposal is shadowing a proposal that was in the Commission of Audit and which talks about reducing the base rate payment and also about ensuring that it is a tighter taper rate for the entitlement for the process—hopefully this process today will help that awareness—they will know that the proposals are talking about losing money with which they have been making their family budgets operate. Family tax benefit A is not an overly generous payment. It is scrutinised. We do follow the process, and we make sure that the processes look at the real situations of families when decisions are made.

So we will not be supporting the proposal that is before us. We think it is very much in line with a range of attacks that have already been put in the government's budget. So, within that whole package, what the Labor Party have done is that we have looked at each proposal that has come forward in the budget. We are looking very carefully at Senator Leyonhjelm's proposal in this private senator's bill. We assess that by how it would operate, what the impact would be and, indeed, whether it is fair. It is the same process that we have used all the way through, and we will continue to do so. We believe that this one does not pass the fairness test. It does not effectively take into account the needs of the families who are receiving family tax benefit A. I have already given the number of families who would be affected by this proposed change and the impact that it would have on their budgets. We believe, as we have said on a number of occasions in this place, that it does not pass the fairness test, and we will not be supporting it.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:02): I stand to make a contribution to the debate on the Family Tax Benefit (Tighter Income Test) Bill 2014. This bill proposes to change the family tax benefit A income test from 1 July next year. It probably will come as no surprise to Senator Leyonhjelm that we will not be supporting this legislation. We think that, if we are going to be targeting how we actually make savings in the budget, there are other ways to be doing that than once again having a go at low- and middle-income families in Australia, and I will go into where we think we should be getting more revenue during my contribution.

This bill, as has been pointed out, will adversely affect 5,530 families who have incomes between $50,000 and $65,000 and are in receipt of child maintenance payments, and 242,070 families with incomes over $65,000; most of these incomes are between $90,000 and $95,000. The bill proposed by Senator Leyonhjelm continues to pursue, basically, the government's agenda of asking low- and middle-income families to bear the brunt of cuts and lets the big end of town once again off scot-free. This bill cannot be seen in isolation and needs to be seen in addition to the range of budget measures that the government is proposing that will make life harder for Australians. We have the GP co-payments and sweeping changes to the social security safety net, increasing the retirement age, targeting young
people, reducing pensioner supports and, of course, removing the pension education supplement. These all combine to hit many Australians and those that are doing it toughest. The federal government is clearly willing to cut some citizens adrift and to see them hit by this budget. We are deeply concerned that this bill basically does the same.

I tabled yesterday in this place the report of the Senate Community Affairs References Committee inquiry into income inequality. That gives us a picture of what is happening in this country. We called it Bridging our growing divide: inequality in Australia, and that is because we have seen from that inquiry that income inequality, as gauged by various measures, has increased. There are various ways that you measure income inequality, but these studies show that income inequality has increased from the mid-1990s to now. Yes, there have been little steps, little dips and increases over that period of time, but the data shows that income inequality has increased in Australia. The study also showed that the likely impacts of the budget measures would be to exacerbate income inequality and poverty in Australia. There is substantial evidence from the inquiry into the social security budget measures about the impacts of the cuts on individuals and families, and the cumulative impact of these budget measures was a recurring theme during the public hearings for the social security bills and also in the income inequality inquiry.

The fact is that we do have growing inequality in this country. Income inequality has deleterious effects on people, and there are numerous studies to show that. Richard Wilkinson's report clearly shows the impacts of inequality around the world on people's health, people's access to opportunity—and I will come back to that—and in fact on productivity. Even the IMF—and the Greens are not always known for quoting the IMF—are now thoroughly convinced of the impacts of growing inequality. They did a paper earlier in the year on redistribution, and also Christine Lagarde has made several comments about the impact of income inequality and inequality on productivity.

This issue, from my perspective and our perspective, is not only a fairness and moral issue, an ethical issue, about not leaving people behind. If you do not get that argument—and I am distressed that people do not—listen to the productivity argument. Listen to the argument about the fact that income inequality and inequality have an effect on productivity and have an effect on our economy. In these days when the government keeps talking about the need to tighten the belt and get us out of deficit, increased productivity will address income inequality, because that is one way that you start addressing productivity and helping our economy. For the Right in particular, if you are not engaging with that argument about the need to ensure that we have a fair and just community, if you are solely concentrating on the argument that economics brings everybody up and raises all the boats—and we know from the income inequality inquiry that in fact just improving the economy does not raise all the boats, and I will go into that in a minute—we know that, if you are growing the economy and increasing productivity, you need to be making sure that you are still putting in measures that make sure that all the boats are floated and that just 'fixing the economy' does not do it. The point that is clearly being made by the IMF is that you need to make sure you fix inequality to fix productivity and to help fix the economy. It is not just a one-way issue there.

In the income inequality inquiry—which I think is very important in this debate, when you are talking about income inequality; I have already been into the issues around impacts on productivity—we looked at the impacts that inequality has on people's access to opportunity,
the entrenching of inequality and the entrenching of poverty and what that does to people's social mobility. And that is also linked to access to opportunity. What the research shows is that, by not addressing income inequality, you are actually impacting on people's social mobility and access to opportunity. In other words, people are not able to access education, adequate health services or affordable housing.

The issue around affordable housing here is extremely important, because what we have seen—and Senator Ludlam, who is our spokesperson on housing and homelessness, knows this very well—and what has come out very strikingly during the income inequality inquiry is that access to decent, stable, affordable housing is critically linked to income inequality. The fact that people are not able to have safe, sustainable, decent, stable, affordable housing is intimately linked to their capacity to gain employment. To have stable accommodation is linked to being able to have a job and gain access to employment and other services.

The issue around affordable accommodation is two things. One is supply. We do not have that supply yet, and there are a number of reasons for that. One of those is that the federal government now seems to be extracting itself from issues around housing and homelessness and has now put off dealing with housing and homelessness to one of its Federation discussion papers. But the federal government is critical in the supply of affordable housing, because it has the policy levers. It has money, obviously, and we want it to be investing money, but it has the policy levers as well. So it is critical.

The point here is that there is the supply issue but there is also the affordability issue. People on low and middle incomes cannot afford accommodation. The evidence to the inequality inquiry showed that people can be spending up to 70 per cent of their income just on rent. So, if you are spending 70 per cent of your income on rent, how can you afford some of those other basics? Then you have utilities and essential food, and that is, of course, one of the issues that drop off, because that is where you have some control over your spending. You have a bit of control over your spending on food, so that gets dropped off. Then, of course, how do you and your family afford all those extras that kids need to address their education and their extracurricular activities? We also know from the evidence received that it is the extra add-on things when you are growing up that help you gain access to opportunity and help you get the best out of your education—help you access education.

So, if you have a very low income, whether you are on income support or are one of the growing band of working poor in that area of insecure, temporary work, it is very difficult for you to get ahead, because what happens is that you are in this cycle of temporary or casual employment. We know there are a group of people that are stuck in this process. You are going off and on income support, but to go back on you have to have worn down all your assets, so you never get ahead, again being denied access to opportunity. To think that $50,000 in this day and age is sufficient—that is one of the bands that will be affected by this bill—is ludicrous. It simply is not sufficient for people to do the things that I have just been talking about—in other words, to gain that access to opportunity.

Bearing in mind all this information—the government knows about issues around income inequality, because the Treasury has done papers on it and there has been a lot of work done on it, and there is more work that we have brought together under the income inequality inquiry—what the government does is to put in place a budget that will have significant cumulative effects on many families. As these numbers of measures combine, they reduce
people's access to income support and to other assistance. The impact of the GP co-payment, particularly for low-to-middle-income families, is very significant and it does put people off accessing the health system, which then obviously has roll-on impacts. It does make it more difficult.

The so-called higher education reforms—I don't like calling them reforms; I call them so-called reforms—will have a significant impact, particularly on people on low and middle incomes, or they would have. Obviously they were kicked out of this place, but the government is talking about bringing them back. Again, what they are talking about will have an impact on low- to middle-income families.

We are dealing with real people's lives here. These are people who are struggling to make ends meet and who are dependent on every cent to help them address the huge issues around renting. There is a new study which just came out a couple of days ago from AHURI that shows the impact of not having your own home and the fact that it is getting more and more difficult for those in the rental market. Of course, people are caught in that cycle. If you have a low income, you lack access to opportunity and you are not able to build up your nest egg through the circumstances I have just talked about. It becomes a never-ending cycle where you are stuck in the rental market, getting further and further behind.

This budget has a significant impact on low- to middle-income families and the government knows that, because the government's own modelling showed that. But it still went ahead and brought those measures in. NATSEM's modelling also shows very similar results, because the government was using a model that I understand NATSEM helped to develop. NATSEM has gone on to develop this further. The point is the modelling showed that the biggest impact of the budget was on low- to middle-income families, and what does this measure do? It tightens the screws even more. Do you think the Greens are going to be supporting something like this? Not on your life. We will be supporting measures that assist low- to middle-income families.

I used to have some sympathy for the argument about this so-called middle-class welfare. But when you look at the role that family tax benefit A and B plays for low- to middle-income families it is very important. It is very important for those families and gives us an opportunity to start addressing the growing divide between the people who are doing very well, in the top quintiles, and those who are doing very poorly. It is not just people in the very lowest quintiles who are doing poorly.

We know that this budget is going to have a negative effect on low- to middle-income families, those who are on income support and those who are on low incomes, particularly the group people call the working poor. We are seeing a growing number of working poor. But what we have here is a bill that would hurt those at the lowest ends of the income quintiles, when the government has virtually let the big end of town off scot-free. That is what Senator Leyonhjelm does with this bill.

There are measures that could have been pouring money into our budget coffers by now—things like the mining tax. They voted to get rid of the mining tax and it should have been tweaked. The Greens are well on the record saying the mining tax that came in was not as adequate as it should have been. Instead of fixing the problems, they got rid of it. Money was just thrown back to big business. It was the same thing with the carbon price. Money would have been pouring into the coffers now and that would have helped our revenue base. They
are refusing to deal with the tax concessions to the big end of town, to the mining companies. They refuse to deal with the diesel rebate for big mining companies—again a revenue stream they could have had.

They are not sufficiently cracking down on tax evasion, because they have sacked so many staff in the tax office that it cannot possibly do the work that used to be done. Of course, then there are the tax concessions to the big end of town. There are the tax concessions that are very clearly articulated in the income inequality report. Are they showing significant backbone to start adequately addressing that revenue source? No, they are not. They are going very slowly on that, but they are having a so-called crackdown on income support.

Australia needs to look at where we can get revenue beyond attacking the most disadvantaged in our community. By attacking that, they are actually attacking productivity, as I said. If we have a growing divide and growing income inequality, that hurts the most vulnerable but it actually hurts our productivity as well, because the more you attack them the more you increase that divide and that income inequality.

As I said, modelling from the Treasury shows that the spending cuts in the budget cost an average of $842 a year for lower-income households, while the average high-income family lost only $71. Here we have another bill that starts trying to rip money off those people that are not doing as well. They are not having their boat floated when income is rising for others. Not all the boats are being floated, and that was clearly shown by the work done by the Bankwest Curtin Economics Centre. That clearly showed that the impact of the boom in Western Australia has not flowed through to everybody.

At the same time, in my home state of Western Australia—because that was done in the boom in Western Australia—you see WACOSS talking about the cost of living. I want to put this into context so that you see that not everybody has gained sufficiently in Western Australia. The lower quintiles have not gained as much as the higher quintiles, and income inequality has risen in Western Australia over the boom period. We have the fastest growing income inequality in Western Australia. WACOSS—the WA Council of Social Service—does a yearly cost-of-living survey, and in 2014 it found:

… housing remains the major weekly expense facing … households. The unaffordability of Perth's housing market for households on low and fixed incomes remains a significant concern for the Council and its members, particularly those delivering financial counselling, emergency relief and community legal services. The cost of housing remains the biggest single driver for households facing financial crisis.

They also found here that, while the cost of living had stabilised a little bit in Western Australia for some, what has happened with the comedown from the boom a bit is that the lower income households have remained static and have not improved their situation. They think that is because they were not able to gain sufficiently through the boom and so, while prices have continued to rise, they have stabilised. Their situation has not improved, while the situation of some of the higher-income households has improved.

Anglicare's Rental affordability snapshot for 2014 found that less than one per cent of rentals in Perth were affordable to people on benefits and pensions, and only three per cent were affordable for families on a minimum wage. The affordability was calculated at 30 per cent— (Time expired)
Senator MADIGAN (Victoria) (10:23): I wish to speak briefly on Senator Leyonhjelm's bill, the Family Tax Benefit ( Tighter Income Test) Bill 2014. I think it will come as no surprise to Senator Leyonhjelm that I would not support this bill. To quote the explanatory memorandum:

The Bill will adversely affect:

- 5,530 families who have incomes between $50,000 and $65,000 and are in receipt of child maintenance payments, and
- 242,070 families with incomes over $65,000—the majority of whom are families with incomes over $90,000.

Families are not an economic burden; they nurture the future of our country. I believe any legislation that adversely affects any family is bad legislation. Families are already doing it tough with their mortgages, food, utilities, education et cetera. I will be voting against this bill, as I earlier said. The economy is the servant of the people; the people are not servants of the economy.

Senator BERNARDI (South Australia) (10:24): I move:

That the question be now put.

The PRESIDENT: The question is that the motion moved by Senator Bernardi, that the question be now put, be agreed to.

The Senate divided. [10:29]

(The President—Senator Parry)

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Senator LINES (Western Australia) (10:31): I rise to oppose the Family Tax Benefit (Tighter Income Test) Bill 2014, put up by Senator Leyonhjelm to further target and reduce the entitlement of family tax benefit A recipients. I think the point needs to be made here that this is already a targeted payment. It is a targeted payment to medium- and low-income families. It provides those families with—

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator Sterle): Senator Lines, I am sorry to interrupt. There are a number of senators engaged in conversation. I cannot hear you, and I would ask that the senators remove themselves outside. Carry your conversations outside and extend the courtesy for Senator Lines to be heard.

Senator LINES: The family tax benefit A payment is a payment provided to families to support their family budgets. If we know one thing in this place, we know that family budgets are already under attack by the Abbott government. We have seen the Abbott government wanting to put on a tax when you are sick and a tax if you need specialist care. We have seen the increase in fuel excise, which has hit people in the hip pocket. We have seen the cuts to how pensions are going to be determined into the future. We have seen massive cuts to health, and we have seen an attack on education in this country like we have never seen before. And yet we have this bill before us from Senator Leyonhjelm which further seeks to put a harsh and unrealistic burden onto medium- and low-income families. That is who is being attacked here.

If you look at the website, you will see that, to be eligible for family tax benefit A, you have to have at least a dependent child or a secondary student under 20. You have to be not receiving a pension, a payment or a benefit such as youth allowance. You need to be providing for your child 35 per cent of the time. And, of course, there is already a means test.
So this is not like the Prime Minister's gold Paid Parental Leave scheme, which will benefit the wealthy in the country; this is a targeted payment to families who need that additional support to buy school uniforms, to buy books, to enable their kids to play sport on the weekend or to supplement the family budget. This is what family tax benefit A does.

I cannot believe that a senator in this place would introduce a bill that further reduces that entitlement—that further penalises Australian families. This bill is designed to tighten the income test, which is already fairly low. Family tax benefits are modest payments—they are not outlandish payments; they are modest payments—and they help low- and middle-income parents with the cost of raising children. I just cannot imagine why anyone would support this, and Labor certainly does not support this bill.

We are a party who support families, who recognise that families need this additional support, who know that come January, after Christmas and holidays, families struggle to provide the new school uniforms required by children, the books that are required in school, the new schoolbags and so on and so forth. Even buying boots for kids to participate in sport is a burden on families, and that is what this benefit is designed to assist with. Yet we see an attack in this place by a senator from New South Wales, our largest state. One assumes there are many families in New South Wales, whom Senator Leyonhjelm is supposed to be representing, who will be hit if this bill is successful. It just does not make sense at all.

There are about 1.6 million Australian families who receive family tax benefit part A, and that is who will be hit if this bill passes this place. In those families we have three million children. Is that who we really want targeted? Do we really and truly want to target three million Australian children? I don't and Labor does not, which is why we will not be supporting this bill. As I said, this comes at a time when the Prime Minister is still pursuing his very expensive paid parental leave scheme—although he has told us these 'barnacles' are supposed to be coming off before Christmas. I am not sure if the paid parental leave scheme is a barnacle. Certainly that is our view.

But this bill attacks honest, hardworking parents doing the very best they can for their children and therefore our country's future. That is what this bill does. It will reduce the payment. Imagine how families are feeling. We already have families and ordinary Australians carrying the burden of Mr Abbott's unfair budget. They are already carrying the burden and this bill will target them even further. It is an outrageous suggestion that anyone in this place could seriously contemplate supporting a bill which says to Australian families, 'You're on your own.' We already know that the Prime Minister and the Abbott government are saying to families, 'You're on your own,' and this bill takes it one step further.

I, along with many other Australians who pay taxes, want my taxes to support those who need a helping hand. I am proud that my taxes support our health system, our education system, our social security system. I am happy to pay more tax to enable that support to be there. To suggest that as a country we do not support Australians who need a helping hand is an outrage and it goes against what we are as Australians. We are a fair go country and it is a fair go to say that those in receipt of family tax benefit A are not the rich and wealthy in this country. They are deserving. They are hardworking. This bill seeks to attack three million children and I will have no part of it.

Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (10:38): I move:
That the question be now put.
Question agreed to.

The ACTING DEPUTY PRESIDENT (Senator Sterle): The question is now that the bill be read a second time. Those of that opinion say aye, against no. A division is required? Ring the bells.

The bells having been rung—

The ACTING DEPUTY PRESIDENT: Senators, before we go to the count, I just want to clarify a bit of confusion. The motion was put. There was no division. Then the motion was put to read the bill a second time, on which there was the vote, the ayes and the noes. I thought I heard two ayes. I think I might have got that one wrong! I call Senator Leyonhjelm to tell it for the ayes—and this should not take long—and Senator Bilyk to tell it for the noes.

The Senate divided. [10:42]

(The Acting Deputy President—Senator Sterle)

Ayes ......................1
Noes ......................45
Majority ...............44

AYES

Leyonhjelm, DE (teller)

NOES

Bilyk, CL (teller) Bullock, J.W.
Bushby, DC Cameron, DN
Canavan, M.J. Carr, KJ
Colbeck, R Dustyari, S
Day, R.J. Edwards, S
Fawcett, DJ Fieravanti-Wells, C
Gallacher, AM Hanson-Young, SC
Ketter, CR Lambie, J
Lazarus, GP Lines, S
Ludlam, S Lundy, KA
Madigan, JJ McEwen, A
McGrath, J McKenzie, B
McLucas, J Milne, C
Moore, CM Muir, R
O’Neill, DM O’Sullivan, B
Peris, N Polley, H
Reynolds, L Rhiannon, L
Rice, J Ruston, A
Siewert, R Singh, LM
Sinodinos, A Smith, D
Sterle, G Wang, Z
Waters, LJ Whish-Wilson, PS
Wright, PL

Question negatived.
The ACTING DEPUTY PRESIDENT (Senator Sterle) (10:46): Pursuant to order, the time for the debate has expired.

Environment Legislation Amendment Bill 2013
Second Reading

Debate resumed on the motion:
That this bill be now read a second time.

Senator SINGH (Tasmania) (10:46): I rise to contribute Labor's position on the Environment Legislation Amendment Bill 2013. Labor is happy to see that the government has changed its approach by making some of these changes to conservation advice retrospective only. Before I get onto the substance of this bill, I will say that I am surprised that the government has brought this bill forward. Its order of business continues to chop and change all over the place. Yesterday we were continuing with the National Water Commission (Abolition) Bill. I understand that the National Water Commission (Abolition) Bill will come on for debate at some point today, but I just find it very bizarre the way this government is trying to run this place, chopping and changing its program on legislation, especially environment legislation.

As we know, there is no good news for this government when it comes to the environment—no good news at all. That will be debated soon when we look at the National Water Commission (Abolition) Bill, which stands alongside all the other climate change related abolition bills that the government has tried to bring into this place. They have all been steps to take Australia backwards when it comes to protecting our unique environment but also contributing to and doing our part on climate change action.

This particular amendment bill, the Environment Legislation Amendment Bill, has a number of components to it and a number of scheduled amendments. As I said at the outset, Labor is pleased that the government has changed its approach to conservation advice, making these changes retrospective only. We recognise that many projects that have been approved are already at the development stage and that Australian jobs should not be jeopardised due to a technicality.

The problem identified by the then environment minister, Tony Burke, was one of the department's making. In fact, it was, indeed, the department that failed to provide the separate piece of paper on conservation issues that were dealt with throughout a range of other briefing documents. That is what led to the issues and confusion forthwith. Labor believes allowing previously approved projects to carry on will ensure that business confidence and jobs for Australian families are protected. That is a good move in this particular amendment bill.

But, given the government's overall agenda for the environment, one cannot help but think that this bill is a bit of a sideshow, because we have had a government now systematically dismantling any policy that will help us respond to climate change, whether it is attempting to abolish the Clean Energy Finance Corporation or the Climate Change Authority or whether it is getting rid of a legal cap on carbon pollution. The history is right there for all to see—this is a government that has taken us backwards on climate change. I find it a little bit bizarre that this government has brought on this piece of legislation today—which, as we know, has a
focus on turtles and dugongs, and I will get to those forthwith—when, on every other environment measure, it has certainly taken this country backwards.

We have a government that is hell-bent on handing over environmental approval powers to state and local governments, weakening those powers and leaving, for example, Premiers such as Campbell Newman or even the Mayor of Mackay in charge of the Great Barrier Reef. The Mayor of Mackay would have more sway and powers in decision-making processes for the Great Barrier Reef than the Minister for the Environment.

That is the sideshow that I highlighted in relation to the bill before us—the fact that the government simply cannot get its act together on the environment. It has been a laughing stock and an embarrassment not just at the national level but at the international level. Now, today, on the very last day—well, one would hope it is the very last day!—of parliament sitting this year it has brought forward this Environment Legislation Amendment Bill, which has some positive components, as I have outlined, that Labor is pleased the government has finally seen important to put in place.

I go now to schedule 1, which will remove the ability to challenge decisions on certain grounds. Under the Environment Protection and Biodiversity Conservation Act, the EPBC Act, environmental approval decisions made by the minister are open to potential legal challenges. I mentioned those in relation to the former Labor minister, Mr Burke. This has not changed with the bill that is before the Senate. Labor supports an amendment to the EPBC Act, which protects projects that were approved prior to 31 December 2013 from legal challenge on the basis that the minister did not consider separate conservation advice as part of that decision-making process. This problem was caused by the Department of the Environment not providing a particular piece of paper regarding advice on conservation issues—advice that was provided in a range of other briefing documents and formed part of decision-making processes.

We recognise that many projects that have been approved are already at the development stage. Jobs should not be jeopardised, and that is why, due to this technicality, we support schedule 1. Allowing previously approved projects to carry on will ensure that there is business confidence. Labor also supports the community's right to challenge government decisions that impact their environment, their livelihoods or their way of life. This amendment does not limit the right to challenge on any other grounds. That is why Labor will be supporting schedule 1.

Labor also supports schedule 2 of this bill, which attempts to provide greater protections for turtles and dugongs, and we know that the minister has some regard for turtles and dugongs. However, it does not provide what is really needed. More resources and support for Indigenous groups to enable them to police their own communities on land and sea are what is really needed. This was a constant theme in evidence and submissions to the legislation committee's inquiry into the bill. I am sure that Senator Birmingham is aware of that evidence.

What this bill does is merely increase existing penalties for illegal hunting. Penalties are one thing, but these are penalties that have never even been used before. Resources to enforce a law, not penalties on paper, are really the crucial element here. It needs to be highlighted strongly that all that this particular schedule does is increase penalties. Resources are the key if we want to really look after, save and protect turtles and dugongs. Penalties could be for
100 years, but without enforcement, they are pointless. We all know that. The fact that the penalties have never been used before raises some questions. It is all well and good to increase penalties, but let us be real about this. It is more important, I think, to highlight the issue of resources. Also, the government did not consult with Indigenous groups in Queensland and the Northern Territory, they did not consult with traditional owners and they did not consult with the land and sea councils. If the minister had bothered to consult, he would have found out very quickly that the real needs are in resourcing current management plans and enabling the enforcement of the law, rather than merely increasing penalties.

Labor recognises that increasing penalties certainly is part of a broader plan to protect turtles and dugongs, and that is a good thing. I note the World Wildlife Fund in Australia have done a lot of work in this regard in relation to dugongs in particular. They have highlighted how dugongs are listed globally as vulnerable to extinction. They have highlighted that:

Australian waters are home to at least three-quarters of the global population and are a vitally important stronghold for the species.

They have also highlighted that populations of dugongs:

…world-wide have become increasingly fragmented and anecdotal evidence suggests that numbers are declining as a result of the loss and degradation of seagrass meadows, fishing pressures, Indigenous hunting and coastal pollution.

I think that we all know the importance of turtles and dugongs; it is what this government is going to do about them that is important. As I have made it very clear, I do not think that simply amending this schedule to increase penalties without addressing the issues of resourcing is going to make a difference. The fact that there was no consultation done by this government, again, is snubbing those particular traditional owners and it is snubbing the land and sea councils, who are on the ground and have a detailed understanding of the plight of these particular animals.

Labor recognises that increasing penalties is part of the broader plan of this government to protect turtles and dugongs. This plan includes funding for Indigenous rangers, and we support the government's efforts for that. We always have supported funding for Indigenous rangers. The plan provides funding to clean up ghost nets. When Labor was in government, it also funded these endeavours. That is a positive step continuing on from Labor's approach. The plan also provides funding to care for and rehabilitate turtles and dugongs that have been injured in the seas of North Queensland—another good component.

The government's plan also includes $2 million for an Australian Crime Commission investigation into the illegal killing of turtles and dugongs and the illegal transport of the meat. I have to say that this does sound like a clear case of overkill. Why does the government not work with local communities rather than going straight to the ACC, giving them $2 million and having it dealt with at a high level? This seems to be the ongoing approach by this government: increase the penalties, get the Australian Crime Commission involved, give them lots of money, do not talk to anyone do not find out what is going on on the ground and ignore expert advice of the people who deal with these issues every day. I do think that it is not the way to go; I do think it is a case of overkill. I strongly urge the minister and his department to consult—the word 'consult' needs to be brought into the lexicon of this government—with traditional owners to formulate a realistic plan for the protection and management of turtles and dugongs in northern Australia.
If they were to do that, we would support the government in this approach. Having said that, Labor will not stand in the way of schedule 2 of this bill. We believe in the principle of schedule 2, but we would be happy to work with the government to provide real and long-lasting protection by enabling Indigenous groups to adequately police their own laws and customs. That is really the way to address the plight of turtles and dugongs. I urge the minister to consider that. Marine turtles and dugongs are impacted, as we know, by a range of enduring threats, including habitat loss, poor water quality, bycatch, poaching, marine debris and boat strike. In government Labor made these issues a high priority, and this work continues in close association with state and territory governments, traditional owners and other stakeholder groups—such as commercial fishers. We also invested $7 million in Indigenous self-management, because this is the best way to ensure the sustainable and appropriate management of the dugongs and turtles. Critically, Labor's approach included leadership and advice on the take of marine turtles and dugongs, developing community-based sea-country management plans and support for traditional owner involvement in sustainable use of marine resources and compliance training.

I think the government can learn from what Labor did in office with this approach and we would welcome such an approach from the government—instead of this punitive approach of raising of penalties. We also supported Indigenous ranger teams to remove ghost nets—that is, lost or abandoned nets—which impact on turtle and dugong populations. Our approach was based on our respect for the customs and traditions of Indigenous Australians and the right under the Native Title Act for traditional owners to hunt native species for personal domestic or non-commercial communal needs. We do support a balanced approach to traditional hunting and the sustainability of native species such as turtles and dugongs.

I to understand that there are some other components to this amendment bill—amendments to be moved by the Greens—and we will look at those in the course of this debate. I am unsure as to whether Senator Xenophon has amendments that he will bring forward, but again Labor will look at those as well during the course of this debate. The main part of this bill are schedules 1 and 2—the ones I have just gone through in this contribution. It is important when we address this part of the EPBC Act that we highlight that it is about Australia being well informed about our biodiversity through the work of government, communities, NGOs, traditional owners and the like. If there is some way in which these amendments address those issues, then that is a good thing, but I do want to stress that there are ways of doing things. Whilst Labor will not stand in the way of schedule 2, I really do want to emphasise the importance of the need for the government to consult those particular groups. They do have the expertise and the knowledge, and they are out there in Queensland and northern Australia on the ground. They are not here in Canberra in departments, making decisions in silos. It is important that those in government take their advice and knowledge into account.

Finally, I would like to say that the other part of this that makes it so important is the fact that Australia has signed a number of international treaties, which, of course, guide the protection and management of a number of important species and ecological communities: treaties like the Convention on Biological Diversity; the Convention on Wetlands of International Importance especially as Waterfowl Habitat—otherwise known as the Ramsar Convention; the Convention Concerning the Protection of World Cultural and Natural Heritage and the Convention on the Conservation of Migratory Species of Wild Animals. All
these conventions need to be taken into account when we look at amending the EPBC Act and it is important that Australia lives up to its obligations under those treaties. Labor will support these two schedules.

Senator WATERS (Queensland) (11:06): I rise to speak on the Environment Legislation Amendment Bill 2013. It is somewhat ironic that what the government is seeking to do here is to have a bill that allows it to ignore science. The first part of this bill, which the Greens have opposed ever since it first passed the House one year ago, says that it is fine for the Minister for the Environment to ignore the conservation advice that was provided prior to December 2013. This sends a ridiculous message about the importance of science. Unfortunately, we know that this government is well known for its disregard of evidence based policy making, particularly on environmental issues, and we know that it has abolished the minister for science; but this bill is just an absolute slap in the face. This is why we will be moving an amendment to oppose the ability of the minister to ignore conservation advices—and I will say more on that later.

What the first part of the bill seeks to do is to say that the community cannot challenge the minister on any decision that was taken that disregards relevant conservation advice. Again, we see these attempts to silence the community's valid right to have a say in environmental decisions and their valid right to challenge decisions that are made in the absence of science. The fact that this bill has for so long sat before parliament with that affront to science in there is an indictment of this government. So we will be moving—as we did in the House of Representatives, although, unfortunately, we received no support at that stage—to delete that part of the bill which is a kick in the face to science and say: 'Actually, conservation advices are important. They are relevant information. The minister should be properly informed when making decisions about projects which are likely to have a significant impact on matters that are nationally environmentally significant.' I am not too sure what Labor is doing on this one, but I understand that the government has agreed that this is a ridiculous proposal and that it will support the Greens amendment to dump this slap in the face. That is at least a step in the right direction. I am relieved at that, because it would have sent a really bad message and it would have set a precedent that allows the environment minister to ignore relevant information. Frankly, we see so much of that process already so politicised and driven by vested interests that we need these basic protections which at least say that the minister should look at the advice before he ignores it. We know that that is what happens. I am pleased that this part of the bill will at least oblige the minister to look at the expert advice. He is, of course, then free to ignore it, and I am sure he will continue to do so in his desire to bend over backwards to the big end of town.

The second part of the bill has been quite a vexed issue. This part of the bill increases the penalties for the unlawful take of turtles and dugongs, which are protected species federally and are also on many state protected species lists. The Greens have held concerns throughout the whole course of the debate on this issue that there has been extremely limited consultation with Indigenous communities on how to achieve sustainable management and sustainable take in accordance with cultural practices of turtles and dugongs. Unfortunately, it seems that the government has not conducted the appropriate amount of consultation. Certainly in the course of the inquiry into this bill, there were many Indigenous voices who were saying: 'Nobody even asked us. We're actually managing this voluntarily and we're doing quite well.'
Why is the government bringing down these draconian laws? We heard those concerns. I would like to place on record that we are really pleased that many of the Indigenous communities are tackling this issue off their own bat. These are community-led responses for voluntary moratoria on the take of turtles and dugongs. This is the sort of approach that is an appropriate response to this issue. We know that the vast majority of Indigenous communities do not want to see turtles and dugongs treated in a cruel manner. There are a handful of incidents where that has occurred, but they are the outliers.

Interestingly, what we are seeing is a purported approach to protect turtles and dugongs. When you look at the bigger picture, the government is presiding over a massive expansion of the coal and gas industries, with huge amounts of associated dredging and offshore dumping of that dredge sludge right in the habitat—the feeding and breeding grounds—of turtles and dugongs. So whilst we are prepared to support the increase in penalties for the unlawful take of these precious species, we would say to the government that, if it really wants to protect turtles and dugongs, to stop approving all of these mega coalmines, mega coal export ports, with all of their millions of tonnes of dredging and offshore dumping of that sludge. You are damaging the valuable seagrass beds, which are the feeding and breeding grounds for these animals. We welcome your purported commitment to turtles and dugongs. Why don't you just actually follow through and do what is really necessary to protect these precious creatures and in a culturally sensitive manner? We will continue to campaign on that issue.

It was really disheartening that, within three months of taking office, the government approved the Abbot Point coal port expansion, which is slated to be the largest coal port in the Southern Hemisphere and which happens to be in the Great Barrier Reef World Heritage area. At that stage, the government approved it, with three million cubic metres of dredging and offshore dumping of that sludge. Because of the massive amount of community pressure and the huge outcry from the scientific community, including scientists from within the Great Barrier Reef Marine Park Authority—who, of course, were then silenced by their superiors—the government is now entertaining the possibility of onshore disposal of that sludge. I think this is a huge win for the community, and I sincerely hope that the government will take a very close look at the proposal that is currently before it.

My concern is that, rather than dumping this sludge offshore, the proponent, which is now the Queensland government—they have stepped in because they basically are the coal industry—want to dump this sludge onto some wetlands on the shores of the Great Barrier Reef. These wetlands are not on the international significance list but they have the qualities that could make them eligible. These are nationally significant wetlands—the Kali Valley wetlands. This government now has an application before it to dump the sludge that has been dredged up from turtle and dugong feeding and breeding grounds—creating all sorts of sediment plumes in that dredging process—on the very kidneys, the filters, of the reef, right on the coastal area at Abbot Point. So we will continue our campaign that speaks for the vast majority of Queenslanders, who do not want the reef trashed and who do not want these wetlands on the shores of the reef trashed either, not just because they are beautiful migratory bird habitats but because they are the filter system which helps protect the water quality of the Great Barrier Reef.

We certainly have a long way to go when this government, within three months of taking office, approve the world's largest coal port in the Great Barrier Reef World Heritage Area.
They also approved the fourth LNG plant on Curtis Island, which is similarly in the Great Barrier Reef World Heritage Area. They have indicated support for a second shipping channel in Gladstone, again, with massive amounts of dredging associated with that proposal. If we are talking about actually protecting turtles and dugongs, the government might want to think about not digging up their habitat. That is just a tip.

I want to place on record that I am really pleased that thanks to community pressure, scientific outcry and the massive pressure that the international community is brought to bear on Australia in embarrassing us for three years running, by warning us that the reef might be placed on the world heritage endangered list, Minister Hunt has started to feel that pressure and has now taken a step forward. He says that he does not want to dump sludge offshore.

But when you look at the commitment, unfortunately it is so full of loopholes that it is effectively business as usual. According to Minister Hunt, it is still okay to dump sludge in the World Heritage Area. You just cannot dump it in the marine park. Last time I checked, world heritage was kind of important to the entire planet, so this artificial distinction between the marine park in the World Heritage Area is farcical. Mounds of sludge do not respect a line on a nominal map. According to Minister Hunt, it is also still okay to continue dumping maintenance dredge spoil into the Great Barrier Reef World Heritage Area's waters and it is still okay for projects that are in the pipeline to do that too.

His commitment, sadly, is a little vague around the edges and is so artificially designed so as to, unfortunately, not provide the protection that is needed for the Great Barrier Reef. Again, if the minister really does want to do something to help the future of our precious turtles and dugongs and to safeguard the 67,000 people who need the Great Barrier Reef healthy for their job, not to mention the fact that this is an international icon and a biodiversity wonderland, then he should stop the dredging, stop the dumping and not make these wishy-washy commitments that are so full of holes. The government might think that they can get away with it with a two-second grab, but anyone who is paying attention—and they are—knows that it is a meaningless commitment.

That said, we are prepared to support the increase in penalties for the unlawful taking of turtles and dugongs, but what we will be proposing is to actually increase the penalties for the unlawful taking of all threatened species that are protected by our federal environment laws. If Minister Hunt is so committed to engaged species, why just single out turtles and dugongs? Why are those other species and ecological communities not similarly worthy of a decent level of protection? We will be moving an amendment to that effect and I am extremely disheartened to be of the understanding that nobody else in this place agrees with us in that regard. There is no support for increased protection for threatened species across the board. Be that as it may, let us hope that people change their minds between now and then.

I have talked about the importance of science and I have talked about the need to actually increase all penalties, but what is an important point to remember is that this government has slashed 450 staff from the Department of the Environment. Where are the people that are meant to be doing the good work of enforcing our laws, as weak as they are? The fact that the laws need to be improved is patently obvious. If you are not even enforcing laws that are substandard, how can you expect to be genuinely delivering environmental protection?

The minister has made some vague commitments about increasing the compliance officers to deal particularly with these offences and we welcome that. I am yet to see the evidence of
that and, frankly, I would not trust this government as far as I could kick them; but I am looking forward to confirmation that there will indeed be increased officers to do compliance for these new offence provisions. But what about all of the other breaches of environmental law? What are you going to do about those? You are cutting staff left, right and centre. There is nobody left to do the work to enforce these already weak laws. Sadly, that speaks to the true commitment of this government to the environment. We know that there has not been any prosecutions under these provisions, so it is somewhat ironic that we are now doubling penalties for offences that have never been enforced in the first place. It is very interesting. Again, one fears that the government is simply trying to paint themselves as caring when every other action of theirs indicates that they are disdainful of the environment.

We have seen one year now of complete attacks on the frameworks and the regulations that are meant to protect our environment. I have talked already about the terrible threat that the Great Barrier Reef is under and the fact that this government is approving coal ports, gas ports, dredging, dumping and coal mines left, right and centre, almost without taking a breath. That is not the only area of the environment that they are distinguishing themselves in. The biggest one is climate change. We know that they have gotten rid of what was a successful price on carbon, which was already bringing down emissions to tackle the biggest problem that humanity will ever face. They have gotten rid of that because of a three-word slogan and a pathetic desire to try to prop up their own popularity in the polls. What a shame they stuck to that promise, because every other promise has been completely thrown by the wayside.

We know they also got rid of the mining tax, which could have been raising more revenue. What a shame that it was removed, because now they are seeking to get money out of the pockets of vulnerable people and off the sick and the aged. Why did they not just fix up that tax? We all accepted that it was not raising the revenue it was meant to. That was because of the loopholes that were built into the tax. Why not fix up the mining tax and actually have it as a revenue raiser? Instead, they say, 'No, let's axe that, because big business asked us to.' They are being completely run by the mining industry. They are looking now at attacking the old, the sick, the poor, students and the unemployed. Good one guys!

The mining tax has gone and the carbon tax has gone. We know that they are still seeking to abolish the Clean Energy Finance Corporation. The government is on the record about that. We can expect that next year. I hope that the people in this place can see the sense of an investment in clean energy that is generating jobs, that is bringing down carbon emissions and that is driving us into a more sustainable future. Unfortunately, I know the dinosaurs that dominate the government benches. Hopefully, the crossbenchers can see the sense and the positives that come from renewable energy. But I fear for the future of the Clean Energy Finance Corporation. We know that the Abbott government has approved every single coalmine and coal-seam gas project that has crossed the desk of the environment minister—the minister supposedly for the environment. I am afraid that when you approve absolutely every coalmine and every coal-seam gas project you do not deserve that title.

When it comes to our environmental laws generally, the Greens have been campaigning ever since the Gillard government first proposed this ridiculous notion of federal environmental responsibilities to protect things that are internationally significant to the planet being given away to state governments to administer—because 'Wow don't they have such a great record on the environment!' Look at Premier Campbell Newman; what a real
environmental champion that guy is! These are the people that this government wants to put in charge completely, without any oversight or federal control of our World Heritage areas, threatened species, wetlands and all of those areas that we have promised to the world that we will look after as a nation. This government wants to give those responsibilities away. They cannot wash their hands fast enough.

I am pleased that the Labor Party have now changed their mind on the proposal and are standing with us to try to protect what is left of our environmental laws. I am pleased that the crossbenchers also see that this is a very dangerous proposal, that it is a very slippery slope and that it would leave absolute environmental cowboys in charge of trashing the place. That is what has happened in the past. We would have had oil rigs in the Great Barrier Reef but for these federal laws, we would have had cows in the Alpine National Park, the Franklin river would have been dammed and the Mary river would have been dammed. We know that we need federal environmental protections because history shows us that, if we did not have them, then all of these beautiful icons would have been sacrificed at the altar of convenience and private profit, being run by the state governments. We will continue to fight that most affronting proposal for the environment that is coming out of the Abbott government.

I have already talked about the 450 job cuts that have come from the environment department under the hand of this government. We know that the value that this government places on science is minuscule, given that we have no science minister anymore and the CSIRO has faced cut after cut. Sadly, the Abbott government has ended the grants to community organisations that were performing environment and heritage functions—that longstanding program that we have had on our books for decades. The voluntary grants to environment and sustainability heritage organisations have now completely gone. In terms of forests, we know that they have tried to attack the Tasmanian World Heritage listing. Thankfully, they were incredibly unsuccessful in that regard. We know that, when it comes to biodiversity, whilst they purport to care about turtles and dugongs and a penalty on paper—which, of course, means nothing without the people to enforce it—they axed the $1 billion biodiversity fund, which was helping land managers, farmers and people who work on the ground to restore and rehabilitate important habitat. I would have thought that that was helpful work, given that we face the sixth extinction crisis and that biodiversity is in a worse state than it has ever been in living memory. The attacks on our environment continue, and the list could go on and on, but from that I can conclude that this government places absolutely no value on the natural environment. It is disdainful of biodiversity. We get laughed at all the time when we talk about the environment; well, sorry, there are no jobs on a dead planet. What we have here is an affront to science, and it is a concerning step to ignore the needs of all other threatened species.

I am pleased that the Greens seem to have made ground and may be able to kill that part of the bill that allows the minister to ignore conservation advices. That is a really positive step that retains the centrality of science in decision making—although, of course, the minister is free to ignore that advice. I will be moving to increase the penalties for all threatened species, and we will continue to campaign for there to be staff to enforce these laws and for these laws to be improved so that they can protect the environment on which we all rely.

Senator URQUHART (Tasmania—Deputy Opposition Whip in the Senate) (11:26): I rise to speak on the Environment Legislation Amendment Bill 2013. As I understand it, there
are a number of amendments to this bill that have been lodged, and I guess we will work through them in the committee stage a little later. I understand that schedule 1 has been amended in the House. Schedule 1 is the removal of the need for the environment minister to consider separate conservation advice for approval decisions prior to 31 December. Schedule 2, as I understand the bill, increases the penalties for killing or injuring turtles and dugongs. As I said, there are a number of other amendments that, I understand, will be tabled in the committee stage of this bill.

From Labor's point of view, we recognise that there are many projects that have been approved and are already at the development stage and that Australian jobs should not be jeopardised due to a technicality. When we talk about the environment, some of the issues in this bill have been caused by the department not providing separate advice on conservation issues, and I think that this is one of the issues that we have seen throughout a number of stages of environmental work that I have certainly done through the Environment and Communications Committee. There does not seem to be a delineation between the environment and conservation. Previously approved projects have been allowed to carry on, which will ensure business confidence and jobs for Australian families, and I think that is the important factor. When we think about these types of issues, we have to think about what it means for the environment but also what it means for jobs and Australia's families. We do not support removing the need for the minister to take into account conservation advice into the future, but we support the streamlining of environmental assessment processes. We do not support the delegation of approval powers to the states. Throughout the conversation on the environment and the delegation of powers to the states, Labor has been extremely strong on the basis that there is a responsibility to have oversight of environmental issues and to not leave these things up to the states. There needs to be someone who can monitor the impacts of environmental decisions that are made around the country, not just the states and their own departments.

We are happy to see that the government has changed its approach, by making these changes to conservation advice retrospective only, but the concern is that we have a government that does not have a fantastic record on the environment. We have a government that has done absolutely everything in its power to tear down climate change policy. They have abolished the carbon tax. You have to question the sincerity of the government's desire to make sure that the environmental record in Australia is secure for the generations to come. Everyone needs to ask the question: what is the environmental record of the Abbott government? If you asked that question, the answer—certainly from this side—would be that they have no credibility when it comes environment. The environment minister talks about there being walruses in Antarctica. He does not even know the types of continents that walruses live in. The environment minister also does not understand the difference between a Tasmanian tiger and a Tasmanian devil. Tasmanian tigers have been extinct for many, many years, but the minister has been quoted as saying that we need to save the Tasmanian tiger. I think are lots of people in Tasmania who would be really happy if we could save the Tasmanian tiger, but I think we have to bring it back from the 1930s before we are actually able to do that.

**Senator O'Sullivan:** That's not conclusive; there've been sightings.
Senator URQUHART: Senator O'Sullivan says there have been sightings. There have not been any proven sightings. I do not know what you do in your leisure time, Senator O'Sullivan, but I am sure that whatever it is you do you can see Tasmanian tigers in your sleep. But this is a serious issue. We have an environment minister who does not know that Tasmanian tigers have been extinct since the 1930s. There is a lot of difference between a Tasmanian tiger and a Tasmanian devil. The Tasmanian devil is a tiny, cute little fluffy thing. It is black and white. Tasmanian tigers are quite big. They are a dog-like animal with stripes on the back of their hindquarters. The two are very, very different.

Senator O'Sullivan interjecting—

Senator Bilyk: At least they can tell the difference between a zebra and a horse.

Senator URQUHART: Yes, Senator Bilyk, it is the difference between a zebra and a horse.

Senator Bilyk: One's got stripes.

Senator URQUHART: They are very different—yes, one has stripes—in the DNA and makeup of a Tasmanian tiger and a Tasmanian devil. It is concerning that we have an environment minister who does not know where a walrus lives and who does not know the difference between a Tasmanian tiger and a Tasmanian devil.

The record of the Abbott government on environmental issues is astounding. It ranges from moving backwards on climate change to risking our reputation on outstanding World Heritage icons.

Senator Bilyk: Just hand it all to the states.

Senator URQUHART: Yes, Senator Bilyk, they will hand it all to the states. That is the concern. Soon after the Abbott government came to office they began rushing through environmental approvals, including for the Abbot Point coal terminal along the Great Barrier Reef. The government disallowed the endangered-community listing of the River Murray from the Darling to the sea. We have a whole host of issues where there is no environmental record from a minister who does not know the difference between a Tasmanian tiger and a Tasmanian devil.

Those opposite went against all reason and all advice and sneakily had the world's largest marine reserve system reproclaimed to undo the management plans that gave them effect. They also began the handing over of environmental approvals to the states. That is a real concern, because we will end up with the states having control of some of our best icons and some of our best attractions that we have in this country for tourism—things like the Great Barrier Reef. Mr Abbott wants to hand over the Great Barrier Reef to people like Campbell Newman. I am not a Queenslander—I am certainly not a Queenslander—but I would have no faith in handing over the beauty of the Great Barrier Reef, the future of the Great Barrier Reef and the control of the Great Barrier Reef to Campbell Newman, who just wants to slash and burn. That is a real concern.

Senator O'Sullivan: That's not true.

Senator URQUHART: Through you, Mr Deputy President, that is true. We have seen the result of what Campbell Newman has done in Queensland, Senator O'Sullivan, with the slash and burn technique that is his approach in a number of areas. The concern is what he will do if
he gets control of the Great Barrier Reef. On the other side of the country the government want to give Colin Barnett control of Ningaloo Reef. These are World Heritage listed areas. They are places of absolutely magnificent beauty that we need to make sure are there for future generations—our children and our grandchildren—to enjoy and for tourists to come to this country to enjoy, but the government want to hand control of them over to the states. I do not have any faith that that is a good, effective system.

The government have also abandoned efforts to have Queensland’s Cape York added to the World Heritage list. Talking about the World Heritage list, what about the debacle of the Tasmanian forests? It was amazing. The previous Labor government, of which I am very proud to have been a member, helped to ensure that there was an enhanced listing of wilderness areas in Tasmania. In my beautiful state of Tasmania we have some of the best wilderness areas in the world. We have the cleanest air. We have some of the most pristine environment. What happened when Mr Abbott became Prime Minister? The first thing on their list of things to do was to cut off 74,000 hectares from the wilderness World Heritage area. They spent hundreds of thousands of dollars to run a case to have those 74,000 hectares delisted. We all know what the result of that was, don’t we? For those who don’t, the government did not win. They did not win for a number of reasons. One is that the argument to overturn the listing as a World Heritage Area was not a substantial one to begin with. They spent a lot of money trying to do it but no effort. They put absolutely no effort into that. This is the whole problem with what the Abbott government are trying to do to our environment. They want to slash and burn, but they are not prepared to put any arguments forward. All this was happening at around the time the Tasmanian election was on. I do not want to be cynical, but, quite frankly, you do have to wonder sometimes about where these things come from, the rationale and the idea behind them. We have a problem where we have a government treating our environment like a sideshow. It is not a sideshow; our environment is precious. We cannot turn it back. We cannot repair it once it is ruined. We cannot alter things once they are damaged. And we have to put particular processes in place to protect the environment moving forward. But we have a government who do not seem to be worried about that.

On other issues the government have been intent on, they have shut down the Climate Commission. Also, they want to axe the Clean Energy Finance Corporation. This body, in particular, is making a very positive return to government coffers—but, no, that does not matter because it does not fit with the agenda to slash and burn and get rid of the environmental processes that Labor so very carefully put in place. Labor put these in place to make sure that we are not only in step with ourselves but in step with the world in terms of the climate moving forward and protecting our environment into the future. But, no, they want to slash and burn all that. They want to shut the doors on the Renewable Energy Agency. They are talking about reducing the RET. These are things that will ensure the future of our pristine environment. When my grandchildren grow up, I want them to be able to breathe the beautiful fresh air that I can. I want to make sure that we do not have sea levels rising to an extraordinary degree. I want to be able to say that I was part of a government and part of a generation that protected this environment and that looked after it for people around the world. People in Kiribati, for example, are going to have to move off their island because of climate change, global warming and sea levels rising. In Antarctica—where the minister thinks walruses live—we are seeing a whole range of ice melts down there attributed to global warming. So I want to be part of a government that looks after that. I am hoping that, after the
next election, I will be part of a government that will protect the environment that has been so callously disregarded by the current government. There does not seem to be any rhyme or reason as to what they are doing. They say they want to save money—and there is no issue with governments trying to make and save money—but it should not happen at the expense of the environment for future generations.

If we look at the protection of turtles and dugongs, for example, there needs to be greater protection for them. However, we need to make sure that Indigenous groups are able to police their own communities on land and sea. Consulting with traditional owners about the environment is, I think, a very important point. If the minister had bothered to consult, he would have found out very quickly that the real need is in resourcing current management plans and enabling the enforcement of the law rather than merely increasing the penalties for the protection of turtles and dugongs. In government, Labor did effectively address these issues as a high priority, and the work continues, in close association with state and territory governments, with traditional owners and other stakeholder groups, such as commercial fishers. But, again, this is why the handing over of environmental controls to states is fraught with danger: many of the environmental issues in this country lap across a number of states and a number of jurisdictions. Without that Commonwealth approach, we are faced with problems. With one-stop shops, states will be able to make decisions without fear or favour about impacts on other jurisdictions. The issue for us is to make sure that the Commonwealth not only has the ability to have control but also the ability to look after the environment when it crosses over jurisdictions.

I talked a little bit about the Tasmanian wilderness proposal. As I said before, the Tasmanian wilderness is an area of high beauty. I do not know whether Minister Hunt has been down to the Tasmanian wilderness. I am sure that he has. If he has not, then I hope he gets a chance to go down and view it, because these are some of the most beautiful areas in Australia. He needs to see these things so that, when he makes decisions about the environment, he understands what the environment means to Australia—and, hopefully, it would change some of his slash-and-burn techniques on the environment.

If we have a look at some of the other things, we see they have ripped out Commonwealth funding from the environmental defender's office. That provides a means for concerned Australians to challenge environmental approval decisions and to protect the places they love, so why has this minister taken that out? Why has he taken us backwards on climate change? Why has he taken us back with how he wants to axe ARENA and get rid of the Climate Change Authority, the Clean Energy Finance Corporation and the RET? Why are these things happening?

They ripped nearly half a billion dollars out of Landcare. I was actually on the environment committee when we did the inquiry into Landcare and I have to say that a lot of the submitters were really concerned about what this meant for local communities and for the environment generally. They were concerned about replacing local volunteer work and the strategic networks they had set up to look after the environmental issues in their community and running it through the Green Army program. There were issues around the concerns about the training and the commitment to the environment, but there were also many people who provided evidence to that committee who had over 20 years of experience involvement in
Landcare and who genuinely cared about their community. That is the reason they had provided 20-plus years to Landcare groups. They now have concerns about whether or not they are going to be responsible for doing the paperwork and providing the project information rather than getting out into the environment and doing what they really love: looking after it from their community's perspective. (Time expired)

Senator McEWEN (South Australia—Opposition Whip in the Senate) (11:47): I want to take the opportunity to contribute to this debate about the very important Environment Legislation Amendment Bill 2013. This bill, as has been pointed out, does a couple of things. It removes the need for the Minister for the Environment to consider separate conservation advice for approval decisions prior to 31 December 2013 and increases penalties for killing turtles and dugongs. I know there are some amendments to be moved to this bill by other parties. Labor will be supporting one of those amendments from the Greens and not some of the others. I look forward to the committee stage of the debate on this important bill.

It is interesting that we are here talking about an environment bill today in the Senate when we have heard overnight of tensions within the government ranks in the environment space as Foreign Minister Julie Bishop is preparing to attend the 21st meeting of the COP in Lima, Peru to discuss the United Nations Framework Convention on Climate Change. It seems the Prime Minister's office is not allowing Ms Bishop to conduct that responsibility on her own.

Senator Birmingham: Mr Deputy President, I rise on a point of order on relevance. The government's representation at the UNFCCC convention in Lima is not remotely relevant to the matters contained in the bill that is under consideration before the chamber.

The DEPUTY PRESIDENT: I will simply remind Senator McEwen of the question before the chair, but it has been a fairly wide ranging debate in the short time I have been here in the chair. At this point in time, Senator McEwen, you still have the call.

Senator McEWEN: I find that interjection from Senator Birmingham to try to say that a bill that has 'environment' in its title has nothing to do with the UN convention on climate change quite an extraordinary claim to make. We know that the future of the environment is all about climate change and what is happening in international forums to address climate change. It is even more extraordinary that the foreign minister is not being allowed to attend this very important international conference in Lima, Peru without having a minder with her who is, of course, Mr Andrew Robb, the Minister for Trade. Minister Robb has a well-known antipathy towards anything to do with climate change. He is a climate change denier. It is an extraordinary thing that the Prime Minister's office will not let the foreign minister attend this important meeting without a climate change denier there as well. I think that goes to exactly what this government's attitude towards the environment is.

I am a little bit surprised that a piece of legislation has come forward from the government which does have some value in it. Part of the bill that we can support is the increased penalties for killing turtles and dugongs, both of which are animals which Australians hold in great regard. I do not know if you can be affectionate towards a dugong or a turtle, but I will say there is some affection towards those sea animals from Australians. So I am pleased to see that this bill does go to that particular issue and also that it fixes up a mess of the government's own making with regard to environmental approvals.
What Labor does not support, of course, is feeding environmental approvals to state governments that are hostile to the environment, which is certainly the case of the Newman Liberal government in Queensland. We were very concerned in the Labor Party that there should be any diminution of responsibility of the federal government in terms of environmental approvals under the EPBC Act or a farming out to state governments that do not have any credibility in this space.

This also gives me an opportunity, of course, to again remind people that, while we are happy to debate this piece of legislation, what we would like to see from the coalition government is some genuine commitment to preservation of the environment. As I said in my opening comments, that should include actually doing something collectively with the international community about climate change and reducing our carbon emissions, and that is what we have not seen from this government. All we have seen from this government is a pathetic package called Direct Action, which every economist and every genuine environmental scientist knows will not work; it will simply pay big polluters to keep on polluting.

Senator Birmingham interjecting—

Senator McEwen: What is the point of having legislation like this when you are not addressing the big picture, Senator Birmingham? I find it extraordinary that Senator Birmingham has to be in this difficult space for him. When I was chair of the Senator Environment and Communications Legislation Committee, when Labor was in government doing great work on the environment, I have to say that Senator Birmingham was a very good representative on that committee. At that stage I believed that he believed—and I am sure he did—in the science that tells us that climate change is real and is caused by carbon emissions. It is a sad thing that Senator Birmingham has had to backtrack, if you like, or deny what we know is in his heart, and that is that he is a believer in climate change. I am pretty sure, Senator Birmingham, you are a reluctant sign-up to Direct Action, because you know that it is an expensive fraud perpetrated on the people of Australia. It is a fig leaf to cover the Prime Minister and the environment minister, who have no credentials when it comes to genuine commitment to addressing environmental problems in this country.

As I said, one of the concerns that Labor has about environmental legislation is that we take away the authority of the federal parliament to manage the EPBC Act, which is one of the best pieces of legislation that we have in this country to protect the environment. But this government, of course, wants to give responsibility for assessments to its Liberal mates. In the case of Queensland, we are particularly concerned about that. I would not be so concerned in my home state of South Australia, where the Premier, Jay Weatherill, has good environmental credentials. But the proper place for these approvals to be made is the federal parliament, and Labor will continue to fight for that to happen.

As I said, the modest benefits of this legislation include higher penalties for killing some marine animals. I note that, during the inquiry into this bill, Indigenous organisations complained that they had not been adequately consulted about that. Again, that is a hallmark of this government in the space of environmental legislation. They make it up on the run. They do not take advice from the experts. They do not believe in the science. They do not talk to local communities about the impact on them. They just listen to the big polluters and the environmental vandals, who will possibly rampage through the countryside, particularly in
states where there are coalition governments who, like this federal government, have no actual commitment to protecting our environment.

The DEPUTY PRESIDENT: Order! It being 11.56, time for this debate has now expired.

STATEMENTS

Divisions

The DEPUTY PRESIDENT (11:56): Earlier today a division occurred on the second reading of the Family Tax Benefit (Tighter Income Test) Bill 2014. The division was called for by two voices, as required by standing order 100(1), but the result of the division was one aye and 45 noes, meaning that one of the voices calling for the division did not vote in accordance with their voice vote. I remind senators that standing order 100(3) requires that a senator shall vote in a division in accordance with that senator's vote by voice.

PETITIONS

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

Defence Amendment Bill

To the Honourable President and Members of the Senate in Parliament assembled, the petition of the undersigned brings to your attention the fact that decisions for Australian troops to engage in military action overseas have customarily been taken without prior parliamentary debate.

Your petitioners ask the Senate to support a Defence Amendment bill to require full parliamentary debate before decisions are made about the deployment of Australian troops to overseas conflicts.

by Senator Ludlam (from 400 citizens)
Petition received.

Medicare Copayment

HANDS OFF OUR MEDICARE — NO $7 GP TAX

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

The petition of the undersigned express their deep concern regarding the Abbott Government's proposed $7 Medicare fee or GP Tax as part of the 2014-2015 Federal Budget.

Your petitioners ask that the Senate oppose this measure, as a Medicare fee or GP Tax is likely to reduce access to healthcare for many Australians who can least afford it.

by Senator McLucas (from 4478 citizens)
Petition received.

NOTICES

Presentation

Senator Siewert to move:

(1) That the following matter be referred to the Community Affairs References Committee for inquiry and report by 24 June 2015:

Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age-related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, with particular reference to:
(a) the experiences of people directly or indirectly affected by violence, abuse and neglect perpetrated against people with disability in institutional and residential contexts;

(b) the impact of violence, abuse and neglect on people with disability, their families, advocates, support persons, current and former staff and Australian society as a whole;

(c) the incidence and prevalence of all forms of violence, abuse and neglect perpetrated against people with disability in institutional and residential settings;

(d) the responses to violence, abuse and neglect against people with disability, as well as to whistleblowers, by every organisational level of institutions and residential settings;

(e) the different legal, regulatory, policy and data collection frameworks and practices across the Commonwealth, states and territories to address and prevent violence, abuse and neglect against people with disability;

(f) Australia’s compliance with its international obligations as they apply to the rights of people with disability;

(g) role and challenges of formal and informal disability advocacy in preventing and responding to violence, abuse and neglect against people with disability;

(h) what should be done to eliminate barriers for responding to violence, abuse and neglect perpetrated against people with disability in institutional and residential settings, including addressing failures in, and barriers to, reporting, investigating and responding to allegations and incidents of violence and abuse;

(i) what needs to be done to protect people with disability from violence, abuse and neglect in institutional and residential settings in the future, including best practice in regards to prevention, effective reporting and responses;

(j) the role of the Commonwealth in preventing violence and abuse against people with disability; and

(k) the challenges that arise from moving towards an individualised funding arrangement, like the National Disability Insurance Scheme and the requirements of a national framework that can safeguard people with disability from violence, abuse and neglect.

(2) That for this inquiry:

(a) ‘institutional and residential settings’ is broadly defined to include the types of institutions that people with disability often experience, including, but not restricted to: residential institutions; boarding houses; group homes; workplaces; respite care services; day centres; recreation programs; mental health facilities; hostels; supported accommodation; prisons; schools; out-of-home care; special schools; boarding schools; school buses; hospitals; juvenile justice facilities; disability services; and aged care facilities; and

(b) ‘violence, abuse and neglect’ is broadly understood to include, but is not limited to: domestic, family and interpersonal violence; physical and sexual violence and abuse; psychological or emotional harm and abuse; constraints and restrictive practices; forced treatments and interventions; humiliation and harassment; financial abuse; violations of privacy; systemic abuse; physical and emotional neglect; passive neglect; and wilful deprivation.
Committees

Selection of Bills Committee

Report

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (11:57): I present the 16th report for 2014 of the Selection of Bills Committee, and I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

Selection of Bills Committee

Report No. 16 of 2014

1. The committee met in private session on Wednesday, 3 December 2014 at 7.21 pm.

2. The committee resolved to recommend—that—

(a) the Australian Broadcasting Corporation Amendment (Local Content) Bill 2014 be referred immediately to the Environment and Communications Legislation Committee for inquiry and report by 25 March 2015 (see appendix 1 for a statement of reasons for referral);

(b) the Defence Legislation Amendment (Military Justice Enhancements—Inspector-General ADF) Bill 2014 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 3 March 2015 (see appendices 2, 3 and 4 for a statement of reasons for referral);

(c) the provisions of the Enhancing Online Safety for Children Bill 2014 and the Enhancing Online Safety for Children (Consequential Amendments) Bill 2014 be referred immediately to the Environment and Communications Legislation Committee for inquiry and report by 3 March 2015 (see appendices 5 and 6 for a statement of reasons for referral);

(d) the provisions of the Fair Work Amendment (Bargaining Processes) Bill 2014 be referred immediately to the Education and Employment Legislation Committee for inquiry and report by 25 March 2015 (see appendix 7 for a statement of reasons for referral); and

(e) the Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 5 March 2015 (see appendix 8 for a statement of reasons for referral).

3. The committee resolved to recommend—that the following bills not be referred to committees:

- ACT Government Loan Bill 2014
- Civil Law and Justice Legislation Amendment Bill 2014
- Federal Courts Legislation Amendment Bill 2014
- Family Tax Benefit (Tighter Income Test) Bill 2014.

The committee recommends accordingly.

4. The committee considered the following bill but was unable to reach agreement:

- Parliamentary Service Amendment Bill 2014

5. The committee deferred consideration of the following bills to its next meeting:

- Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014
- Corporations Amendment (Publish What You Pay) Bill 2014
- Defence Amendment (Fair Pay for Members of the ADF) Bill 2014
Higher Education and Research Reform Amendment Bill 2014
Mining Subsidies Legislation Amendment (Raising Revenue) Bill 2014
Motor Vehicle Standards (Cheaper Transport) Bill 2014
Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Bill 2014
Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Designated Coastal Waters) Bill 2014
Parliamentary Joint Committee on Intelligence and Security Amendment Bill 2014
Public Governance and Resources Legislation Amendment Bill (No. 1) 2014
Private Health Insurance Amendment Bill (No. 2) 2014
Regulator of Medicinal Cannabis Bill 2014
Social Security and Other Legislation Amendment (Caring for Single Parents) Bill 2014
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014
Excess Exploration Credit Tax Bill 2014
Tribunals Amalgamation Bill 2014.

(David Bushby)
Chair
4 December 2014

APPENDIX 1

SELECTION OF BILLS COMMITTEE

Proposal to refer a bill to a committee:

Name of Bill: Australian Broadcasting Corporation Amendment (Local Content) Bill 2014

Reasons for referral/principal issues for consideration:

In undertaking the inquiry, the Committee should consider:

1. The importance of local content in Australia, and the role the Australian Broadcasting Corporation should play in the provision of such content;
2. The recent efficiency savings imposed on the Corporation by the Government;
3. The centralisation of the Corporation's operations to Sydney; and
4. Any related matters

Possible submissions or evidence from:

Australian Broadcasting Corporation (both employees and Board members)
Department of Communications
Friends of the ABC
Media, Entertainment and Arts Alliance

Committee to which the bill is to be referred:

Senate Environment and Communications Committee (Legislation)

Possible hearing date(s):

January/February 2015
Possible reporting date:
   25 March 2015
(signed)
Senator Siewert
Whip/Selection of Bills Committee Member

APPENDIX 2
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee:
Name of bill:
   Defence Legislation Amendment (Military Justice Enhancements—Inspector-General ADF) Bill 2014
Reasons for referral/principal issues for consideration:
   To provide an opportunity to canvass the proposal and the benefits it brings to the Australian Defence Force in efficiency, transparency and accountability.
Possible submissions or evidence from:
   Stakeholders with a particular interest in Military Justice issues
   Department of Defence, including the Inspector-General Australian Defence Force
Committee to which bill is to be referred:
   Foreign Affairs, Defence and Trade Legislation Committee
Possible hearing date(s):
   To be determined by the committee
Possible reporting date:
   3 March 2015
(signed)
Senator Fifield
Whip/Selection of Bills Committee Member

APPENDIX 3
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee:
Name of bill:
   Defence Legislation Amendment (Military Justice Enhancements—Inspector- General ADF) Bill 2014
Reasons for referral/principal issues for consideration:
   Further evaluation and consideration
Possible submissions or evidence from:
   Department, Australian Law Reform Commission, Australian Defence Association, Legal Professors and Professionals
Committee to which bill is to be referred:
   Senate Foreign Affairs, Defence and Trade Legislation Committee

Possible hearing date(s):
   To be determined by the committee

Possible reporting date:
   3 March 2015

(signed)

Senator McEwen
Whip/Selection of Bills Committee Member

APPENDIX 4
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee:
Name of bill:
   Defence Legislation Amendment (Military Justice Enhancements - Inspector-General ADF) Bill 2014

Reasons for referral/principal issues for consideration:
   Changes to the powers of the Inspector-General of the ADF are controversial and could have a substantial impact on ADF members. With this in mind, the bill should be referred to committee for inquiry to examine its consequences.

Possible submissions or evidence from:
   Australian Defence Association, Defence Force Welfare Association, other Defence stakeholders, the Department of Defence, the Inspector-General of the ADF.

Committee to which bill is to be referred:
   Foreign Affairs, Defence and Trade

Possible hearing date(s):
   Mid to late January 2015

Possible reporting date:
   March 2015

(signed)

Senator Siewert
Whip/Selection of Bills Committee Member

APPENDIX 5
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
   Enhancing Online Safety for Children Bill 2014 and Enhancing Online Safety for Children (Consequential Amendments) Bill 2014
Reasons for referral/principal issues for consideration:
This is the first legislation of this kind proposed in the Parliament
Allow for public consultation, including with industry, community groups and education providers
Enable public input into the impact of technological developments on this new area of law
Scrutiny of the practical issues surrounding the implementation of the scheme
Possible submissions or evidence from:
Social media companies
Anti-bullying organisations
Education groups
Technology and communications specialists
Department of Communications
Committee to which bill is to be referred:
Senate Environment and Communications Legislation Committee
Possible hearing date(s):
To be determined by Committee
Possible reporting date:
3 March 2015
(signed)
Senator McEwen
Whip/Selection of Bills Committee Member

APPENDIX 6
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Enhancing Online Safety for Children Bill 2014, and Enhancing Online Safety for Children (Consequential Amendments) Bill 2014
Reasons for referral/principal issues for consideration:
There is substantial disagreement within the wider community about whether this legislation has merit. The legislation would benefit from scrutiny and debate over its approach. The consequences for the many stakeholders affected by the legislation need to be examined.
Possible submissions or evidence from:
Communications Alliance, Australian Interactive Marketing Industry Association, Twitter, Facebook, Microsoft, Yahoo, Instagram, Telstra, Optus, iiNet, Vodafone, parents groups, the National Tertiary Education Union.
Committee to which bill is to be referred:
Environment and Communications
Possible hearing date(s):
Mid to late January 2015
Possible reporting date:
   March 2015
(signed)
Senator Siewert
Whip/Selection of Bills Committee Member

APPENDIX 7
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
   Fair Work Amendment (Bargaining Processes) Bill 2014
Reasons for referral/principal issues for consideration:
   To ensure a thorough and complete assessment of its potential impact on a bargaining parties' ability
to take protected industrial action and to examine any unforeseen consequences arising from the Bill.
Possible submissions or evidence from:
   Unions, employer bodies, academics and the Department of Employment.
Committee to which bill is to be referred:
   Senate Education and Employment Legislation Committee
Possible hearing date(s):
   To be determined by the committee
Possible reporting date:
   Wednesday 25 March 2015
(signed)
Senator McEwen
Whip/Selection of Bills Committee Member

APPENDIX 8
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee:
Name of bill:
   Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014
Reasons for referral/principal issues for consideration:
   Important piece of proposed national security legislation
Possible submissions or evidence from:
   Gilbert and Tobin Centre for Public Law
   Law Council of Australia
   Inspector-General of Intelligence and Security
   Attorney-General's Department
   Australian Human Rights Commission
Senator BUSHBY: I move:
That the report be adopted.

Senator MOORE (Queensland) (11:57): I move the following amendment, which has been circulated in the chamber:

At the end of the motion, add, "but, in respect of the Parliamentary Service Amendment Bill 2014, the bill be referred immediately to the Finance and Public Administration Legislation Committee for inquiry and report by 2 March 2015."

We believe that it is most important that a bill of this kind, which is looking at security issues in this place, be referred to the appropriate committee. We have a very effective and very hardworking finance and public administration committee in our parliament which takes great interest in issues which are going on within this parliamentary precinct.

We have a standard process that, when any person in this parliament seeks referral of a bill, it is usually, through the selection of bills process, discussed and approved. There are often some very robust debates in the selection of bills process, and it is often around timing, when the deadline will be, what kind of process will take place and how many meetings of the committee there will be. But the inherent process of the openness to scrutiny of any piece of legislation that is put forward is something that we tend to support in this place. There are exceptions, of course, and I am sure the government will be able to point to exceptions in the past, but they are very specific. They are when there are issues of key urgency—issues of national security or processes that make it important that the bill be passed immediately. We do not believe the government has made these arguments effectively in this case.

My understanding is that we put forward a recommendation to refer the Parliamentary Service Amendment Bill to the Finance and Public Administration Legislation Committee. The bill is looking at changing the way security operates in this building and engaging with the Australian Federal Police in a more direct way, something that we think is realistic but should be considered. My understanding is that we agreed in our party that this particular bill would move through the House of Reps, as it did, but that when it came to the Senate it would be subject to the scrutiny processes which are standard in this place. Agreement was reached.
between the offices of the Leader of the Opposition and the Speaker to pass the bill, and there was very little debate in the other place.

One of the reasons that happens is the understanding that, when a bill gets to the Senate, there are clear procedures to ensure that that legislation is considered effectively. That is facilitated by the committee process, which is open to anyone who is interested in learning about the legislation or making a submission on it.

What was put to the Selection of Bills Committee last night was not a referral for a six-month inquiry with all the bells and whistles. What was put forward was a straightforward inquiry into the issues around how this will operate, exact roles and, particularly, the definition of ‘operation’ as part of the proposed expanded remit of the security management board. Those issues would then be subject to our expected process.

The Finance and Public Administration Legislation Committee, as I said, has extensive experience in these areas and is made up of knowledgeable senators from across this place who have already proven that they have the experience and have a professional interest in what makes this building operate best. Those senators should have the opportunity to consider this legislation, to ask questions of the appropriate people about how it will work and also to ensure that any concerns in the wider community are considered. And there are people who are very, very involved in how security here operates—not the details. This is not an argument for finding out security details; it is about just how the protection of this building, and the people in it, will work.

So we strongly believe that there should be a committee review of the bill, which is an inherent part of the way the Senate operates—a short-term review: my understanding is that we asked for a reporting date of 2 March. That is not asking for too much. We know that Senate committees do not operate in the January period. We do not come back to sit until February. We believe it is an entirely appropriate process for a piece of legislation that impacts on the security of this building. At a time when there is real interest generally in security issues, a request put forward to the Selection of Bills Committee for a committee review of this bill should not be rejected out of hand. The government has not made it clear why it should not happen. We believe that it would work effectively to ensure that there was scrutiny and we strongly believe that our straightforward amendment—(Time expired)

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:03): The government do not support the referral of the Parliamentary Service Amendment Bill to the Finance and Public Administration Legislation Committee, but we will not be seeking to divide on this. We recognise that the numbers are probably out there. We know that Senate committees do not operate in the January period. We do not come back to sit until February. We believe it is an entirely appropriate process for a piece of legislation that impacts on the security of this building. At a time when there is real interest generally in security issues, a request put forward to the Selection of Bills Committee for a committee review of this bill should not be rejected out of hand. The government has not made it clear why it should not happen. We believe that it would work effectively to ensure that there was scrutiny and we strongly believe that our straightforward amendment—

Senator SIEWERT (Western Australia—Australian Greens Whip) (12:03): The Greens will be supporting the amendment to refer the Parliamentary Services Amendment Bill 2014 to the Finance and Public Administration Legislation Committee. We support the reporting date; we think 2 March is fair enough for reporting on this bill. We understood, when the bill
was introduced by the President, that in fact there was an understanding that it would be referred to a committee for inquiry. I have been told subsequently that that is not what the President intended, which I am disappointed about, because I know the President does follow procedure really appropriately and that he is concerned that this place operate according to appropriate procedures. Therefore, I am a bit surprised that now the government are saying, 'We don't want to refer this particular bill.' It does have in it points that need to be reviewed, so I am concerned that the government have decided it should not be referred to a committee.

I also understand that the government thought the ALP were going to support the bill's passage through the Senate without referring it to a committee. I am sure the ALP will address that issue, given that I am not aware of those circumstances. However, I do know that the Greens are keen to see this bill reviewed by a committee because it is important that bills of this nature are reviewed. The Greens support the referral of bills to the committee process. There have been some exceptions to this, but, in general, when a party refers a bill for inquiry by a committee, that is nearly always supported. There have been some notable exceptions, and we have had stoushes about that in this place because there is a need for scrutiny of legislation that has potential implications. There are some exceptions; I agree with Senator Moore.

In fact, we are about to deal with one, in non-controversial legislation, and that is the Mr Fluffy bill—and we all know why it is essential that that bill be dealt with. But, as far as I am aware, this parliamentary service bill is not a time-bound bill. There is no requirement for it to be dealt with in an expeditious manner, unlike the bill that we have collectively agreed not to refer to a committee, which is the bill that addresses the issues around Mr Fluffy. Nobody would want to stand in the way of that process for compensation starting immediately and dealing with that issue of asbestos contamination. That is of course a sensible exception to referring bills to a committee, because it needs to be dealt with very quickly.

But, on the whole, we do support referrals, and the selection of bills process works this way: someone says, 'We want the bill to be referred,' and we then maybe quibble about the dates. But, on this bill, the government are not quibbling about the date; they are saying they do not want it referred. It is a bill that should be looked at because it is dealing with issues of security and, as I understand it, puts an additional person, an AFP member, on the security management board. We do think these issues need to be dealt with.

As I said, we do not see its urgency. Certainly, when it was introduced we were not given to understand that this was going to be an urgent bill—it was a bill that the President introduced, and I understand it came through the other place fairly quickly. That is not unusual. Sometimes bills do go through the other place quite quickly because the other place knows that the Senate is the house of review and that the Senate will, in fact, give bills a fair going-over in the committee process, because that is part of its job. We have an effective committee system on the whole—sometimes it does not function quite well when bills are rammed through this place and committees are given very short time lines to review them. But in this case the government are not even willing to give a short time line for this—they just do not want it reviewed. I must say, I find it quite unusual that they do not. As I said, the President usually is very keen to ensure that we are giving proper review to particular pieces of legislation.
If this bill is urgent, I think the government should be explaining why it is urgent. There has been no statement to say why this is urgent and why they do not want it referred—other than that we had a misunderstanding in this place. They say that we, the Greens and other senators who want this bill referred, had a misunderstanding of what the President wanted. Be that as it may, we think this bill should be referred to committee. We think this is an appropriate time line for it to be referred. It is not too long, but it gives us enough time to be able to look at the bill.

Senator McEWEN (South Australia—Opposition Whip in the Senate) (12:08): I want to contribute to this important debate as well. I am actually a member of the Selection of Bills Committee, and last night, when this particular item came up on the schedule of bills for its fate to be determined, I moved that this bill be referred to the Senate Finance and Public Administration Legislation Committee for inquiry and for report by 2 March. It was an extremely usual kind of thing to do with a bill of this nature, and I was surprised when the government indicated that for some reason they believe this bill had to be dealt with immediately. There is no urgency to this bill. In fact, this bill should and must be subject to the scrutiny of the appropriate Senate committee because the bill deals with the matter of the security of the people who work in this building, and indeed with the security of the people who visit us in this Parliament House.

This bill, if passed, will change the membership of the Security Management Board, which is a legislated authority which advises the presiding officers of the parliament about matters to do with security. In the recent past, of course, we have had some very interesting advice from the presiding officers about matters of security. I have to say, as the Opposition Whip in this place, that one of the things the senators who work here talk to me about often is issues of security, and they, of course, are concerned not just for themselves but for the guests and other people who come to visit them. So, if this committee is dealing with the important issue of security—and we know that this building has been on a heightened security alert for some period of time—it is entirely appropriate that the right Senate committee gets an opportunity to look at the actual implications of this legislation, if it is enacted. It is a simple request. It should be examined by the relevant Senate committee so that, if there are any unexpected outcomes or potential problems within this legislation, these can be identified by that committee and recommendations can be made. That committee, which is chaired by the government, could make recommendations to the Senate about any changes that may need to be made to this very, very important piece of legislation.

It is not just a simple piece of legislation. It is not just a 'tick and flick' piece of legislation. It came to the Senate—we know it passed through the House of Representatives, but they do not have the inquiry process that we have here in the Senate, where we are very used to looking at what seem to be innocuous pieces of legislation. This seems to be innocuous, but we will not know until it is has been properly examined by the finance and public administration committee of this Senate. As I said, when we are dealing with matters of security, it is very important to take the time to ensure that legislation is actually going to deliver what you set out for it to deliver. There are numerous instances in this place, and it happened when we were in government as well. You would think a piece of legislation was right, you would think the drafters had got it right and you would think there were no unintended consequences of that legislation—but when the Senate committees had a look at it
they would find that there could be unintended consequences. It could be that those consequences would be pointed out by witnesses who would be called to give evidence to a Senate committee looking at this. We are not asking for anything extraordinary. It is a very timely reporting date of 2 March—early next year. Hopefully, if the legislation were up to scratch, it would then be passed by the Senate, as it should be.

All we are asking for is normal process and normal practice. All we are asking is that in the matter of security—for heaven's sake, Senators on that side—be responsible, be reasonable and act in the best interest of everybody who works in this place. (Time expired)

Senator Wong (South Australia—Leader of the Opposition in the Senate) (12:14): I was not inclined to speak in this debate till the Manager of Government Business chose to put some things on the record which I think require a response from the leadership of the opposition in this place. He made a number of comments which I think require some correction.

Let us be clear about what we are debating. We are debating here the issue of whether or not the Parliamentary Services Amendment Bill goes to the Finance and Public Administration Legislation Committee for an inquiry. One would not have thought this is a controversial issue. There is a change—

Senator Fifield: We are not debating it.

Senator Wong: He is interjecting again.

Senator Fifield: We are not going to divide.

Senator Wong: Mr Deputy President, I am going to need the protection of the chair soon. What we are debating is whether or not the Parliamentary Service Amendment Bill—

Senator Bushby: You are just filling in time.

Senator Wong: Mr Deputy President, I wonder if you could ask the whip to cease talking to me. I am happy to talk to him outside, if he wants.

The DEPUTY PRESIDENT: The Senate should come to order.

Senator Wong: What I want to be very clear about is this. We do, in this place, have a principle, where absent urgent circumstances, absent a compelling argument as to urgency, the general proposition that senators across the political divide, including—

Senator O'Sullivan interjecting—

Senator Wong: Senator O'Sullivan, you may well avail yourself of this at times—senators have agreed that legislation gets referred to committees for consideration. That is the general proposition. There are circumstances where we have urgent bills where it is agreed that that principle is departed from but that is the general principle in this place. Even with the counter-terrorism legislation there was agreement with Senator Brandis that there be an inquiry through the PJCIS. It is true that senators also will agree, if something is not controversial or urgent, that we will have a limited inquiry. I am very clear that there is no need for a lengthy inquiry on this legislation but we think it is appropriate to refer it to the Finance and Public Administration Legislation Committee. The manager made some suggestion that this was a new proposition, that this was something they were not aware of. I want to make very very clear, crystal clear, that I was clear on Monday of this week at a meeting of leaders and whips, to the Leader of the Government in the Senate, to the whip and
to the manager, if he was in the meeting—I cannot recall; he was in and out of the meeting—that we were intending to ask that this be referred to Finance and Public Administration Legislation Committee. So the suggestion the manager has put on the record, to which I feel the need to respond—Senator O'Sullivan, you will understand that—that this is somehow a stunt or a new thing is wrong. I told the Leader of the Government in the Senate on Monday that we would want this referred to the Finance and Public Administration Legislation Committee. I also advised the President that that was the opposition's position.

The Labor Party has facilitated speedy passage of this legislation through the House. At no point in this debate, at no point in the conversations which have been had has a single government senator or minister explained to this chamber why it is so urgent that this bill be passed to day. Not a single government senator has made that argument. Why is this occurring?

The information I was given—I do not want to divulge by whom—in some private conversations would suggest that there is some push from the Prime Minister's office to get this legislation through. If that is the case, tell us what the urgency is. All are silent over there. This is so urgent, we cannot actually send this bill to the Finance and Public Administration—

Senator Bushby: I believe the Prime Minister told the Leader of the Opposition.

Senator Wong: I am told that the Prime Minister's office has spoken to the Leader of the Opposition. I speak to Mr Shorten fairly regularly and this is the Labor Party's position. We want a limited inquiry to the Finance and Public Administration Legislation Committee.

Senator Bushby: You moved an amendment; we didn't agree. Let's move on.

Senator Wong: If the Chief Government Whip is so anxious to interject, I invite him to stand up and tell us what is so urgent about this bill, why the Prime Minister's office is demanding that the manager push this bill along and refuses to send it to a committee, which is the normal process in the Senate. The normal process in this Senate is that, if a senator or a party requests that the bill go to a legislation committee, then absent compelling circumstances to the contrary, that principle has been adhered to. Not once have you indicated to us why this is so compelling. (Time expired)

Senator Conroy (Victoria—Deputy Leader of the Opposition in the Senate) (12:19): I rise to contribute to this debate because I am somewhat perplexed.

Senator Fifield: Stephen, that's not unusual.

Senator Conroy: It may not be unusual but it is unusual that you could perplex me. What I am confused about here is this quest for urgency which you are unable to articulate. Why is the fix being put in by your side that you are being so unreasonable that you are not allowing the normal processes of the Senate to take place?

Senator Fifield: Mr Deputy President, I rise on a point of order. Senator Conroy is bordering on misleading the Senate. I have already indicated that we will not be seeking to divide. So this debate is superfluous really.

The DEPUTY PRESIDENT: Thank you, Senator Fifield, but that is not a point of order; that is debating point.

Senator Conroy: As you can see there, another opportunity for the Manager of Government Business in the Senate to explain the urgency as to why we have to say no, why
we have to overturn a normal Senate procedure, just because the Prime Minister's office have told you that you cannot send it to a committee. It is no wonder we are seeing reports in the paper about the shambolic government. It is all over today's papers. The Prime Minister's office is being criticised by the whole backbench and you can see today that that shambolic management of government has now stretched from the executive wing, stretched from the House of Representatives and come in here.

We have the Prime Minister's office saying, 'This bill must go through.' Just as the Liberal Party backbench committee rejected bringing on the setting up of the medical research fund— I am sure you are on that because I know you're interested in these topics—just as the backbench said no, we are not going to be railroaded by the executive, we are not going to be railroaded by the 18 year Prime Minister's office with a tin ear, we are not going to be railroaded by ministers coming here around saying, 'Just vote for this and be quiet,' we want to have a look at it.

The Senate is now saying the same: why are we being forced to overturn normal procedures? Why will this government not accept that the normal processes of this Senate should apply? We know it is because the Prime Minister's office thinks it is actually running the entire parliament, both chambers. It thinks it can just tell the Liberal Party backbench what to do. It thinks it can tell the House of Representatives what to do and, more importantly and arrogantly, it thinks it can tell this chamber what to do. Well, this chamber is not going to swallow that sort of treatment, any more than Senator Macdonald is. Senator Ian Macdonald made a very important contribution on radio this morning. He does not make many, but this was one. He said: 'We've got a government that's just rushing willy-nilly. It's not consulting its own people. It's not taking the time to have conversations with its own backbench. And it should stop.' So its own backbenchers are now so upset at the conduct of the executive of the Prime Minister's office they are in open rebellion at the conduct.

What we are seeing here is that the Prime Minister's office has obviously picked up the phone to the whip and the deputy whips, picked up the phone to call Senator Birmingham, picked up the phone to call Senator Fifield, and said: 'I want this bill through. How dare the Senate want to have a look at it in a committee process?' Well, just like that Liberal Party backbench economics committee, we say no. It is unfair on the Senate, it is unfair on the parliament and we are entitled to examine this bill just like we examine every other bill that people want referred to committees. That is what is at stake here today.

It is a shambolic government. There are reports in today's paper of Ms Bishop 'going bananas' at the Prime Minister because the Prime Minister's office had leaked that she is not allowed to go to Lima because they do not trust her and they have got to send the hard man Mr Robb to keep her company—and the Prime Minister's office leak it! No wonder Ms Bishop storms into Mr Robb's office and points out to Mr Robb that she is actually his boss, not the other way round. No wonder she storms into Mr Abbott's office. We are now seeing leaks from private meetings between the Prime Minister of Australia and the foreign minister of Australia. The National Security Committee has got more leaks than the House of Representatives had yesterday! We get almost a daily transcript of the fights between Scott Morrison, the Minister for Foreign Affairs and the Minister for Defence. (Time expired)

**Senator FAULKNER** (New South Wales) (12:24): I was pleased to receive an invitation from my colleagues to speak about some of the historical imperatives and implications about
the referral of a bill to a Senate legislation committee. I am very, very pleased to do so. I would have to acknowledge to the chamber that it is a very long time since I had the pleasure of attending Selection of Bills Committee meetings, but I suspect that I have done so more often and for more hours than anyone else who serves in this chamber. I thought the useful contribution—

Senator Bushby interjecting—

Senator FAULKNER: If the government whip would care to allow me to complete a sentence, I would appreciate it—Senator Bushby, if you would extend me that courtesy in this important debate.

I thought it would be useful to talk about the general principle that has applied—I acknowledge not exclusively, not always, but in the vast majority of cases, and the only exceptions are when there is genuine controversy about the referral of a bill. The general principle that has applied is that, when a senator or a group of senators or a party wishes to have a bill, particularly a non-controversial piece of legislation, referred to a committee, that normally is agreed to by the chamber. I suspect it is for that reason that my colleagues generously asked me to come down and perhaps point out to the chamber what the precedents have been in relation to the referral of bills.

Even though I suspect that most would consider this a non-controversial bill, I have always accepted that the role played by the Security Management Board in this place—the representation on the Security Management Board and the interaction between the Security Management Board, the Department of Parliamentary Services and the two chamber departments—is a critical issue for the parliament itself. I think you would have to acknowledge, Mr Deputy President, that I have been very consistent for a very long period of time in trying to encourage senators from all shades of political opinion to take a close interest in these matters. That goes not only to the question of representation on the Security Management Board—and in this particular case the Parliamentary Service Amendment Bill 2014 is providing for a senior officer from the AFP, nominated by the Presiding Officers, to be represented on the Security Management Board. It does one additional thing—and I think this is also worthy of consideration by the Senate through its committee processes—and that is adding to the function of the board the operation of security measures. I must admit—and I hope it assists my colleagues who asked me to come and speak on this matter—that I do not understand—

Senator Ian Macdonald: It has been a huge assistance, John, thanks!

Senator FAULKNER: Thanks very much, Senator Macdonald. That, I would have to say, is possibly the most generous thing you have ever said to me in the 24 years that we have shared membership of this chamber, and I do appreciate that positive feedback on this occasion. I commend the opposition's approach. (Time expired)

The DEPUTY PRESIDENT: The time for this debate has now concluded. Senator Bushby has moved a motion for the adoption of the Selection of Bills Committee report and Senator Moore has moved an amendment. The question is that the amendment be agreed to.

Question agreed to.

The DEPUTY PRESIDENT: The question is that the motion as amended be agreed to.

Question agreed to.
BUSINESS

Rearrangement

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:30): I move:

That—

(a) government business orders of the day as shown in the list circulated in the chamber be considered from 12.45 pm today; and

(b) government business be called on after consideration of the bills listed in paragraph (a) and considered till not later than 2 pm today.

Non-controversial government business—

ACT Government Loan Bill 2014
No. 7 Tertiary Education Quality and Standards Agency Amendment Bill 2014
No. 8 Australian Citizenship Amendment (Intercountry Adoption) Bill 2014

Question agreed to.

Rearrangement

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:31): I move:

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

(a) general business notice of motion no. 582 standing in the name of Senator Moore relating to the Abbott Government; and

(b) orders of the day relating to documents.

Question agreed to.

COMMITTEES

Community Affairs References Committee

Economics Legislation Committee

Reporting Date

The Clerk: Committees have sought extensions as follows:

Community Affairs References Committee—out-of-home care—extended to 13 May 2015

The DEPUTY PRESIDENT (12:32): I remind senators that the question may be put on any proposal at the request of any senator. There being none, we will move on.

Foreign Affairs, Defence and Trade References Committee

Reference

Senator McEWEN (South Australia—Opposition Whip in the Senate) (12:32): At the request of Senator Gallacher, I move:

That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 26 November 2015:
The delivery and effectiveness of Australia’s bilateral aid program in Papua New Guinea (PNG), with particular reference to:

(a) the political, economic and social objectives of Australia’s aid;
(b) the role of multilateral and regional organisations, non-government organisations, Australian civil society and other donors;
(c) scope for increasing private sector involvement in sustainable economic growth and reducing poverty;
(d) scope for expanding private sector partnerships in leveraging private sector investment and domestic finance;
(e) improving PNG’s progress towards internationally recognised development goals;
(f) supporting inclusive development by investing in good governance, health and education, law and justice and women’s empowerment;
(g) establishing realistic performance benchmarks to assess aid outcomes against set targets and to improve accountability; and
(h) the extent to which development outcomes in PNG can be improved by learning from successful aid programs in other countries.

Question agreed to.

Economics References Committee
Reference

Senator McEWEN (South Australia—Opposition Whip in the Senate) (12:33): At the request of Senator Cameron, I move:

That the following matter be referred to the Economics References Committee for inquiry and report by 11 November 2015:

The scale and incidence of insolvency in the Australian construction industry, including:

(a) the amount of money lost by secured and unsecured creditors in the construction industry and related insolvencies, including but not limited to:
   (i) employees,
   (ii) contractors and sub-contractors,
   (iii) suppliers,
   (iv) developers,
   (v) governments, and
   (vi) any other industry participants or parties associated with the Australian construction industry;
(b) the effects, including the economic and social effects, of construction industry insolvencies, having particular regard to the classes of creditors in paragraph (a);
(c) the causes of construction industry insolvencies;
(d) the incidence of ‘phoenix companies’ in the construction industry, their operation, their effects and the adequacy of the current law and regulatory framework to curb the practice of ‘phoenixing’;
(e) the impact of insolvency in the construction industry on productivity in the industry;
(f) the incidence and nature of criminal and civil misconduct related to construction industry insolvencies, having particular regard to breaches of the Corporations Law both prior to and after companies enter external administration and/or liquidation;
(g) the current extent and future potential for the amount of unpaid debt in the industry to attract non-construction industry participants to the industry for the purposes of debt collecting and related activities and the extent of anti-social and unlawful conduct related to debt collecting and related activities;

(h) the adequacy of the current law and regulatory framework to reduce the level of insolvency in the construction industry; and

(i) any other relevant matter.

Question agreed to.

BUSINESS

Rearrangement

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:34): I seek leave to amend government business notice of motion no. 1 before seeking to have the motion taken as a formal motion.

Leave not granted.

Consideration of Legislation

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:34): I move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the ACT Government Loan Bill 2014, allowing it to be considered during this period of sittings.

Question agreed to.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Reference

Senator WHISH-WILSON (Tasmania) (12:35): I move:

That the following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 3 December 2015:

(a) current demographic trends and the role of regional capitals in this change;
(b) the current Government funding provided to regional capitals;
(c) an analysis of the appropriate level of funding regional capitals should be receiving based on their population, demand for services and strategic importance;
(d) investment challenges and opportunities to maintain or grow regional capitals, including in areas such as telecommunication technology, transportation links, human services, energy and other infrastructure;
(e) incentives and policy measures required to sustainably grow regional capitals;
(f) the impact the changing environment and demand for water will have on regional capitals; and
(g) any other related matters.

I seek leave to make a short statement.

Leave not granted.

Leave not granted.

The DEPUTY PRESIDENT: The question is that the motion moved by Senator Whish-Wilson be agreed to.

(The Deputy President—Senator Marshall)

Ayes ......................15
Noes ........................41
Majority ..................26

AYES
Hanson-Young, SC
Lazarus, GP
Madigan, JJ
Muir, R
Rice, J
Wang, Z
Whish-Wilson, PS
Xenophon, N

NOES
Back, CJ
Birmingham, SJ
Bushby, DC
Canavan, M.J.
Conroy, SM
Day, R.J.
Faulkner, J
Fierravanti-Wells, C
Gallacher, AM
Leyonhjelm, DE
Ludwig, JW
Macdonald, ID
McEwen, A (teller)
McKenzie, B
Moore, CM
O’Sullivan, B
Polley, H
Ruston, A
Singh, LM
Smith, D
Urquhart, AE

Question negatived.

Rural and Regional Affairs and Transport References Committee
Reference

Senator XENOPHON (South Australia) (12:37): I move:
That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 26 April 2015:
(a) recent media reports on apparent breaches in airport and aviation security at Australian airports;
(b) consideration of the responses to those reports from the Government, regulators, airports and other key stakeholders, and the adequacy of those responses;
(c) whether there are further measures that ought to be taken to enhance airport security and the safety of the travelling public;
(d) the findings of, and responses to, reports undertaken into airport security issues since 2000; and
(e) any related matters.
Question agreed to.

BILLS
Commonwealth Electoral Amendment (Donations Reform) Bill 2014
First Reading
Senator RHIANNON (New South Wales) (12:44): I move:
That the following bill be introduced: A Bill for an Act to amend the Commonwealth Electoral Act 1918 to prohibit political donations from certain industries, and for related purposes. Commonwealth Electoral Amendment (Donations Reform) Bill 2014.
Question agreed to.
Senator RHIANNON: I present the bill and 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 RHIANNON (New South Wales) (12:46): I move:
That this bill be now read a second time.
I table an explanatory memorandum and seek leave to have the second reading speech incorporated in Hansard.
Leave granted.
The speech read as follows—
COMMONWEALTH ELECTORAL AMENDMENT (DONATIONS REFORM) BILL 2014
I am pleased to introduce the Greens Donations Reform Bill to reduce corporate influence on Australian politics. If passed this Bill would stop certain industries from donating to political parties.
Since 1998, we know millions of dollars from the liquor industry, clubs, hotels, developers, tobacco companies, gaming industries, and the mineral resources sector have poured into the coffers of the Liberal Party, the Nationals, and the Labor Party.
We don't know if and if so to what extent businesses involved in these sectors have gained advantages and influence from their political donations. However, there is certainly the perception that these companies do not give political donations without expecting something in return.
These industries have all made large donations to political parties and there is strong evidence that such donations influence government policies that affect those industries. Prohibiting these industries
from making political donations would be an important step in combating the corrupting influence of political donations.

The Greens' Bill contains amendments to the Commonwealth Electoral Act 1918 (the Act) that will prohibit political donations from specific industries. The purpose of the amendments is to strengthen the integrity and accountability framework underpinning Australia's electoral system.

Specifically, amendments are proposed to ban donations from:

• property developers;
• tobacco industry business entities;
• liquor business entities;
• gambling industry business entities;
• mineral resources or mining industry business entities; and
• industry representative organisations whose majority members are those listed above.

These amendments will improve the electoral system by strengthening the regulatory framework, enhancing individuals' capacity to take part in public life without undue influence to their decision making capacity, and reinforcing the integrity of the electoral system, particularly from efforts from third parties to unduly influence the political process.

Over the last three decades the scale of spending by these industries in Australian elections has sky-rocketed. Both major parties are engaging in an election expenditure arms race, particularly on advertising. Political donations from these industries largely fund these campaigns.

The major political parties have become increasingly reliant on private donations, particularly from business and lobby groups who stand to benefit from the decisions of ministers, cabinet and often individual MPs.

This growth in political donations has seen a culture develop where large donors have gained privileged access to ministers and MPs. This has contributed to a perception that corporate donors are buying influence. In some cases there is evidence that this perception accurately reflects the real relationship between politicians and donors.

The revelations of the NSW corruption watchdog ICAC, where former ministers have been accused of granting mates mining leases that stand to deliver million dollar profits; the sanctioned release of polluted water from coal mines in the Queensland Bowen Basin into rivers and the waters of the Great Barrier Reef; and the diversion of federal funds from public universities and TAFEs into private colleges are just a few examples of why people are losing faith in their parliaments and elected decision makers. The public see that many corporations work against the public good when they try and influence government outcomes that will boost their profits.

In NSW, these issues have resulted in a series of scandals where ministers have been exposed making decisions to benefit key donors. Property developers in particular have formed inappropriate relationships with local councillors and state politicians who make decisions about property development.

While this poisonous culture has been most obvious in states like NSW and Queensland, the perception that political donations buy influence in federal politics and in other states is very real.

While federal electoral funding laws put no limits on political donations, they make it difficult for most people to identify who is donating to whom. High disclosure thresholds and loopholes allow many tens of thousands of dollars to be donated to a political party from a single company without being disclosed. Lengthy disclosure periods mean that donations made in the lead up to an election are kept secret until well after the election is held.
We acknowledge that there is a lot more to do on electoral funding reform than is set out in this Bill but what we are proposing is an important start.

While it is easy to dismiss concern about the corrupting influence of donations as a mere perception of corruption, it is understandable as long as large political donations remain a secret.

The Greens NSW launched the Democracy for Sale research project in 2002 in order to shine a light on the influence of donations on the political process. The website for this project is at democracy4sale.org. This website has compiled information from donations returns to the Australian Electoral Commission and the NSW Electoral Funding Authority, classified donations by donor industry and provided them in a transparent and easily accessible format that allows the public to view at a glance where political parties are sourcing their funding. Official disclosure websites do not provide information on political donations in an easy to access and understand format.

The Greens have introduced this Bill as we urgently need uniform electoral funding laws across this country. New South Wales and Queensland have introduced some legislative reforms to restrict donations and campaign expenditure. Although they have been partly eroded and loopholes have been exploited by donors and parties hell bent on breaking the rules to funnel donations for what one would have to assume is to their political advantage.

My Greens colleagues in the NSW parliament were able to secure a ban on all donations from the tobacco, gambling, alcohol and property development industries – a move that had widespread community support because people are concerned that these industries are generous donors to political parties as they expect something in return.

It is understandable that people have this perception as all around them they see governments changing laws, issuing tenders and approvals that benefit certain industries and sectors.

We see it in the failure of this parliament and the previous parliament to introduce pokies reform and pursue mandatory pre-commitment.

We can see it in the impacts of the tobacco industry, which kills 6,000 people and hospitalises 42,000 people each year. This industry costs the taxpayer millions in social and health costs. Companies associated with the tobacco industry should have been banned from giving donations years ago.

A stand out example of why people think the worst of elected decision makers comes from NSW where we have seen property developers boost their profits as successive state Labor and the Coalition parties have voted together to weaken the state planning laws.

The culture of political donations distorts Australian politics and the consequences have been appalling. Not only have we seen poor decisions and bad outcomes, we have also seen citizens alienated from the political process, from engaging with the democratic processes.

Federal legislation is central to tackling the issue of reforming the culture of political donations. Money for election campaigns regularly flows from one state to another. It is impossible for Australia to effectively reform the electoral funding system without reform at the federal level. We now know that the new NSW laws can be effectively circumvented by donating to a federal election campaign.

Internationally there is a trend towards electoral funding reform. The Australian government is out of step with other democracies that are strengthening their democratic processes.

I commend this Bill to the Senate.

Senator RHIANNON: I seek leave to continue my remarks later.

Leave granted; debate adjourned.

ACT Government Loan Bill 2014

Second Reading

Debate resumed on the motion:
That this bill be now read a second time.

Senator LUNDY (Australian Capital Territory) (12:46): I rise to speak on the ACT Government Loan Bill 2014. Firstly, I would like to thank my colleagues for supporting the quick passage of this bill through the parliament. This bill is of great importance to over 1,000 homeowners in the ACT who have been faced with the awful reality that their homes are contaminated, or potentially contaminated, with loose-fill asbestos. This bill provides the appropriate mechanism for the provision of a $750 million loan in the form of a concessional loan to the ACT government to deliver a program to buy back and demolish houses in the ACT that have been affected by Mr Fluffy loose-fill asbestos.

This is the first part of the $1 billion loan facility agreed between the federal and ACT governments on 28 October 2014. Seven hundred and fifty million dollars will be paid this financial year, with the remaining $250 million to be paid in the next financial year. This loan will allow the ACT government to enter into individual agreements with those individual homeowners to buy back their homes, demolish those asbestos-contaminated blocks, clear the blocks and then look to resell the blocks and recoup some of the costs across the overall scheme. The ACT government plans to buy and demolish 1,021 homes contaminated with Mr Fluffy asbestos insulation across Canberra. It is estimated that the buyback and demolition scheme will take five years to complete.

The loan arrangement between the ACT and Commonwealth governments will be for a 10-year period. I am pleased that the government has facilitated this loan to the ACT government. Without the loan it would simply not have been possible for a small jurisdiction like the ACT to make the quick and responsible response to the devastating situation facing so many families and individuals in Canberra who, less than a year ago, believed that the deadly loose-fill asbestos had been removed from their homes many years before.

I also acknowledge the bipartisan character that this conversation, negotiation and ultimate outcome have had, and I particularly acknowledge my colleague Senator Zed Seselja in that regard. I think it is appropriate at this juncture, however, to note that surprise and disappointment have been expressed that the Commonwealth did not acknowledge a shared liability of the situation for Mr Fluffy homeowners. Offering the loan as I have described still places the full burden and liability on the ratepayers of the ACT—a jurisdiction that was the responsibility of the Commonwealth when the initial loose-fill asbestos remediation took place. It is also very fair to note that this loan facility provides better terms than those which could be secured by the ACT government, thereby providing a quantifiable financial benefit to the ACT. Chief Minister Katy Gallagher has reflected on this point in the ACT Legislative Assembly this morning.

This morning, legislative assembly colleagues have introduced and debated their own bill, the partner bill to this legislation, to facilitate the program that has been put in place. I would like to quote from the Chief Minister's speech:

Forty-six years ago, well before self-government for the ACT was even contemplated, the Commonwealth had the opportunity to prevent pure asbestos being pumped into the ceilings of Canberra houses. The risks were known. Clear advice was provided. That opportunity was missed.

In the late 1980s the Commonwealth recognised the danger and designed a remediation program that aimed to remove visible and accessible asbestos insulation from affected homes.
Consideration was given at the time to demolishing the affected houses. That opportunity, too, was missed. In September this year the ACT Government asked the Commonwealth to honour a Memorandum of Understanding which dictated that future costs in relation to these homes be shared as they were during the remediation program.

Thankfully and appropriately, the ACT Chief Minister and assembly colleagues have not dwelt on this history but have focused ahead on facilitating the quickest possible action and remediation for affected homeowners.

I am really pleased to report that the ACT government has introduced, as I said, their legislation this morning in an extraordinary sitting of the ACT Legislative Assembly relating to the remediation program, which will enable the Asbestos Response Taskforce to begin making buyback offers for the 1,021 Mr Fluffy homes as early as next week.

The Loose Fill Asbestos Insulation Eradication Scheme, as it is known, is unprecedented both here in the ACT and indeed in the world. As the Chief Minister said at the introduction of that legislation just a very short time ago, 'The cost and the complexity will test our government, our budget and our community.’ The ACT government has taken responsibility to bring a permanent end to an asbestos legacy which has plagued our city for almost half its history. This by no means was an easy thing to do and continues to cause much distress in our community. As the Chief Minister has acknowledged again this morning, these are beloved family homes, and this process will bring great sadness to many. But the fact remains that they are not safe and nor can they be made so. In around 10 per cent of houses contamination is so bad that they are uninhabitable. Fibres have been detected in the living areas of between 50 and 60 per cent of houses, sometimes in visible quantities, and in the rest we know that fibres populate the walls, roofs and subfloors. There have been no easy choices in seeking to correct tragic failures of the past.

The Mr Fluffy legacy has had a profound impact upon the lives of so many of my fellow Canberrans. While the financial impact on families cannot be overstated—it has been huge for so many—the deeply devastating toll upon Canberrans has primarily been an emotional one, born of their sense of responsibility for those affected and for the wellbeing of their families, friends and people who may have worked on their houses in the ensuing period.

Barbara Walsh, the chief editor of the Fluffy Owners and Residents' Action Group's impact statement—tabled just last week by Senator Zed Seselja and myself—in her introduction to the impact statement eloquently distils the collective feelings of fear, guilt, anger and disillusionment of those touched by the toxic legacy of Mr Fluffy. Ms Walsh said:

There is overwhelming guilt from parents who feel they have betrayed their children by not keeping them safe. There are people with rare cancers who may never know if it was their random choice of house that contributed to their illness. There is a deep sense of grief that people will lose their homes and gardens, their havens, that hold so many precious memories, but which are now seen as a poison. There is anger that a government remediation program in the 1980s assured them the houses were safe to live in.

These stories contained within the Fluffy Owners and Residents Action Group impact statement are gut-wrenching, raw and powerful. They detail the deeply personal impact upon individuals and their families; the real and constant havoc and stress visited upon their lives by this calamity continues today.
None are more powerful than those from those whose lives have been touched by illnesses they fear are the result of exposure to Mr Fluffy's dangerous legacy or who fear for their children's futures. Chris from Canberra shared his story, and I would like to relay just a little of it to the Senate today:

Do I believe my mesothelioma came from my home? 100 per cent. My wife died of cancer in her 50s, and now I worry that she might have gotten it from the home too. At the time I didn't know. We had two family pets die of cancer. My biggest worry is my kids. My son worked on the roof with me.

Chris's story is, sadly, not unique. The devastating and life-changing consequences contained within it are typical of so many affected by Mr Fluffy. Lesley and Allan of Pearce also shared their story:

We are angry, so angry, distraught, guilt-stricken and very rapidly becoming weary, beaten and without hope. How could we end up in such a dire situation? Our house and our entire lives, as well as those of our beloved children, are contaminated to the very core by Mr Fluffy. Yes, compensate us fairly for what we have lost materially, but there is no compensation on this earth for the destruction of our peace of mind and the enduring fear we all now face of malignant disease with every breath we take, until the day we die.

This is from Judith of Hawker:

My children have not blamed us for this exposure. However when one of them said, 'I grew up in a house with asbestos. I had no choice,' the comment cut me to the core. I live with it every day.

And Jenny from Aranda wrote:

We have lived in our Mr Fluffy home since 1997 when we moved in with our two children, aged four and seven at the time. I have always described our house as a happy house, not only because of the happy relationships nurtured inside it but also because it is in a lovely setting and filled with sunshine. It is the home in which I intended to continue to enjoy my retirement for the foreseeable future. I no longer feel this way. I see it now as a toxic house where I do not feel comfortable having visitors and here I shall not ever entertain my (future) grandchildren. I feel very guilty to think that I have exposed my children to this risk. Keeping children healthy and safe is one essential key to being a good parent, the most important role I have undertaken in my lifetime, and I have failed them in this. I have great concerns for the health of my husband who has crawled in the now condemned subfloor to install internet cabling. This area is where my children and others have fed our cats over many years and it has been regularly accessed as a storage area.

The unknowable, eternal nature of this distress is painfully elucidated in the submission from Clare in Hackett:

More than anything, I hope that our daughters have not been exposed to a dangerous amount of amosite. Will I spend the rest of my life wondering?

Will I die wondering?

An anonymous contributor to the impact statement, from Weston Creek, illustrates the heavy weight of that sense of responsibility for those whose connections were fleeting and tangential:

A lovely tradie who did all the electrical work on our house developed mesothelioma and died in August this year. I know it wasn't from working on our house specifically. Still, all those years, all those people, and we didn't know to warn them. We didn't even know we might need to protect ourselves.
These are people who all need to be looked after. I am so proud of the ACT government and, indeed, the ACT assembly as a whole that they have moved to establish this program that will resolve this problem once and for all.

I would like to conclude today by reflecting on the mental health issues associated with the stress and trauma resulting from living in a Mr Fluffy house. These people need to be looked after. I am really pleased that the ACT government has put in place free counselling to support affected families. I would like to take this opportunity to say to anybody who is affected and feeling distressed: please, you need to find support. You need to get support early. We understand—I think the whole community understands—what you are experiencing and going through. The following is taken from the taskforce website, and describes the supports that are in place for affected people and their families—in fact, for anyone who is distressed by what is going on:

The NewAccess Program is provided at no cost through the ACT Medicare Local and offers support from trained coaches for those who are experiencing mild anxiety or depression. People registered with the Asbestos taskforce can self-refer to this service by phoning the central intake number on 6287 8066. The coaches provide evidence based, low intensity psychological strategies and support, either face to face or over the phone, for up to 6 sessions.

For anyone who is experiencing moderate anxiety or depression your usual family doctor can complete a mental health treatment plan and provide referral for free sessions with a psychologist under the ACT Medicare Local’s HealthinMind program. For those registered with the Asbestos taskforce, any ‘gap’ fee for the GP visit … will be reimbursed to ensure that there is no out-of-pocket expense.

ACT Medicare Local will also:

… ensure priority access to NewAccess coaches and HealthinMind psychologists for eligible people registered with the Asbestos Taskforce.

For any urgent/crisis mental health concerns, particularly in relation to acute stress and/or risks to the immediate safety of individuals, please contact the Mental Health Triage intake line on 1800 629 354.

All of this information is available on the taskforce website but I underline it here today because I know that it is the psychological impact that is going to be one of the enduring legacies for people who have lived in a Mr Fluffy house. I have met with many families, personally, and seen and experienced the level of trauma and distress as they have shared with me their stories as, I know, have all my parliamentary colleagues in the ACT government. I know Senator Seselja has had similar contact.

I used to work with asbestos as a removalist when I was young. That experience led to a whole range of things, including my becoming active in the area of fighting for the occupational health and safety rights of working people. I know what it is like to live a life with asbestos in your lungs and not know. In this way I have the deepest empathy for all of the Mr Fluffy families. I am so proud to be part of a solution that will provide permanent respite for these people. I am incredibly proud of the Chief Minister and my ACT colleagues and I am incredibly proud of the ACT assembly for the bipartisan support they have shown through this program and tackling these problems. I am proud of the fact that I am in a federal parliament that has contributed positively in some way to finding a permanent solution to this devastating problem.
My heart goes out to those families and individuals whose lives this issue will continue to touch. We are doing what we can for you. We understand the depth of your distress. We hope that this program can alleviate at least some of that for you.

Senator SESELJA (Australian Capital Territory) (13:05): I also rise to support the ACT Government Loan Bill 2014. I thank Senator Lundy for her comments and her contribution. I endorse the sentiment behind Senator Lundy’s contribution and acknowledge at the outset that Senator Lundy has worked in a very straight-down-the-line, bipartisan way on this issue. I appreciate the way that she has handled it on behalf of the Labor Party in her role as senator for the ACT.

As Senator Lundy has acknowledged, this issue has touched over a thousand families in the ACT, but it has also touched so many more people, because everyone in Canberra knows someone who owns or lives in a Mr Fluffy home. Many people have formerly owned Mr Fluffy homes and many have been through them over the years. This is something that has a very significant impact in the ACT on many people but, of course, primarily and most devastatingly on those who have lived in these homes for a long time and those who have raised children in these homes. So, as we debate this bill and see it passing through the Senate today, we acknowledge that significant impact and trauma—which is impossible to undo, regardless of anything that is done either in this place or in the ACT assembly.

This has been playing out over many years but particularly for the last year or so. Over 1,000 households in Canberra and also, of course, in neighbouring Queanbeyan have had to deal with the trauma, uncertainty, stress and anguish of learning that their homes had Mr Fluffy insulation installed during the sixties and seventies and that traces of asbestos remained on their properties. This news was devastating for these Canberrans. Not only were their houses unsafe now and unsuitable to live in; they had been that way for a long time, in many cases, without their knowledge. Words cannot express how stressful such a discovery must be—to know that this has been the case for, perhaps, many years for people in homes where they have raised children, built a career and hosted a countless number of guests. These were years when asbestos materials in your home were putting at serious risk your health and also the health of those who came through your home. These Canberrans who owned or lived in these homes come from all walks of life. They are families with young children, older couples and young people entering the housing market for the first time. They are people from all over our city and people of a range of financial means. They are all people who have had to deal with the fact that the place they call home has put them at risk.

The residents and owners of Mr Fluffy homes know that the presence of asbestos is not just a matter of the financial value of their homes, as important as that is. This is a matter of their health. This is a matter of the health of themselves and their families. As the impact statement tabled by Senator Lundy and me in this place last week showed, these are people who, every time they come down with an illness or feel an illness coming on, may wonder if this might be because of what they have been exposed to—loose-fill asbestos in their homes here in Canberra. Indeed, some of the affected residents already wonder if illnesses they are dealing with today might have been caused or worsened by their choice of home.

This is not a tragedy of their own making. This is not something that any reasonable homeowner could have known. They were told that, in fact, their homes were safe. So due diligence would not have helped them because, unfortunately, all of the information simply
was not available to people as they purchased these homes and moved into them. There a couple of stories from the impact statements I want to share. Mr and Mrs W talk about how they were looking forward to shortly having their home paid off but now potentially need to start from scratch. They talk about how they want to stay—they love the location—but there is stigma of being in a 'pariah' home. They go on: 'How many people have we put at risk of contracting asbestos related illness?' As Senator Lundy touched on, that guilt—which is not fair or reasonable but is real—is there for these homeowners and residents. We all feel that, don't we, when we may have inadvertently had our children put at risk or others put at risk. I say to them that it is not their fault. It is not because of their actions. People can only act on the best information that they have, and I know that these people did.

Ellen from Charnwood said: ‘We are now effectively bankrupt and living in a home that it is a danger to our children. I have lost countless nights of sleep thinking about this and have suffered horrible anxiety. I feel sick at the thought of having friends around, particularly if they have children.’ Again, we see those themes coming through. There are the financial issues and the financial fears. What is very important and what can be dealt with, to the maximum extent possible, through this process and through what the ACT government is doing are the financial issues. That is a significant part of the burden—there is no doubt about it.

Some of the detail of that, of course, is still being worked through. It is not easy. We all get approached at the various functions that we go to in the ACT by Fluffy residents and owners. They talk about outstanding issues, such as certain goods that they cannot take out of their homes and how that will be compensated for. There are all sorts of things that are deemed unsafe like soft-fibre couches and the like that simply cannot be taken out. That is an ongoing issue. Obviously, the financial burden is one significant part—it is a massive part, but it is not the only part, as we have discussed. As we deal with these processes, we will be broadly dealing with many of these financial issues. But, obviously, those emotional issues and those health issues are a different question again and cannot easily be dealt with. The health issues, of course, are what have forced the drastic action—the demolition of these homes. Those are a couple of the stories, but there are many more. I encourage people to read through that impact statement. You can turn to almost any page of that document to find stories just like those which I have just mentioned—filled with uncertainty and sadness, yet also resilience in the face of the tough hand they have been dealt.

There is, I think, some hope here as well. Today, we are discussing and debating a way forward. Hopefully, it is a very positive way forward in the midst of great difficulty. People can have the opportunity to get on with their lives and in many cases take the buyback from the ACT government and move on. That is not a perfect circumstance—it is a far-from-perfect circumstance for many, and there will be much discussion and negotiation about what is the best for individual families and individuals—but it is a significant improvement on what could be the case if we did not have this fund, if we did not have this low-interest loan and if there were not the ACT government.

Senator Lundy acknowledged the way it has been handled in the assembly. There are all sorts of issues members of the community are raising about this, but I think I have seen from both the Chief Minister and the opposition leader a desire to actually work together to get a solution here. So, in paying tribute to the ACT government and Katy Gallagher, I also pay
tribute to Jeremy Hanson and the Liberal opposition. People can play politics with big issues like this, but I have not seen any evidence of that. I have seen a desire to get solutions which I think is very positive, which is likewise the way Senator Abetz has dealt with this issue.

The bill does present a significant way forward: $750 million now, $250 million to come. It is a low-interest loan, so it is subsidised. It does allow the ACT government to maintain its credit rating, so as it borrows for other projects it does not place a significant extra burden. This of course will not fix the issue. It will not fix those other issues we have talked about—the health issues, the emotional issues, the issues around displacement—but it is a significant step forward. I join with Senator Lundy and others in this place in commending this bill to the Senate.

Senator CAMERON (New South Wales) (13:16): First of all I indicate I certainly support the ACT Government Loan Bill 2014 and agree with the comments made by Senator Lundy and Senator Seselja. For many years I have had a particular interest in asbestos eradication. Like the families in Canberra, I have lived with asbestos most of my working life.

My real exposure to asbestos was when I became a maintenance fitter at Liddell Power Station. We had white asbestos at Liddell Power Station. We were told by management that it was not a problem, that it was only blue asbestos that was a problem. That was absolutely wrong. I remember going out to the power station. We were given a hatchet and would chip away the asbestos from around the valves. Then we would get the big pneumatic guns and start what we call 'rattling' the bolts off, and asbestos was everywhere around us. We were in an asbestos cloud. So, like those residents in Canberra, every time I feel chesty, I am very worried about whether it is a longer term problem that has been lying dormant. I can fully understand what both Senator Lundy and Senator Seselja have been saying about the individuals. This is a terrible, terrible thing.

For anyone who is listening: I hope you never have to go through this. If you ever have to watch a friend or a relative die of mesothelioma, it is one of the worst diseases you can ever contract. It is a horrible death. It is a terrible death. A good mate of mine, Brian Fraser, worked with asbestos for a short period of time in the shipyards in Brisbane and some 30 years later ended up with mesothelioma. He was a bit, healthy, strapping Irishman. He was about six foot one, about 18 stone and died just a bag of bones, full of cancer. It is just an awful thing. So, when we hear about the economic impacts of asbestos on people, we should always remember that the health issues are far away more devastating than any economic impact could be. But I am very pleased that we have bipartisan support to deal with the economic impacts.

I do not want to politicise this, but I want to make what I think is a valid and reasonable point. For many years my union, the AMWU, campaigned to try to get some regulation and control over the use of asbestos in this country. We fought for a ban on asbestos for many years, and it was opposed in some parts because some people still thought this was the miracle fibre. This was the fibre that was going to do all these good things. We still had them in brake pads coming into this country only a few years ago There is asbestos everywhere in this country still.

I want to take the opportunity to say: if you are worried about asbestos being anywhere, do not go near it. Take the precautions. It is in my view one of the areas where you can strongly argue that this is not about red tape. This is about people's safety. It is about making sure...
people can safely go about their lives and their work. We have set up the Asbestos Safety and Eradication Agency, and that agency in my view should be strongly supported. It should have bipartisan support. Until every fibre of asbestos is gone from this country, that agency is needed. It is not red tape; it is an appropriate thing for this government to do.

I do not want to leave this on the basis of an argument that there might be some differences. I fully support what Senator Seselja has said. I fully support what Senator Lundy has said. This is a very, very important issue for the health and safety of all Australians. If you are worried about asbestos, do not touch anything. Do not try to remove asbestos on your own, because no-one deserves to die with mesothelioma. As someone said to me, it is like pouring cement into your lungs. You die with your lungs being crushed.

I will leave my comments at that and strongly support the bill. I thank the government for their indulgence on this issue. 

Senator RYAN (Victoria—Parliamentary Secretary to the Minister for Education) (13:22): I thank senators for their contribution, particularly Senator Lundy and Senator Seselja, who represent the ACT, to which this bill applies, and Senator Cameron for his personal reflections. I know many Australians could make similar reflections about members of their family, particularly those involved in certain trades over past decades. I commend the bill to the Senate.

Question agreed to.
Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Gallacher) (13:23): As no amendments to the bill have been circulated, I shall call the minister to move the third reading unless any senator requires that the bill be considered in Committee of the Whole.

Senator RYAN (Victoria—Parliamentary Secretary to the Minister for Education) (13:23): I move:

That this bill be now read a third time.

Question agreed to.
Bill read a third time.

Tertiary Education Quality and Standards Agency Amendment Bill 2014

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator KIM CARR (Victoria) (13:24): I rise to support the Tertiary Education Quality and Standards Agency Amendment Bill 2014 which I did not expect to do when the bill was introduced in February. The bill was introduced without notice and without prior consultation with stakeholders but since then the bill has been the subject of an inquiry by the Senate Education and Employment Legislation Committee. The committee recommended that the bill be passed but Labor senators submitted a minority report that proposed amendments, which I am pleased to see have changed the government's attitude to its own bill.
At the time I was attacked for referring the bill. We now find that the government has accepted all of the amendments that the Labor Party proposed. The Minister for Education described my referral of this bill as a spectacular backflip. He argued that the purpose of the bill was to implement the recommendations of the Review of higher education regulation 2013 report by Professors Valerie Braithwaite and Kwong Lee Dow, which Labor commissioned when in office. I was very keen to have that report published, even though the department was somewhat reluctant to have it published. But we can ask the question: who has actually backflipped now? All of the concerns raised by Labor senators in the report have been addressed in the government's amendments, which are, as I have said, subject to that report. So as backflips go the minister's reversal on this bill is about as spectacular as the claims that he has been making about other people.

The claim that the bill intended to implement the Braithwaite and Kwong Lee Dow recommendations was maintained by the government throughout the inquiry. It was impossible, however, to consider the consequences of the bill as originally conceived other than in the context of the proposed changes to higher education that were announced in the budget.

The Tertiary Education Quality and Standards Agency, TEQSA, is the regulator of Australia's higher education system. It assesses and registers new institutions in the system and conducts quality audits of existing institutions. TEQSA's operations are already constrained by this government's removal of 40 per cent of its funding. At a time when the government wants to open up higher education to new private providers and at a time when the government is proposing that universities can charge what they like for a university degree, TEQSA would be required, if the government amendments were true to form, to undertake considerably more with much less.

That depleted state would have been made even worse as the original form of the bill sought to deprive TEQSA of powers that it actually needed to do the job. As the minority report notes, the unamended bill would have altered TEQSA's structure and purpose in fundamental ways. It would have substantially diminished the agency's quality assessment role, other than in assessing institutions against threshold standards—as it was put, those concerned with provider registration and course accreditation in the Higher Education Standards Framework.

The bill also increased the minister's power to issue directives to TEQSA, gave the minister the power to reduce the number of TEQSA commissioners and allowed greater delegation of authority to the senior staff. I was concerned with the way the bill was originally worded as it may well have allowed for delegation to personnel outside of the agency. All those proposed changes raised disturbing questions about the government's intention, which of course we never got straight answers on in the inquiry.

The number of staff TEQSA employs is about 88. Under these government proposals that is to be reduced to 66. The consequences of that sort of reduction when it comes to the issue of quality assurance I think are quite serious. On the issue of quality assessment itself, the bill would have repealed section 60 of the act that gives TEQSA the power to assess institutions, or the sector more broadly, against non-threshold standards. Such things here would include learning and teaching standards, research standards and information standards.
The minister sought to justify the change by arguing that it would streamline TEQSA's operations by focusing them on provider registration and course accreditation as core functions. This was in spite of the fact that section 60 only states that TEQSA 'may review any aspect of an entity's operation'. The act as it is currently written does not require TEQSA to conduct comprehensive quality assessments of all institutions beyond the threshold level. Because of that, and because TEQSA has already begun to move beyond the one-size-fits-all approach that characterised earlier operations, it is not obvious why the section needed to be repealed.

The dangers of restricting the scope of TEQSA's operation, however, are abundantly clear. The National Tertiary Education Union stated in its submission to the inquiry:

… the push to reduce regulatory burden … is being conflated with deregulation—and in doing so, removing an entire government mechanism that addresses quality in the sector.

The need for such a mechanism should be obvious. TEQSA plays a crucial role in the reputation of a higher education provider. The damage caused by fly-by-night operators in recent years was a great threat to the reputation of Australian higher education, and that is the reason why TEQSA was actually established by Labor in office.

Senators may remember the saga of Greenwich University, the scam degree factory operating out of Norfolk Island which followed the laissez-faire approach, the dog-eat-dog approach, that developed under the former Howard government. That sort of policy is reminiscent of the sorts of attitudes we are seeing under this government. So TEQSA was established to clamp down on those types of operators, which were doing such profound damage to this nation's international reputation. These examples were not isolated and without a regulator, without appropriate powers, such dodgy operators may in fact be able to infect the system again. That is why TEQSA was actually established by Labor in office.

If you look at the example of what has happened in VET in Victoria, the danger is clear. In that state traditional TAFE colleges have been struggling to compete with a flood of new providers, many of which have been briefly pursuing somewhat fashionable lifestyle courses. They have been able to extract quite substantial revenues but at great cost to the students that they enrol. It does not take a leap of imagination to envisage a similar outcome in the higher education sector if the regulator were to be permanently crippled.

TEQSA's ability to fulfil its quality assurance role was also undermined in the original bill by a provision allowing the agency to extend registration periods beyond seven years. As the RMIT argued in its submission to the inquiry, the provision would have 'presented a real risk in ensuring consistency in the approach to and assessment of a provider's ability to meet the higher education framework'. This provision, together with the repeal of section 60 of the act, reasonably prompted some suspicions about the government's motive in introducing the legislation. The conclusion that it actually wanted to weaken the regulator to facilitate the entry of new providers to the market was a very difficult one to avoid.

The question of ministerial directives for quality assessment is extremely important. Quality assessment is an area where I do not think the government had thought through the implications. The unamended bill increased ministerial powers to issue directions to TEQSA in relation to 'the performance of its functions and the exercise of its powers'. That raised the possibility in my mind of the politicisation of TEQSA's decisions by ministerial direction.
The minister's power of direction was not, in the original bill, a disallowable instrument. The minister had given some rather blithe assurances that nothing sinister was intended by the change. It may well be that the minister is well intentioned. This minister may well be. I will concede there is that possibility—I do it quietly and quickly. But, nonetheless, you cannot assume that all ministers would have that level of integrity. You cannot possibly suggest that we know what a minister in the future could do with such unfettered powers unless they were disallowable. The whole point of a disallowable instrument is to provide accountability, a very important principle which this Senate guards jealously. We have the immortal words of Mandy Rice-Davies, who said, 'He would, wouldn't he?' when the assertion was made that he would never do such a thing.

The point, of course, is not whether the minister did in fact intend to interfere in TEQSA's operations for political purposes. The point is rather that the change would have allowed him or any subsequent minister to interfere on political grounds should they choose to do so. That is why I have been so insistent on having this matter a disallowable instrument.

Yet another ill thought through change in the original bill allowed TEQSA to delegate its functions to 'persons who hold an office or appointment under a law of the Commonwealth'. A pretty amazing set of drafting, that! That clearly had to be clarified, because we know that 'any Commonwealth officer' is a very broad remit. It could well have been portrayed as an innocuous change allowing the agency to resolve temporary staffing problems but would have most unintended consequences. The power of delegation was so broad that it raised the possibility of the blurring of roles that should never be blurred when it comes to the question of regulation. A seconded immigration officer, for instance, might bring concerns to the process of assessment which should properly be the work of TEQSA.

The bill also sought to reduce the number of TEQSA's commissioners and to separate the roles of chief commissioner and chief executive. These changes supposedly sought to adopt a more corporate model of governance that would allow greater administrative efficiency. In business operations, however, the CEO is appointed by a board, whereas under the original form of the TEQSA the CEO would have been appointed by the minister. Coupled with the minister's increased powers to issue directions to the agencies, this prerogative appointment raised the spectre of politicisation again. Further, the number of commissioners would be reduced not by attrition but by the spilling of all existing positions. The sacking of a board by legislation would have set a disturbing precedent, with implications beyond the regulation of higher education. It could, for example, have raised the prospect that all the human rights commissioners could be dismissed in the same way if such a precedent were allowed to go unchallenged, or perhaps the Fair Work Australia commissioners.

Labor's amendments, taken together, change these TEQSA proposals in the original bill, which would have resulted in an agency with fewer powers at a time when greater vigilance is actually needed, and in an agency potentially subject to political direction. Those changes needed to be prevented because of a potential for political intervention in the regulation of our higher education scheme. For that reason, Labor proposed amendments to the bill: that TEQSA's discretionary power to conduct assessments of non-threshold standards should not be removed; that an upper limit should be placed on TEQSA's ability to extend registration periods; that the number of commissioners, their role, their relationship with the CEO and the
grounds on which they may be dismissed should be clearly identified; and that the minister's power to issue directions to TEQSA should become a disallowable instrument.

Some comment has been made about the relationship between the government and some commissioners. I take the view that it is important, particularly when a new government is established, that senior officers do enjoy the confidence of the minister. I take the view, however, that the political dismissal of boards is not appropriate—there are other ways in which relationships of those types can be resolved. I do not take a simplistic notion, however, that, if the minister has lost confidence in a senior officer, there cannot be things done to resolve that matter. I do not make any suggestion that I would agree in advance to any proposition, but I do think as a general principle it is important for the minister to have confidence in senior officials with whom he is working. That, of course, is all consistent with the principles of merit protection within the Australian Public Service.

However, since this bill was first introduced, I think the minister has made appropriate adjustments consistent with the principles that I have argued here today. The government's amendments ensure that TEQSA's quality assurance function will be maintained; ministerial directives to TEQSA will now be a disallowable matter; the provisions regarding the sacking of commissioners will be removed; and the delegation of powers by TEQSA's commissioners will not only be made within TEQSA itself. Labor welcomes the government's commitment to amend the bill consistent with these principles.

The amended bill is a much more reasonable piece of legislation. It safeguards the reputation of TEQSA and, through it, the reputation of Australia's higher education sector. The international and domestic reputation of the universities and other providers deserves absolutely nothing less. There has recently been some discussion concerning plagiarism, particularly with the operations of a website which has been subcontracting out the writing of essays for students to be used for assessment. I have made some comments about that—I have raised the matter at Senate estimates—and I understand the government has now taken some steps to ensure that these questions are attended to. But that is an example precisely of why you need a strong regulator. We have circumstances here where people have committed fraud—and I believe, prima facie, there is a case of fraud. If that can be demonstrated, there may well be criminal sanctions required. In the first instance, the universities have to take responsibility to ensure quality within their institutions, but there must be a strong monitoring body with real power—real teeth—and it has to be able to protect our reputation as a nation. I recall that during the previous Liberal government Minister Nelson made the observation that, when it is all said and done, our education industry, and our international education industry in particular, is all about reputation. It is all about people's perceptions of Australia being a quality provider of quality qualifications with real integrity.

We need to ensure that there is a regulator there to guarantee that proposition. The problem, of course, with crooks in the education field is that it is a bit like tax avoidance—you can never rest. You can never, ever assume that a set-and-forget policy is going to be satisfactory. That is why this amended bill vindicates the approach taken through the Senate committee process; it vindicates that it is appropriate that there be proper discussion with the government about such matters. Although the government initially resisted the inquiry and suggested we should adopt a 'tick and flick' operation, we demonstrated just how important these processes are. Of course, I am delighted that the government now has completely
abandoned its former position. So I take this opportunity—it does not happen very often—to congratulate this minister for his change of heart and for his recognition that he was wrong. I stress how important it is for him to recognise his responsibility to protect the integrity of Australian higher education. I am so pleased to be able to offer Labor's support to this amended bill.

Senator RHIANNON (New South Wales) (13:44): The Greens now support this legislation. When it was first introduced we were deeply concerned about it. We are pleased that we are now at the stage, because of the amendments, where we have unity, as I understand it, across the chamber. That is always a positive, and it is a good example of how the Senate can successfully work in this way.

Australia's higher education system is clearly an important part of the fabric of our society. It is essential to our economy and to the wellbeing of so many individuals. And considering it is supported by billions of dollars of public investment from federal governments and substantial funding from students in the form of student fees, we need to get regulation right. Regulation can be abused in terms of how the regulator is set up. That is why it is so important to get this legislation right. There are over one million higher education students in Australia, 120,000 staff and dozens of universities, as well as private education providers.

When this legislation was first released, one of the very considerable concerns of the Greens was that it was there to work, to make it much easier for private operators. We now have seen how dangerous, how dubious the operations of some of those private for-profit operators can be. That is why so much effort has been put in to get this legislation right.

I agree with the comment of the previous speaker, Senator Kim Carr, when he linked the changes that have come about in this legislation with the committee work of the Senate. It really was the committee work of the Senate—and I congratulate all those who gave evidence and who put in submissions because they helped work through to the very important point of bringing forward the amendments which I understand Labor have put forward and the government have agreed to. It is so important in terms of protecting the integrity and the standards of our higher education system.

The Australian Greens believe adequate regulation and quality assurance mechanisms are crucial to building a strong higher education sector which protects the public interest and the rights of staff and students. Stakeholders across the higher education sector, including students, staff, universities and the federal government, deserve to have mechanisms in place to ensure the vast amounts—we are talking about billions of dollars—of public and private money being spent on higher education are delivering a quality return. We are talking about the future of individuals and the future of the country. This is incredibly important legislation. While the Greens agree with many in the higher education sector that TEQSA's role could be improved, we did not support the overhaul of the organisation as proposed in the original, unamended legislation. I want to put that on the record very clearly.

I was very concerned at the end of 2013 when the coalition government caved in to pressure from the university vice-chancellors and really crippled TEQSA's role in quality assurance and regulation. Strong, quality-assurance mechanisms and a fair regulatory framework are not inconsistent with academic independence and innovation. Given that billions of dollars—I cannot emphasise this enough—are flowing from governments to universities, we need an agency with teeth. It needs to be a real agency, not a mickey mouse
job so that the minister of the day has the headline he needs when another scandal breaks about another college, but a real regulator with teeth to ensure that education quality is maintained at the highest levels. That is what we need and that is what we are working to get in this legislation.

We do not want TEQSA to be a light-touch regulator. This has to be said over and over again and we have to be so vigilant here. If we ended up with a light-touch regulator, this would lead to significant concerns which, justifiably, would come from international students and from the Australian public, as well as from those attending the colleges and the higher education institutions. TEQSA's role must be always to ensure that tertiary education, in particular by private providers, meets national standards.

We need to remember it was created by the Rudd government amid an industry plagued with problems in particular among private colleges promoting degrees to international students. We need to remember where this came from: it came from a serious problem which was a real setback for our higher education—how we were perceived on the international market. This legislation is needed for those important reasons.

The need for a strong regulator in the current system where government and students spend billions on higher education providers should be self-evident. The Greens do not support the notion that a private market in and of itself provides adequate oversight and regulation. Education is a public good, and in so far as there is a private market for the delivery of higher education the government must play an essential role in ensuring the quality of that education is of the highest standard so that graduates are best equipped for the future. In their submission to the Senate inquiry into this bill, the National Union of Students argued that: Students are ultimately the prime beneficiaries of a strong quality regulatory framework.

Unfortunately what we saw from this government in the May budget—and in this bill—was the gutting of regulation in higher education at the same time as a massive expansion of the sector was being proposed. The beneficiaries of this new regime would likely be private, higher education providers, who would doubly benefit from the proposal to extend Commonwealth funding and from the proposed gutting of TEQSA. The losers would be students and staff, subjected to a weakened regulatory regime.

The need for a strong regulator in such an environment becomes even more necessary than it is currently. It is incredibly worrying that the federal government is simultaneously proposing to massively expand the private higher education sector, at the expense of the public sector, while stripping back TEQSA's functions and cutting its funding by 41 per cent. These factors need to be linked. They are very serious and they have implications for what is the government's intent.

The Greens have a number of concerns relating to the legislation in its current form. The removal of quality assurance functions from TEQSA raises serious questions about where that responsibility will now lie, or if in fact it will fall within any government department or agency at all.

As the National Union of Students argues: What happens to the quality assurance improvement functions that AUQA used to perform? The [Lee] Dow-Braithwaite report argues that aspects of sector or discipline-based quality assurance – best practice and continuous improvement – could be better delivered through the Office of Learning and
Teaching. NUS would be concerned about the adequacy of current resource levels for the Office of Learning and Teaching to take on this role. The Government needs to reveal its intentions with regard to these functions.

Again, this underlines why the amendments were needed, why this legislation had to change from its original form.

We also had concerns around the proposals to authorise the minister to reduce the number of TEQSA commissioners, provide the minister with greater flexibility in terms of commissioner appointments, as well as the proposed legislation's impact on current commissioners. As noted by the National Tertiary Education Union in their submission to the Senate inquiry, these changes raise:

… serious question about procedural fairness and natural justice for people who have entered into an employment contract in good faith. If the Minister wishes to have the power to dismiss a Commissioner or Commissioners on grounds other than those currently specified in the Act, then he or she should amend the legislation to change the reasons and not use transitional arrangements associated with changes to the Act to remove people for unspecified reasons.

In keeping with other decisions made by this government, the proposal to slash TEQSA's funding nearly in half and gut many of its important functions was not relayed to the public prior to the last election—again, a very worrying aspect of how this government is conducting its higher education policy overall. It certainly was a factor in the debate that we have just had, on Minister Pyne's major higher education bill, and it is certainly a highly unsatisfactory way for any government to operate. As with the government's proposed cuts to higher education, the government remained silent, waiting till it won office to deliver for its mates in the private sector. That is one of our major concerns. I have particular concerns about how this bill was developed, but it is pleasing that we have been able to agree on the amendments, so many of the issues of concern that the Greens have addressed have now been amended in the bill, which I understand that the government is now willing to support.

Senator PAYNE (New South Wales—Minister for Human Services) (13:55): I thank the senators who have spoken on the Tertiary Education Quality and Standards Agency Amendment Bill 2014 for their participation in the debate. The bill provides for a number of amendments, as has already been discussed in the chamber. I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator PAYNE (New South Wales—Minister for Human Services) (13:55): I table a supplementary explanatory memorandum relating to the government amendments to be moved to the Tertiary Education Quality and Standards Agency Amendment Bill 2014 for their participation in the debate. The bill provides for a number of amendments, as has already been discussed in the chamber. I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator PAYNE (New South Wales—Minister for Human Services) (13:55): I table a supplementary explanatory memorandum relating to the government amendments to be moved to the Tertiary Education Quality and Standards Agency Amendment Bill 2014. I seek leave to move government amendments (1) to (3) and (5) to (12) on sheet HV131 together.

Leave granted.

Senator PAYNE: I move:

(1) Clause 2, page 2 (table item 2, column 1), omit "Parts 1," substitute "Parts".

(2) Clause 2, page 2 (table item 3), omit the table item, substitute:
3. Schedule 1, Part 4
The day after this Act receives the Royal Assent.

(3) Clause 2, page 2 (table item 4), omit the table item, substitute:

4. Schedule 1, Part 5
The day after this Act receives the Royal Assent.

(5) Schedule 1, page 4 (after line 5), after item 6, insert:

6A Paragraph 199(1)(b)
Omit "classification; or", substitute "classification."

6B Paragraphs 199(1)(c) and (d)
Repeal the paragraphs.

(6) Schedule 1, item 17, page 6 (line 24), at the end of subsection 37A(1), add ", so long as the period has not been previously extended by TEQSA".

(7) Schedule 1, item 20, page 7 (line 17), at the end of subsection 57A(1), add ", so long as the period has not been previously extended by TEQSA".

(8) Schedule 1, item 36, page 11 (lines 5 to 13), omit the item, substitute:

36 Transitional—Commissioners' appointments
Scope
(1) This item applies if a person held office as a Commissioner immediately before the commencement of this item.

Continuity of appointment
(2) The person's instrument of appointment has effect, after the commencement of this item, as if it were an instrument of appointment:

(a) made under subsection 138(1) of the Tertiary Education Quality and Standards Agency Act 2011 (as amended by this Part); and

(b) for the balance of the person's term of appointment that remained immediately before the commencement of this item.

(9) Schedule 1, page 16 (after line 3), after item 42, insert:

42A Subsection 155(1) (note)
Repeal the note, substitute:
Note: Part 6 (sunsetting) of the Legislative Instruments Act 2003 does not apply to the direction (see section 54 of that Act).

42B After subsection 155(1)
Insert:

(1A) Section 44 of the Legislative Instruments Act 2003 does not apply in relation to a direction under subsection (1) of this section.

Note: This means that section 42 (disallowance) of the Legislative Instruments Act 2003 applies to the direction.

(10) Schedule 1, item 45, page 16 (lines 22 to 29), omit the item, substitute:

45 Transitional—Chief Executive Officer
Scope
(1) This item applies if a person (the substantive appointee) held office as the Chief Commissioner immediately before the commencement of this item.
Continuity of substantive appointee’s role as Chief Executive Officer

(2) The substantive appointee is the Chief Executive Officer throughout the period (the transition period):

(a) starting at the commencement of this item; and
(b) ending when the substantive appointee ceases to hold office as the Chief Commissioner.

Acting Chief Commissioner

(3) If a person (the acting appointee) is acting as the Chief Commissioner at any time during the transition period, then, while the acting appointee is so acting:

(a) the acting appointee has and may exercise all the powers, and must perform all the functions and duties, of the Chief Executive Officer; and

(b) the Tertiary Education Quality and Standards Agency Act 2011 (as amended by this Part), and any other law of the Commonwealth, applies in relation to the acting appointee as if the acting appointee were the Chief Executive Officer.

Other matters

(4) Sections 154A to 154K of the Tertiary Education Quality and Standards Agency Act 2011 (as amended by this Part) have no effect during the transition period.

(5) However, subitem (4) does not prevent the making of an appointment during the transition period under section 154A of the Tertiary Education Quality and Standards Agency Act 2011 (as amended by this Part) if the appointment takes effect after the end of the transition period.

(11) Schedule 1, page 19 (after line 7), after item 54, insert:

54A Subsection 136(1) (note)

Repeal the note, substitute:

Note: Part 6 (sunsetting) of the Legislative Instruments Act 2003 does not apply to the direction (see section 54 of that Act).

(12) Schedule 1, item 55, page 19 (after line 13), after subsection 136(2A), insert:

(2B) Section 44 of the Legislative Instruments Act 2003 does not apply in relation to a direction under subsection (1) of this section.

Note: This means that section 42 (disallowance) of the Legislative Instruments Act 2003 applies to the direction.

Question agreed to.

Senator PAYNE (New South Wales—Minister for Human Services) (13:57): The government opposes schedule 1 in the following terms:

(4) Schedule 1, Part 1, page 3 (lines 2 to 13), to be opposed.

The TEMPORARY CHAIRMAN (Senator Lines): The question is that schedule 1, part 1, page 3, lines 2 to 13, stand as printed.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator PAYNE (New South Wales—Minister for Human Services) (13:58): I move:

That this bill be now read a third time.
Question agreed to.
Bill read a third time.

QUESTIONS WITHOUT NOTICE

Minister for Defence

Senator CAMERON (New South Wales) (14:00): My question is to the Minister for Defence, Senator Johnston. I refer to the minister's spring culinary tour of Australia, which has currently clocked up over $6,000 of spending in restaurants in Perth, Adelaide and Canberra. Can the minister confirm that his culinary tour included a $190 bottle of Henschke Mount Edelstone shiraz, a $98 T-bone steak, a $20 lobster roll and $12 ice-cream sandwich? Can the minister also confirm that the bill for these feasts was paid for by the taxpayer?

Honourable senators interjecting—

The PRESIDENT: Order on my right and on my left! We will not proceed until there is silence. I call the minister.

Senator JOHNSTON (Western Australia—Minister for Defence) (14:01): I am very grateful to the senator for the opportunity to put a few facts onto the record. All hospitality hosted by me and extended to foreign dignitaries or industry heads has been within guidelines and is consistent with previous Labor defence ministers' practice.

With respect to the month of November, I would like to remind the senator through you, Mr President, that that was the weekend of the Albany Anzac commemorative event. A number of defence officials from other countries came through Perth, with whom I had bilateral meetings.

Honourable senators interjecting—

The PRESIDENT: Pause the clock. Order on my left! The question has been asked. Allow the minister to answer so that we can all hear the answer.

Senator JOHNSTON: They were from France, with a team of approximately eight people, if I remember correctly; from Japan, with a team of approximately five people; and New Zealand I think had about 10 or 12 people in the party. Of course, that is a very sizeable amount of what this relates to. Whilst some of our close allies were in the country for this important event, we took the opportunity to hold meetings and to discuss issues that are of mutual benefit.

I can assure the Senate that all travel that I have undertaken also has been entirely within entitlement, and I have never, in response to the article that was published, accepted an international flight upgrade as minister. All of the entitlements, the dinners, all of the things that I have done as hosting foreign dignitaries, have been entirely proper and appropriate, and I am very proud of the material we presented to our foreign visitors.

Senator CAMERON (New South Wales) (14:03): I suppose you should do all right after a $100 T-bone!

The PRESIDENT: Come to the question, Senator Cameron.

Senator CAMERON: Mr President, I ask a supplementary question. I refer the minister to the President of the Defence Force Welfare Association, who says, 'It smacks of double standards and the use of power for privilege.' Can the minister confirm that, in contrast to his
thousand-dollar dinners, soldiers who travel on official business can only claim up to $47 for dinner, provided there is no flight meal provided?

Honourable senators interjecting—

The PRESIDENT: Order! We will not proceed until there is silence. Minister.

Senator JOHNSTON (Western Australia—Minister for Defence) (14:04): I reject the premise of that question, but can I say that I am not in the circumstances that I saw and observed over a long period of time with the shadow minister, where he was accepting the largesse of three commercial television stations and then of course awarded them some $250 million. I have not done that. May I say that when a foreign defence minister—I have done more than 40 bilaterals with defence officials—

The PRESIDENT: Pause the clock. Senator Cameron on a point of order.

Senator Cameron: Mr President, I raise a point of order. The question goes clearly to the use of power for privilege. I would like a response on the misuse of power for privilege.

The PRESIDENT: Senator Cameron, the minister rejected the premise of your question up-front. Minister, you have the call.

Senator JOHNSTON: I am extremely proud of what Australians have done in France in two world wars, and when the French defence minister comes here I am very pleased to extend hospitality to him, as I—

The PRESIDENT: Pause the clock. A point of order, Senator Cameron?

Senator Cameron: Mr President, I raise a point of order. The minister has gone nowhere near the question, which says that soldiers who travel on official business can only claim up to $47. The minister should go to that point.

The PRESIDENT: Thank you, Senator Cameron. The minister has rejected the premise of your question. Minister, you have concluded your answer?

Senator JOHNSTON: Yes.

The PRESIDENT: The minister has concluded his answer. Senator Cameron, a final supplementary question?

Senator CAMERON (New South Wales) (14:06): Mr President, I ask a further supplementary question. With ADF personnel now receiving a real pay cut, isn't the minister's taxpayer funded fine-dining tour just another example of a government that has got its priorities all wrong, or is this just the minister's attempt to line up a job as a food and wine critic once he is reshuffled out of the ministry?

The PRESIDENT: Order! The minister does not have to respond to the second part of that question. Minister, you have the call.

Senator JOHNSTON (Western Australia—Minister for Defence) (14:07): I have explained why the pay situation for service personnel is as it is. We are endeavouring to clean up the mess, and the tenor of your question indicates the length, breadth and depth of the mess that we have had to clean up. That question is an absolute insult to our intelligence.

DISTINGUISHED VISITORS

The PRESIDENT (14:07): Order! I inform senators of the presence in the President's Gallery of former Senator Sue Boyce. Good to see you.
Honourable senators: Hear, hear!

QUESTIONS WITHOUT NOTICE

Budget

Senator O'SULLIVAN (Queensland—Nationals Whip in the Senate) (14:08): My question is to the Leader of the Government in the Senate, Senator Abetz. Will the minister inform the Senate why it is absolutely vital that we deal with important legislation prior to rising for the year—listen up!

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:08): I thank Senator O'Sullivan for the question and especially for the injunction at the very end of it. The government was elected by the Australian people with a very clear agenda: to build a stronger Australia by building a stronger economy, stronger communities, a cleaner environment and more modern infrastructure. Our commitment was and remains to build a strong, prosperous economy for a safe and secure Australia.

Many of Labor's legacy issues remain unfixed, including 30,000 illegal arrivals by boat. The government's legislation currently before this Senate is crucial to resolving that crisis, in particular, legislation reintroducing temporary protection visas, which will provide stability for genuine refugees while denying people smugglers a permanent visa product to sell to unwitting passengers.

The government has already agreed to a number of measures which will have results, including reducing the number of children in detention. Since coming to government, the number of children in detention has already decreased by about 50 per cent.

Senator Moore: Mr President, I rise on a point of order. I seek clarification from you as to whether that question is in line with order 85, which is about anticipatory motions. I am wanting to see whether the question is actually questioning something that is already a notice of motion on the agenda.

Senator Conroy: Are you going to make a ruling?

The PRESIDENT: I am about to do so, if I can have some silence, Senator Conroy.

Senator Conroy: I am just trying to help.

The PRESIDENT: You are not. The minister is answering a question. If he goes into the detail or substance of matters on the notice paper, then it would be out of order. At the moment, he has not done that. He is answering in very general terms, and I will be listening carefully. Minister.

Senator ABETZ: Once again, you can understand the embarrassment of the Labor Party being reminded of the mess that we need to clean up. Vital work still needs to be done, and we will spare no effort to fix Labor's mess and restore confidence in Australia's borders. The government—

Senator Wong interjecting—

Senator ABETZ: Protecting our borders is going very well, Senator Wong. The government is willing to go the extra mile or hour—indeed we are willing to go the extra miles or hours to implement the policies for which the Australian people elected us. Whatever
this Senate may eventually agree to, can I simply say: inaction is not an option. *(Time expired)*

**Senator O'SULLIVAN** (Queensland—Nationals Whip in the Senate) *(14:11)*: Mr President, I ask a further supplementary question. Will the minister outline the consequences for the people of Australia if the Senate refuses to consider the government's legislation?

**Senator ABETZ** (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) *(14:11)*: Senators would be aware that each and every day we fail to consider vital legislation Australia's national gross debt will continue to rise to $667 billion. The government is taking decisive steps to insulate the Australian economy by improving our budget bottom line from external shocks.

The Secretary of the Treasury, Dr Martin Parkinson, has warned that:

... unless we tackle structural reform, including fixing our fundamental budget problem, we will not be able to guarantee rising income and living standards for Australians.

Whichever measures this Senate may agree to and whatever form they may take, all that we as a government are asking is for senators to fully consider how we can relieve future generations of Australians from a growing debt burden. If we shirk the hard decisions today, our children will suffer the consequences tomorrow. *(Time expired)*

**Senator O'SULLIVAN** (Queensland—Nationals Whip in the Senate) *(14:12)*: Mr President, I ask a further supplementary question: does the Senate have a responsibility in the national interest to consider all legislation?

**Senator Wong:** Mr President, on a point of order: I seek your ruling as to whether or not that question is inconsistent with standing order 73(2). We have a notice already distributed by the Manager of Government Business in relation to debate on a motion to keep the Senate sitting every day, including over the weekend, for particular legislation.

**The PRESIDENT:** Thank you, Senator Wong. So far, the question asked by Senator O'Sullivan was reasonably broad in its context, and the minister has not commenced his answer, so I will be listening carefully to the minister's answer.

**Senator ABETZ** (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) *(14:13)*: All senators, including Senator Wong, should take their role very seriously. Access Economics Chris Richardson observes that:

The opposition and minor parties have washed their hands of setting out detailed alternatives, preferring populist posturing.

We are not asking senators to necessarily agree with everything the government wants to do. We are only asking that they consider it fairly—

**Senator Kim Carr:** We certainly won't do that!

**Senator ABETZ:** and the sort of noise coming out of Senator Carr indicates fairness is not one of his attributes. We are only asking that they consider it fairly, to treat it on its merits and to be prepared to compromise, where possible, all in the national interest. Each and every one of us has been elected to this place by the Australian people and for the Australian people,
and I ask that all senators reflect on this as they decide their actions later today. *(Time expired)*

**Minister for Defence**

**Senator CONROY** (Victoria—Deputy Leader of the Opposition in the Senate) (14:14): My question is to the Minister for Defence. I refer the minister to reports of chaos and dysfunction within his office. Can the minister confirm that two of his staff had their phones and electronic devices confiscated, had their phone records inspected, had their security passes revoked and were escorted out of Parliament House yesterday without being allowed even to clean out their desks? Does the minister take responsibility for the chaos and dysfunction in his office?

**Senator JOHNSTON** (Western Australia—Minister for Defence) (14:15): Out of respect for the privacy of people who have worked with me, I will not comment publicly on staffing matters. The Department of Defence is investigating the origins of the material that was published and, as such, it is inappropriate for me to comment on that inquiry. However, I would make a general point. As a senior cabinet minister and a member of the National Security Council, I require the highest standard of probity and secure management of information within my office. Let me be clear: I will continue to maintain those standards. I have a very heavy responsibility, I take it seriously and I discharge it without hesitation.

As an office that has been disparaged by the senator, I want to run through some of the things that this office has achieved in a very short space of time. We have restored the defence budget—and let me tell you, that has taken some work. We have acquired 58 Joint Strike Fighter aircraft. We have acquired the Triton broad area maritime unmanned aerial vehicle. We have acquired P-8 Poseidon maritime aircraft to replace our P-3s. We have brought forward work necessary to keep open the option of building the future frigate in Australia—something you never did. We fixed the Air Warfare Destroyer Program. We have provided new vehicles to special forces. We have restarted the ADF gap year program. We have indexed military superannuation. We have freed up basic health for all defence family members. We have started a white paper team, established it and issued discussion papers. The first principles review team is at work. We have signed a defence cooperation agreement with Japan. We have restored our military relationship with Indonesia. We have excised part of the Woomera prohibited area and we have opened it up for mining. We have conducted exercises in Australia with the Chinese. *(Time expired)*

**Senator CONROY** (Victoria—Deputy Leader of the Opposition in the Senate) (14:17): Mr President, I ask a supplementary question. I again refer the Minister for Defence to the report about the chaos and dysfunction in his office. Can the minister confirm that, since April, he has lost his chief of staff, his senior adviser, his international adviser, his press secretary, and special adviser General Jim Molan, who said that working with him was simply not feasible?

**Senator JOHNSTON** (Western Australia—Minister for Defence) (14:18): Obviously the senator was not listening and has a prewritten question. I have said I will not discuss the privacy of people who have worked in my office, and I will maintain that position.

**Senator CONROY** (Victoria—Deputy Leader of the Opposition in the Senate) (14:18): Given the chaos in the minister's office and the fact that he does not add much to the NSC, as
he said in his own words, and given that he has been censured by the Senate, condemned by
the South Australian parliament, abandoned by his colleagues, attacked by his junior minister
and repudiated by the Prime Minister, will he now confirm that this will be his last question
time as Minister for Defence?

Senator JOHNSTON (Western Australia—Minister for Defence) (14:18): No.

Economy

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:19): My question is to
the Minister representing the Treasurer, Senator Cormann. Given the Treasurer's admission
that we cannot take another decade of growth for granted, will the government now concede
that continuing to rely on and prop up a 'dig it up, cut it down, ship it out' economic strategy is
1950s thinking and a huge error?

Senator CORMANN (Western Australia—Minister for Finance) (14:19): The short
answer to Senator Milne's question is no. The longer answer, of course, is that it was the
Labor-Green government that put in place a tax—the so-called minerals resource rent tax—
based on an assumption that the blue sky was going to last forever. The Labor Party and the
Greens put in place a tax that hurt one of the most important industries for our economic
growth into the future, recklessly and irresponsibly hurting an industry that is generating jobs
and generating massive export income, assuming that record terms of trade and record
commodity prices would last forever. Of course, the situation ended up where we always said
it would end up. It ended up in tears. The Labor Party and the Greens put in place a tax which
did not raise any revenue, when the Labor Party and the Greens had already raised all the
revenue they thought it would raise—and more. We on this side of the chamber are
implementing our economic action strategy to build a stronger, more prosperous economy so
that everyone can get ahead. We are building a stronger, more prosperous economy to create
jobs, and we are doing it by getting rid of these bad taxes, by reducing red tape costs for
business by $1 billion a year by pursuing free trade opportunities. Minister Robb has already
been able to sign three free trade agreements with Japan, South Korea and China, which will
help us put our economy on a broader foundation, which will help us to diversify our
economic base.

We are ensuring that our economy can be more competitive internationally again by
removing the lead that the Labor Party and the Greens have been putting in our saddle bag, by
bringing down the tax burden, by reducing the cost of doing business and by pursuing better
opportunities through trade for us to grow a stronger, more prosperous economy.

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:21): Mr President, I
ask a supplementary question. Does the Minister concede that the government's short-sighted
cuts to universities and the CSIRO and its attacks on innovative renewable energy and clean
industries in favour of the big polluters will damage the Australian economy not only for
years but for generations? And do you concede that no amount of Santa Claus spending can
rescue the government's failed budget strategy now and into the future?

Senator CORMANN (Western Australia—Minister for Finance) (14:22): What damages
our national interest and damages our prosperity into the future is the Greens' reckless and
irresponsible approach to legislation here in the Senate. We have a situation here with the

Greens opposing the legislation that they actually support just to ensure that we are not able to get certain measures through the parliament.

We have a situation now where Senator Milne is here fighting for regular reductions in the real value of the excise on fuel. She is here in this chamber fighting—fighting!—to ensure that we can deliver a windfall gain for big oil. Big oil—that is what Senator Milne is fighting for here! Senator Milne is fighting and fighting for less money for public transport. I hear that there is a former leader of the Greens in Tasmania who is already circling your seat, Senator Milne. I hear that there is a former leader of the Greens in Tasmania who is looking forward to being the next leader of the Greens here in the Senate. (Time expired)

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:23): Mr President, I ask a further supplementary question.

Government senators interjecting—

The PRESIDENT: Just a moment, Senator Milne. Order on my right.

Senator MILNE: Hopefully, the minister might be able to answer this question: will the minister now agree to implement alternative revenue proposals, such as applying a levy on the big four banks or clamping down domestically on corporate tax evasion as he told the G20 he was prepared to do?

Senator CORMANN (Western Australia—Minister for Finance) (14:24): The government's agenda to build a stronger more prosperous economy and to repair the budget mess that the Labor Party and the Greens put Australia in is there for all to see in the budget papers. We have already been able to pass 75 per cent of our budget measures through the parliament, despite the obstructionist approach by Labor and the Greens. But there are a series of structural reforms that are yet to get through the Senate.

What I would say is that Senator Milne would have much more credibility in putting forward alternative suggestions if she actually started by supporting the policy positions that the Greens have held for a very long time. As long as Senator Milne is trying to argue in favour of regular cuts in the real value of the excise on fuel and as long as Senator Milne is arguing in favour of letting the revenue from the fuel excise erode by inflation she has no credibility. I think there will be regime change in the Greens sooner rather than later. (Time expired)

Senator Sinodinos

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:21): My question is to the minister representing the Prime Minister, Senator Abetz. Does the Prime Minister maintain full confidence in his suspended Assistant Treasurer, Senator Sinodinos, noting that the Assistant Treasurer's suspension is the longest on record? When will the Prime Minister make a decision about Senator Sinodinos's future?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:21): I have a funny feeling that the Prime Minister will not take as long to make a decision in relation to Senator Sinodinos as the Labor Party did in relation to Craig Thomson. 

Honourable senators interjecting—

The PRESIDENT: Order on my left! Order on both sides!
Senator ABETZ: Let me make this point very clear: if I had a choice between Craig Thomson or Senator Sinodinos, it would be Senator Sinodinos every single day, every single hour, every single second! As we know, there are processes—

Honourable senators interjecting—

The PRESIDENT: Pause the clock. Order! We will not proceed until there is silence. Senator Conroy, Senator Carr, Senator Brandis and Senator Wong—order! We are wasting time. On my right!

Senator Faulkner: Are you really comparing Craig Thomson to Senator Sinodinos?

The PRESIDENT: On my left!

Senator Conroy interjecting—

The PRESIDENT: Senator Conroy!

Senator ABETZ: It took a whole minute or more for Senator Faulkner to think of that interjection. Of course what it shows is the gross hypocrisy of the Leader of the Australia Labor Party, who ran and helped run the defence of Craig Thomson without any concern whatsoever other than the capacity to cling to power. Let us make the point very clear: that the Labor Party cannot come into this place making the sorts of assertions that they have tried to in relation to my very good friend Senator Arthur Sinodinos, a man by whom I am very proud to stand.

Senator Sinodinos, voluntarily stood aside for the purposes of ICAC. I think all of us are disappointed that ICAC in New South Wales is taking longer than might otherwise have been expected. Due process will take its course. But can I simply say that Senator Sinodinos enjoys, more importantly, not only the confidence of myself but also all of his Senate colleagues.

Senator Wong: What about the Prime Minister?

Senator Abetz: And the Prime Minister as well.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:28): Mr President, I ask a supplementary question. Can the minister outline the circumstances in which—

Senator Ian Macdonald: And Don Farrell is standing behind you!

The PRESIDENT: Order, Senator Macdonald!

Senator Conroy: You have been dumped three times, Macca—take the hint! You do hold a record!

Senator Cameron: You did the biggest dummy spit in parliamentary history. The biggest dummy spit ever!

The PRESIDENT: Senator Cameron and Senator Conroy, your leader is seeking the call for the question.

Senator Ian Macdonald interjecting—

The PRESIDENT: Senator Macdonald! Order.

Senator Cameron: A big dummy spit!
The PRESIDENT: Senator Cameron! I know this is the last question day of the year, but let us just see if we can get through it without so much disruption.

Senator WONG: Can the minister outline the circumstance in which the Prime Minister would contemplate the return of Senator Sinodinos to ministerial duties? Will the finding of corruption by the New South Wales Independent Commission Against Corruption result in Senator Sinodinos's dismissal? Or will reckless indifference be enough?

The PRESIDENT: Minister, you can answer the part of that question—

Senator Bernardi: Mr President, I rise on a point of order. It is clearly a hypothetical matter—

The PRESIDENT: Senator Bernardi, I am dealing with that, thank you. Minister, you can answer the part of that question that fits in with your portfolio and is not of a hypothetical nature.

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:30): It is clearly a hypothetical question. It is clearly in breach of standing orders. But, for the benefit of the Leader of the Opposition in the Senate, Australia's worst finance minister ever, I will say that the Prime Minister said in the House of Representatives just a few days ago:

They would be very happy circumstances indeed, wouldn't they, to get Senator Sinodinos back into the ministry? As I have indicated on many previous occasions, it is my hope to have Senator Sinodinos back in the ministry.

And so say all of us.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:30): Mr President, I have a final supplementary question. Can the minister confirm the only reason Senator Johnston remains in the ministry is that the Prime Minister cannot reshuffle before ICAC reports on Liberal Party corruption?

The PRESIDENT: Again, Minister, you can answer whatever part of that question you believe fits within your portfolio.

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:31): I think we all know why Mr Shorten remains Leader of the Opposition. It is because the Labor Party have so tied themselves up with rules that they cannot remove him. Let not the Labor Party come into this place—

Opposition senators interjecting—

Senator ABETZ: They scoff over there. It is the same scoffing they gave to Kevin Rudd before they knifed him. It is the same scoffing they gave to Julia Gillard before they knifed her. We know what the Labor Party get up to—knifing leader after leader.

I have every confidence that Senator Johnston will remain in the ministry for as long as he wants, and I am very hopeful that Senator Sinodinos will return to the ministry as soon as possible, because both gentlemen are committed to the service of our nation.

Asylum Seekers

Senator MADIGAN (Victoria) (14:32): My question is to the Assistant Minister for Immigration and Border Protection, Senator Cash. Nobel Prize winner Aung San Suu Kyi
said during her visit to Australia in November 2013 that the rule of law 'must be tempered by mercy' in cases of asylum seeker children born in Australia. Will the government commit to ensuring that the babies of asylum seekers who are born on Australian soil are given the legal right to apply for protection and citizenship and are not deported to offshore detention centres?

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:32): I thank Senator Madigan for the question. The government considers that children of unauthorised maritime arrivals are already included within the existing definition of an 'unauthorised maritime arrival' within the Migration Act. Section 5AA of the Migration Act defines an unauthorised maritime arrival, and section 10 of the act provides that a non-citizen child born in a migration zone is taken to have entered Australia when he or she is born. If the parents of the child do not hold visas at the time of the child's birth, the child will not hold a visa at the time of the its birth because the children of unauthorised maritime arrivals enter the migration zone without a visa. When they are born as unlawful citizens, they are taken to have entered the migration zone by sea and are unauthorised maritime arrivals. I can also confirm that on 15 October 2014 the Federal Circuit Court handed down a judgement in this matter. The court found that a child born to parents who are unauthorised maritime arrivals is also an unauthorised maritime arrival.

Senator MADIGAN (Victoria) (14:34): Mr President, I ask a supplementary question. Minister, when government makes decisions on the fate of asylum seeker children, what consideration is given to whether or not the actions of government are merciful and compassionate?

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:34): I thank Senator Madigan for his supplementary question. The government treats all asylum seekers with compassion and in accordance with our international obligations. The government feels that the most compassionate action is to get all the proven children of refugees out of detention. I would reiterate the point that Minister Morrison made to the Human Rights Commission inquiry. He stated as follows:

The aim of the Abbott Government is to return detention centres to the position left by the Howard Government, where there were no … children in detention at all who had arrived by boat.

None whatsoever. I'm sure we would all welcome seeing that again and I know I certainly would.

Senator Madigan, I would make the point that recent policy changes by this government have seen a decrease in the number of children in detention.

Senator MADIGAN (Victoria) (14:35): Mr President, I have a final supplementary question. Minister, do you or the government believe that it is right to use children as bargaining chips in political dealings concerning asylum seeker policy?

Senator Conroy: The answer is yes.

The PRESIDENT: You were not asked the question, Senator Conroy.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:35): I thank Senator Madigan for his second supplementary question. Senator Madigan, I respectfully reject the
The premise of your question. The point that Minister Morrison has made is that he would like to see children out of detention facilities at Christmas time. I certainly believe that is what we on this side of the chamber want. The only bargaining going on here is by those on the other side.

**Higher Education**

Senator McGrath (Queensland) (14:36): My question is to the Minister for Human Services, Senator Payne, representing the Minister for Education. Can the minister update the Senate on the progress of higher education reforms following input from crossbench senators?

Senator Payne (New South Wales—Minister for Human Services) (14:36): I thank Senator McGrath very much for the question. As senators will know, the government has, in fact, taken on board a number of important changes proposed by Senate members of the crossbench to the proposed higher education reforms. We have included those in a new reform bill which was introduced to the House of Representatives yesterday.

The new reform bill accepts, firstly, a proposal made by Senator Day in relation to keeping the indexation of HECS at CPI, and also Senator Madigan's proposal, which I understand Senator Wang has also carefully considered, for a HECS indexation pause for the primary care-giver of newborns. The government will also fund more scholarships for students from disadvantaged backgrounds, on top of the Commonwealth scholarships. Senator Muir has particularly advocated for that. There are other improvements, as well.

We all now have some months to discuss the reforms and to negotiate further improvements. As Professor Sandra Harding from James Cook University in North Queensland said yesterday: ' Appropriately amended, these reforms can deliver a high-quality and sustainable higher education and research system.' Professor Harding, who is also the chair of Universities Australia, has stressed both the need and the urgency of the reforms, saying that the status quo is not an option.

The vice-chancellor of Central Queensland University, Professor Scott Bowman, said yesterday:

If regional Australia had any hope of ever catching up with city Australia in university participation—without sending the country broke—then it would be through an uncapped student system in a deregulated market.

That is what these reforms deliver. Even the Regional Universities Network release yesterday was headed, 'The RUN urges the Senate to pass the new higher education bill, with changes.'

Senator McGrath (Queensland) (14:38): Mr President, I ask a supplementary question. Can the minister apprise the Senate of the benefits that will flow to students from the reforms?

Senator Payne (New South Wales—Minister for Human Services) (14:38): I can indeed do that for Senator McGrath. These reforms have enormous benefits for students. Above all, though, it means they will get an education of the quality they want, a truly world-class education in the courses they want, with the Commonwealth support they want, without having to pay a single cent up front.

The new bill makes HECS even more generous. It is HECS that guarantees that access to higher education is based on ability, not income. The Commonwealth scholarship scheme will support tens of thousands of disadvantaged students in going to university, and with even more students supported now through additional scholarships in the new bill.
Commonwealth will be supporting all Australian undergraduate students in all registered higher education institutions, from diplomas to bachelor degrees, supporting students on pathways into higher education, and, importantly, in qualifications for jobs. We will in fact see lower fees for many students, as COPHE, the Council of Private Higher Education, has confirmed. (Time expired)

Senator McGrath (Queensland) (14:40): Mr President, I ask a further supplementary question. Can the minister advise the Senate whether she is aware of any credible alternative proposals to the government's higher education reform measures, as amended following input by crossbench senators?

Senator Payne (New South Wales—Minister for Human Services) (14:40): As I indicated in response to Senator McGrath's first question, there have been some very constructive proposals from crossbench senators, and their further input is warmly welcomed. But, otherwise, as Professor Greg Hill, the vice-chancellor of the University of the Sunshine Coast said yesterday, there is no alternative. There is no credible alternative from those opposite. They are the party of a dishonest scare campaign. They are a party of $6.6 billion in cuts to higher education and research and funding cliffs for research fellowships and infrastructure. These reforms will provide funding for research Future Fellowships and for the National Collaborative Research Infrastructure Strategy, for which the other side left no funding at all. So if the reforms are not passed, there are not the funds to support these. We will lose valuable research talent to overseas and the 1,500 people whose jobs depend on NCRIS will lose their jobs. (Time expired)

Fishing Industry

Senator Whish-Wilson (Tasmania) (14:41): My question is to the Minister representing the Minister for the Environment, Senator Cormann. Yesterday in the Senate the tabled report of the Expert Panel on the Declared Commercial Fishing Activity that looked into the super-trawler Abel Tasman, found that there were unassessed and unmitigated environmental risks in bringing this type of industrial factory fishing vessels into the small-pelagic fishery. Considering that anyone who previously opposed the arrival of the super-trawler Abel Tasman was labelled as anti-science, when will the government respond to the expert panel's report, and will the government apologise to recreational fishermen and environmentalist who were, it is now proven, simply raising valid concerns?

Senator Cormann (Western Australia—Minister for Finance) (14:42): I thank Senator Whish-Wilson for that question. The government will respond to that report in due course.

Senator Whish-Wilson (Tasmania) (14:42): Mr President, I ask a supplementary question. There was not much Christmas cheer in that answer. Considering that in March this year the Prime Minister stated in relation to the super-trawler: 'It was banned and will stay banned,' is the government's permanent solution to bring forward legislation to bring the Prime Minister's words into effect—to ban super-trawlers—or do the Prime Minister's words no longer carry any weight with his cabinet?

Senator Cormann (Western Australia—Minister for Finance) (14:43): The government stands by all its previous commitments in relation to this issue. The government is working towards an effective and permanent solution. When we are in a position to make further announcements we will do so.
Senator WHISH-WILSON (Tasmania) (14:43): Mr President, I ask a further supplementary question. Considering the enthusiasm of some of your Senate colleagues for bringing back large industrial floating-factory ships, such as Senator Colbeck and Senator Edwards, can you inform the Senate whether the environment minister or the agriculture minister or indeed Senator Colbeck have met with or worked with proponents of any super-trawler since the Prime Minister's comments?

Senator CORMANN (Western Australia—Minister for Finance) (14:43): Leaving the political rhetoric in that question to one side, I am here representing the Minister for the Environment. I am not here representing other senators and those who were listed in that question. If Senator Whish-Wilson is genuinely interested in an answer to that question he should ask the respective people themselves about who they have met with—

The PRESIDENT: Pause the clock. Senator Whish-Wilson on a point of order.

Senator Whish-Wilson: My point of order concerns relevance. Senator Cormann is sinking without a trace on this. I simply asked him whether he could say whether his department or the Department of the Environment has met with any proponents of a future super-trawler.

The PRESIDENT: The minister has the call.

Senator CORMANN: I would put it to Senator Whish-Wilson that the question he is asking me is a question addressed to the minister with responsibility for the fisheries portfolio, which would be the minister representing the Minister for Agriculture. In an abundance of helpfulness let me just say that I suspect that the minister and the parliamentary secretary with responsibility for fisheries matters would have interaction with relevant stakeholders in the fisheries portfolio.

Abbott Government

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:45): My question is to the minister representing the Prime Minister, Senator Abetz. I refer to the article by Ms Niki Savva in today's *Australian*, which reveals the internal chaos and confusion around the Prime Minister's office briefing of the media on the $7 GP tax. Can the minister confirm that the Prime Minister did not know his own office had briefed the media that the GP tax was dead? Can the minister further confirm that the Prime Minister called him the next morning before the minister's radio interview to say that nothing had changed and that the briefings from the PMO were 'unauthorised'?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:45): Mr President, when you have a lazy opposition, that is the sort of question that you get—purely based on media speculation. I can confirm for the Leader of the Opposition—

Senator Kim Carr interjecting—

The PRESIDENT: Senator Carr.

Senator ABETZ: that on the morning before I went on that particular radio program to which she refers, the Prime Minister and I did not have a discussion.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:46): Mr President, I ask a supplementary question. Can the minister confirm that Liberal MP, Mr Ken
Wyatt, was greeted with 'a spontaneous round of applause' in the government party room after complaining about the rude and arrogant attitude of the Prime Minister's office towards government MPs? Can the minister advise whether any of the Senate backbench join in this round of applause?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:46): Mr Wyatt, the member for Hasluck, is an excellent member, does a wonderful job for his electorate and is always willing to speak his mind. In relation to the particular party room to which the senator refers, I did not happen to be there, but I have just checked with some colleagues behind me who confirm that Mr Wyatt did not say such words.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:47): Mr President, I ask a further supplementary question. Can the minister confirm the foreign minister went 'bananas' at the Prime Minister after learning that she was to be chaperoned by Minister Robb at the UN climate conference? With the Defence minister frog-marching staff out the door, the foreign minister going bananas and the Prime Minister's office out of control, I ask the minister: is this what government looks like when the adults are back in charge? Merry Christmas, Senator Abetz.

Honourable senators interjecting—

Senator Bernardi: On a point of order, Mr President. I refer you to the rules for questions provided by previous president Hogg who said it was inappropriate for questions to contain ironic expressions, and so I would ask you to rule that question out of order.

Senator Wong interjecting—

The PRESIDENT: Senator Wong, I really do not assistance on the point of order. Senator Bernardi, I think today of all days we will allow some irony, which has found its way into many questions over the year, I will say, Senator Wong, and I was going to say it before Senator Bernardi's point of order that the final supplementary is really stretching the limit of being related to the primary question. I will allow the minister to answer the parts he wishes to answer.

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:49): The problem for the senator is that the way she said 'Merry Christmas' absolutely exposed her insincerity. It also shows that when she said to Mr Rudd, 'You've got my full support,' her sincerity was just as great. Then when she later said to Julia Gillard, 'Merry Christmas, you've got my support,' it was simply as insincere as her attempt to send me good wishes. Mr President, I have tried to determine the technical meaning of 'going bananas', but I am sure it has something to do with Christmas goodwill and cheer, which I genuinely do extend to the Leader of the Opposition.
National Security

**Senator BACK** (Western Australia) (14:50): My question is to the Attorney-General, Senator Brandis. The key offence provisions of the Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014, including the offence of entering or remaining in a declared area came into force on Monday, 1 December. Can the Attorney-General update the Senate on what the government is doing to address the threat from foreign fighters and to keep Australians safe from terrorism?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:50): Thank you very much indeed, Senator Back, and I know you take a very deep interest in this important area. As you rightly say, on Monday the new offence under section 119 of the Commonwealth Criminal Code did come into force, making it a crime to enter or remain in a declared area where terrorist organisations are engaged in hostile activities.

The declared area offence was a key provision in the foreign fighters bill to act as a deterrent and send a strong message to Australians who may wish to fight with terrorist organisations. Despite recent gains against ISIL in Syria and northern Iraq, the threat posed by foreign fighters returning to Australia remains the most-pressing matter of national security we face at the moment.

The government has not delayed in using this important enforcement and deterrence tool. This morning the foreign minister declared the Syrian province of Al-Raqqa under section 119.3 of the Criminal Code, meaning that it will be an offence to be in this area without a legitimate purpose such as a bona fide visit to family members. Al-Raqqa serves as the de facto capital of ISIL, one of the world’s most deadly and active terrorist organisations. ISIL uses terrorist attacks extensively against civilians. This includes frequent mass casualty attacks; rape and enslavement of women; mass executions, including beheadings; and other atrocities. ISIL boasts of these atrocities through videos and magazines depicting these violent acts. There is more to do. Consideration is being given at the moment to declaring further areas where ISIL is heavily engaged in hostile activities under section 119 of the Criminal Code:

**Senator BACK** (Western Australia) (14:52): Mr President, I ask a supplementary question. I thank the Attorney-General for the answer. Can he inform the Senate on the declaration process.

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:52): Yes, Senator Back, I can. Under section 119.3 of the Criminal Code, the foreign minister made it clear an area where she is satisfied that a listed terrorist organisation is engaged in hostile activity in that particular area. The minister’s decision is based on the expert advice and recommendation of our national security agencies. While classified intelligence plays a critical role, information supporting the declaration will, to the greatest extent possible, be based on unclassified material to enable it to be made public and provide important transparency about any such decision. Consistent with the requirements of the legislation, the Leader of the Opposition was briefed in relation to the proposed declaration. I take the opportunity, once again, to thank the opposition for its bipartisan support of this important provision.
Senator BACK (Western Australia) (14:54): Mr President, I ask a further supplementary question. Attorney-General, how will the government ensure that the community is made aware of the foreign minister's declaration on Al-Raqqa?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:54): Senator Back, beyond consultation across government and opposition stakeholders, a range of notification processes will be used to ensure the information is disseminated as broadly as possible and the area covered by the declaration is readily identifiable by the public. This will include publication in the Gazette, the issue of a media release, publication on the government's national security website, and updated travel advice on the Smartraveller website. Consultation with the community on this matter and on broader issues to counter radicalisation is, of course, critical to the government's a counter-terrorism response. As I have said many times before, community leaders are our partners and key allies in eradicating the problem of those who would lure their young men and women along a path to violence and ultimately self-destruction. The judicious use of section 119.3 of the Criminal Code is one of the several tools at the government's disposal, which we will use to achieve that end.

Abbott Government

Senator O'NEILL (New South Wales) (14:55): My question is to the Minister representing the Prime Minister, Senator Abetz. I refer to the Prime Minister's promise before the election that there would be no changes to pensions. Hasn't the Prime Minister broken this promise by cutting indexation of pensions? Won't these cuts hurt the elderly, the disabled and war veterans and leave millions of pensioners worse off?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:55): One of the first decisions that we as a government sought to implement on coming to power, courtesy of the support of the Australian people, was to remove the $550 impost per average family household of the carbon tax—no thanks to the Labor Party, who promised the pensioners of Australia no carbon tax and then implemented one. They then went to the election saying there would not be a carbon tax and they would get rid of it, and then they constantly voted against it, until, thank goodness, there was a breath of fresh air in the Senate, with some senators who were willing to listen to the Australian people. So, on the cost of living for the average family household—and that of course also transfers to the pensioner community in our midst—there was a real reduction.

In relation to pension increases, let us remember that Australian history did not start on 8 September 2013. We had a lot of legacy issues to deal with. When the Australian Labor Party kicked off the 2013 election campaign, they told the Australian people that there was an $18,000 million deficit. When the books were closed for that financial year, it had blown out to $48,000 million—a shortfall of $30,000 million in just one year. The Australian people expect us to take action in circumstances where there has been a $30,000 million shortfall in the budget in the circumstances which Labor went to the Australian people on and which we then inherited. There are legacy issues which we are seeking to fix; but, for the pensioner community, we got rid of the carbon tax, which has assisted them. (Time expired)
Senator O'NEILL (New South Wales) (14:57): Mr President, I ask a supplementary question. I refer to the Prime Minister's promise: no cuts to the ABC or SBS. Hasn't the Prime Minister broken this promise by cutting more than $500 million from the ABC and SBS? Won't these cuts cost 400 jobs, reduce public broadcasting services and hurt regional communities?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:58): I think the Australian people fully recognise that the ABC can make some savings, without the need to cut programs. Just one example: for the broadcasting of the Asian Cup, SBS put in a bid for three-quarters of a million dollars that they could have completely recouped with advertising dollars. What did the ABC do? It came along and put in a bid of one and a half million dollars and no money to be recouped—a $1.5 million expense to the Australian taxpayer.

Senator Moore: Mr President, I rise on a point of order on direct relevance to the two questions asked. One was about the Prime Minister's promise about cutting, and the second one was about the cuts to jobs and public broadcasting services in regional communities. The minister has not moved on those two questions.

The PRESIDENT: The minister is addressing the question. He has 24 seconds left. He has finished his answer?

Senator ABETZ: I have finished my answer.

Senator O'NEILL (New South Wales) (14:59): Mr President, I ask a further supplementary question. I refer to the Prime Minister's pre-election promise to be the Prime Minister for Indigenous affairs. Can the minister confirm that the Prime Minister has cut over half a billion dollars from services to Indigenous communities? Why is the Prime Minister intent on hurting the most vulnerable people in Australia and changing the country for the worse?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:59): Money does not necessarily equal services. He is the Prime Minister for Indigenous affairs.

Senator Abetz: Mr President, I ask that further questions be placed on the Notice Paper.

BUSINESS

Rearrangement

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (15:00): I seek leave to move a motion to vary the routine of business for today.

Leave not granted.

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (15:00): Pursuant to contingent notice, I move:

That so much of standing orders be suspended as would prevent me moving a motion to provide for the conduct of business, namely a motion relating to the consideration of government business order of the day No. 3.
The issue that the Senate faces on this final day is to deal with some important legislation. The important legislation that we want to see dealt with today is the legislation that will deal with temporary protection visas. It is legislation that will actually help get people and children out of detention to face an appropriate Christmas. Keeping in mind that people in the case load of which we speak are not people that have come to Australia courtesy of coalition policy, but courtesy of the legacy issues that we are still trying to clean up on this side.

I simply say this, especially to the Australian Labor Party and the Greens who might oppose this motion: do they really want children and others in detention over the Christmas period or would they want this issue to in fact be resolved? Here they have a very real opportunity to assist in providing some legislation that undoubtedly is within the best interests of our country and especially in the best interests of that 30,000 case load legacy that the Australian Labor Party and the Greens have left us.

That is all we seek. It is a relatively modest request for and on behalf of the government to at least complete business order of the day No. 3, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. That is the issue that we want to deal with before we rise for the Christmas break. We believe it is an appropriate measure, it is a humanitarian measure and it is good all around. I trust that the Labor Party and Greens will see it within themselves to expedite this legislation so that we can deal with it in a manner that is expeditious and then allows us to break for the rest of the year.

Senator Wong (South Australia—Leader of the Opposition in the Senate) (15:03): The first point I wish to make is to place on record not only our disappointment but also our opposition to having a discussion about children in detention used in order to further the government's attempt to rearrange the business here in the Senate. It should be very clear to everybody that if the minister, Mr Morrison, chose to allow children to leave detention, he could do so. He could do so today; in fact, he could have done it yesterday.

Senator Madigan hit the nail on the head after a profoundly important question, where he also put to Minister Cash that it was not an appropriate thing, it was not a compassionate thing and it was not a principled thing to use the issue of children in detention to try to gain some advantage for a Senate program. I want to associate myself with the sentiment that was expressed by Senator Madigan.

But this is not a debate about the substantive bill. This is a debate about whether this government can suspend standing orders in order to move a motion about the hours that the Senate should sit and about the bills that the Senate should consider. I want to, in the brief time I have, just remind the Senate of the history of the way in which this government has run this chamber.

As I previously indicated, I wrote to Senator Abetz on the Monday of last week. I asked him for an indication from the government as to what were their priority bills, I asked him for an indication as to what additional time would be required and I asked him for an indication of how they wanted to structure this last week and whether any additional sitting days would be required. I did not get a reply to that.

A week later, along with every other leader and whip in this place, I got an invitation to Senator Abetz's office. It was very nice office. We all sat around a table. We had three meetings. In each of the three meetings, Senator Abetz's indication to us about what his
priority legislation would be was changed. It changed depending on, as he said, 'It depends whether we have got the numbers. It depends what happens. We have to have a discussion.' He also refused on Monday to tell us what additional hours were required.

Now, because of that frankly chaotic management of the chamber, his solution is to come in here after question time on Thursday and to up-end standing orders in order for him to be able to now move a motion, because he has finally decided which bills are actually priority and what the hours should be. We had the Manager of Government Business in this place lodging a motion yesterday that will require, if passed, the Senate to sit every day—tomorrow and over the weekend—until a range of bills were passed. That was lodged without notice to anybody. We had three meetings on Monday where you might have raised this, but you do not want to talk to anybody about how long you want the Senate to sit. You do not ever want to even approach the opposition—I do not know if you approached the crossbenchers before you lodged that motion—and say, 'Look, we would like to discuss how we might rearrange things et cetera'. No, there was nothing like that. We had a chat in Senator Abetz's office three times on Monday where none of this was discussed, and then we get lobbed with a motion, put in yesterday without notice, that the Senate is going to sit every day of the weekend for a whole bunch of bills in order to get legislation passed.

Senator Abetz also put out a press release talking about the Mr Fluffy asbestos issue, trying to suggest that we have to sit to deal with that, when I told him on Monday that we would do that in non-controversial legislation and get that through.

Senator Ian Macdonald interjecting—

Senator WONG: I told him on Monday. So do not try and use children in detention or asbestos removal to cover up the fact that this Senate leadership team—and goodness knows where Senator Brandis is, because he never seems to be around on these issues—has presided over chaos and mismanagement when it comes to running this chamber and a refusal to engage in adult, responsible dialogue with other members of this Senate in order to facilitate how this last week was to be handled. (Time expired)

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (15:08): The phrase that comes to mind right now is 'hypocrisy, thy name is Labor'.

Senator Conroy: Oh, look in a mirror.

The PRESIDENT: Senator Conroy.

Senator FIFIELD: We have heard day in, day out from Senator Wong and Senator Conroy about what they state to be the management capacity of those on this side of the chamber. The reality is that those opposite have given up any of the basic courtesies or protocols or understandings in this place that make it work. Even the worst opposition—which I think those opposite are—usually can find it within themselves to recognise that there is a public interest greater than themselves to be served in this place through agreement on certain pieces of legislation and on when the Senate will sit.

I have seen a few things that I have never seen before this week. Today, there was a first, and that was seeing the Selection of Bills Committee report adoption motion filibustered. That is a new one. I have not seen that before. Even when the government indicated that we were
not going to seek to divide on an amendment to that report which those opposite were moving, they filibustered the selection of bills committee report adoption. That is a new one.

Senator Wong interjecting—

The PRESIDENT: Senator Wong, you have made your contribution.

Senator FIFIELD: Then there was the one that I spoke about at some length earlier this week—

Senator Wong: We gave you notice at 11 o'clock last night. You have no-one to blame but yourself.

The PRESIDENT: Senator Wong.

Senator FIFIELD: when, during the leaders, managers and whips meeting, Senator Conroy on behalf of Senator Wong pulled a stunt that we have never seen before. He used that meeting—which is meant to be all about cooperation—as a cover for bringing on the omnibus repeal day bill so that they could move amendments to do with submarine tenders, which was countermanding the agreement that had already been reached with those opposite about the rearrangement of business.

Senator Conroy: Mr President, I rise on a point of order. The senator is clearly misleading this chamber, and I ask you—

The PRESIDENT: That is a debating point.

Senator Conroy: to call him to order, because it is not allowed under standing orders to mislead the chamber like that.

The PRESIDENT: There is no point of order; you are debating the matter.

Senator FIFIELD: What I was referring to was a breach of agreement, where it was agreed with those opposite and the Australian Greens as to what the reordering of business would be. Our word on those matters should be something that can be trusted. What did those opposite do? They spent the night up-ending government business time and denying the government the time to debate its agenda. So we on this side are not going to cop that there is some lack of capacity to manage this place, because when you do not have the numbers in your own right in this place, chamber management is a shared responsibility—a responsibility that you abrogate. That is why Senator Abetz has sought to suspend standing orders so—

Senator Wong: Mr President, I rise on a point of order. If it is a shared responsibility, why does the manager not talk to anyone?

The PRESIDENT: That is not a point of order; it is a debating point.

Senator FIFIELD: Because of how the opposition have conducted themselves, Senator Abetz has been put in the position where he is seeking to suspend standing orders so that he can move a rearrangement of business—and it is a very modest rearrangement of business. It seeks to have one bill debate—one bill—and those opposite cannot even bring themselves to allow the government of the day to have one bill debated on the last sitting day of the year. That is how low they have sunk.

This is a very modest proposition to rearrange business—to suspend standing orders so that Senator Abetz can move a motion to debate the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. That is what this procedural
motion is about. It is the government seeking to make up for the acts of those opposite to deny the government of the day the opportunity to debate in an orderly fashion its legislative program. Indeed, we even saw in non-controversial business time today the opposition undertaking filibusters.

Senator Conroy: Mr President, I rise on a point of order. Could you ask the minister to address the chair?

The PRESIDENT: Minister, I remind all senators that all comments go to the chair and not across the chamber, but I did not detect the minister overtly doing that.

Senator Kim Carr: Mr President, I rise on a point of order. I do not think that it is appropriate that the government misrepres...
Senator CONROY: I apologise again. Senator Leyonhjelm went on to say:
They have a few exceptions and you think OK, now they've figured it out then they go back to normal again.
He went on to say:
The government should certainly lift its game.
Hear, hear, Senator! The government should certainly lift its game.

The PRESIDENT: Through the chair.

Senator CONROY: Through the chair, of course, Mr President. He went on to say, through the chair:
They haven't got any alternative ideas.
That is what Senator Leyonhjelm said, Mr President: 'They haven't got any alternative ideas.'
He said:
There's two years to go to an election ... so they say there's plenty of time to put forward their policies.
And he went on to say:
It's kind of like the old joke about going to the dentist and you reach up under his jacket and you grab him by his delicate parts and you squeeze a little bit and say we're not going to hurt each other are we.
Through you, Mr President, Senator Leyonhjelm said:
My advice to Tony Abbott—
Mr Tony Abbott, but Senator Leyonhjelm called him Tony Abbott—
is, let's not hurt each other.
The fundamental point of this very eloquent explanation is that this government is a shambles.
We see it from the head down. We see it in the way the Minister for Foreign Affairs stormed into the Prime Minister's office just this week and, I am quoting a Liberal party person, 'she went bananas.' Why did she go bananas? Because the Prime Minister's office had briefed the media that she was not up to the job of defending Australia's interests at Lima and needed a chaperone. She needed Mr Robb to attend. Senator Macdonald is on his feet again because he has lost the plot, as usual.

The PRESIDENT: Senator Conroy, withdraw that.

Senator CONROY: I certainly withdraw that.

Senator Ian Macdonald: Mr President, a point of order on relevance: I know we allow a little bit of latitude in these motions to set aside standing orders, but talking about what someone said about Ms Bishop, the best foreign minister this country has had for a long period of time, can hardly—

Senator Conroy: That's not what Peta Credlin thinks!

Senator Cameron: Why does she need a chaperone?

The PRESIDENT: Order, Senator Conroy and Senator Cameron! Senator Fifield and Senator Xenophon, could you just move? I cannot see Senator Macdonald.

Senator Ian Macdonald: I will just repeat: while we do allow a lot of latitude in motions to set aside standing orders, talking about something completely irrelevant and out of the atmospherics cannot be part of this debate.
Senator Wong: Mr President, on the point of order: with respect to Senator Macdonald, I think Senator Conroy’s comments go directly to the issue of why this matter is not urgent, which is the core of the suspension—

Senator Ian Macdonald: Someone called Julie Bishop names!

Senator Wong: I’m sorry?

The PRESIDENT: Order! Not across the chamber, thank you. To me Senator Wong.

Senator Wong: It is germane to the suspension of standing orders argument.

The PRESIDENT: In relation to the point of order, Senator Macdonald, you are correct that there is usually a lot of latitude in relation to a suspension motion.

Senator CONROY: I am not sure if it was Senator Leyonhjelm who said: ‘The only time we hear from this government is when they want to borrow some money or the keys to the car,—’

Senator Kim Carr: Like a kid!

Senator CONROY: Like a child. That is absolutely what we are seeing here.

Senator Abetz: That is harsh!

Senator CONROY: It is what he said. It is harsh. It is absolutely a reflection on you, Senator Abetz.

The PRESIDENT: To the chair, Senator Conroy.

Senator CONROY: Sorry, Mr President. Through the chair, it is a reflection on the negotiating ability of those opposite, who are incapable of managing this chamber. They are incapable of managing a simple conversation with Senator Leyonhjelm, Senator Day, Senator Lazarus and Senator Lambie, and then they come in here and complain and blame everybody else. It has been demonstrated by the statements that I have referred to. Even Senator Macdonald, Mr President, has given them a serve today. He has talked about how they will not listen. He has talked about how they have a tin ear. We have had the Liberal Party economics backbench committee refuse to consider a bill put forward for the medical research fund because they were sick of being railroaded by this government. So they have the crossbench senators sick of it, they have the backbench senators sick of it and they have the chamber sick of it, and they come in here and try and blame somebody else. They have to have an absolute good look at themselves, because they have nobody but themselves to blame for the debacle they are faced with at the moment.

Senator Abetz: Senator Xenophon.

Senator Jacinta Collins: No, you can’t call him!

The PRESIDENT: Thank you, Mr President. Siewert is on her feet, and Senator Siewert will have the call.

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:22): Thank you, Mr President. I am glad that you made sure you exercised your authority over the chamber.

Senator Ian Macdonald: On a point of order, Mr President, your practice is to go from one side of the chamber to the other. The Greens and the Labor Party are one and the same, as we all know.
Senator Conroy: On the point of order, Senator Macdonald is just the grumpy old man of the Senate. You correctly called Senator Siewert and you should tell him to sit down and stop taking spurious points of order.

The PRESIDENT: Senator Conroy! You will withdraw that remark. That is an adverse reflection on the senator.

Senator Conroy: My goodness! I withdraw unreservedly.

The PRESIDENT: Thank you. And I do not need any assistance on the point of order. Senator Siewert was clearly the only senator on her feet at that time—and for quite some time. Senator Siewert has the call.

Senator SIEWERT: Thank you, Mr President. The Greens, it will come as no surprise, will not be supporting this motion to suspend standing orders. The government have failed to manage this place over the last period of sitting, to the extent where they were stacking their own bills. So, when they did not have the numbers, they started putting people on the speaking list. Because of their failed management of the chamber, they expect us to sit here late. We could go through a list of the times that the government have, in fact, used up the time of this Senate because they were not managing it properly. I will note just a few of them. For a start, there was the time when Senator Brandis refused to do his job as the Attorney-General and answer questions during committee-stage debate on the counter-terrorism bill. Senator Wright and Senator Ludlam were asking totally legitimate and very necessary questions over a critical piece of legislation in this place, and what did Senator Brandis do? He sat there and sat there. In fact, the video of that particularly poor performance is rather popular on the internet at the moment. Last time I looked, there had been 40-odd thousand views of that clip—and it is probably more by now. It was a classic example of where the government were refusing to answer questions on their own legislation. So they wasted valuable hours of government debating time, and here they are with their key law person of the country refusing—

The PRESIDENT: Pause the clock. Senator Conroy on a point of order?

Senator Conroy: I am not sure, but I think I might have misheard Senator Siewert. If I could just ask her to clarify, she may have used an unparliamentary term. Could she just clarify what she was describing Senator Brandis as? Otherwise, I think you should ask her to withdraw, because I think it was unparliamentary.

The PRESIDENT: Order, Senator Conroy! If that was the case, I would certainly not be asking her to repeat it.

Senator Conroy interjecting—

The PRESIDENT: Order! Senator Conroy! If Senator Siewert did say something unparliamentary, I expect that she will withdraw it. But, Senator Siewert, it is at your discretion. You have the call.

Senator SIEWERT: I sincerely withdraw the comment I made about Senator Brandis, the Attorney-General, being the senior law person of this country.

Then, finally, someone obviously spoke to him and said, 'You'd better get things moving and actually do your job and start answering the questions.' So he begrudgingly started
answering the odd question now and again. That cost this chamber hours, because he was refusing to do his job.

Then, of course, we lost more time when we, rightly, censured the Minister for Defence for saying that ASC could not build a canoe, which was a totally ridiculous comment to make. What did the government expect—that we would just suck it up when such accusations were being chucked around? Then, of course, on FoFA, they deliberately filibustered the debate for half a day when we tried to very sensibly address a huge flaw in that legislation. That was another day lost. Now they come in here and say that we should give up more time—because they now think that maybe they have the numbers. They have been re-counting, re-counting and re-counting, putting people on their speakers’ list and putting their legislation on and off the agenda. First it is top of the list; then it is down the list. Really, do not come in here and expect us, at two minutes before going-home time, to be willing to discuss hours.

At the beginning of the week, we finally had a leaders and whips meeting—finally. The list of what they wanted to discuss was as long as your arm. Then some form of agreement was reached on what was going to be on the list. Then we got the hours motion with more bills stacked back on. Maybe that was because they thought they had the numbers then, whereas they did not think they had the numbers earlier in the week. Now that very important list of bills—there were seven in the previous motion—has just one bill on it. There is now only one urgent bill. This is not good management.

We do not believe that we should be sitting here to debate this bill because the government think they may have the numbers. What happens a bit later when they do not have the numbers? That was obviously what happened yesterday, when you started adding people to the speaking list because you did not have the numbers at that time. Therefore, you started stacking it up, wasting Senate time when there was other work that could have been done. The non-controversial bills could have been discussed. Because you did not manage it well enough, we still have not got through all of those so-called non-controversial bills. For example, with the adoption bill—though I do not think it is non-controversial—we were willing to debate it at that point because we were trying to help manage the chamber. That is a bad piece of legislation. The other legislation is bad legislation. You know it. You have not got the numbers to deal with it. We will not be supporting the suspension.

Senator XENOPHON (South Australia) (15:29): I will make a very brief contribution. I indicate that I will be supporting the motion for the suspension of standing orders. I think the government—or governments as a general principle—ought to be able to rearrange their business. So I indicate that. Secondly, in relation to the bill in question, I think it is an important bill that is the subject of passionate debate on both sides of the fence. It is important, and I also believe it ought to be debated and dealt with one way or the other.

I will support the government's motion that this bill be dealt with, but I think there ought to be some reasonableness in terms of sitting hours. That is not in the motion, but I think that can be dealt with as the debate evolves. In respect of this being seen to be a gag on any debate, I make it clear that in procedural matters I think there is a clear distinction between the two. There ought not be under any circumstances a gag in terms of the consideration of this bill in the committee stage in terms of any amendments or any consideration of this particular bill.

Senator KIM CARR (Victoria) (15:30): The normal custom and practice in this chamber is for a government to actually go through a methodical process of ensuring the chamber is
aware of the bills the government regards as urgent, as a priority, and to plan for that. This is a
government that I recall recently went through a very widespread public relations exercise
called Operation De-barnacle. We had an extensive media campaign where the government
said it was going to careen the ship of state. The ship of state would be put in the dry-dock,
and then all the barnacles would be scraped away. Of course, what we had was the
government saying that the things they were not able to secure support for in this chamber
would be jettisoned. So we had the Prime Minister's office saying that the medical co-
payment bills would be scrapped. We had the Prime Minister saying that the higher education
bill would be put to the Senate and, if it failed, it would be removed.

But what the government then did was to go through a process of trying to get those bills
by wasting as much time as possible. We had speakers list after speakers list amended by
government senators being added to the list in the vain hope of trying to secure the support of
this chamber. That measure failed. But you cannot then say to this chamber that we need extra
time at five minutes to midnight, to suggest that there is some urgent bill which they should
have considered in a much earlier part of the proceedings of this parliamentary session.

This is a government which its own members recognise is in chaos because of its
arrogance. Take for instance the Western Australian Liberal MP Ken Wyatt, who has
complained of a culture of arrogance inside the Abbott government ministry, which is
reported to have struck a chord right through the Liberal Party party room. Mr Wyatt
explained to The West Australian that, after one young staffer used his mobile phone to text
message throughout a meeting that was being held with backbench members of the
government, Mr Wyatt told the staffer to never come back again. He had a ministerial adviser
telling his wife and backbenchers that they do not matter in Canberra.

This is a situation where the government cannot even organise its own back bench. We
have a situation here where senators who are well known for their closeness to this
government are complaining about the way in which they have been treated. We had Senator
Lazarus drawing to our attention the undue attention that has received from a marauding
minister that had to harass him in their desperate bid to secure support for government
legislation which they knew was not likely to attract the support of the chamber yet
consumed—what is it—eight hours of normal business and about 15 hours of government
business time. They spent it on a bill which went nowhere and which they knew— (Time
expired)

The PRESIDENT: The question is that the motion to suspend standing orders moved by
Senator—

Senator Cameron: Mr President, I rise on a point of order. I am not quite sure what we
are voting on here. I have not got a copy of what is being presented. Could you explain
exactly what is before the chamber, in detail, so that those that do not have something before
them can understand exactly what we are voting on?

The PRESIDENT: I was about to put that question and, as I always do, I explain what the
question is before I put it. The question is—

Senator Cameron: Mr President, I rise on a further point of order. I am not happy with
you explaining it. I would like a copy of what we are voting on.
The PRESIDENT: We never have a copy of a suspension of standing orders motion. Would you please resume your seat. I am going to put the question. The question is that the motion to suspend the standing orders moved by Senator Abetz be agreed to.

A division having been called and the bells being rung—

Senator Conroy: Mr President—

The PRESIDENT: If it is a point of order, Senator Conroy, it can only relate to the division.

Senator Conroy: I am seeking clarification of what will happen after the division, if that is permissible.

The PRESIDENT: What will happen after the division will be determined by the result of the division.

Senator Conroy: I appreciate that, but I want to indicate that I have an amendment to the substantive motion. I am seeking guidance from you about what will be the process if this division is successful.

The PRESIDENT: The next motion has not been moved yet—

Senator Conroy: No, I appreciate that, but I am seeking guidance.

The PRESIDENT: If the division is successful—and really we are talking hypothetically; we have to wait until we count—

Senator Conroy: I am trying to avoid confusion after the vote, so I am seeking your guidance.

The PRESIDENT: Once the motion is moved and is before the chair, you have the right to move an amendment.

Senator Conroy: I have a substantive amendment.

The PRESIDENT: Thank you, Senator Conroy.

The Senate divided. [15:39]

(The President—Senator Parry)

Ayes ......................34
Noes ......................30
Majority .................4

AYES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Heffernan, W
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Cash, MC
Day, R.J.
Fawcett, DJ
Fifield, MP
Lazarus, GP
Madigan, JJ
McGrath, J
Muir, R
O'Sullivan, B
Payne, MA
Ronaldson, M
Thursday, 4 December 2014

AYES
Ruston, A
Seselja, Z
Wang, Z
Ryan, SM
Sinodinos, A
Xenophon, N

NOES
Brown, CL
Cameron, DN
Carr, KJ
Collins, JMA
Conroy, SM
Faulkner, J
Gallacher, AM
Hanson-Young, SC
Lambie, J
Lines, S
Ludlam, S
Ludwig, JW
Lundy, KA
Marshall, GM
McEwen, A (teller)
McLucas, J
Milne, C
Moore, CM
O’Neill, DM
Peris, N
Polley, H
Rhiannon, L
Rice, J
Siewert, R
Sterle, G
Urquhart, AE
Waters, LJ
Whish-Wilson, PS
Wong, P
Wright, PL

PAIRS
Cormann, M
Bullock, J.W.
Johnston, D
Di Natale, R
Macdonald, ID
Bilyk, CL
Scullion, NG
Singh, LM
Smith, D
Ketter, CR
Williams, JR
Dastyari, S

Question agreed to.

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (15:42): I move:

That—

(a) consideration of government business order of the day no. 3 (Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014) be called on immediately and have precedence over all other business till determined;

(b) divisions may take place after 4.30 pm; and

(c) the Senate shall adjourn after it has finally considered the bill listed in paragraph (a), or a motion for the adjournment is moved by a minister, whichever is the earlier.

And I move:

That the question be now put.

The PRESIDENT: I have two senators on their feet. I am going to give the call to Senator Conroy only for the purposes of a point of order or clarification.

Senator Conroy: Mr President, you indicated during the division that I would be able to move an amendment.
The PRESIDENT: Yes.

Senator Conroy: I deliberately sought clarification from you and now I am going to seek to move my amendment given Senator Abetz has sat down.

The PRESIDENT: Senator Conroy, resume your seat and I will explain what has happened. Firstly, I indicated to you during the division in a point of clarification that if there was a question before the chair you could move an amendment. Senator Abetz has not only moved his motion but has also moved a procedural motion, which a minister has the right to do. I cannot anticipate from this position—

Senator Conroy interjecting—

The PRESIDENT: But that is the procedural motion. Those are the standing orders of the Senate. So, in relation to the point of clarification, the minister has the right to do that and now I am obliged under the standing orders to put the question.

Senator Wong: Mr President—

The PRESIDENT: Senator Wong, I will allow a point of clarification.

Senator Wong: Thank you.

A government senator: This looks like a speech.

The PRESIDENT: Order! I will determine what happens.

Senator Wong: Senator Conroy gave a clear indication to the chamber that he wanted to move an amendment. What the crossbench and the government are doing is denying Senator Conroy the right to move an amendment.

The PRESIDENT: No, I am sorry; I will not take any—

Senator Wong: I seek leave—

The PRESIDENT: You cannot seek leave at the moment.

Senator Wong: I can seek leave, Mr President, with respect.

The PRESIDENT: You cannot.

Senator Wong: I seek leave—

The PRESIDENT: No; there is a question before the chair, and I have been indulgent in allowing you and Senator Conroy—

Senator Wong: I am seeking leave to move an amendment.

The PRESIDENT: Senator Conroy, you have no leave; you cannot seek leave. I am putting the question.

Senator Wong: I am Senator Wong, not Senator Conroy.

Senator Conroy: I'm Senator Conroy.

The PRESIDENT: Senator Wong, I am going to put the question.

Senator Conroy interjecting—

The PRESIDENT: Sit down, Senator Conroy.

Senator Wong interjecting—

The PRESIDENT: No, you cannot seek leave.

Senator Wong: You can always seek leave.
The PRESIDENT: There is a question before the chair; you can seek leave immediately after the question has been put. I am obliged to put a procedural question. I am not entertaining any further points of order or clarification.

Opposition senators interjecting—

The PRESIDENT: No, there cannot be a point of order!

Opposition senators interjecting—

The PRESIDENT: Yes, it was, Senator—

Opposition senators interjecting—

The PRESIDENT: Right, I am not taking any further comments, points of order or clarifications. The question is that the motion moved by Senator Abetz, that the question be now put, be agreed to.

The Senate divided. [15:49]

(The President—Senator Parry)

Ayes .......................34
Noes .......................30
Majority.................4

AYES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Heffernan, W
Lazarus, GP
Madigan, JJ
McGrath, J
Muir, R
O’Sullivan, B
Reynolds, L
Ruston, A
Seselja, Z
Wang, Z

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Cash, MC
Day, R.J.
Fawcett, DJ
Fifield, MP
Johnston, D
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Ronaldson, M
Ryan, SM
Sinodinos, A
Xenophon, N

NOES

Brown, CL
Carr, KJ
Conroy, SM
Gallacher, AM
Lambie, J
Ludlam, S
Lundy, KA
McEwen, A (teller)
Milne, C

Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lines, S
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Question agreed to.

The PRESIDENT: The question now is that the motion moved by Senator Abetz, to vary the routine of business for today to consider a bill, be agreed to.

Senator Wong: For clarification, is it possible for Senator Conroy to move his amendment to this motion?

The PRESIDENT: No, because the question was that the question be now put.

Senator Wong: So you are denying the—

Honourable senators interjecting—

The PRESIDENT: Order! Senators, you do not help.

Senator Conroy interjecting—

The PRESIDENT: No, I am dealing with Senator Wong at the moment, Senator Conroy. Senator Wong, I am not denying anything. I am complying with the standing orders of the Senate. That is exactly what I am doing.

Senator Wong: Then I seek leave to move an amendment to the motion.

The PRESIDENT: Senator Wong, you cannot do that in this process. It is a procedural matter we are dealing with. The procedural matter is that we have to deal with this motion straightaway without any other business before the Senate. Leave cannot be sought.

Senator Wong: I am seeking leave to move an amendment to the motion and leave is denied?

The PRESIDENT: No. Senator Wong, you cannot seek leave in the first place, so it cannot be denied. The question is that the motion moved by Senator Abetz, to vary the routine of business for today to consider a bill, be agreed to.

The Senate divided. [15:54]

(The President—Senator Parry)
Thursday, 4 December 2014

SENATE

Noes ......................30
Majority ...............4

AYES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Heffernan, W
Lazarus, GP
Madigan, JJ
McGrath, J
Muir, R
O'Sullivan, B
Reynolds, L
Ruston, A
Seselja, Z
Wang, Z

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Cash, MC
Day, R.J.
Fawcett, DJ
Fifield, MP
Johnston, D
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Ronalson, M
Ryan, SM
Sinodinos, A
Xenophon, N

NOES

Brown, CL
Carr, KJ
Conroy, SM
Gallacher, AM
Lambie, J
Ludlam, S
Lundy, KA
McEwen, A (teller)
Milne, C
O'Neil, DM
Polley, H
Rice, J
Sterle, G
Waters, LJ
Wong, P

Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lines, S
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Peris, N
Rhiannon, L
Siewert, R
Urquhart, AE
Whish-Wilson, PS
Wright, PL

PAIRS

Cormann, M
Macdonald, ID
Payne, MA
Scullion, NG
Smith, D
Williams, JR

Ketter, CR
Bilyk, CL
Di Natale, R
Singh, LM
Bullock, J.W.
Dastyari, S

Question agreed to.
BILLS

Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014

Second Reading

Debate resumed on the motion:
That this bill be now read a second time.

Senator Abetz: Mr President, I seek leave to make a brief statement.

Leave not granted.

The PRESIDENT: The question is that the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill be agreed to. Those of that opinion say 'Aye'.

Government senators: Aye!

The PRESIDENT: Those against say 'No'.

Government senators: The ayes have it!

Senator Wong: Oh, come on.

Senator Conroy: Don't be ridiculous. There's a bit of confusion in the chamber. Can we clarify what is happening?

The PRESIDENT: Can I have some order, please?

Senator Kim Carr: I haven't seen any of this!

A government senator: Don't abuse the clerk, Senator Carr!

The PRESIDENT: Order!

Senator Kim Carr: What's that? What did you say?

The PRESIDENT: Senator Carr, resume your seat. Senator Conroy, resume your seat.

Senator Conroy: Ask him to withdraw that.

Senator Kim Carr: That ignorant fool—

The PRESIDENT: Excuse me! If anything unparliamentary was said, which I did not hear, but if anything was—

Senator Kim Carr: Yes, it was!

The PRESIDENT: Order! Can we just have some calm.

Senator Jacinta Collins: Senator Brandis should withdraw.

The PRESIDENT: Senator Brandis, I did not hear any comment. I will leave it up to you, if you think you need to withdraw any comment.

Senator Kim Carr: Mr President, I demand that it be withdrawn!

The PRESIDENT: Senator Carr!

Senator Conroy: He is a coward!

The PRESIDENT: Senator Conroy! Everyone is getting tense. I want a bit of calm. Senator Carr, were you seeking the call?
Senator Kim Carr: Yes, I was, Mr President. I was seeking the call because Senator Brandis made a deliberate slur on me and ought withdraw it. He has accused me of abusing the Clerk, and it is totally false. You should withdraw it, you coward! You gutless wonder! You should withdraw!

The PRESIDENT: Senator Carr!

Senator Conroy: We've now identified what was said. Ask him to withdraw.

The PRESIDENT: Senator Carr, I asked Senator Brandis if he thought he needed to withdraw.

Senator Conroy: He said he did not know what he said.

The PRESIDENT: I did not hear—and I can tell you the reason I did not hear. It was because of the number senators standing around the Clerk's table at the time. Senator Brandis, you will need to take your seat if you want to address the chair. I will allow Senator Brandis to seek a point of order or to make a statement.

Senator Brandis: Mr President, I observed Senator Carr to be rounding on the clerk and abusing the clerk.

Opposition senators interjecting—

The PRESIDENT: Order! I want order before anything will be determined. Senator Brandis, I did not hear what you have said. You have indicated what you have said. I think you were reflecting on a senator and Senator Brandis, could I say in the state of the chamber, as we are the moment, it would be very helpful if you did withdraw the comment.

Senator Brandis: If it helps you, Mr President, I will.

The PRESIDENT: Thank you, Senator Brandis. Senator Carr, in the same spirit, I think you should withdraw your comment about Senator Brandis and what you called him.

Senator Kim Carr: I withdraw.

The PRESIDENT: Thank you. I appreciate that from both senators.

Senator Kim Carr: Mr President, I am now seeking the call on another matter.

The PRESIDENT: Senator Carr.

Senator KIM CARR (Victoria) (16:00): Mr President, we have had the most irregular of procedures here where a bill has been brought on, no speakers' list has been distributed—I have not seen it. I have responsibility for the coverage of this matter. I understood there were senators in continuation and you are seeking to put the question. I think we are entitled to know what stage this bill is at, given that the government has brought this matter on through some shady deal with the crossbenchers and without distribution of the speakers' list or proposed amendments.

The PRESIDENT: Thank you.

Government senators interjecting—

The PRESIDENT: Order! Senator Fifield! Senator Macdonald, I will respond to this first. I am not taking any further points of order at the moment. Senator Carr, I will explain what happened. There was a lot of confusion, I am sure, because no-one on this side stood. I looked across all chamber—
An honourable senator interjecting—

The PRESIDENT: Order! The clerk had called the bill.

Senator Wong interjecting—

The PRESIDENT: No, Senator Wong, I will explain what has happened before I take any further commentary.

Senator Wong interjecting—

The PRESIDENT: I am addressing the chamber, Senator Wong.

Senator Wong interjecting—

The PRESIDENT: I am addressing the chamber, Senator Wong. You will resume your seat!

Senator Ian Macdonald: Throw her out!

The PRESIDENT: And I don't need assistance from you, Senator Macdonald. What has happened, Senator Carr, was that I looked across and no-one, not one senator, rose to their feet until Senator Abetz did, and he put the bill. Then I called it. Now, because there was confusion on your part on that side and no-one was prepared, I am very happy for the bill to be called on and you seek the call in the second reading debate. I am very happy for that to happen, but I want senators to clearly understand that it is also your responsibility to listen to the clerk when the clerk calls upon a bill, to actually show some respect to the chamber, to actually listen to the proceedings, follow the proceedings and then it is up to you to seek the call. Senator Carr, are you ready to take the call? Senator Carr!

Government senators: Take the call!

The PRESIDENT: Order on my right! Senator Siewert, do you have a point of order?

Senator Siewert: No. I want to make a point about what happened, Mr President.

The PRESIDENT: I think I have just done that, Senator Siewert.

Senator Siewert: No, you haven't, with all due respect. Senator Canavan is in continuance on this bill. We were expecting the senator who is in continuance on this bill to take the call.

The PRESIDENT: Thank you for that clarification, Senator Siewert.

Senator Siewert: There is a list and we also expect that for the person who is going to be in continuance you give them the respect to get to their place to stand up to speak.

The PRESIDENT: Thank you, Senator Siewert. I think I clearly explained that no-one sought the call. Not one senator sought the call until Senator Abetz, after a fairly lengthy period, sought the call. We have now resolved that. Senator Canavan did not seek the call. I am giving the call to Senator Carr, so I think the matter is resolved and I will not take any more points of order on the matter. Senator Carr, you have the call in the second reading debate.

Senator KIM CARR (Victoria) (16:03): Thank you, Mr President. The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 is perhaps the most significant piece of legislation to be presented to this parliament since the election of the Abbott government in regard to immigration and asylum seekers. The bill has many parts to it and is quite complex. It contains a legislative response to judicial actions. This bill seeks in part to override in part the High Court. The bill contains
arrangements which might be regarded as quite unusual, to say the least, whereby the parliament is asked to intervene in a matter that is currently before the High Court. The minister describes this bill as a legislative recognition of the government policies. In fact, it is much more than that; it is an attempt by this government to override the judicial processes which have been established in this country.

We have a situation where the government is seeking in a somewhat shoddy manner to undermine a case which is currently concerning the CPSF versus the Minister for Immigration and Border Protection. What the minister is actually doing is attempting to scuttle a case before the court. If the legislation is passed, it would render the precedent value of that case redundant. It is a case which is fundamentally important to the application of the Maritime Powers Act. We know that the High Court in this country is extremely important and it ought not be treated in the manner which this bill would have us do. It is inappropriate to be able to go down this path whereby a case which is currently before the High Court, where the High Court has not made a decision—and the High Court is able to make its decision based on the evidence but it should not have the government intervene in such a manner to disrupt the proceedings that are currently before it.

The government says that this is all about saving lives and it makes an emotive appeal to the suggestion that it is the only way in which these matters can be resolved. We know that the impact of policy relates to a whole lot of issues in regard to people currently in Indonesia, people who are arriving by boats. We want to make sure that there is an appropriate response to those actions. The government is claiming that this bill is really all about legislating for a turn back policy, when we have seen quite extraordinary circumstances in regard to Indonesia.

The minister's claim that the bill is recognition of the turn back policy is quite deceptive, given that the real interest here is whether or not the government is able to intervene in a legal process currently before the High Court. Labor believes that that action is grossly inappropriate.

The bill seeks, at the same time, to resurrect TPV policy. It creates a new class of temporary 'safe haven enterprise visas'. Labor's position on TPVs is well known. We oppose them because they place recipients in limbo. There is no certainty about the way in which they will be treated, about their future within this country. Our view is that people who have been found to be entitled to Australia's protection—that is, they have genuine refugee status—should not be treated in the manner that this bill proposes.

What we are seeing here is the government trying to undermine the High Court, claiming the political imperative in terms of legitimising its policy, and taking away fundamental rights that people are entitled to have. The vast majority of people will be here, under various arrangements, without any opportunity to secure any future advancement in this country. We saw during the Howard government that TPVs were effectively abandoned because of the failure of such an approach by the government.

The bill purports to introduce this new visa class, the safe haven enterprise visa, ostensibly in fulfilment of the undertakings the government made to Mr Palmer. I say 'ostensibly' because the bill has not met those requirements. The explanatory memorandum states that the conditions for the operation of these so-called SHEVs will be laid down by regulation in the new year. The bill therefore holds out, I suppose, some hope that there will be permanency in
the future for people, but that is clearly not what the minister is saying publicly. The opposition believes that there ought to be an appropriate, proper pathway to permanency for those who have been resolved to be genuine refugees. You will not find that in these measures that are before the parliament.

The measures in this bill would provide a temporary visa, valid for five years, and applicants for this visa would need to demonstrate their intent to work or study in regional Australia. If they do not work or study in regional Australia for at least 3½ years of the visa period, they would become eligible, you would think, for further action from the government. Labor's amendments propose that there is a right to work and extend bridging visas to asylum seekers while their claim for refugee status is being assessed.

We are concerned that the bill seeks to change the refugee assessment process in a number of ways. The bill seeks to speed up the processing of assessment claims, but it is not clear how this fast-tracking arrangement will work, because the bill depends on various regulations, details of which, of course, have not been provided. The second change is the replacement of the Refugee Review Tribunal by an Immigration Assessment Authority, with a limitation on the existing right of review for adverse decisions. This is a change which is a matter of grave concern. This government has undermined the whole process of legitimate, legal processing of refugee claims. Labor cannot support the limiting of applicants' rights to review the provisions of application processing. We cannot support the proposed fast-tracking of applications, which does not offer any way of reducing the duration of the process but would go a long way towards reducing the rights of people to actually get a fair outcome.

There is also the issue of the refugee convention within this bill. The bill seeks to remove any reference in the act to refugees. You cannot possibly ask the Labor Party to support such a proposal. The government argues that the bill in fact codifies the obligations under the existing convention so that the decisions of Australian courts will determine Australia's laws in this area, rather than the decisions of international courts. There is no good reason for changes of this type, and in many cases they are unlikely even to achieve the government's objectives. The minister's second reading speech argued that Australia remains a party to the refugee convention and that this is given legislative effect by the Migration Act. But our courts will inevitably refer to decisions by courts in other common-law countries when determining how obligations of this kind should be interpreted.

There is a further problem raised by attempts to codify the law. The bill inserts requirements in the act that, if a person is able to alter their behaviour reasonably, they should not be able to claim Australian protection. Setting this down in fixed, statutory form raises questions that would not be easy to resolve. We simply do not have clear administrative practice in regard to, for example, the protection of people in regard to their sexual preference. Would protection be denied on the basis that the alteration of that behaviour would result in a person not being persecuted in his or her country of origin? The fact remains that, in these measures, we would have different legal standards being applied to certain classes of people in this country. It may not be the intention of the bill, but it is simply impossible to see how you could have this bill interpreted in any other way.

The bill also contains a provision for the removal of the 90-day rule for the hearing of various claims by refugees, which is a very important accountability measure and a mechanism by which public servants have to respond to applications. At the time of last year's
federal election, about half the protection applications were decided within the prescribed 90
days. But according to the most recent report about the Abbott government's behaviour here,
only 14 per cent of decisions were being made within 90 days. This is a 90-day rule which
this government has already sought to abrogate by administrative action. We know how
important that provision is. Labor will defend that provision within the second reading
components of this bill.

In essence this bill rewrites, in a far-reaching way, administrative law in regard to
immigration. It seeks to set aside due legal process in regard to court actions currently
underway. It seeks to undermine the rights of many people who are in this country. This is a
further step in the government's downward spiral in regard to the proper treatment of
refugees.

The government will say that if we do not support these measures then we will not be able
to remove children from detention. Frankly, this is a proposition which says that this chamber
should respond to a government that is now holding children up as hostages. If the minister
were interested in removing children from various offshore facilities, he could do so tonight.
He does not need this legislation to achieve that outcome. To suggest that we should respond
to quite unfair measures in the hope that we can get children out of detention strikes me as the
most crass form of blackmail. Holding children to ransom in that way is something that any
government should regard as reprehensible. This is a government that does not blush at such a
proposition. Frankly, the idea that we vote for this and we get additional humanitarian
assistance places strikes me as in itself quite obscene. If the government were concerned to do
these things, it could do them immediately. People do not need to be treated as bargaining
chips in the government's desperate bid to further its political objectives of winding up public
hostility towards people who are legitimate, bona fide refugees.

Senator LINES (Western Australia) (16:16): It is with great sadness that I follow Senator
Carr, particularly with respect to some of the final words he spoke into the Hansard today—
that is, that the government is holding children to ransom in order to get agreement on the
Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy
Caseload) Bill 2014. I agree wholeheartedly with Senator Carr's comments.

In looking at the bill before us today and going by the media reports—because that is all
we have to go on—seemingly, what some in this place have signed up for is no guarantee. If
the media reports are correct, the offer to increase the humanitarian intake, which is one of the
propositions we believe has been put forward, is a conditional one. It seems that those
senators in this place that have signed up to that deal do not even have a firm undertaking—
just a vague commitment that if others are processed the government might find a way to
increase the humanitarian intake.

Senator Carr is completely right when he says that the government could act on children in
detention right now, and it could. Many government senators and members have had a group
called Love Makes a Way come and sit in their offices and talk to them. This is a religious
group that has said over and over again that what the Abbott government is doing to children
in detention is wrong. Those children could be taken out of detention today, yesterday, a
month ago—but, no, we see not an ounce of compassion from the Abbott government.
Equally, people could be processed. What we have seen over and over again from this
government is the complete demonisation of refugees and asylum seekers in our country. We see nothing but demonisation of those who seek our protection in this country.

The bill before us today is really about a much bigger issue, one that the Abbott government is completely silent on. All we see from the Abbott government is their mean spirit and their small-mindedness, not just in the area of refugees and asylum seekers but right across all areas of government. We never hear the Abbott government talk about refugees who are displaced from their home country. They never talk about the persecution of refugees and they never acknowledge that the persecution of refugees is a worldwide issue. We never hear the Abbott government talking about that. That is really where the debate should start. It should look at this global issue facing all countries in the world. But, no, the Abbott government, because of their mean spirit, because of their demonisation, want to start by looking at those who try to enter this country. It is as if they were just beamed in, and that is where they start from.

What I and others want to do is shine a light on the Abbott government's absolute unwillingness to take that global perspective on refugees. Instead, over and over again, it seeks to make political capital. Over the last couple of days it has sunk to its lowest level by making political capital out of children. It is making political capital out of those who are genuinely seeking asylum. The Abbott government has shown no compassion on the issue of refugees. Instead it demonises refugees and asylum seekers at every opportunity.

If we think back a few months ago to the death of Reza Barati, the minister was the first to point the finger; Reza's death was somehow the fault of refugees. Those were the first words he uttered. Somehow they were at fault because they were rioting. All the questions from government backbenchers to ministers, whether in the other place or in the Senate, are about stopping the boats. They are not about the world's global refugee issue. They are not about the world's global asylum issue. They are simply about stopping the boats and calling asylum seekers 'illegal maritime arrivals'—dehumanising them. There has not been one question by a government backbencher about children in detention showing any skerrick of humanity; not one question about the global refugee solution—just this continued hardline demonisation of refugees and those seeking asylum.

The bill before us today seeks to make it easier for the government to deny its protection obligations—and it does have obligations to certain people. There are a lot of myths—and I heard them in this chamber yesterday at the start of this debate. The facts are: Australia does not host a large number of refugees. By comparison, Pakistan, a country that does not have the wealth that Australia has, hosts over 1.6 million refugees. Iran hosts almost 900,000 refugees. Chad has almost half a million. And Australia? Just 13,750 refugees are granted permanency residency by Australia each year—a tiny, tiny drop in the ocean. Per $1 billion of GDP, we take in less than 35 refugees. By comparison, Pakistan takes 2,811. I would say that we can afford it.

When we look at refugees hosted by countries across the world, Pakistan is the No. 1 currently, and that stands to reason, because they are in a conflict zone. But to suggest there is some kind of queue or orderly processing—of course there is not. It is another myth, another way, for the Abbott government to dehumanise refugees and asylum seekers. On that refugee hosting list, Australia is at No. 49. Countries ahead of us include China, Ethiopia, United
States, Jordan, Lebanon and Iran, and on and on it goes. We are not a fair country, a generous country, when it comes to refugees and asylum seekers.

This bill today seeks to curtail rights and endorse in a legal framework the sorts of actions we have seen the Abbott government take on the high seas such as turning boats around or separating out a boat and its occupants—all of this sneaky stuff to legitimise what they have been doing in secret.

When we look at asylum seeker applications, where does Australia sit? It is No. 30. At the top of the list is Lebanon then Jordan, Turkey, Iraq, Egypt, Germany, France, South Africa, Sweden and the United States—all in the top 10. And where are we? Right down the list at No. 30.

There is no need for this harsh, cruel legislation, because the reality is: we are not swamped by refugee applications. Contrary to what the Abbott government would have us believe, the truth is: we are not swamped. Compared to other refugee-hosting countries, Australia actually receives a very small number of asylum seeker applications, with about 16,000 people seeking asylum per year in Australia. By contrast, the United States receives 68,000 applications a year; and Germany many more—almost double that; almost three-quarters of a million. Australia has an obligation to help with the global refugee situation, and our responsibilities do not start and end with boats—they clearly do not.

The legislation before us today will seek to further demonise those genuine refugees seeking asylum in our country and curtail their rights. It is like blackmail. This commitment that we will take children out of detention by Christmas is a furphy, because the government has been so slow at processing applications. We would have no guarantee of that anyway, so I do not know what senators in this place think they would be signing up to when they sign on the bottom line that somehow children will be magically out of detention by Christmas. Are we going to see yet a new form of visa, a Christmas visa, issued to those children in detention?

We already know that it is taking the Abbott government months and months and months to process applications. Why would any senator in this place think that somehow magically the government is going to process those children in a matter of weeks? Who in their right mind would believe that, particularly from a government who has constantly broken promise after promise?

How could anyone be hoodwinked about the increased numbers for humanitarian reasons when it is conditional upon the government to process what it claims is some kind of legacy? It has been the government for more than a year, and all we have seen is the processing claims almost stop in this country. It is well and truly below any kind of rate that we have seen in the past. Why would we even think that our humanitarian intake would be increased when it is a conditional commitment on the basis that the Abbott government processes 30,000 other applications? Whoever did the negotiation is a very poor negotiator to think we could get to that number and to think that we could have children out of detention by Christmas. In any event, it is such a low blow. It is almost the worst thing the Abbott government has done, to hold children up as some kind of bargaining chip. We do process very few applications in relation to other countries.
We know that many refugees return home, but a set number of years in Australia cannot guarantee people a durable solution. We have this new visa, the SHEV visa, and there is some question about what that might lead to because it has not been properly thought through. What does it actually mean? And here we are today being held in this place until we pass this bill, with very limited information around it.

Labor's views have been very clear on temporary protection visas: we believe that they are damaging to refugees and that they are inhumane and discriminatory. We know that during the Howard years refugees on temporary protection visas were unable to apply for family reunion visas. They are not allowed to work—although we understand the minister is saying he will give work rights as part of the deal, but let's see the detail of that. What assistance will they be given to resettle in Australia? They certainly will not be given any kind of stability on a temporary protection visa—no permanence. And there is the psychological damage that refugees fleeing persecution have, because that is the test. When people are granted asylum it is on the basis that they have been persecuted. That is what we are talking about here: people—men, women and children—who cannot remain in their home countries, who have left those countries because they have been persecuted. Let us not forget that.

Let us also not forget that refugees are a global problem, and Australia takes a very tiny part of that. We have seen that through this government cutting back foreign aid, and earlier this week we had the threat that foreign aid would be cut even further. We help to resolve conflicts in other countries by doing a whole range of things. Sometimes, yes, we have to send troops in, but we also give aid by way of talking to people and educating people about democracy. We give aid that helps with health, aid that helps to educate children and to provide basic water security and other basic needs that countries have. But what we have seen under the Abbott government is a retraction of all of that. We are not only abrogating our responsibility in terms of the global refugee program; we are making matters worse by withdrawing and reducing foreign aid.

What kind of country are we becoming? We are becoming a small minded, mean spirited country. That is what we have seen this government do across a whole range of areas. And if this bill gets up today it will treat refugees and those seeking asylum in our country in a very harsh way—much harsher than what is required. But obviously the Abbott government still thinks it is on a winning vote, still thinks that demonising refugees is going to win it votes. They are wrong. Australians by and large were quite disgusted and horrified over the death of Reza Berati. And more and more Australians are horrified about the numbers of children we have in detention, and they are starting to ask questions. When you have conservative religious leaders in this country risking arrest and prosecution themselves—which is what Love Makes a Way do—something is wrong. These are not radical, left-wing churches. These are ordinary, everyday conservative churches and leaders. The leaders of those churches are saying to the Abbott government, 'You've overstepped the mark.' I know how passionate the Love Makes a Way group are because they have been in my office. I invited them into my office. They do not need to stage a sit-in in my office and get arrested. I invited them in, we had afternoon tea and we sat down and discussed the issues. But I know that my friends at Love Makes a Way would be quite disgusted about this blackmailing. As desperate as they are to have children out of detention, they certainly would not sign up to this sort of deal.
They would not, because they understand that what we need is a humane approach to asylum seekers and those who flee their countries because of persecution.

This bill is completely unnecessary. All it does is to try to legitimise those secret matters that have been occurring out in the oceans between Australia and Indonesia that the Australian public do not know anything about. What we do know is that this bill seeks to legitimise those actions. It is a harsh treatment of those fleeing persecution. To use children as political pawns in this process is an absolute disgrace and the Abbott government will be held to account for that.

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (16:36): First of all I would like to thank the Senate for providing the Senate with the opportunity to consider this bill. It is a bill that really does need to be considered by the Senate this week, before the Senate rises. I thank those who supported the Senate decision to allow that to occur, particularly in a week where the Labor Party have conspired with the Greens to minimise the opportunity that the senators have had to consider government business this week before we go away. There are a number of other bills which were also time dependent and which the Senate has not had the opportunity to consider because of the games that have been played in this place this week.

On behalf of the government I can indicate that, if this bill is not likely to be finalised by 11 pm tonight, the government will move to suspend the Senate until 9 am tomorrow.

Senator RICE (Victoria) (16:37): I rise today to speak about the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. It is a very long name and it is a very complicated technical name, but the thing that I want to focus on is that this bill is about people. It is about real people, it is about people's lives, it is about people who are suffering and it is about people who Australians care about and who Australians want to see protected.

I think about the refugees that this is going to affect and whom I have met over the last five months whilst I have been a senator, and the many others that I have met prior to that. In particular, I think about a lot of the refugees I met as I was on my journey to Canberra. I travelled to Canberra through regional Victoria on a listening tour, and along the way, at every stop, I managed to meet with members of the community. The plight and the fate of refugees, those who were living in the community, those who were languishing on Christmas Island and those who were locked up in detention on Nauru and Manus Island was something that people were passionate about and that they wanted to talk to me about.

My first stop on my ride out of Melbourne was at Bacchus Marsh. I met with some Burmese refugees who had been accepted as permanent residents. They were very fortunate compared to the more recent arrivals. They were working now as part of a social enterprise and were contributing to the country. They were growing vegetables. They were doing that with the support of the local church community and a local person who had donated land on the fertile river flats of the Werribee River at Bacchus Marsh to help this group of refugees, who are largely Burmese but who are also from other parts of the country. They were showing that Australians do have a heart.

The refugees were contributing to part of the community. They really want to establish their roots there. I think the fact that they were growing vegetables on the bank of the river
showed that here they were establishing their roots, they had their kids going to local schools and they were on their way to becoming productive and happy Australians like the rest of us. In Australia, as a culture and as a country, we have people from all over the world. Our culture is based on contributions from people from all over the world, so many of them refugees. Our national anthem says, ‘We’ve boundless plains to share’—accepting people and knowing that the can contribute to our diverse multicultural country. This is the sort of approach and the sort of culture that is being so compromised and so attacked by this cruel and heartless legislation.

From Bacchus Marsh, I moved on to Ballarat. I was very fortunate to be in Ballarat at the launch of World Refugee Week, where I met with refugees from Sri Lanka and from Sierra Leone. I met with a young man from Africa who was now the Young Citizen of the Year in Ballarat. He had arrived from war-torn Africa and was now able to contribute to Australia.

The Sri Lankan refugees were in a more difficult situation. I met with a number of them who were on bridging visas at that stage. They wanted to talk to me about how we could help them, because all they wanted to do was to settle down and to help—to be part of Australia and to contribute to a vibrant, prosperous and healthy Australia, and to be recognised for the contributions that they were able to make. They told me their stories, about what they have escaped from. That is the really sobering thing for me and for us here, who have the opportunity to be living good lives. The refugees that we are talking about are people who, through no fault of the own, are suffering. They have suffered torture, they have seen the death and the murder, in many instances, of friends, family and people around them. They have taken any opportunity, as you and I would, to flee for their lives. If we put ourselves in the shoes of these people and think about the choices—the choice of being shot or of taking any opportunity to escape, or taking any opportunity to save your children to give your children the opportunity of a good life—we would take that opportunity. That is the choice that people have had, regardless of how they have tried to come to Australia.

I moved on in my journey to Canberra, from Ballarat to Shepparton. In Shepparton I met a group of approximately 60 Hazara men. I had said that I was interested in meeting with some of the local Hazara community living in regional areas and I offered to meet with them. I expected that we would have around perhaps a dozen men and women who might like to meet with me. I arrived at the community hall where the meeting had been arranged and there were 60 of Hazara men wanting to talk to me, to tell me their stories and to see whether I could help them. Most of these men were on bridging visas. They did not have the opportunity to work or study, and they did not have the opportunity to bring their families out who they knew were still in very dire circumstances in their home countries of Iraq, Iran and Afghanistan.

All they wanted was the opportunity to contribute; all they wanted was the opportunity to settle down, to work, to raise their families and to know that they have the certainty of being able to be Australian residents permanently. Like many refugees before them, the expectation would be that if things calm down in Afghanistan, as we all hope that one day they may, they would be able to move backwards and forwards but still be able to come back to Australia. They would be able to see themselves as global citizens moving backwards and forwards, as is the case in our modern society. But, no, the circumstances they were in and the circumstances they will continue to be in, even if they are offered one of these temporary
protection visas, are such that they will not have that ability. They will not have the rights they deserve and that we should be able to offer people because of what they can contribute to Australia, which can offer them safety and refuge.

Finally, the next group of refugees that I met was when I was in Albury-Wodonga. There were some members of the African community there but I also met with the Albury-Wodonga community group that was working with them—welcoming them to their community—and supporting them as being part of the community. Meeting that group of people really gave me heart, because here—like all over Australia—there were people in rural Australia who were reaching out. They recognise the contributions that refugees from all over the world are able to make to their community and they were welcoming them into their community. They wanted them to have the same rights and opportunities as other Australians. This very cruel bill is not going to give people those opportunities.

If passed, this bill is going to widen the immigration minister's powers. It is going to marginalise international law and the rules of natural justice, and it is going to severely restrict the ability of Australian courts to scrutinise the government's treatment of asylum seekers. The title of the bill—I referred at the beginning to the complex legalese—refers to the 'legacy caseload'. That is the 30,000 people, including the Hazara men I met in Shepparton, who sought Australia's protection between August 2012 and December 2013, who have suffered the physical and mental anguish of mandatory detention, family separation, absolute uncertainty about their legal status and the constant risk of removal to Nauru and Manus Island. Again, referring to the people I have met and the people I have known who are in this circumstance, I can attest to the mental anguish, the depression that they feel because they just do not have the certainty of knowing whether they are going to be able to stay, that they feel because they are unable to sleep at night, that they feel because they do not know what their future holds. The whole concept of only giving people temporary protection feeds into that. We as a country are better than that. We can be giving these people permanent protection. It is good for refugees and is good for us as Australians.

To quote the New South Wales Bar Association, the bill:

... goes far beyond what is necessary to deal with any "legacy caseload" the. It involves serious departures from Australia’s international obligations, both as to human rights and more generally. To the extent that the Bill does deal with the "legacy caseload", it does so in a way which is procedurally unfair and unjust.

The process for us to consider this legislation today is so inappropriate, given the severity of the legislation. The significance of the changes proposed in this bill should not be understated. Along with the other bills before parliament, this bill constitutes the single biggest change to Australia's asylum seeker policy ever made and it is being rammed through here on this last day of sitting on the basis of a blackmail deal which says 'if you support this bill 500 children will be able to leave Christmas Island.' This is not good process. It is not good law-making. It is not the sort of process that I thought I would be part of when I joined the Senate.

The bill's six schedules will fundamentally change the way that protection claims are assessed. The bill changes the criteria by which a person is found to be owed protection and the nature of the protection provided by Australia to those in genuine need. It also changes the legal status of those seeking our protection and empowers a range of government agencies to restrict or remove their liberty. In each schedule, the bill removes the rare existing features of
the Migration Act that operate to protect the rights and interests of asylum seekers. They have not got many rights but this bill removes the rights they have in favour of a system that departs from international law and the principles of the rule of law. One of the very sad things about this is that, on Australia's contribution as a global citizen and living up to international law, we are departing from that and sending ourselves down a very sorry slope. Australia is better than that and most Australians consider that that is not the direction that they want to see Australia taking. This bill will have a really ruthless impact on the lives, health and wellbeing of the 30,000 men, women and children who will be subject to it.

Other Greens speakers, including Senator Hanson-Young, have spoken of the brutal changes being proposed in schedule 6, which, chillingly, are going to classify children born in Australia to asylum seeker parents by the deliberately depersonalising and Orwellian term 'unauthorised maritime arrivals' and leave these babies, these children, stateless. These are children like yours and like mine. The beginning of these children's life is going to give them such handicaps to overcome, when we could be offering these children, these babies, a good life here in Australia. They could be kids like the kids my children went to school with, from all over the world, who we know we are offering security, support and the ability to contribute to Australian society. Once these stateless babies, these unauthorised maritime arrivals, have been declared as such they are required to be detained and transferred to Nauru. We have seen the conditions on Nauru. We have seen the cruel treatment of asylum seekers on Nauru. This government is going to continue to hold children in those cruel, heartless circumstances that we know are going to have a long-term impact on and long-term implications for the mental health of the children and the adults who are living there.

This bill also, astoundingly, removes references to the refugees convention from the Migration Act and replaces them with the government's own interpretation of the convention. These changes allow Australia to turn its back on the document that 145 nations have signed up to as a legal framework for the international protection of refugees. The measures in this bill have been condemned by the United Nations High Commissioner for Refugees and the Parliamentary Joint Committee on Human Rights as being contrary to international law. They allow the minister to decide the definition of a 'refugee', and there will be no review of that allowed. This is not good law. This go-it-alone approach has implications for any attempt Australia might make in future to engage the countries of our region in cooperating to address issues around processing and resettling asylum seekers. How can we possibly persuade other countries to fulfil their international obligations when our own actions show that we are prepared to manipulate and undermine an important international convention? Our hypocrisy will be seen for what it is.

As I have already discussed, the bill proposes to introduce temporary protection visas and the safe haven enterprise visas. These visas only last for three or four years. They limit family reunion and require people found to be genuine refugees—people who arrive genuinely seeking protection because of persecution—to continually establish their internationally recognised right to protection just because of the way they entered Australia. As Save the Children has explained, TPVs will mean people fleeing persecution are left in limbo—forced to prove and re-prove that they are refugees. The emotional and mental cost of such uncertainty is enormous and well documented. Again, it does not have to be this way. It is a choice of this parliament, if this bill ends up being supported, to make it that way. The
reintroduction of these visas is being pursued in the face of a significant body of medical evidence which shows the detrimental effects that TPVs have on people's mental health and in blatant disregard of the actual facts. They are hateful, punitive things.

The policy settings that existed the last time that TPVs were introduced have fundamentally changed. None of the deterrence based arguments apply anymore. We do not need temporary protection visas. This is because TPVs cannot possibly be seen as a deterrent to the 30,000 asylum seekers already in Australia, whose only other options are to return to a place of harm or face indefinite detention. Nor can TPVs be considered a deterrent to any future asylum seekers arriving by boat, because, if they are intercepted, they must be removed to Nauru or Manus Island, and will never be offered a TPV.

This bill also removes fundamental procedural rights to safeguard the integrity of what can be a life-or-death decision about a person's need for protection. It does this by introducing a new fast-track procedure and by establishing the Immigration Assessment Authority to deal with the claims of asylum seekers who have arrived by sea in Australia without visas on or after 13 August 2012. This fast-track process only gives asylum seekers one go at setting out the evidence needed to substantiate their protection claim to an immigration official. It does not provide them with any access to independent advice or support. It flies in the face of what is recognised as good procedural and good legal practice. A woman fleeing politically motivated sexual violence, for example, will be required to assemble evidence to substantiate her claim without any expert help or support. And she will only have limited time to do this. We are better than this. This is not the rule of law that we should have in an advanced, caring country like Australia.

To make things worse, under the fast-track process applicants for protection visas will no longer be entitled to have the merits of their claims reviewed by the Refugee Review Tribunal. In some cases, but not all, they may be able to have a negative decision fast-tracked by the Immigration Assessment Authority, but that review will not involve a hearing where the applicant can set out his or her claim for protection. The decision will have to be made purely on the papers; the applicant will not be interviewed or have the opportunity to comment on an application. The applicant will not be allowed to provide new information or evidence, except where exceptional circumstances exist. This is extraordinarily bad. It is undermining the whole nature of what it means to be a caring country and a caring Australia that has international obligations. It is not consistent with the obligations which, when we signed up to the refugee convention all those years ago, we said we were going to comply with. It is not the Australia that I want to live in. I know it is not the Australia that thousands and thousands of people who have spoken to us want to live in. It is something that really needs to be rejected. (Time expired)

(Quorum formed)

Senator GALLACHER (South Australia) (16:59): I rise to make a contribution on the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. I think it is really important to note at the outset that Australia has an enviable reputation in respect of migration matters. We have accepted thousands of refugees over the history of our great country. The fact that migration policy is so political now is something that I personally deeply regret.
I go to the detail of this bill before us. I think it is very pertinent to go through and place on the record exactly what is before the Senate. Schedule 1 relates to turnbacks and addresses issues that have been raised in the current High Court case CPCF versus the Minister for Immigration and Border Protection and another, relating to the 157 asylum seekers intercepted on 27 June 2014. Most of the provisions relate to the operation of sections 69 and 72 of the Maritime Powers Act 2013. These sections relate to the detention of a vessel by a maritime officer and the taking of a vessel—section 69—and the people on it—section 72—to a destination. This makes clear that the powers exist where the people and/or the vessel is being taken away from Australia. It also makes clear that the powers relate separately to the vessel and the people on board, thus covering the circumstance where persons are removed from the vessel.

I can tell you I had the privilege of leading a delegation to ASEAN. In that delegation we went to Indonesia. It was very clear through the interaction with members of the Indonesian parliament that there was concern about turning vehicles back. They were raised in discussions with our delegation. It was also very clear that the new President of Indonesia, Joko Widodo, has also indicated a very keen interest in our policies in this respect. I am sure that all Australian governments want good relations with Indonesia and I am sure that we need to deal in a very sensitive and proper way. This legislation is very clear about what it is trying to do, but I thought that I would put that on the record.

This bill explicitly gives the power to the minister to give specific and general directions about the exercise of powers under subsections 69 and 71—which can include matters on board an Australian vessel—and subsection 72 of the Maritime Powers Act. This overcomes concern that a commanding officer's decisions are invalid by the virtue of their discretion having been fettered by the dictation of a minister. These are significant issues which really do need to be on the public record.

With regard to maritime powers on the high seas this bill ensures that the full suite of maritime powers under the Maritime Powers Act can be exercised between Australia and another country provided the minister has authorised this use and there is continuity with a detention which has occurred within Australia's contiguous zone. It ensures the provisions in the Maritime Powers Act will apply continuously from where a vessel is apprehended in Australia's contiguous zone to wherever the final destination is.

Natural justice is not to apply to certain aspects of the Maritime Powers Act. The amendments make it clear that natural justice does not apply to the detention and movement powers in the Maritime Powers Act. According to the explanatory memorandum for this bill, the original explanatory memorandum to the Maritime Powers Act acknowledges the unique circumstances in a maritime environment render the provision of natural justice in most circumstances impracticable. This seeks to give effect to the original intent of the Maritime Powers Act.

It separates Australian domestic law from international obligations. It ensures that decisions of Australian maritime officers cannot be invalidated because of a failure to take into account international law or laws of another country. Maritime officers' decisions will only be judged by reference to the application of Australian domestic law.

There is no need for an arrangement with another country. These sections provide that a vessel or a person may be taken to a place outside Australia and near another country whether
or not Australia has an agreement or an arrangement with that country concerning the reception of the vessel or persons. That place may be another country. This changes the terminology in the Maritime Powers Act from 'place' to 'destination' which may or may not be a country and may be outside Australia.

Obviously, these amendments are quite complex. I think they require a reasonable amount of time to consider. I think this should be a regular and healthy debate. Australia cannot really afford to get any of these arrangements wrong. We live in a very delicate area where we are dealing with neighbours who do not always agree with what Australia's view is. We live in an area where trade is really important. We live in an area where good relationships need to be built and harmoniously developed. I think at times we may have too much of a sense of how relevant Australia is to the region. We are only 20-odd million people. There is a country north of us with 10 times that population, ASEAN has 600 million people and China has over one billion people, so I do not think we can afford to put our finger up at the rest of this region. We need to do these things very carefully and do them with a sense of justice and compassion.

Then there is the time of detainment. Currently section 87 of the Maritime Powers Act provides a 28-day time limit for detainment. These provisions insert a notion of reasonableness in respect of the time it takes for such matters as dealing with a detained vessel, making decisions in respect of the final destination and travelling. The reasonable time associated with these matters is not considered to be part of the 28-day time limit. Accordingly, these provisions seek to prevent an argument that there has been false imprisonment on a vessel over an extended time period. This has an effect on regional processing and interaction with the Migration Act 1958. These provisions make clear that powers in the Maritime Powers Act are intended to operate in their own right. Accordingly, the regional processing arrangements that are written in the Migration Act will not limit the operation of these maritime powers—that is, it cannot be argued that regional processing provisions in the Migration Act automatically apply to detained vessels and the persons on those vessels, thus requiring those persons to be placed within the offshore processing system.

I turn to the exemptions for Customs and other vessels from other legislation. These provisions allow Customs and other vessels involved in turn-back operations to operate without having to comply with certain aspects of the Navigation Act 2012, the Shipping Registration Act 1981 and the Marine Safety (Domestic Commercial Vessel) National Law. This essentially means that Customs and other vessels are put on the same regulatory footing as Navy vessels while participating in turn-back operations. The minister may make a written determination specifying a vessel or a class of vessels to which these exemptions will apply.

I turn now to the exemption from the Legislative Instruments Act 2003 and the AD(JR) Act. These provisions mean that certain determinations made by the minister in respect of turn-back operations cannot be interpreted as legislative instruments and thus subject to tabling or disallowance. The bill exempts decisions in respect of turn-back operations from the AD(JR) Act, bringing the Maritime Powers Act in line with the Migration Act. This means that any legal action will be restricted to judicial review.

We remain open to any policy that saves lives at sea; however, we retain significant concerns about the safety at sea of personnel having to conduct turn-back operations as well as the damage this policy is having on our relationship with Indonesia. I have personally
heard representatives of the Indonesian people in the Indonesian parliament, in front of our ambassador and in front of our delegation to ASEAN, express concerns directly about our policy. I think this is a really important issue given our relationship with Indonesia.

We do not support the Hon. Scott Morrison's attempt to make changes to the legislation based on guesses about the outcome of a case that is currently before the High Court. The High Court should be allowed to do its job on this matter before any legislative changes are considered. The subject of this legislation is currently before the High Court so we believe that until that case is properly resolved it is inappropriate to introduce this legislation.

I go to schedule 2—temporary protection visas and safe haven enterprise visas. In principle we are opposed to the temporary protection visas. The bill establishes within the act that a TPV of a three-year duration will be offered as a protection visa to any person seeking protection who is in Australia in an unauthorised way. Work rights are provided to TPV holders and access to the safety net is provided to TPV holders; however, it appears that this would not include access to the full suite of resettlement services. The holding of a TPV bars a person from ever holding a permanent visa. There are no rights to family reunion. There are no re-entry rights.

I go to a permanent protection visa application deemed to be an application for a TPV. Once again we oppose this. This deems an existing application for a permanent protection visa by a person who is in Australia in an unauthorised way to be an application for a TPV. It also provides a general power to deem an application for one kind of visa to be an application for another. This legislation was brought on in this chamber an hour ago and I have not had time to go through all of the application and detail of what is before us. It is critically important that this debate happen and that we place on the record exactly what I am advised the situation is.

There is clarification about the application of bars. Once again in principle we oppose these things. These provisions are consequential to the deeming provisions above and ensure that the application of bars to the making of protection applications is not altered by the deemed change of a permanent protection visa application to a TPV application.

Then we have the safe haven enterprise visa. We support, with an amendment, this provision by the name of SHEV, but there is no detail in this package beyond the name. It is envisaged that regulations would be made around March next year, which will describe it. The government has publicly stated that a SHEV will be open as an alternative to a TPV, can be applied for by a TPV holder at any time, will be for five years, will allow work rights, will not allow rights to family reunion, will not allow re-entry rights, and will require the holder to live in a region that has nominated itself to be a SHEV destination. It will allow access to the safety net; however, not settlement packages—although it is imagined that some regions may provide a package and will enable a holder who has not been the recipient of the safety net for 42 out of 60 months the ability to apply for an onshore visa and thus may ultimately provide for some pathway to a permanent visa.

PENDING THE OUTCOME OF THE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE INQUIRY AND REPORT, WE WILL CONSIDER MOVING AN AMENDMENT IN THE SENATE TO SECURE AN EXPLICIT PATHWAY TO PERMANENCY. THESE ARE QUITE COMPLEX PROPOSALS.

We now go to the TPV and the SHEV consequential provisions, which, once again, in principle we support. The bill will allow for multiple classes of protection visas given that it is the upshot of creating TPVs and SHEVs. The bill will provide a definition of a protection
visa, given that it will now incorporate more than a permanent protection visa. Our supporting these provisions flows from the conditional support of the SHEVs. Labor has had a long-standing position of opposing TPVs. They do not appear to offer the deterrence value, and place people in a state of uncertainty. It remains unclear as to whether the SHEV will offer a pathway to permanency. The legislation does little more than name the SHEV. There is no detail in the legislation regarding the criteria or any firm policy around what the requirements will be, apart from the minister's public comments. Accordingly, there is a real danger that the Palmer United Party has been sold, excuse the pun, a pup. If SHEVs did provide a pathway to permanency, this would be of value. Labor will give further consideration to ensuring that this is the effect of SHEVs for amendments in the Senate.

We now go to schedule 3, linking the Migration Act 1958 and the Migration Regulations 1994, which in principle we express support for. This schedule creates an express link between the way certain classes of visas are described in the act and in the regulations. These visas are special category visas, S32; bridging visas, S37; temporary safe haven visas, S37A; maritime crew visas, S38B; and protection visas including, TPVs and SHEVs, S35A. This clarifies the need to meet requirements for a valid visa application both in the act and in the regulations, as opposed to the act or the regulations. If the regulations do not describe any criteria then the visa will be inoperative. Basically, this is a sensible tidying up of the act and the regulations.

Schedule 4 goes to limiting appeal rights in the refugee assessment process, and in principle we are in opposition to it. For persons who are in Australia in an authorised way, a new fast-track assessment process will be developed. This will involve shortening the existing time frames through regulations that are yet to be developed. Access to the RRT will be removed. The bill establishes that the IAA will sit within the RRT. Any adverse initial decision must be referred to the IAA for review. The review will be limited and need only to be done on the basis of the papers, or the applicant can be interviewed if the IAA wishes. The IAA will be able to seek new information, if it wishes, and consider new information presented to it in exceptional circumstances. The bill sets out the manner in which the IAA will operate and it empowers the principal member of the RRT to issue practice directions and guidance decisions. The reviewers within the IAA will be employed under the Public Service Act 1999, there will be a senior reviewer who will have administrative responsibilities as delegated by the principal member of the RRT. In the short time that was allotted to me today, I have gone through some really interesting points and a really careful consideration is required.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (17:20): On 5 April 2013 the now Prime Minister, Tony Abbott, who was the opposition leader at the time, in a speech to his favourite organisation, the Institute of Public Affairs— that is, the Rupert Murdoch-Gina Rinehart think tank— said this:

'Do unto others as you would have them do unto you' is the foundation of our justice. 'Love your neighbour as you love yourself' is the foundation of our mercy.

That was our Prime Minister when he was the Leader of the Opposition, and now this government is engaged in what I think will be regarded as crimes against humanity because it is systematic abuse. It is not one-off, not by any means: it is systematic and deliberate humiliation and degradation of people, and a deliberate and systemic process to destroy
people's mental health. That is what this government has undertaken, and that is what we are talking about here today. The fact that there are children locked up in detention at all is a disgrace, and the minister has the power right now to free all of those children and their families, but he will not do it. He will not do it because he wants to treat those children as pawns in a political game to try to get more power and to get more disgraceful legislation through this parliament. What sort of a person uses the fact that he has the power to keep children locked up behind barbed wire in detention centres and decides to trade or not to trade their freedom depending on whether he can get other people to agree to give him more powers which are against international law?

As a nation, we would be the first to condemn other countries for behaving in such a way, but here we are, Australia, doing it ourselves. A campaign has started around the country: 'Australia—we are better than this'. And we are better than this as a country. As you well know, Mr Acting Deputy President Seselja, under crimes against humanity they are defined as odious offences, constituting a serious attack on human dignity and grave humiliation or degradation of human beings. People can be held personally responsible for these crimes—and the threshold, as I said, is that it is systemic. People who vote for these things need to recognise that this is more than just a political debate in the Australian parliament; this is more than the Australian parliament making a law. The Australian parliament and people who make these laws will be held to account, and they should be held to account.

There are so many things wrong with this legislation that it is hard to know where to begin. Schedule 6 provides that you can classify children born in Australia to asylum seeker parents as unauthorised maritime arrivals. No, they are not. They are babies born in Australia on Australian soil, and they should be regarded in the same way as any other child born here and be given their citizenship—their statehood. But we are taking their statehood away from them. We are leaving them as stateless people.

What do you call this treatment of pregnant women? There are two women on Nauru who are eight months pregnant. They had been classified as genuine refugees and were settled as refugees on Nauru—not criminals but settled refugees—but, because Australia has determined to send people to Nauru, where, clearly, the medical facilities are not good enough and these women had to be sent to Australia to have their babies, they have been put in detention. They are eight months pregnant and were put in detention, when they are settled refugees. I call that disgraceful and grave humiliation of those people. It is degradation of their human rights. They are settled refugees—they should be treated with the respect that they deserve, not shoved into detention. Children are already in detention—we have had endless reports of the mental health stress of those children. They should be freed immediately, but a piece of legislation has been put up that says: 'Oh, well, if you want those children to be freed, you agree to this other appalling set of provisions.' I want to go through some of those.

I want to talk first of all about the minister's grab for power—that is, the removal of judicial oversight of the use of maritime powers. The fact that this bill will amend the Maritime Powers Act and remove judicial scrutiny of whether Australia complies with certain human rights obligations, by removing a role for judges and removing a role for the courts to invalidate government actions at sea, proves and provides that the rules of natural justice do not apply to certain key actions. It suspends Australia's international obligations in the context
of powers exercised under the Maritime Powers Act. This is the parliament saying that it will exempt itself and its behaviour from the scrutiny of the courts. This is absolutely shocking behaviour in international law terms—we are abrogating our responsibilities under international law just so this minister can do what he likes on behalf of his government. Every one of his ministers and every one of the crossbenchers who votes for this is voting for Australia to exempt itself from the provisions of international law for the sole purposes of the minister being able to do what he likes on the high seas. And why? Because the courts are catching up with him—that is why. The High Court is catching up with the behaviour of this government, so what do the government do? They exempt themselves from the scrutiny of the courts. What disgraceful behaviour from a government.

I want to go back to what this bill does in relation to again bringing in temporary protection visas. Thirty thousand people have already sought Australia's protection between August 2012 and December 2013. They have already suffered physically and mentally. They have been locked up in mandatory detention, separated from their families, uncertain about their legal status and at constant risk of removal to Nauru or Manus Island. On Manus Island, of course, they know that Reza Barati was murdered. Nobody has been held to account for that murder, and this government has tried to palm off responsibility to so-called service providers. The responsibility for whatever happens to people on Manus Island or in the detention centres in Nauru lies firmly and squarely with the Australian government.

What this does is go way beyond the legacy caseload suggestion put here by the government. It is a serious departure from Australia's international obligations under human rights and it is procedurally unfair and unjust. Basically, this bill changes the criterion by which a person is found to be owed protection and the nature of the protection provided by Australia to those in genuine need. It changes the legal status of those seeking our protection and empowers a range of government agencies to restrict or remove their liberty.

I cannot believe that we are in this situation. I have looked around the world in the past and I have asked myself the question: how is it that decent people who care about other people have allowed the atrocities that go on around them and have just carried on with their lives as though it was not happening? I have never understood how it could happen. And now I am standing in a parliament where it is happening, where people will happily go home for Christmas and sit up with their own families making speeches saying, 'Do unto others as you would have them do under you,' and make speeches saying, 'Love your neighbours as you love yourself,' and happily lock up people in detention, excluding Australian government actions from the courts, leaving thousands of people in the mental anguish of never being able to settle in this country and wondering what on earth will happen to them in the future. They will happily head off to church, talk about their Christianity, yet fundamental Christian principles, fundamental decency and fundamental principles of humanity are being violated here knowingly and wilfully.

I also want to put on the record that while people will argue that they have no personal responsibility for the crimes that are going to be carried out as a result of this legislation passing, yes they do. They cannot say they did not know. They cannot say it was not wilful and they cannot use any other excuse. Wilfully and knowingly passing this legislation means that you are signing up to crimes against humanity and it is in the Australian parliament that
people are doing it. The rest of the world is going to be horrified when they see the detail of what it is that Australia is doing to people. I just find it extraordinary.

As Save the Children has explained, temporary protection visas will mean people fleeing persecution are left in limbo, forced to prove and reprove they are refugees. The emotional and mental cost of such uncertainty is enormous and well documented. There is a body of significant medical evidence which shows the incredibly detrimental effects on people's mental health. It is just disgraceful that this is being allowed to happen and that people are going to vote for it.

The other thing that is appalling is that it is allowing for fast-tracking to occur. To make things worse, under this fast-track process, applicants for protection visas will no longer be entitled to have the merits of their claim reviewed by the Refugee Review Tribunal. In some cases but not all they will be able to have their case looked at by the immigration assessment authority, but it will not involve any hearings where the applicant can set out their claims and a decision will be made purely on the papers. Of course everybody knows that for refugees and people seeking asylum that is going to be virtually impossible. Many of them are already frightened of the authorities because of the way they have had to leave the countries they have been in. They will have no papers and no-one to justify or prove or verify some of the things they are saying.

This is setting up a grossly unfair procedural process. And you are knowingly doing it. It is beyond my understanding of how you continue to use this Orwellian language. 'Unauthorised maritime arrival'—no, person, people like you and I, people with parents, with children, with brothers and sisters and families and hopes for a better future, people who have had to leave Afghanistan, Hazaras who have had to leave because they are being persecuted. And this government thinks it is fine to turn them around at sea and send them back to Sri Lanka, for example, where you know and I know that the Rajapaksa government is engaged in crimes against humanity all the time, yet you appease them. You appease the Rajapaksa. You know exactly what they are doing in Sri Lanka. You know what they are doing to the Tamils. You know that the white vans turn up and people disappear, yet you send asylum seekers back because it suits you to do so and, what is more, you give to the Rajapaksa regime some of the vessels which will better able them to intercept people leaving or to return them.

You are more than happy to turn people around, to traumatise the Navy, for example, as we saw on the 7.30 Report this week where people were horrified about what they have been expected to do. They have been given no counselling or assistance even though they are experiencing the humanity they feel about seeing the way these people are being treated. There is the fact that anyone could say it would be inconvenient for a refugee vessel to turn up on Australia Day, 'So let's make sure that doesn't happen, let's turn them around, let's push them back, let's do what we like, let's get rid of them because they're unauthorised maritime arrivals.' No, they are people of whom the Prime Minister has said, 'Do unto others as you would have them do unto you.' It is very clear that he does not believe that. The Prime Minister would not have his own family treated in this way. He would not have a child of his own family left stateless.

Every child has a right to a name and a nationality, a statehood. In the UN Convention on the Rights of the Child every child has a right to a name and a nationality, yet you are taking that away from them
You are saying: 'That child will be stateless and, what's more, we're not even calling a child a child; we're just going to label them'—in Orwellian terms—'an "unauthorised maritime arrival."

International law will catch up with this government. The International Criminal Court was set up to look at systemic abuse by governments around the world. This government will be and is in breach of international law. Everyone who votes for this legislation will be knowingly and wilfully supporting breaches of international law and will be subject to the same scrutiny in international law—as they deserve to be. You can walk out of this parliament and think you have gotten away with it, think you have pulled some great stunt—and in another 20 years, of course, we will have the apology, and people will tell their children that they had nothing to do with that, that they could not possibly have known; if they had known, it certainly would not have happened. Well, they do know and they are knowing and they have done it. They are making children stateless. They are making people live in limbo on temporary protection visas, with no hope for the future, and deliberately imposing mental health problems on a group of people. They are deliberately exempting the Australian government from the law, to enable the minister to do as he likes on the high seas. That is a disgrace.

I know that this government will rush out there and say, 'Oh, we were doing it to free the children before Christmas.' The Christmas story has Mary trying to get to the inn—you might remember, Mr Acting Deputy President—but the inn was closed, and that is why she ended up in a stable. This lot are the innkeepers, closing the door. So, when you tell your Christmas stories, I hope you will explain to your own families that you are the innkeepers. You are closing the door. You are sending refugee women who are pregnant into detention, even though they are refugees. 'Settled refugees' is the term. So let us actually have on the record here what this government is doing, and let us not have this being said: 'Oh, we had to get the children out.' The minister has the power to get them out immediately. The minister has the power not to put them into detention in the first place. They should never have gone into detention. They are being illegally held in detention. It is not illegal to seek asylum. It is wrong that they are being locked up and their freedom deliberately taken from them. This is appalling legislation. It is un-Australian. It is a matter of shame to me that this parliament will pass this legislation, but the future will ensure that justice will be done.

Senator LUDWIG (Queensland) (17:40): I rise to speak on the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. Can I start by outlining the provisions of this omnibus bill. In this instance, the government has tried to bring everything possible together, on potentially the last day of parliament, to try to deal with what are quite complex matters.

This bill provides additional powers in relation to turning back boats. The question that arises in my mind is, if they need additional powers, what is the justification for those additional powers? Have they provided an open and frank case for the justification of those powers to the Australian people and to this parliament? When you juxtapose that with the secrecy surrounding Operation Sovereign Borders, you do not get an insight into the justification. You do not get an insight into how they have managed Operation Sovereign Borders. You do not get an insight into where the failings might be which require this legislation. You do not get an insight into how this bill will fit in with the current workings of
Operation Sovereign Borders. You do not get an insight into how Operation Sovereign Borders have advised the government, if at all, that they do require additional power, they do require some assistance. You do not get any of that from the government.

It is extremely disappointing to find that we have a government that is clothed in secrecy when it comes to Operation Sovereign Borders. I respect the military operation that it is, but let us not then continuously say that it is all operations and parts of it should not be made available for the Australian public to assess how it operates, particularly now, when the government has had some time—some water has gone under the bridge—to consider how the operation has operated. I have no doubt that the government has received reports from Operation Sovereign Borders about how it works. Otherwise, why would we be here with an omnibus bill? If they do exist, this government should have been more up-front about it and provided the parliament with that material. We will see in the committee stage if the minister wants to add anything, but let me say in advance: I doubt very much that the minister will add much to this debate today. This is a government that prefers the dark corner to the light.

The next thing the government seeks to do is to reintroduce temporary protection visas, through a new class of visa known as a safe haven enterprise visa. Despite the minister's comments that no-one will receive a permanent visa, it does appear that the SHEV may offer a pathway. We can explore in the committee stage how that might actually work.

One concern I have vividly reminds me of a government very similar to this one. They were perhaps not as shambolic as this one; perhaps they were a little bit more coherent; and in some respects they probably were an adult government, unlike this one. They implemented temporary protection visas, and it was disastrous. It did not work then and it is questionable whether it will work now. This government should have looked at what occurred under the Howard government as to how it would play out in the longer term. I guess this government is very short-termist. If you look at the policies it tries to implement, you see that, by their very nature, this government is short-termist.

A further area this bill seeks to deal with is to provide better consistency between the Migration Act and the Migration Regulations in respect of certain visa types—schedule 3. I will come back to that should I have time, but I will probably get extra time in the committee stage to explore it a little bit further. This bill seeks to introduce a fast-track assessment process for protection claims, combined with a limited form of review through the newly established Immigration Assessment Authority, removing access to the Refugee Review Tribunal for people who are in Australia in an unauthorised way—schedule 4. It seeks to clarify the exercise of the removal power and codifies Australia's interpretation of its protection obligations under the refugee convention. It makes clear that the children of unauthorised maritime arrivals inherit the migration status of their parents—schedule 6. It also ensures the minister can cap classes of protection visas in the Humanitarian Program—schedule 7.

Before I go to some of those more detailed provisions, I want to go to an overarching issue that has been concerning me deeply when you look at the overall context of the omnibus bill. I am not convinced the government could fairly and evenly have a statement of compatibility with human rights in respect of this bill. I have had an opportunity to look at the provisions in this bill. At page 219 of the explanatory memorandum to the bill, you find that the government does sign a statement of compatibility with human rights. I fail to see how this
bill overall allows this government, without exception, without qualification, to sign a statement of compatibility with human rights. The government obviously considers that the bill and regulations and amendments are compatible with human rights because it makes broad sweeping statements about this issue rather than delving into the detail—which is what this government tends to do. It is not a government for detail; it is a government that has a broadbrush approach and does not care much about the consequences or the detail.

You hope that the Parliamentary Joint Committee on Human Rights will see the human rights implications of this bill. Arguably the most significant, and potentially the most dire, consequence would be Australia's nonrefoulement and nonreturn. It is an obligation that, in this bill, the human rights statement and the human rights lawyers should look very closely at with this government. It is a fundamental principle that we have signed up to for a very long time. If you look at the effects of this omnibus bill, you see that there are very serious consequences should the obligation of nonrefoulement be breached. Every government before this one has taken this issue very seriously, including the Howard government. Although I may have many criticisms of the Howard government, they took this obligation very seriously. I do not think this government have turned their mind to the detail as well as they could have or should have.

When you look at how we have expressed this issue, I think you come to the conclusion that there are serious questions for this government to answer in respect of meeting its international obligations in a way that is both considered and recognising of its obligations. Again, we will have an opportunity in the committee stage to explore that issue a little further.

I think the dissenting report of Labor highlights many of the issues that I averred to earlier in my speech which do create some concern. We go more to the broad again. I think Senator Carr used the word 'balance' between the judiciary and the executive. I much prefer the word 'separation' between the executive and the judiciary. There should be, and should continue to be, a separation between the executive and the judiciary. It is not a fine line; I think there is a thick line between what the executive can and should do and what the judiciary can and must do. In this instance, I do worry about whether or not the maritime powers have been confused by the government when it comes to the importance of ensuring that there is a separation and that the proper process has been followed.

As I said in my opening remarks, we are concerned about the secretive on-water operations carried out by the government. This committee report similarly reflects that concern. Those concerns are not put to one side or assured by Operation Sovereign Borders. You would think that it was within their remit to tell estimates and the various other committees it has appeared before that it is an area which they can manage and it is safe to do so. They could describe some of the examples and go through the detail, but they cannot. They talk in a very general sense—no detail, no specifics—and the justification for that, I do not think, cuts it today where we have an omnibus bill like this being put forward.

In the committee report is the dissenting report by Labor. It is a government—and I talked about that separation—that is endeavouring to legislate in areas and pre-empt High Court matters. I am not arguing for the High Court either way the case may go; however, I worry about a government that steps in too often in this instance in this omnibus bill—too often it steps into the ring to ensure that it wins. I say that it is not a particularly fair fight. This
government may not want a fair fight on immigration, because it tends to nobble anybody and everybody or prevents people from having a view about their process.

As I indicated, the terms of temporary protection visas are in schedule 2. The dissenting report of the committee makes clear that Labor senators oppose revisions in schedule 2, which seek to reinstate the failed TPVs. I dealt with that earlier, so I will not transgress or deal with that again.

The Labor Party is not standing in complete opposition to the safe haven enterprise visa. If the government had the opportunity to listen—which I think is a difficult chore for them, quite frankly—to the detailed speech given by Senator Carr, they would have detected that the Labor Party was prepared to talk to them about a range of areas. We could have had compatibility and some reasonable outcomes in some parts of the bill. But it would be unusual for this government—and maybe they have been pushed by the minor parties. It seems you only get some decency out of this government where they have had to compromise or been pushed by the minor parties or Independents to a much better place—I am not complaining about that; it is not a bad thing. Perhaps Labor should put its shoulder to the wheel to convince this government to go to a better place, but this government would not go there, if it did not think it had to.

In the period from 2004 to 2007, this government had a majority in this place and they did not bother. They went hard whenever they could. They took the opportunity. They did not consult. They did not choose to ameliorate any of their harsh legislation. They treated the Senate like a sausage machine.

I think this government thought from 1 July onwards that they could do the same. They have been rudely awakened that it is not that easy to manage this place. The easy answer to it all is: it is the opposition's fault—a place for cowards to go and hide and use those phrases. It is the government's job to manage the program, the legislation and the debates, and consult and compromise where it has to. I think this government has got tin ears when it comes to consulting and compromising—but not to take away too much.

The dissenting report dealt with a range of other matters, but one in particular which always concerns me—and I think I outlined a little earlier—is how this government is stepping into what I would say is the preserve of the judiciary. Limiting appeal rights in the refugee assessment process in schedule 4 of bill seeks to deprive asylum seekers of the opportunity to have their applications for protection assessed fairly and replace it with a bureaucratic agency subject to the direction of the executive government. I do not think I can say any more than that in respect of that provision. It is abhorrent to think that this government considers that an open, fair and transparent process.

We all understand that we need a system that works but, if it is that broken, replacing it with a bureaucratic model such as this disgusts me. These people—you may not have liked the Refugee Review Tribunal, but my dealings with and understanding of them for many years was that they were dedicated—were well-meaning, but it is a thankless and difficult task: sometimes you have to say no and other times you can say yes. They may not like either answer to that, but it is a task that is best left to an independent agency or tribunal. I think it detracts from this government, but again maybe I do not mind that position because I think it ultimately reinforces my view of this government—that they do like to have, and try to have, completely control of the bureaucracy. They do like to have complete control of the outcomes.
when they fit their purpose, and only when they fit their purpose. When they do not fit their purpose they try to change them to ensure that they do. I think ultimately this is a government that will pay a heavy price for that position, particularly when you look at how it is displacing Australia's obligations under the refugee convention. As I mentioned earlier, in dealing with the human rights issue I think this government is a poor government.

Senator RHIANNON (New South Wales) (18:00): This bill should not pass. We have heard some very good contributions detailing the horrors that would occur if it were to become law. I congratulate my colleague Senator Sarah Hanson-Young for the work that she has done over many years on this issue, bringing the voices of refugee advocates and human rights activists into this chamber and representing the rights of refugees in such a clear, articulate way. I also draw the attention of my colleagues in this place and others who read Hansard or who are listening to this debate to the speech of Senator Christine Milne, the Leader of the Australian Greens. She made a very telling speech in which she set out the crimes that are embodied in this legislation. She particularly nailed the issue that there are, embodied in this legislation, crimes against humanity. We need to realise how incredibly serious this legislation is.

A large number of legal and human rights experts have warned how dangerous the legislation would be if it is passed. I do not support the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. Just the title, 'resolving the asylum legacy caseload': this does not resolve the caseload; it inflicts cruelty, it could result in death, it breaks the law. It should not be passed. Refugees are essentially being used as an electoral football here. We have seen this occur under the Liberal and National parties for years now, where refugees and asylum seekers are demonised. The issue is played out particularly when we are coming into elections, when there is such a carry-on about people seeking asylum in this country. People do become fearful. They do start to worry about what is happening with our borders, but it is because of the hysterical, extreme way that people in the government present this issue.

I do acknowledge that there have been and are some individual MPs and members of the Liberal and National parties who do not hold the views of the Abbott government. However, we need to acknowledge that the Liberals and Nationals, whether in opposition or in government, are driving a very ugly policy process and are pushing forward with laws that will do such deep damage not just to individuals but to the very fabric of our country. The harshness and cruelty of this bill are so extreme. If this bill passes, and I understand that a deal has been done, there will be an absolute shift by the Australian government. Senators who are considering voting for this need to recognise what they will be voting for. They will be voting to trash respect for the law; they will be voting to trash recognition of the rights of refugees. What this bill will essentially do if it is passed is to establish in law the mistreatment of asylum seekers and refugees who have left their countries, where they have faced death, rape, imprisonment, persecution and torture. It will now be very easy to return those people to those terrible threats. This is how far this government is considering going with this legislation.

We know it does not have to be like this. Many of us here would remember the 1980s and the 1990s, when the issue of refugee rights and asylum seekers in this country occupied barely any space in our media. It is worth reflecting on why that was the case. It was the case
because there was a bipartisan approach, with Labor and the coalition at that time largely working together for a humane approach to people who had every right to come to this country to seek asylum. So many refugees were processed quickly and in a way that their safety was not in jeopardy and they were able to rebuild their lives in Australia.

I want to share with the Senate tonight some comments by former Prime Minister Fraser which he made at the 2012 Whitlam Oration. It really does give detail about how this developed. The period he is describing in the first instance is the aftermath of the Vietnam War—a war that was very divisive in Australia. Despite that, the leaders of the two major parties at the time came together with a humane and largely successful approach to handling people who were coming to this country. These are the words of Mr Fraser:

At the end of the Vietnam War, tens upon tens of thousands of Indo-Chinese sought to flee to safety. Initially the Whitlam Government decision was to have limited numbers of people from Vietnam. My Government made the decision to take large numbers of people. Gough Whitlam did not play politics with this. It would have been easy to do. Instead he led his party to fully accept the convention of the post war years. Bipartisanship on issues of immigration was maintained. This bipartisanship was fundamentally important. It shows that political conflict can live alongside the sustaining of a shared, deep respect for people regardless of colour, race or religion, a belief that people should be respected for who they are. The capacity to engage in conflict and maintain such a respect depends on a degree of consensus between political leaders. Gough Whitlam and I participated in this consensus.

If instead of this consensus, the disgraceful race to the bottom of the populist political point scoring of recent years had prevailed, the cost to Australia would have been enormous.

I do say that that is a most significant quote and I urge senators to read all of Mr Fraser’s speech. I do want to share one other aspect of another comment that he made in that speech, because it brings us forward to recent times:

Before Tampa there would have been many who accepted that the idea of the White Australia Policy was dead and that those who supported racism had no influence. Since Tampa, despite the great and beneficial diversity of people within Australia today, there are many who interpret our attitude to refugees, and the toxic and demeaning debates that have taken place over this question, as a resurgence of racism.

Those were Mr Fraser’s words: ‘resurgence of racism’. He went on to say:

Our treatment of refugees, and the poisonous debate engaged in by our major political parties has done Australia much harm throughout our region.

This is where we are today, with a resurgence of racism and the harm done within our own region; and it is actually now beyond that. Mr Fraser’s speech was from two years ago.

We now have a very bad name around the world because of the way we are treating refugees. It is a shameful period in our history, and if this bill goes through it will be much more shameful. The indignity, the abuse and the cruelty of this bill is encompassed in the reintroduction of temporary protection visas. This means that refugees will have to prove and re-prove that they are refugees. Think of our daily lives: our freedoms, our rights, the pleasures we take and how we are able to hang out with our families and our friends, largely when we wish—when we get out of this place—we can visit our special places and we can work. But for those on temporary protection visas, those basic rights and the things that we take for granted are not there. Let us remember that Australia has tried this before, so we know of the cruelty this brings—the anguish and the emotional and mental cost. People do not
know their future, are left in limbo and are unable to reunite with their families. This is what we are about to impose on people.

When the history of our country is written this period will shock people; when they read what this country and successive governments, both Labor and coalition, inflicted on people who have every right under international law to come here. What will deserve special treatment and will so deeply shock people is temporary protection visas. This is so ugly. I am still shocked that I live in a country like this. Obviously, with my politics there is a lot that I have disagreed with, but I never thought that either side of politics would get to the point where they would treat people like this.

It is understandable that people ask what we should do: we should recognise that seeking asylum is a humanitarian issue rather than an issue of border security or defence, and that people seeking asylum must be treated with compassion and dignity. Considering what this bill does, we need to remember that as a signatory to the refugee convention Australia should assess the applications of all asylum seekers who arrive in our territory, including our territorial waters, irrespective of their mode of arrival. We also need to recognise that Australia has additional responsibilities to refugees from countries where Australian defence personnel have been deployed in conflict situations. Clearly there is a link there, and it is something that we should recognise. We should work to settle people quickly. This is what we need so that people can rebuild their lives, gain work, find a home, study and do all of the things that people have the right to do.

The figures show how unnecessary temporary protection visas are. When we had them before, some 95 per cent of people on TPVs the first time around ended up with permanent protection. That speaks volumes—95 per cent of those people who were put through such humiliating processes and had to live in such a degrading way, were given permanent protection and are part of our society now. There is no reason to believe this statistic would be any different now.

We particularly need to give consideration when debating this bill to the role of the minister. He has quite rightly figured strongly in this debate because the bill gives unacceptable power to the immigration minister. I think we should be asking, ‘Why?’ The minister will be able to make life-and-death decisions about individual refugee cases. This means that the chance of people being sent back to a situation of grave danger, or even death, is a real possibility. Imagine this: this bill denies even babies born on Australian soil—in Australia, here—to parents who arrived by boat, any protection. They will effectively be rendered stateless. Again, there are so many aspects of this bill that shocks and then shocks again and again and again. These babies will be retained offshore until they are forced to go to a place like Nauru.

The changes to the definition of ‘refugee’ is one of the most despicable aspects of the bill. So much flows from this abuse that is set out in the law in this bill. This change means it will be easier to send more people back to where they came from, to where they could be abused, tortured or killed. We do not offer them assistance and we do not offer them protection. We take actions that will lead to harm. The power the minister will have is so troubling. We have the scenario that if the department asserts that a refugee can simply ‘modify their behaviour’—they are the words: ‘modify their behaviour’—to avoid persecution or harm at home, then they will be sent back. What a flimsy policy! ‘Flimsy’ is too light a word. What an outrageous and
cruel policy! The people who are making this assessment will either be told what they have to
do in making those assessments to approve as few refugees as possible, or they will just know
that that is what their job really hinges on: to send, by far, the majority of people back. That is
the situation we are facing.

Then there is the issue of travel documents. It is quite understandable that so many asylum
seekers arrive with no papers. That has been the case forever with refugee asylum seekers.
That is the nature of escaping from the abuse that they have experienced. Having no travel
documents can now be used against them. It can mean, in fact, that they are knocked back.

Let's reflect on history here. Let's remember people fleeing from Nazi Germany or at the
end of the Vietnam War or from Pinochet's Chile. All of those times in our history come to
mind. I believe that so many of those people would have escaped with no papers. At those
times, we did the right thing. We assisted those people. We assisted them to settle and to
rebuild their lives in Australia. So many of those people have gone on to have wonderful lives
here and to be a very rich and important part of our society. But we do not do that now. We
need to ask: how many of the people who will come here now will be treated like we have
treated people in the past who had every right to come to our country? I fear under Minister
Morrison and under the Abbot government, no matter who the minister is, very few people in
a situation similar to those escaping from Pinochet's Chile, Vietnam post 1975 or Nazi
Germany will be treated in the same way.

It comes to this point: how extreme does this government want to be? It already has very
tough legislation in place. It is already loaded against refugees. Now it wants to be so much
more extreme. The current Migration Act has a very tough process to check if asylum seekers
should be given protection. Asylum seekers will now, however, face a minimalist process that
will determine issues of life and death. Some call it a 'fast-track' process, but for most of them
it is a fast-track process back to misery. It is essentially about accepting minimal numbers of
refugees.

Consider the state so many people are in when they arrive here. They are frightened and
intimidated. They are particularly often intimidated by authority. And who do they have to deal
with when they come here? It is military people. I know that many of those military people
are absolutely trying to do their best, but put yourself in the minds of these people who are
coming here. So often they have fled authority and military people and then they have to
adjust to the situation that confronts them when they first arrive. Then they face department
representatives who have been told what the minister expects from them. That is going to be
set out very clearly. Again, I repeat: many of them will know, even if they are not told how
many to not approve, that that is what the minister wants. That will be the culture. That will
be the intent. That is how this bill will play out for the people who have to put it into effect.

Asylum seekers will, in the main, have to quickly assemble their case with no legal
assistance. That is the other aspect of this. How hard will that be? They will be confronted by
a new range of authorities and they will have to try to articulate their case. They may have no
travel papers and no legal assistance.

On top of this abuse of process and abuse of people, this bill gives the government the
power to disregard whether someone is at risk of torture. Can you imagine that? I have often
felt a characteristic of our society is that we recognise that torture is wrong, that it is a
criminal act, that one needs to speak out and highlight what regimes engage in torture and that
we need to assist people who have escaped from that. But here we have a government with the power to disregard whether somebody would be at risk of torture if they returned. Again, it is one of those aspects that I find so hard to believe—that the government wants to make torture effectively irrelevant when it comes to determining the status of asylum seekers.

Another horror aspect of this bill is that it is designed to put the government's actions above international maritime law. This will allow the minister and future ministers to force people on boats back to the country they have left without any court oversight. Again, this is a real abuse of process and our obligations under international law. I have set out the case in a very thorough way—and many of my colleagues have too—why this bill should not be passed.

I want to touch on the fact that there is also the very ugly aspect of how so much of this work has been outsourced to a private company, Serco. That deserves a mention here because, every time the law gets worse in this place, Serco, a private company, makes more profit. That is now on the record. It is a British multinational. It is in financial trouble. Significantly, the company which is favoured by our government and by governments in other countries as well to lock up refugees has admitted that it is its Australian detention operations that are effectively keeping it afloat. It is in financial difficulties, and we now have private companies that, based on cruelty, are profiting from the misery of people who our country, our government and our departments should be working with to help them rebuild their lives. This bill should not pass. It will be a shameful day if it does.

(Quorum formed)

Senator McLUCAS (Queensland) (18:23): I rise to comment on the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. At the outset let me make a few comments about the way that this legislation has come to the chamber. I have to say that what I saw happen in the chamber this afternoon was some of the worst behaviour we have seen in this place. When this happens, we are all diminished. We have to be very careful, in the delivery of our responsibility as senators, that we ensure that this chamber and this place command the respect of the Australian people. That did not happen today, and that can only be sheeted home to the government. The government runs this chamber. The silliness we had to witness this afternoon does us no good. So I call on the government—

The ACTING DEPUTY PRESIDENT (Senator Seselja): Senator Ruston on a point of order.

Senator Ruston: On relevance. I thought we were discussing migration bills, not behaviour in the chamber.

The ACTING DEPUTY PRESIDENT: We are. Senator McLucas, if you could return to the second reading speech on the bill before the chamber.

Senator McLUCAS: Are you ruling that I am out of order in speaking in a way that—

The ACTING DEPUTY PRESIDENT: I am not ruling you out of order. We do allow some latitude. But a point of order has been raised. The question before the Senate at the moment is the bill, so I would ask you to focus on the bill.

Senator McLUCAS: To conclude, I do understand that those opposite are a bit sensitive about what I am saying. The criticism I am making of them will hurt, but it is their responsibility to keep order in this place, and it did not happen today.
I will now go to the bill. The bill has seven schedules. Labor senators have very significant concerns about some elements of the bill, and we cannot support it in its current form. I want to go through some of the schedules and discuss how they will operate and why Labor is opposed to them.

The intention of schedule 1 is to seek to provide legal authority, according to the government, for the government's policy of turning back asylum seeker boats on the high seas. During a committee inquiry there was a lot of discussion about this particular element and what in fact its intent is. The intention, as described, is to give some legal authority for the actions that are happening on the high seas—we do not know about them, but they are still happening. Through schedule 1 the government asserts that this requires some sort of legal framework. The Labor Party maintains its long-standing concern about what has happened, since the change of government, in the ocean between ourselves and our northern neighbours.

On the government coming to power, we heard of Operation Sovereign Borders. It was turned into quite a militaristic type of response to the issue of people seeking asylum in Australia. According to the government, we had to turn this response into a response that had a militaristic way of behaving. Who can forget those uncomfortable weekly briefings that Minister Morrison was conducting in the early days of this operation—painful, they were, with Minister Morrison refusing to answer almost any questions, saying that they were 'on water' matters. Everything was an 'on water' matter and could not be answered because that would compromise the operation. The secrecy we had in those days—and it is not a lot better now—was a shameful part of Australia's history in dealing with migration matters.

The other part of it that offended me particularly was, frankly, the abuse of Defence Force personnel. Minister Morrison required, or demanded—I cannot work out how that happened—a member of our Navy to stand with him and respond to media questions. I think that was a dreadful abuse of our military. To use them in that way was appalling. In saying these words, I make no criticism, though, of the officer involved. He was doing what the government of the day had asked him to do. As we all know, that process then moved away from those very awkward weekly briefings to more information, and then finally—and I was pleased about this—the naval officer was not required to stand with Minister Morrison.

I have to say we still do not really know—we do not know what is happening out there on the water. We cannot find out. We have even had the circumstance where the immigration minister has refused to admit that a boat has been intercepted, despite widespread reporting in the media that that was the case. It has gone past amusement and it is now to the point of embarrassment. As previous speakers have noted, the way this happens is frankly a shame on our nation and we should behave better as a nation when we are dealing with these matters. It is important to note that in 2012 Admiral Ray Griggs stated before Senate estimates inquiry said:

There are obviously risks involved in this process.

He was referring to turn backs. We are yet to hear or find out what is different and what has changed that means that there are no longer risks involved with turning back boats to Indonesia.

Another issue is the issue of the relationship with Indonesia, our closest neighbour and a very important neighbour for us. I find the number of incursions that have occurred in Indonesian waters astonishing. We are yet to know why and how this has happened; but
importantly it has now impacted our relationship with Indonesia and the new Indonesian President, Joko Widodo, has issued a very stern warning to the Australian Prime Minister about the Prime Minister's failure to respect Indonesian sovereignty. This is a relationship that has to be mended and that we have to make sure is strong and respectful, and to do that will require good diplomatic relations as well as also continued openness with Indonesia, our nearest neighbour.

I think we should call schedule 1 for what it actually is. It is less about legislating for turning back boats and more about seeking to undermine a specific case which is before the High Court—namely, CPCF v the Minister for Immigration and Border Protection, commonly known as the CPCF case. It is Labor's view that schedule 1 is a pre-emptive strike on an existing High Court case, and in our view that it is an inappropriate way to legislate. It is important and surely fundamental that the High Court be allowed to do its job and apply the rule of law. Surely this government can respect the role of the High Court. The High Court should be allowed to determine the legality of the government's turn-back policy as implemented on the basis of existing law. If the policy is shown to be totally lawful, that is important for public confidence in the government and its actions. Equally, though, if aspects of the turn back policy are found to be unlawful, it is important that this be a transparent part of the public record. This in my view is an extraordinary way to use this parliament and legislation generally. Accordingly, Labor senators will oppose schedule 1.

In the time I have available I too want to go to the visa elements of this bill. This bill proposes to reintroduce into Australia the temporary protection visas. The government argues that this is a deterrent to people coming to our country by boat, but there is no evidence to support that assertion—none at all. When the Howard government introduced TPVs more than 90 per cent of refugees who were initially granted temporary protection visas were eventually granted permanent protection, because the situation of their country of origin had not changed. This is not a deterrent and it is a furphy frankly to argue that that is why the visas are being introduced. The reality of what happens with temporary protection visas is that people seeking asylum are placed in a state of limbo. I am sure that many of us in this place have met people who have been living on temporary protection visas. They are in a place where they cannot make decisions about their lives. There is a level of fear and anxiety that they will be returned to their country and so placed in a dangerous circumstance. They live in incredible financial hardship but it is the effect on families who are living under temporary protection visas and their inability to make decisions about their futures that I find the most troubling. You see families who have made the decisions not to progress with education, not to make decisions about forming families. People are almost put in limbo, and it is a cruel way of dealing with potential migrants.

In December last year when the parliament rejected Minister Morrison's policy of bringing back temporary protection visas, Mr Morrison reacted by stopping the processing of people. I have to say that that was a pretty petulant response. Labor believes that the correct response should be now to start and continue processing people without delay and managing our detention facilities in a safe and humane and dignified manner. The other important point to make is that this legislation deals with people who are already in detention, who arrived before 19 July last year. This flies in the face of any argument that this is a deterrent policy. This deals with that group of people who are currently in detention.
The other visa class that the bill ostensibly introduces is the safe haven enterprise visa. This resulted from consultations with Mr Palmer and his party earlier this year, in September. But the truth is that this bill does not in fact give any legal effect to safe haven enterprise visas as a new visa class. The most that the bill does is to introduce a new subsection 35A(3) into the Migration Act, which provides:

There is a class of temporary visas to be known as temporary protection visas. But that is it. There are no further details. There are no criteria for the visa or the conditions that apply to it. I am interested to know whether Mr Palmer and his party are comfortable with those words in the legislation as it stands. Does that in itself deliver on the agreement that was made in September of this year, when Mr Palmer provided some support for the bill? In my view, it does not provide the outcome which Mr Palmer was looking for when he said:

… it’s a win for regional Australia, which will benefit from the additional work resources in communities where there is a labour shortage, thereby increasing the viability of these areas.

So I am interested to know whether Mr Palmer and his party are comfortable with what they have achieved in negotiations with the government. Does it actually provide what they were seeking? The other question that they might want to ask is: how many people will be able to receive a SHEV, a safe haven enterprise visa? Mr Morrison himself responded to a question on this issue during a press conference. He was asked how many people would be able to receive a safe haven enterprise visa and would it be a very small number. His words were:

It's very possible.

There is also a high level of doubt about many aspects of the visa, including what pathways there will be to other visas—an issue that does need some clarification. There is a question about regional Australia. What is the definition of 'regional Australia' when it applies to the safe haven enterprise visa? Also, what social services would disqualify a holder of a safe haven enterprise visa from applying for other visas? We do need some clarity about those elements. If the agreement with Mr Palmer is to be upheld, I think Mr Palmer should be asking for answers to those questions.

As I said, there are real questions about the way in which this bill was introduced into the parliament and about the decorum and the demeanour of the parliament during its entry into the chamber. But there are also questions about what we should be doing as a country, as a nation, in dealing with asylum seekers. Repeatedly, people say to me that they are offended by the way that the language has drifted to the bottom, that we use the wrong language to describe asylum seekers. The word 'illegal' is used inappropriately and, in a legal sense, incorrectly to describe people who are seeking asylum in our country. We are better than this. We can be respectful of people who are acting within the law. We know that we have to work with our international neighbours and with the international community more broadly to ensure that the very, very large numbers of people who are seeking asylum from their war-torn countries are provided the support that we can give. We are the furthest away than possibly New Zealand in terms of destinations for people seeking asylum. We can do better. We can do it in an orderly way. We can provide to our community a much more dignified way of speaking about individuals who are seeking asylum in our country.

People have talked about bipartisanship. It is hard to see where we will be able to get to a point of bipartisanship in the future, but I still do have a hope that we should aim for that, that we should aim for a place where we do not turn desperate people into political footballs, that
we do not use people seeking asylum who come from different nationalities, different religious backgrounds, that we do not demonise those people for the benefit of a political outcome. Unfortunately, that has been the case for about the last 10 years, maybe even longer, and that we have been divided as a nation on this issue. It is time that we came together to try and provide a better way for our country. (Time expired)

Senator KETTER (Queensland) (18:48): I rise to make a contribution on the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. I want to make a number of points with respect to the proposed bill, which some have characterised as the most significant piece of legislation on immigration and asylum seekers that has been put to the parliament since the election of the Abbott government.

This is an omnibus bill, as many of the speakers have already indicated. It contains many parts. There are some parts of this bill which Labor can support, but we have a number of significant concerns with respect to certain other aspects of the bill.

I think the most appropriate way to characterise my concerns with the bill is this: it does not apply principles of fairness and natural justice to the very contentious issue of dealing compassionately with refugees. Labor understands that there does need to be a balanced approach between the fact that we do not want to see deaths at sea, but on the same token we want to deal compassionately with people who are refugees. Labor knows the contribution that refugees have made to our country over many years. It is a vexed issue and very contentious.

This is a bill that is broken up into a number of parts, as I indicated. The parts that I will be attempting to deal with are the areas in which Labor has some concerns. As a brief overview of the various parts of the bill, schedule 1 provides additional powers in relation to turning back boats. I will come back to that particular schedule with some comments. Schedule 2 seeks to reintroduce temporary protection visas and to introduce an alternative class of visa, known as a safe haven enterprise visa, although, as we will see, this class of visa seems to be introduced in name only. Very many parts of that particular visa and how it will operate are left for next year in terms of regulations. That is an area that I will make further comment on.

Schedule 3 provides better consistency between the Migration Act 1958 and the Migration Regulations 1994 in respect of certain visa types. Schedule 4 goes on to introduce a fast-track assessment process for protection claims, combined with a limited form review, through a newly established immigration assessment authority, removing access to the Refugee Review Tribunal, or the RRT, for people who are in Australia in an unauthorised way. Schedule 5 clarifies the exercise of the removal power and codifies Australia's interpretation of its protection obligations under the Refugee Convention. Schedule 6 makes clear that the children of the unauthorised maritime arrivals inherit the immigration status of their parents. Schedule 7 ensures that the minister can cap classes of protection visas in the Humanitarian Programme.

In terms of Labor's position, we are opposed to schedule 1. In making some comments about our position on schedule 1, I want to reiterate the Labor position: we are completely committed to doing everything we can to see an end to deaths at sea and the human tragedy which is unfolding on our borders. Labor has a history of attempting to put arrangements in place which deal with this issue. We put in place the Papua New Guinea arrangement, which did a lot of the work necessary to see an end to the flow of asylum seeker vessels.
But we do have two concerns about schedule 1. I think some of the speakers before me have touched on these points. Firstly, there is the fact that we do need to do this in a way which does not have a detrimental impact on our relationship with Indonesia. Labor has a very clear history of understanding the diplomatic necessities in that regard. The incoming President of Indonesia has made some comments in respect of Australia's border protection policies. His Excellency Joko Widodo, as I understand it, has issued a stern warning to the Australian Prime Minister about his alleged failure to respect Indonesian sovereignty. We do need to have an approach which is not going to impact our very, very important relationship with our northern neighbour. It is obviously a country with 200 million or so people and, being one of our closest neighbours, it is extremely important that we have a hand in glove relationship with Indonesia in respect of dealing with asylum seeker vessels. That is the approach that Labor adopted in government and we were able to achieve that close working relationship.

It is probable that this is not a short-term issue that we are addressing here. We are probably looking at an issue that will take some years to work its way through. Obviously, the sooner the better, but in order for us to deal with this comprehensively with Indonesia it is important that those concerns be taken into account. The second concern we have with schedule 1 is the question of safety at sea. We have had advice from the Navy to the parliament about the question of safety at sea. Unfortunately, there appears to be a lack of information in respect of this issue. When there is a lack of information, there cannot be public confidence in whether the operations that are occurring at sea are in fact safe; it becomes an open question. In order for us to form a position with respect to the issue of turning back boats at sea, there is this need for further information, and we need to be satisfied that it is a policy which can be carried out safely.

The other aspect of schedule 1 which causes us some concern is that, in a sense, this aspect of the bill is attempting to deal with a case which is currently before the High Court—the case of CPCF v Minister for Immigration and Border Protection and others. This is an important case; it will determine the legality of the government's turn-back policy, as implemented on the basis of the existing law. We say that the High Court should be allowed to come to a position on that particular issue. If the turn-back policy adopted by the government is shown to be lawful, then that is important for public confidence in the government and in its actions. Equally, if the turn-back policy is found to be unlawful, it is important that that be placed on the public record and that it be totally transparent. Of course, if that were to occur, then this parliament could consider this issue and this legislation in light of the legal position. But there is a scattergun approach that is being adopted by this government, and I would take the opportunity to say that we have this extremely important piece of legislation being put through on what may or may not be the last day, or the second-last day, of sittings for the year; it is probably not an appropriate way for this extremely important matter to be dealt with.

On the issue of schedule 2 of the bill, this seeks to reinstate what we would call the 'failed' temporary protection visas. The Labor Party has a well-established policy on temporary protection visas. We adopt the view that these visas suspend asylum seekers in a prolonged state of uncertainty. Under a temporary protection visa, people put their lives on hold for a significant period of time. People are unable to take out loans or to do the sorts of things that
we all take for granted in our lives. It causes fear, anxiety and financial hardship to asylum seekers; it means that they are unable to move their lives forward for themselves and for their families in Australia; and it prevents them from making a contribution to the community.

We would also say that there should be no pretence about the fact that temporary protection visas in any way serve as a deterrent to people seeking to risk their lives and to come to Australia by sea—that is patently wrong. We saw evidence of that in the Howard-government era in the use of temporary protection visas by the Howard government—and the figures speak for themselves. More than 90 per cent of refugees initially granted temporary protection visas under the Howard government were eventually granted permanent protection because the situation in their country of origin had not changed. I will recap: the temporary protection visas offer no deterrent value and only place people in a state of uncertainty.

We move to the proposal under schedule 2 on safe haven enterprise visas, to which the Labor Party has offered its in-principle support. Speakers before have expressed disappointment with the fact that the government has failed to deliver the SHEVs, as they are called, through this bill. We note that the commitment on the part of the minister to deliver the SHEV was a key component of an agreement with the leader of the Palmer United Party, Mr Palmer, to support the reintroduction of temporary protection visas. The minister has repeatedly claimed that he would give life to a new visa to be known as the safe haven enterprise visa. On 24 September, he wrote to Mr Palmer to say that the visa would be introduced. Then on 25 September, in a statement to the House of Representatives, the minister said that the visa would be created. In a media release on 25 September, the minister asserted:

A further temporary visa, a Safe Haven Enterprise Visa (SHEV) - where holders work in a designated self-nominated regional area to encourage filling of job vacancies - will be introduced as an alternative to a TPV.

It is a matter of regret that Mr Morrison has failed to deliver on this commitment. I say that because this bill does not give legal effect to a safe haven enterprise visas as a new class of visa. All it seems to do is introduce into the Migration Act new subclause 35A(3A), which states:

There is a class of temporary visas to be known as safe haven enterprise visas.

No further details, let alone any criteria, are provided to us about the conditions that apply to this visa. Extensive provisions are included in the legislation to make clear that despite the SHEV being named in the bill no such substantive visa is actually brought into effect and nobody can apply to obtain one until we see regulations coming forward. There is no guarantee, and nothing in the proposed legislation, to compel the minister ever to promulgate the regulations that are required to give effect to this class of visa. We would argue also that the government has failed to undertake the detailed policy development necessary to make the safe haven enterprise visa a reality.

All of this uncertainty goes to the concern and the suspicion we have that nobody really knows what this new type of visa will look like, if it comes into existence at all. Labor supports in principle the idea of the safe haven enterprise visa. We agree with the leader of the Palmer United Party when he says that they would be a win for refugees and a win for regional Australia. It would be important for both of these wins to come into effect, but we do not see the detail of that.
The Australian Labor Party opposes schedule 4, which seeks to deprive asylum seekers the opportunity to have their applications for protection assessed fairly. What it does is replace it with a bureaucratic agency that is subject to the direction of the executive government. In the time available to me I will not deal with that further, but there are real concerns about the procedural fairness in relation to the way in which the proposed system will operate. Returning to the points I made at the outset, we believe that the government should go back to the drawing board in relation to this bill in respect of the areas that I have touched on.

**Senator WHISH-WILSON** (Tasmania) (19:03): I rise to talk about the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. I do so with a heavy heart on the last night of parliament for 2014. I am looking forward to getting home to my home state of Tasmania and spending time with my children and the rest of my family and enjoying the good life that so many Australians enjoy, spending time with our loved ones over Christmas. I will certainly be reminding myself of what a lucky country we live in. I think that sometimes we forget that it is not like that in the rest of the world, unless you have been overseas and experienced life in other places or have met people who have fled these other places. For example, I grew up socialising through our church group with Vietnamese refugees during the mid-1970s. They were a common part of my Sundays—we called them 'spring roll Sundays'. Our families would get together and we would spend time with them. I think now about the sort of society that my children are going to live in and the message that is coming from this government about other human beings. We need to get this right back to the building blocks and wash away all the spin, all the nonsense and all the messaging around this debate. Essentially, we are dealing with human beings.

**Senator O'Sullivan:** What do you tell them about the drownings?

**Senator WHISH-WILSON:** I will get to the drownings for your benefit, Senator O'Sullivan, through you Mr Acting Deputy President Smith, very shortly. We are dealing with human beings. Every human being has human rights. We should all have the same human rights. It is a fundamental concept that I think we in here all understand.

The reason I am standing here and debating this bill on the last night of parliament, on a Thursday night, rather than being on a plane heading home is politics. It is not because Senator O'Sullivan's side of the chamber is trying to save lives at sea. We are here because the government desperately needs a win in the last remaining hours and minutes of parliament. When the bell rings and we go home the government wants to be able to say that it has focused on an area that it believes it is strong on and has delivered on. It wants to show the Australian people just how big and tough and in control it is. Considering that I have heard several times from the Prime Minister and Minister Morrison this week that the big achievement of this government this year is that it has stopped the boats—not that we would know, because it is top secret; but let us take their word that they have stopped the boats—why are we here trying to pass this fundamentally flawed legislation as a matter of urgency? It is legislation that the majority of human rights experts in this country condemn. It is an extraordinary bill even for this government with its record of cruelty towards refugees and asylum seekers. It is an extraordinary bill—and there is no hurry for this. This is all about trying to get a good headline and appearing to be strong and in control, because this government is in disarray. It is ending the year having been thoroughly spanked in this chamber, in the opinion polls and by the Australian people. It makes me sad...
that it believes that a race to the bottom on cruelty is somehow something it should be waving a flag on, saying how great it is and, 'Look at what we've achieved.'

I have talked before about language that we use as leaders in parliament on issues relating to war and terrorism. I have talked about the role of the media in these types of debates. And it is no different here. It really disgusts me. I know that Senator Cash probably has a good heart, but it is her job to stand up in the chamber during question time, talk about the government's message and use certain language. But it really disgusts me that we have couched what is humanitarian assistance in military terms—even the word 'operation', as in Operation Sovereign Borders, and 'protecting' our borders. Protecting our borders from what? From the most unfortunate and desperate people in the world. The last time I checked, they were not coming here to seize our national assets. They were not carrying guns or explosives. This is set up because this cruel, conservative government knows it is good politics, and has been good politics in the past, to demonise, dehumanise and marginalise other human beings.

In an attempt to appear more reasonable, the argument goes that it is all about people-smugglers, but, in the attempt to push that frame into the minds of Australians through the media and through this parliament, they forget that they are doing a lot of damage—not just to the people that they are locking up on prison islands but also to migrant communities here in Australia. The Greens have consistently offered alternative solutions. I want to talk in a minute about a project in my home state of Tasmania which a number of church groups have come together to lead as an alternative solution to cruel offshore processing, turning back boats and temporary protection visas.

The procedures set out in this bill actually clearly point to this Australian government seeking to limit the number of people who are found to be genuine refugees, thereby limiting the onus on Australia to meet its fair share of responsibility in dealing humanely with those seeking asylum from persecution and violence. The unfairness in the system is obvious to anyone who has ever worked with refugees. This is the position of strength that the Greens have always had in our policy—and through Senator Hanson-Young in all the work that she has done. Our position is firmly embedded in that of stakeholders in this country who work with refugees. We have always worked with stakeholders in the formulation of our policies and ideas around refugees. Many of these, who have provided written submissions to the Senate inquiry, which I will touch on in a minute, have pointed out things such as the following. People fleeing countries where government institutions are weak or predatory are, understandably, initially fearful of Australian officials. Asylum seekers are often traumatised by their experiences and are unable to put the whole of their claims into a logical or coherent narrative. I have met a number of them in Tasmania at the Pontville detention centre. There are heartbreaking stories from young men who have fled persecution. They do not understand what is important and what is incidental in recounting their stories. It takes some time before they feel safe. When sexual violence is also involved, it can be many months or even years before an asylum seeker feels enough trust to be able to divulge the nature of their suffering.

It is also important to note that even this substandard form of review will be off limits to certain categories of asylum seekers who arrive by sea—for example, those whose claims the minister decides to exclude, based on his or her opinion, as being manifestly unfounded. This effectively renders the minister judge and jury in a decision that could cost the person their life, their family and their future. I do not know about others in this chamber, or how
Australians feel about it, but, from what I have seen of Minister Morrison, he is not the sort of person I would want in a position where compassion, empathy and understanding are required in dealing with human beings who have universal—or should have universal—human rights. When taken together, the Australian Human Rights Commission has warned that these changes will:

- Significantly reduce the rights of asylum seekers travelling to or arriving in Australia
- Increase the risk that they will be wrongly found not to be refugees
- Increase the risk that they will be returned to a place where they have a well-founded fear of persecution, because of a lack of judicial oversight of relevant decisions

These changes are also unlikely to lead to the types of efficiency gains—which I have heard coalition senators in the chamber talk about this week—that the government coldly hopes for, particularly if protection applicants continue to be denied access to legal advice. As the Law Council of Australia has pointed out, the lack of access to legal advice at the initial stage, coupled with the removal or restriction of merits review, is:

… likely to lead to more applications to the High Court based on common law judicial review principles. This will undoubtedly lead to further inefficiencies, and prolong the process of determining Australia’s protection obligations.

The bill also seeks to amend the Maritime Powers Act 2013 to remove judicial scrutiny of whether Australia complies with certain human rights obligations. And on and on it goes.

The debate that was in the media today and was focused upon in the Senate was about temporary protection visas. That is one of seven schedules. That is being used as a Trojan Horse to ram through this parliament tonight, with no real urgency except for headlines and political gain, a whole series of manifestly unjust, unethical and dangerous provisions that have been so well summarised in the Senate inquiry into the migration and maritime powers legislation amendment.

We heard from thousands of human rights lawyers, refugee advocates, academics and community members, all of whom rejected the amendments proposed in this bill. Despite the overwhelming evidence from experts in the community, who have said this bill should not proceed, the majority report had recommended that the bill be passed. This committee has arrogantly rejected the evidence of thousands of Australians and has chosen to favour politics and punishment over protection and the rule of law. Unfortunately, I am sometimes not paying enough attention during question time, but I do not know how many times I have had to stand up and ask Senator Cash to retract her statements that they are illegal entrants into this country. They are not. Under international law it is not illegal to seek asylum.

This bill is by far one of the most regressive pieces of legislation this parliament has seen when it comes to the treatment of asylum seekers and refugees. There is no doubt this bill is an attempt by the government to dramatically reduce the number of refugees Australia takes each year and to legitimise their actions at sea when intercepting and turning back asylum seeker boats. It seeks to legalise the government's actions at sea, limit parliamentary and judicial oversight, disregard Australia's international and human rights obligations—and we are becoming a global embarrassment—reintroduce temporary protection visas for boat arrivals, introduce a new temporary protection visa called a 'special humanitarian enterprise visa', introduce rapid processing with the sole aim of reducing the number of people Australia
finds to be in need of protection, remove the refugee convention from the statute books and
deeb babies born to asylum seeker parents as unauthorised maritime arrivals.

This bill is an attack on Australia's generous heart and our whole concept of fair and
equitable treatment and will result in Australia wrongly refusing protection to genuine
refugees and returning them to persecution or significant harm. We do not know how many
genuine refugees we have turned away when we have 'safely towed back the boats'. We have
no idea how they are hurting or what kind of lives they fled from. We have denied them the
right held by so many of our predecessors in generations before us who had fled persecution,
come to this country and built themselves a better life. They not just built themselves and
their families a better life but built a better country.

Why is all this happening? Why are we having this radical deviation from Australia's
longstanding commitment to international and human rights law? Why are we seriously
endangering the lives of thousands of asylum seekers? While you can say you are saving them
from drowning, you have no idea what they are going back to or how long they can survive in
the places they are going to have to flee to.

Senator O'Sullivan interjecting—

Senator WHISH-WILSON: You can laugh, Senator O'Sullivan. It's not a good look.

Senator O'Sullivan: I wasn't.

Senator WHISH-WILSON: Good. I hope that is the case.

The Australian Greens

strongly recommend that this bill be rejected by the Senate. We are better than this. This is
not about saving lives at sea. This may be about saving money because efficiency dividends
are so important to this government. This is about politics. This is about trying to get a win in
this chamber before we go home for Christmas, because this government is under pressure. It
is in disarray. Even the Murdoch press has turned on it in recent weeks. It knows it has six to
eight weeks before parliament comes back and it desperately needs a win. Once again, it is
genuinely sad that the coalition government feels it can get a win on being more cruel to
people every time it tries to introduce a new piece of legislation.

I want to finish on the concept of empathy. If you saw the documentary Go Back to Where
You Came From, it was pretty hard not to feel empathy for people who were fleeing
persecution. But, without that empathy, there is no understanding. And, of course, there is no
compassion without empathy. If any one of us here tonight goes home, stares at the ceiling
before they close their eyes and try to imagine that it would be like to be in people's shoes, we
probably could not, to be honest, because we have never seen our children shot in the head.
We have never seen some of the awful—

Senator O'Sullivan interjecting—

Senator WHISH-WILSON: Senator O'Sullivan, these are eyewitnesses. This is what I
have been told. Some of the atrocities these people are fleeing from are well documented.
They are often from war zones and areas of famine or disease. All they want to do is get a
better life. A young man who gets put on a bus at two in the morning by his dad and his uncle
is spirited away somewhere, and before he knows it he is on more buses. Then he is on a boat.
He does not know where he is going or why, but his family want a better life for him or do not
want him killed. These are the kind of people we are 'safely towing back' at sea, safely
spending them back into the blue yonder. Goodbye.
What are we afraid of in this country? What are we actually protecting our borders from? That is the question at the heart of this debate. Why does the coalition, going all the way back to John Howard and *Tampa*, see it as good politics to be cruel, dehumanise and marginalise other human beings? I am still struggling with why there are people in my country who are so fearful of desperate people arriving by boat. The only conclusion I can come to is that that fear is deeply seated for a number of reasons. I sometimes wonder whether it is just the fact that we fear for our quality of life, because we have such a good one in this country. We are so lucky. Of course there are people doing it tougher than others. There are people doing it tough here but, compared to the poor souls risking their lives for a better life, I actually think we do pretty well here, and we would do pretty well to remember how fortunate we are.

I have been very pleased to be working with a group of Tasmanians—originally it was church groups but a number of people have joined them—to look at the Tasmanian opportunity to offer an alternative to offshore processing in Tasmania using facilities that are there, using the community to resettle refugees and taking a compassionate approach that will cost a fraction of what Senator Cash's department is spending on her so-called military operation to protect this country from the world's most unfortunate people. We could do it through our communities in a positive and inclusive way. There is another way. We have to build the politics. It is our job in the Greens, and hopefully in Labor and other progressive parties, to build support for that kind of initiative in the Australian community. That is our job—to let Australians know that there is nothing to be fearful of. This is a normal part of Australia's heritage and it will have a very positive future if we can come together—

*Senator O'Sullivan interjecting—*

*Senator WHISH-WILSON:* and put aside the politics of fear, Senator O'Sullivan. Have a Merry Christmas and enjoy the time with your family.

*The ACTING DEPUTY PRESIDENT (Senator Smith):* I draw the chamber's attention to the fact that a second reading amendment has been circulated. It is on sheet 7645. I expect that that will be moved.

*(Quorum formed)*

*Senator LUDLAM* (Western Australia) (19:25): I rise tonight to oppose the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 in the strongest possible terms. This is the latest sordid chapter in a race to the bottom. I guess many of us thought it would not come to this. Just when you think this government cannot get any more vindictive in its treatment of innocent families fleeing war and violence and just when you think this government could not get any more sadistic, secretive and authoritarian in its attitude towards some of the most vulnerable people in the world, this government finds a way to surprise you.

So I am now beyond surprising. In truth, the ruination of Australia's arguably proud record of providing safe harbour to people seeking to escape political or sectarian violence has been a long time coming and there is no point in laying all of the blame at the feet of Minister Scott Morrison. From the moment the ALP and the Liberal-National parties settled their bipartisan consensus that henceforth Australian refugee policy would rest on the principle of deterrence, a bill like the one we are debating tonight was practically inevitable.
To deter people from fleeing the Iranian secret police, the medieval violence of the Taliban, the horrors faced by the Rohingya in the western part of Burma and the murderous repression that passes for official state policy in Sri Lanka inevitably means your policy ends up in a very dark place indeed. The United Nations has recognised this. The Australian High Court has recognised this. Advocates who work face to face with refugees fleeing the unfortunate circumstances that people find themselves in, refugees themselves and advocates, like Amnesty International, which keep an eye on the kinds of horrific situations that people find themselves in around the world, have looked at Australian government policy in recent years and found it extremely wanting.

The refugee convention that the Australian government will effectively shred tonight was written in the aftermath of the Second World War. The precursor to the UN High Commissioner for Refugees—the UN Relief and Rehabilitation Administration—was actually set up in 1943, in the latter part of the Second World War, to provide humanitarian relief to the vast numbers of potential and existing refugees in areas that were facing allied liberation at the time. Millions of people were on the move, fleeing the various fronts of the war.

It was evident after the First World War but it was certainly very evident in the aftermath of the Second World War that we needed to ensure that people fleeing Nazi Germany in various occupied territories and those fleeing regimes as the fronts and the ruination of war shifted from place to place would never again find themselves—like many Jews, for example, fleeing the Holocaust found themselves—stateless, unwanted and shunted from port to port. It was decided by the international community in the aftermath of the Second World War that nobody should face these horrors again and that nations that considered themselves civilised should have an obligation to provide safe harbour for people with legitimate reasons to flee regimes, to flee war, to flee violence, to flee occupations and to flee persecutions.

So we ended up a proud signatory of the 1951 refugee convention. I do not think there would actually be disagreement in this chamber tonight that Australia ended up a better place for participating in that convention, for recognising the horrific circumstances faced by families fleeing war and violence, and for allowing people to make a new home in this country. It has made Australia what it is. Of course it has its flaws. It has so many flaws, but you could also argue that Australia is one of the most successful experiments in genuine multiculturalism anywhere in the world as a result, in part, of our ascension to the 1951 refugee convention, which said that as a civilised country, as a democracy and as human beings we would provide safe harbour to people when they needed it.

The convention was obviously more or less limited in its initial draft to protecting European refugees in the aftermath of the war. But, of course, the 1967 protocol, which Australia also signed, expanded its scope as the problem with displacement spread around the world. And that is why the bill we are faced with tonight will do such damage. It will do damage not just to Australia's international reputation and not just because of our evident disrespect for the rule of law here and overseas; it will do damage, most importantly, to those families and those individuals and those children who find themselves, having committed no crime and through no fault of their own, on the move and forced to flee their homes.

We have a bill tonight that will grant almost total impunity to Minister Scott Morrison and whoever comes after him in the continued process of the militarisation of a humanitarian crisis. And that, I think, is something that Prime Minister Howard kind of put down in draft.
We saw during the Tampa crisis what that looked like—when you had a cargo ship boarded by the SAS and which cued the militarised press conferences and the chest thumping that arguably changed the course of an election—to what we see now: Minister Morris, flanked by men and women in uniform, having militarised a humanitarian crisis. This bill grants almost total impunity to a minister who has already shown himself fundamentally secretive and untrustworthy, and I genuinely fear for what powers this bill would grant an individual like Minister Scott Morrison—his authoritarian tendencies when he thinks he can score some kind of political point; brutalising people who already have lost so much—and I genuinely fear what this will actually mean for people who, through no fault of their own, find themselves on the front line.

It is a bill that seeks to reintroduce temporary protection visas, and I guess that is what has seemed to have dominated the public debate and public understanding of this bill. Temporary protection visas effectively invite people to put their children on boats if there is no other way of and no other hope for family reunification.

We understand that the Palmer United Party—and I think Senator Lazarus will speak later in this debate about the concessions, if you could call them that, that Mr Palmer has been able to extract—think this bill will create a safe haven enterprise visa, but of course the bill does not actually do any such thing. Mr Palmer again appears to have engaged in the tactic of creating all kinds of diversionary press conferences, putting himself in front of cameras, demanding concessions, marching around the landscape as though he is some kind of deal maker, but has come away with precisely nothing. There is nothing in the bill to give any kind of life to the concessions he says he has extracted. And we have seen this repeated pattern of behaviour. Maybe everyone does have their price, it is just that Mr Palmer's is very, very low. We do not see anything in the bill, as it is drafted, that would give any kind of expectation of permanent protection to people who find themselves in this country, no matter how they have managed to get here after fleeing some of these horrific circumstances.

The bill effectively will redefine the definition of refugee to be whatever the minister of the day says it is. And although Mr Morrison appears to be using hundreds of children who should never have been detained in the first place as a bargaining chip—and, again, we see the kind of compassion that I think has driven this debate for many years. People right across the political spectrum, across all parties—Independent, Liberal, Labor, Green—were horrified at the number of people who were making risky voyages on unseaworthy vessels and finding that the boats simply were not able to get them here. So many people died in those crossing. The compassion that was felt by people right across the debate was so callously manipulated, and, again, that is what is happening tonight. The crossbenchers have been told that Minister Morrison will trade off children behind razor wire—who should never have been put there in the first place—as though they were poker chips in a political negotiation. What kind of sociopath engages in a political debate or a political negotiation using the lives of children who have fled from Hazara lands in Afghanistan or from Sri Lanka? It is very, very hard to fathom how it could possibly have come to this. Those children could be released tomorrow, irrespective of the outcome of this debate tonight. That is what the Labor Party understands, it is what the Greens understand, and I would urge the other crossbenchers—some of whom have made their position clear and some of whom have not—to rest with that consideration.
overnight, because that decision will be on their conscience and on all of our consciences irrespective of which way the vote goes when it is committed.

The bill effectively removes most references to the refugee convention from Australia’s Migration Act. This is something that I am not expecting will make the front pages of the papers tomorrow because for whatever reason most Australians, through spending our lives in such a fortunate part of the world, if we are lucky will not ever have to think carefully about what human rights actually mean in the flesh or what international humanitarian law actually means to families, to real individuals. These things are seen by most of us, mediated through television screens, happening to other people.

But these instruments were put there for a purpose. As I described briefly earlier, they were put there so that nobody would ever have to face what those of Jewish descent fleeing the horrors of Nazi Germany had faced, or that the story of those fleeing Poland would never be repeated. That is the flesh and blood behind these human rights instruments that this government is so casually violating in the terms outlined in this bill. What kind of legislator—what kind of leader; what kind of politician—determines that the children of boat arrivals who were born in Australia, in Australian hospitals, are nonetheless unauthorised maritime arrivals? It is bleak. It is not even ironic; it is an incredibly black piece of legislation. And yet that is what this bill does—newborn children are classified as unauthorised maritime arrivals. How did it come to this degree of political dehumanisation?

Of course, there will be further debate on the amendments that are outlined in this bill when we get to the committee stage, and further amendments will shape the final form of the bill. I will leave comment on those to my colleague Senator Hanson-Young, who has carried the burden of government policies under the former government and under this government as they have sought this race to the bottom—as governments of both persuasion have sought to outdo each other in that deterrent effect that would somehow make Australian government policy scarier than the Taliban or the Iranian secret police. We will see what kind of final form this bill ends up in, but in the meantime I fear that this Senate is going to fail these people tonight and that, again, we will see that the resistance and hope and compassion wielded by people a long way from Capital Hill actually provide the real opposition and the real hope in refugee policy in Australia.

In my own home town, there are groups like the Refugee Rights Action Network, and right across Australia there is a movement called Love Makes a Way. These are people of faith who have taken some of the most significant parts of scripture about loving thy neighbour very literally indeed. Hundreds of them have risked arrest, and many of them have been arrested, in peaceful, non-violent sit-ins in ministers’ offices around the country, including that of my Western Australian colleague Senator Cash, who is here tonight. They are respectful but defiant that we simply cannot continue this hateful race to the bottom. I want to acknowledge all of those who have taken those kinds of matters into their own hands to ensure that there is some hope in the Australian community for compassionate policy on refugees, because it is very, very hard to find it in this building.

There are groups like the Asylum Seeker Resource Centre, who work with those who arrived with nothing and are trying to make their way in the Australian community or avoid deportation. There are groups like the Refugee Council and, as I said, like the Refugee Rights Action Network, who do everything from political advocacy to front-line activism to visits to
detention centres, where people find themselves detained for years despite the fact that they have committed no crime.

We can talk about the high-level policy of lifting the humanitarian intake and about the Greens' safer pathways proposal, which would lift the humanitarian intake to 30,000 to take the pressure off those people who found themselves stranded in transit camps in Malaysia and Indonesia. Under that proposal, out of that target of 30,000, we would take 10,000 from those camps in our region, where people have been told there is no queue. That is what creates the business model that the people-smugglers exploit. Momentarily lapsing into the language adopted by the coalition, if you want to smash that business model, remove the incentive to climb onto a boat. Rather than making people more terrified of the Australian government than they are of the Sri Lankan white vans, offer them hope by offering them a chance at a safe harbour—you might be in this camp for a period of time, but you will be safe while you are here, and you will eventually be resettled. If you want to dissolve the people-smugglers' business model, that is how to do it. The Greens propose an additional $70 million per year in emergency funding for safe assessment centres in Indonesia to enable this kind of process and to give people confidence that they will not be in these camps forever while they wait for assessment and resettlement. We propose to shut down all offshore detention in Nauru and PNG. This is not simply about getting children out of detention; it is about getting all human beings out of detention.

There are many, many policy instruments if we simply set the racist undertones of this debate aside, cease the race to the bottom—where we try and terrify people out of fleeing military dictatorships and war zones—and actually adopt a compassionate approach. With all sides of politics engaged in that project, we could potentially regain some of the dignity that we had under the Fraser government, when we resettled tens of thousands of people fleeing the Vietnam War—a war that Australia was also implicated in. At that time, nobody on either side of the old political parties decided to throw rocks, and there was a bipartisan consensus at the time that these people should not be used as political bargaining chips. Perhaps it was a more civilised political age, but it is our hope that we can return to that kind of civilised debate where people, and particularly children, are not treated as some kind of political weapon to be wielded in pursuit of one cheap headline after another.

I want to particularly acknowledge Jarrod, Teresa and Tyson for their First Home Project in Western Australia. This is what I think Australian refugee policy would look like if it actually proceeded from love rather than fear. The First Home Project is a unique experiment where funding was crowdsourced for a home in Perth's eastern suburbs, where recently arrived refugees could actually live and get themselves a rental history—and, of course, as we know from our work in homelessness policy, if you have somewhere to live you can build a life. You can go out and get the services that you are looking for, you can get job training, you can learn the language, your kids can go to school and you can find a way in our community. This was created with absolutely no government support at all, and it is a wonderful experiment. People end up moving on after a year in the place with a rental history and they can then go out into the private rental market. It is that kind of Australian spirit of welcome and compassion that I think, surely, is what most Australian people want. They want for this debate to proceed not with fear but with love and compassion for people who actually have
nowhere else to go in many instances and have fled circumstances that we in this wealthy and very fortunate place could barely imagine.

That is what I hope the crossbenchers tonight will rest with, as we all rest with these kinds of debates. I wish these debates were considered conscience votes. For all of us in here I think it is that serious where these lives are at stake, that just for once we could see party discipline relax, the talking points set aside and we could treat people as human beings not as collateral in a political debate that has long since passed the point of dismal. As Australians, whatever our political allegiances, we can do better than the kind of bill we are debating tonight.

Senator SINGH (Tasmania) (19:45): I rise to oppose the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 and to stand with the Labor Party, a party which certainly represents humanity, dignity of self-worth and compassion. I would like to start by acknowledging that this is an incredibly significant piece of legislation. If we go into the depth of it, we can see very clearly that it does incredible damage not just to the value of humanity but also to Australia's international reputation as a country which signed the refugee convention 50 or more years ago now. The bill is complex in its nature but it will also leave a legacy for this government that will not in any way leave it in a good stead. That is why Labor does not accept this bill.

There is much in this bill which, in effect, is a legislative response to actions of the judiciary—some of which is still occurring and the courts ought to be allowed to do their work—and some of it demonstrates very clearly this government's dismissive attitude to its international obligations. There is a stark difference between the Labor Party and the coalition and it can be seen very clearly in the nature of this bill—that is, the Labor Party like people and we want to help people. No matter what their background, we feel we should treat our fellow human beings as we would have them treat us. We are better than this, but it seems this government is not. It seems this government does not like people or at least it has forgotten people. As it basks in its own self-described glories about stopping the boats and saving lives at sea, the adults and children who fled their homes and countries because they thought they were going to be killed, or that they were endangering their children's lives, spend an average of 413 days behind barbed wire. Some of those people have lost their sanity in all of that time. Some have lost their lives. Most of the children have lost their childhood.

There are two young Iranian men who we know very clearly have died as a result of their detention in PNG. Hamid Khazaei was declared brain dead in September following a severe infection to his cut foot, when his life support was turned off. How did someone in Australia's care die from a cut foot? Reza Barati was beaten to death by a mob comprising camp guards and PNG local residents who had broken into the centre. Again, how did someone in Australia's care get killed by a mob? It seems to save the lives of refugees this government is prepared to destroy them, but this government is also prepared to ignore international law in order to destroy the hopes of people who asked for its help.

A self-evident truth over the course of Australian political history has been the conservatives' fear of engaging fully in the international community. Australia had to wait in fact until Gough Whitlam introduced us to the world and the world to Australia. The election of the Whitlam government was a turning point in Australia's international outlook and, perhaps most importantly for our global standing, Gough Whitlam engaged deeply with the United Nations. The Whitlam government brought a new emphasis to the United Nations
processes and engaged with that organisation more deeply than previous governments. It was under the Whitlam government that Labor first made contributions to United Nations funds to support education and other development programs in Africa and signed a range of significant multilateral treaties, conventions and covenants, a number of which have been left unsigned or unratified by the Australian government for many years.

There are some 130 of them, including the Convention relating to the Status of Stateless Persons of 1954, the 1961 Convention on the Reduction of Statelessness, the 1966 international Convention on the Elimination of All Forms of Racial Discrimination and the 1967 Protocol Relating to the Status of Refugees. Curiously, the Whitlam government was not responsible for the signing of the 1951 Convention relating to the Status of Refugees, defining who is a refugee, their rights and their legal obligations as states. That was an achievement of the Menzies government in 1954. As I have noted above, in 1973 Gough Whitlam's government was responsible for appending Australia's signature to the 1967 Protocol Relating to the Status of Refugees, which of course removed geographical and temporal restrictions to the convention. It is primarily the refugee convention approved by Menzies which this government now seeks to comprehensively reject in this bill. This bill contains a brazen attempt to walk away from this government's responsibilities under that convention. I want to make clear for the Senate the convention's description of a refugee. I quote:

… owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Clearly, this has been too much responsibility for this Abbott government—too much pressure to be humane for this Abbott government; therefore, unable to cope with the basic need to be compassionate, the Abbott government is attempting to wipe the refugee convention out of Australia's mind. I would like to add, as Senator Ludlam highlighted, that Australia is very much a successful multicultural nation. It is a multicultural nation built on migrants and its first people. Many of those migrants are refugees and they have contributed greatly to this nation over decades upon decades, and they will continue to, and that includes the refugees who have come to settle in Australia in recent times. We should note that and note the fact that this is a bill that is trying to destroy the future of those refugees in this nation—refugees who, under the convention signed by Menzies, were able to rebuild their lives. Why? Because this bill deletes references to the refugee convention from the Migration Act, the primary domestic act with which Australia engages—or did engage—with the refugee convention. This bill replaces those references with a new independent and self-contained statutory framework setting out Australia's own interpretation of its protection obligations under the refugee convention. In any event, by well established, accepted and respected principles of international law, this government has no right to self-interpret the scope of its international treaty obligations. It simply does not.

According to Jane McAdam, Professor of Law and Director of the Andrew and Renata Kaldor Centre for International Refugee Law at UNSW:

Basic rules of treaty interpretation state that a treaty must be interpreted in good faith, and in accordance with the ordinary meaning to be given to its terms in their context, and in the light of the treaty's object
and purpose. Furthermore, asserting that a treaty obligation is inconsistent with domestic law is no excuse for breaching it.

What follows are some comments, by no means all, from the UNHCR's submission to this bill, setting out very clearly its concerns:

UNHCR is concerned that the proposed amendments to the Migration Act would narrow the personal scope of the refugee definition, and lead to a restrictive application of rights to Convention refugees.

The proposed amendments specify that a person does not have a well-founded fear of persecution if reasonable steps could be taken to modify his or her behaviour so as to avoid a well-founded fear of persecution, unless a modification would conflict with a characteristic that is fundamental to the person’s identity or conscience; or conceal an innate or immutable characteristic of the person.

The UNHCR recommended the deletion of those proposed amendments, as they are fundamentally at odds with the purpose of the refugee convention. Let me repeat that: fundamentally at odds with the purpose of the refugee convention—a convention signed and ratified by Australia for over 50 years, first signed by Sir Robert Menzies himself. It is fundamentally at odds, the UNHCR has highlighted. Why? Because:

… a person cannot be denied refugee status based on a requirement that he or she can change or conceal his or her identity, opinions or characteristics in order to avoid persecution.

The fact that this bill is putting forward that a person should change his or her identity, opinions or characteristics in order to avoid persecution is in itself a bizarre piece of legislation to put forward for people wishing to seek asylum in this country—as the UNHCR states, and I completely agree, is fundamentally at odds with the purpose of the refugee convention. Further:

UNHCR is not aware of any other Contracting State to the 1951 Convention which has removed Article 1D from being a basis for determining the refugee status of Palestinian refugees.

As such, 'UNHCR recommends that Australia gives effect to its international obligations to Palestinian refugees by codifying, in full, Article 1D of the 1951 Convention in the Migration Act 1958'—agreed to and signed by Sir Robert Menzies and the Liberal and National parties. The UNHCR also recommended the deletion of the parts of the proposed amendments on temporary protection visas which require Convention refugees to re-establish their continuing need for international refugee protection. No distinction should be made on the basis of mode of arrival in respect of rights. All refugees are entitled to the 1951 convention rights agreed to and signed by Sir Robert Menzies—someone very familiar to those in the coalition government.

The UNHCR also recommended the deletion of the proposed amendments which operate to limit the entitlement of a convention refugee to the rights and obligations specified in articles 2 to 34 of the 1951 convention agreed to and signed by Sir Robert Menzies. I have noted for the Senate just some of the many problems—indeed downright contradictions—that the UNHCR has identified in this bill with our refugee convention.

In the brief time I have left I would like to focus on children, because I know that this bill has a focus on children. No-one does that better than UNICEF, who have outlined very clearly what these proposed changes to the migration law mean for children, how they would widen the immigration minister's powers, how they would marginalise our international law, which I have just outlined, and how they would wind back the ability of Australian courts to
scrutinise the government's treatment of asylum seekers. In their joint submission with the Human Rights Law Centre, Save the Children, Plan, the Human Rights Council of Australia and Children's Rights International, they outlined the grave human rights risks posed by this bill. They said very clearly that, under the proposed changes, children born in Australia would be classified as unauthorised maritime arrivals if one of their parents is a UMA, leaving those children subject to mandatory detention and transfer to Nauru. These children will be born right here in Australia, in Australian hospitals, yet they will be treated as if they arrived on a boat. Not only does that defy logic; it is incredibly cruel and again is a clear breach of international law.

These changes would render children stateless and deprive them of access to health care, education and their fundamental rights. UNICEF's submission clearly outlines further that, as I just highlighted, the bill would remove references to the refugee convention from the Migration Act and replace them with the government's own very watered-down interpretation, which I have gone through. The refugee convention is the cornerstone of international refugee protection and has now been signed by some 145 countries. The government should therefore not just unilaterally redefine it to suit its own purposes. That is what it is doing. It is out on its own, outside the 145 countries it joins in ratifying and signing the convention, trying to unilaterally define it for its own political purposes. I thank UNICEF, the Human Rights Law Centre, the Refugee Council, Save the Children, Plan and all of those organisations. Many of them have written to me; many of them I have met. They are at the coalface. They know a lot more than we in this place know about the real effects that this bill would have on children, on parents and on future refugees that seek asylum in this country.

This is a wealthy country. We have the capacity to take a humane approach to refugees in this country. That is what we have been known for for decades upon decades. Why now do we have to bear this government making us this most embarrassing and humiliating country, a country to be ashamed of in its approach to the treatment of people seeking asylum and their children, whether they come on a boat, whether they come in any way, shape or form; they are coming because they are fleeing persecution and they need our support. This is no way to treat them. This appalling piece of legislation completely guts them of any hope of being able to settle and rebuild their lives in this very rich country that we all take for granted and benefit from every day. That is why Labor will not support this bill. That is why we see very clearly that this bill does nothing to support the values that we stand for—the values of humanity and compassion.

I simply cannot understand why a government would do this to so many people that need our support and help and, on top of that, breach our obligations under the refugee convention, take the refugee convention out of the Migration Act. The long legacy that started under Sir Robert Menzies with the signing of this refugee convention was continued by great leaders such as Gough Whitlam, with all the conventions we signed under his short leadership, only now to have it all undone. One hundred and forty-five countries have ratified this convention, and here we stand, out on our own, as this inhumane, rich nation putting up the walls, saying: 'We are not a country of compassion. We are not going to care for refugees. We are going to be fierce and tough and hard.' What kind of message does that send? That is why Labor will not support this bill. It is an appalling piece of legislation.
Senator MUIR (Victoria) (20:05): Madam Acting Deputy President, I would like to inform you that this is not my first speech. I would like to make a statement on the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. Coming to a decision on this bill has been, without a doubt, one of the hardest decisions I have had to face—a choice between a bad option and a worse option. It is a decision that involves human beings: children, mothers, fathers. It involves the lives of people who have had to endure unthinkable hardship, people pushed to the point where they go to any lengths to seek asylum.

In its initial form, I could not vote for this bill. What the government is proposing is not ideal. There are parts of the bill that I am not comfortable with. However, to do nothing is not an option either. I fear that doing nothing will not help these people. The government has said that, if this bill does not pass, the 30,000 people currently awaiting processing will continue to be left in limbo. The government has said that, if this bill does not pass, the 1,550 people who arrived between 19 July 2013 and the election would be sent to Nauru. The minister has said that, if this bill does not pass, he would be unable to use statutory processes to assess refugee claims and would need to go through an administrative process. He has publicly stated, 'What it means for those 30,000 people is they will just wait longer and longer and longer.'

I believe that this bill has many bad aspects; however, I am forced into a corner to decide between a bad decision or a worse decision—a position which I do not wish on my worst enemies.

Ultimately, it is my desire to see the legacy case load resolved with a clear pathway to permanency for those who are found to be genuine refugees, and for those who are found not to be genuine refugees to return home. Unfortunately, due to the current government's policy, I do not have that option in front of me.

The question is: if I am to vote this bill down because it is not perfect, am I making a worse decision for the people who desperately want to be processed? There has been a lot of concern expressed about the government's new fast-track process. There have been claims that, if a protection visa applicant has their claim denied by the immigration assessment authority, then the only hope is getting that overturned by the High Court. I want to assure people that, if a genuine refugee has their claim knocked back by the case officer, the immigration assessment authority, they can have that decision reviewed by the Federal Circuit Court. Access to the courts for asylum seekers is something that this bill is not taking away.

It is important to remember that this bill is not about how we process people in the future but how we process the current case load left behind by bad policy. I fear for what may happen to people currently seeking some form of security and I believe we need to give them a chance to contribute to society and finally have a chance to get on with their lives.

This has been an extremely difficult process for me. I agree with the remarks made by my colleague Senator Xenophon, who I know has been working extremely hard on this issue. There are many parts of this bill that I am not comfortable with. Whilst I have not had the opportunity to visit detention centres to hear their stories personally, I cannot ignore a joint letter written by refugees on Christmas Island. In that letter, they state that, if a TPV was the only option this government was going to offer, to accept it, because the mental anguish and pain cannot go on. It was a plea, a loud cry for help.
Tonight I have also spoken with people who have worked closely with detainees on Christmas Island. They told me that this bill is not completely fair, but that the detainees are tired. They told me that the detainees have had enough and that they want out. They are desperate. She told me that they have watched the news and they know it is down to one vote, and that vote is mine.

While I was speaking to these people and they were informing me, they started to break down and cry as they were speaking about children who have been in detention since they were born who are two years old. They speak about the word 'out'. To them 'out' means going to church on occasion, and that is it. When they hear the word 'out', they cannot begin to associate it with freedom.

They told the people in detention that they rang the office of the man whose decision it was to decide whether they would be out of detention before Christmas. That man wasn't the minister for immigration; it was me. It should not be like this but it is. The crossbench should not have been put in this position, but it has.

I feel that amendments suggested by my colleagues in the Palmer United Party and Senator Xenophon address some real humanitarian concerns and have the potential to give an opportunity to the current case load of 30,000 refugees. It is important that the Senate look closely at the amendments and vote in a manner which I honestly believe will be in the best interests of my fellow human beings.

**Senator O'Neill** (New South Wales) (20:11): I rise tonight with a heavy heart to speak on the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. I would like to respond, before I make my more formal prepared remarks, to what we have just heard—that extraordinary statement for the record of this parliament from Senator Muir.

Let us be very clear about what we just heard from Senator Muir; he has a choice between a bad option and a worse option. Let us remember who has put him in that position. A man has received a phone call tonight and he has put on the record that he is the man who is going to decide the fate of these tired and desperate people. Why are we in that situation? Because the cruel and heartless government that is running this country and the disgraceful minister, who history will show is presiding over the most appalling treatment of refugees in the history of this nation, have put our crossbench—these men and women who are elected to the parliament—in a position where they have to make a choice tonight on the fate of these desperate, tired people. They are making them make that decision tonight.

'It is not ideal,' said Senator Muir, and he is uncomfortable. Tonight in his discomfort and his weariness from carrying this burden in this parliament, in this not ideal situation, the government will smugly sit over there. They will smile and, if they are successful in getting this piece of legislation through, they will count it as a political victory.

But they will have ripped away good process in this place, in the genuine care that we should be able to apply to the people who need us tonight—the people who are on the end of that phone call to Senator Muir; the people who are tired; the people who are vulnerable; the people who are nearly broken by the experiences that are being inflicted on them by this minister, who has the capacity in his own right as a minister to do the things that he is dressing up as required by this legislation.
It is a litany of deception—one layer after another like some dirty, disgusting cake that they are concocting one layer at a time. It is disgraceful. What they are attempting to do tonight—let us be very clear—is a great shame. It is a stain on this nation.

This cruel government has put to Senator Muir—in language that he expressed on multiple occasions in his comments—‘If this bill does not pass, the minister will not …’ He said it at least three times that I heard. This is the language of threat and intimidation. This is not the language of a government that is in control, dignified and carefully considering the legislation that it brings before this place. This is a government of bullying and intimidation that is placing the crossbenchers in this untenable position this evening. The reason it is doing it is that tonight it thinks it has got the numbers. It did not have them yesterday and it might not have them tomorrow, and that is why there is this disgraceful, unedifying haste to shove this legislation through the parliament, because tonight it thinks it might have the numbers.

I say to Senator Muir and to the other senators who may be listening to my contribution—small as it might be in this great conversation we are having here tonight—that senators have found an option C with much of the other disgraceful legislation that the government have tried to bring to this parliament, and that option C is to send back dodgy legislation to the dodgy government and make them put in writing, carefully articulated, the things that they are promising on the horizon. The senators in this place know, from their interactions with the government, that they cannot trust a word the government say. So, for the vulnerable people whose plight was well explicated by Senator Muir in his contribution, for the children who want out, I urge the senators this evening—or tomorrow, as the case may be—to do what they have done wisely with other legislation: send it back to the dodgy government. Do not trust them, because they are not worthy of our trust.

As I have said, my heart is heavy with the weight of what this parliament is being asked to do in this piece of legislation. It is a very dense piece of legislation. There are seven detailed schedules, each of which makes very significant changes to the lives and opportunities of people who will share this nation with those of us who are lucky enough to be Australian citizens. Each schedule in itself is worthy of the careful consideration of this Senate, but that will not happen. The reason it will not happen is that this government does not want it to happen. This is a government that wants to govern in darkness. It does not want the light of scrutiny to come near the dodgy legislation that it is putting before us this evening. It is pushing the legislation through as if its very life depended on it—and in a way it does, because the deal that has been done to get this matter through tonight really is not about the seven schedules and the people they will impact; it is about a chaotic, deceptive government that is desperately trying to create some pseudo-impression that it is in control.

As the government grind to a halt at the end of the parliamentary sitting year—and let us not forget they have been in for more than a year—out of the chaos that they have generated in these last few hours they think they are going to grab a little moment of glory, of control. That is what this is about. It is not about the goodwill of people. It is not about the good intent of legislation to advantage human beings. This is about a government scratching for their own survival and the creation of an impression. They are a government in chaos, a government having to toss their legislation overboard, off the barnacled Abbott canoe—chuck it overboard one day and then reach over and fish it out the next day when the winds of change have
shifted and they think they might have stitched together some sort of sordid or dodgy deal for a day. This is what is happening here tonight.

Today, not yesterday and perhaps not tomorrow, the government think they have got a chance to get their legislation over the line. Today, not yesterday and perhaps not tomorrow, they think they have got a deal with enough members of the crossbench to get a vote up and bring into being law that will forever change thousands of tomorrows for people it will affect. We see this unseemly haste and determination from the government to do whatever deal they need to—the heavy-handedness of Minister Morrison, the heavy intimidation that we have seen as people have been moving around the chamber, walking up and down the corridors, in and out of offices. Why have they been doing this? Because they know that they have no trust. The reason they have to do it today is to do with the currency of trust this government have with the people who work with them here in this parliament, as well as with the Australian people, who are watching this debate and are part of what we are doing here tonight. The government's word is of so little value that it cannot be connected to the promises of yesterday and it certainly should not be connected to the promises of tomorrow. That is why this legislation should not pass the Senate tonight, or indeed tomorrow. The senators should send it back to the drawing board.

This week we saw senators in this place yet again trying to pull the wool over the eyes of the Australian people. We have seen them do it in so many areas. Today, in question time, we had questions of the Minister for Defence, a minister who is presiding over such chaos that he lost two staff this week. Last week he lost a few canoes or something. Next week we all anticipate he might lose his ministry. He is in chaos.

Senator Polley: Up the creek without a paddle.

Senator O'Neill: He is up the creek. That is exactly right, Senator Polley. Despite a government talking about a budget emergency, despite a government offering our Defence personnel an effective pay cut this year, we had a minister today who was challenged about $6,300 worth of spending on a gastronomic feast.

We had Senator Abetz trying to justify here in the Senate today why the foreign minister needs her junior minister to hold her hand overseas next week. The Prime Minister's only woman in cabinet is not even allowed to do her own job by herself without a chaperone to accompany her to make sure that she does the right thing. It looks like it is a situation of 'father knows best'. It seems that the PM thinks he is the great patriarch of the party and he is going to tie everyone down; trying to limit and contain. And in his haste, along with his chief of staff, to contain this government, what we have is a government breaking out all over the place: a government in chaos—constantly in chaos.

Amongst this chaos and this confusion, we have this bill this evening. It is one of the most significant pieces of legislation that we are probably going to have to deal with since the election of this government—it is certainly one of the major pieces. And this eleventh-hour reprieve on the final day of sitting for the year is basically serving as an omnibus catch-all bill to try to clean up all the mess of this government's failure in immigration and in the border protection space.

Labor is not opposing this just for the sake of opposing. I notice that Senator Carr has returned to the chamber. His comments earlier this evening made very, very clear that there
are parts of this bill that we agree with. There are parts of this bill that are sensible. But, then, there are the other parts—an ideological fight to the bottom where the Liberals are committed to putting their policy ahead of human policy. Much of this bill just serves as a legislative response to the actions of the judiciary. This should be of great concern to us: a government interfering with that process. Some of it is understandable, but other serious parts of this legislation fly in the face of the separation of powers. The attempt to pre-empt the work of the courts is again another revelation about the attitude of this government; a government that thinks it is bigger, better, braver and bolder than anything else, even the judiciary. That is what we are seeing pushed through here this evening. And that is why Senator Muir was so right to describe this as a choice between a bad option and a worse option.

The High Court is currently dealing with a case with strangely familiar elements to what we see presented here this evening in this bill. If we delve a little deeper we can see that, sadly, this is not a coincidence, because if it were passed through this parliament, this piece of legislation would render the precedent value of that case redundant. It is a case which is fundamentally about the Maritime Powers Act, and the very outcome of that case may well have an impact on the government's ability to conduct its turn-back policy and rip the backbone out of the government's immigration standpoint. It sets a dangerous precedent for governments and their relationship with the High Court, that should a case be heard that a government of the day disagrees with, they can subvert any hearings of the court with pre-emptive legislation. That is what is underway here: pre-emptive legislation to get ahead of the courts from a government that thinks it knows best.

Our view about the question of turning back asylum vessels is simply this: we are open to any measure which saves lives at sea, and we are completely committed to doing everything we can to end the human tragedy which has unfolded on our borders. That is why we took deliberate steps, including putting the PNG arrangement in place, which has done an enormous part of the work in seeing an end to the flow of asylum seeker vessels. We absolutely understand that that needs to happen in order to end the human tragedy, and we hope that we are in a place now where have seen the last of the deaths at sea.

We do have two anxieties in relation to the question of turning back asylum seeker vessels. The first is the impact that this policy, if established through this legislation, will have on our relationship with Indonesia. It becomes clearer and clearer every day that this government, in all its relationships, including those with our international friend just to the north, Indonesia, has a lack of respect for relationships. The second area of concern with regard to safety at sea is with regard to the expertise of the Navy. We have had advice from the Navy to this parliament about the question of safety at sea. But since the election of the Abbott government, information about this part of proceedings has been—if we are honest—very difficult to ascertain. We cannot get questions answered openly in this parliament on the circumstances of the conduct that is occurring on the high seas because the government has tried to hide that too from the Australian people and from this parliament. In its opaque governing, in its determination to do deals in the darkness—dirty deals done behind doors over and over—this government continues to hide very important operational matters from the public.

In closing, I would like to return to the responsibility that weighs heavily tonight on the hearts of those who are on the crossbench this evening. They have been pushed and pushed by
the government on this day. First of all, the crossbench should not be put in such an intensely uncomfortable position. The difficulty of dealing with this complex piece of legislation and its long shadow across this nation, really requires that a more transparent, more open, more informed, more effective and less hasty response be developed. We have seen our crossbenchers work with Labor. We are clearly the ballast of this parliament in making sure that we hold true to a message of fairness for the Australian people. On the test of fairness, so much legislation has been rejected. We rejected the higher education bill this week because we knew it would lead to an unfair Australia, with two types of students—two classes of students—huge debt and a Commonwealth scholarships that has no Commonwealth money in it.

This legislation that we have had before us was rejected because senators could see that they simply could not trust the government. They sent it back to the drawing board and said, 'Let's get this cleaned up and let's lock down this dodgy group of people, who consider themselves the leaders of our nation at the moment, in language that they can't run from.' We know from the promises of the Prime Minister who said, 'No cuts to health, no cuts to education, no changes to the pension, no cuts to the ABC, no cuts to SBS,' that when they tell you they are not going to do something it is almost as if they have concocted a recipe for doing the exact opposite.

The words from this government with promises attached should not be trusted. They have no currency of trust. Everything they promised they have gone back on. I urge senators: if it is not locked down, described, written in triplicate and photocopied several times over do not trust the government with this heavy, heavy piece of legislation. Did not trust it yesterday. My bet is that tomorrow you probably will not trust them again. Do not trust them tonight on the one day that they think they have stitched together enough votes. This is too important an issue for us to have to deal with it in this short time frame, this disrespectful time frame, which reveals through process just how little respect this government has for the fair work of the parliament.

**Senator LAZARUS** (Queensland—Leader of the Palmer United Party in the Senate) (20:31): Australia's reputation across the world is being damaged. We are being viewed by the world as a country that locks up innocent and defensive children, subjecting them to jail-like conditions without hope, compassion or any sense of a future. The sad truth is that we are a country that locks up defenceless children who have been washed up in our waters, children who have been dragged onto boats as innocent victims by their parents or others at the hands of unscrupulous people smugglers.

Australia is locking up traumatised children who have lost their parents and have been forced to travel by sea in treacherous conditions on unsafe boats. In Australia we are currently keeping some 30,000 asylum seekers in detention on the mainland and on Christmas Island, 468 of whom are children. Of those children, 32 are unaccompanied children. Let us be very clear, Australia is currently keeping 32 children without parents in a detention centre on Christmas Island.

Over the last 12 months, processing of asylum seekers has come to a grinding halt. Human beings have been left to languish in detention in jail like conditions at the hands of the Australian government. Detention means that these people are either living in detention centres or living in Australia on bridging visas, unable to work and living in appalling
conditions. I cannot be a part of this. Palmer United cannot be a part of this. Australia cannot continue to be part of this.

As a representative of the people of Queensland and more broadly Australia, as a father and as an Australian with a genuine desire to ensure Australia flourishes as a nation, I have to do something. I cannot look forward to Christmas while young children are in detention on Christmas Island suffering, lonely and without hope. We have to process the asylum seekers—the men, women and children—who are being kept in detention, as they desperately need to know what their future holds. We have got to get the 460 children out of detention and we have to start doing the right thing.

Palmer United has spoken to the government and put forward a solution. Our solution is not one of political pointscoring. It is one that ensures that Australia as a country meets our humanitarian obligations and treats people with respect, decency and offers authentic refugees real and genuine hope. I recognise that it is a difficult pill for the government to swallow to take on board Palmer United's proposal to redress the current asylum seeker crisis. I am grateful that the government has agreed to Palmer United's ideas to ease the asylum seeker crisis and, as a result, agreed to implement our solution through key amendments to this bill, which will significantly improve outcomes for asylum seekers and put Australia back on the right path. As a result, in response to Palmer United's demands, the government will put in place a fast-track processing system to process the existing group of asylum seekers awaiting decisions in relation to their future. Further, the government has agreed to ensure that the 1,500 asylum seekers who arrived in Australia illegally by boat between 19 July and 31 December 2013 will not be transferred to Nauru for processing but, instead, will be included in the group of asylum seekers to be processed through the fast-track system. This will ensure that the 460 children in detention on Christmas Island, including the 32 unaccompanied children, will be removed from Christmas Island by Christmas this year. In addition, the government has agreed to increase Australia's refugee and humanitarian intake by 7,500 over the next budget and forward estimates periods.

Importantly, the government has also agreed to introduce the concept of a Palmer United safe haven enterprise visa, commonly referred to now as a SHEV. As Australians, we all recognise the important socially, economically and culturally significant benefits that immigrants have brought to our country. As a young boy growing up in Queanbeyan, I grew up and went to school and my local primary and high school with kids from local Italian, Croatian and Greek families. These family settled in Australia showing incredible tenacity and entrepreneurial spirit by establishing small local businesses, building a life for themselves, providing immense benefit for their local communities and contributing to the overall cultural fabric of our great nation. These families worked hard and were tireless in their commitment to their communities and their family businesses. They worked long hours every day building their businesses. Some of them were builders, restaurateurs, painters and corner-store owners. Without the arrival of people from other countries we would not be the wonderful multicultural and diverse nation that we are today, excelling in so many fields and industries. This is why the Palmer United Party developed the concept of the SHEV, because we value the benefits that people from other countries bring to our nation. We would like to give genuine refugees the opportunity to build a life for themselves here in our great country while also contributing to the continuing growth of Australia. Australia should open its arms
to the genuine refugees and give them the opportunity to be part of our nation through real and genuine integration that builds on the strength of our great country while also supporting them to build a life of their very own, entwined with our laws, values, culture and social norms.

I am pleased the government has agreed to the Palmer United's SHEV idea, which involves asylum seekers who have been deemed genuine refugees being offered the opportunity to apply for a safe haven enterprise visa. The Palmer United safe haven enterprise visa, which is a five-year visa, will provide the opportunity for genuine refugees and their families to be placed in rural and regional areas across Australia, where they will either work or study for a minimum of 3½ years of that five-year visa. Rural and regional Australia is on its knees. Farmers need employees to undertake farm based duties, such as picking, sorting and packing, along with various other business and administration duties. Tourist operators in my home state of Queensland desperately need staff and are having to rely on a transient workforce of backpackers to work in restaurants, resorts and hotels, particularly in rural and remote areas. The Palmer United safe haven enterprise visa will complement this industry sector with people who are available and willing to work.

Australia's banana industry in Queensland is relying on backpackers to work on the banana plantations. Backpackers only work for up to six months at a time as their primary objective is to travel and experience our great country. Rural and regional farmers need to retrain staff on a constant basis. This is both stressful and inefficient for the farmers. While it is wonderful that young people from all over the world are opting to experience our great country, we also need to recognise that the needs of regional rural and regional Australia need to be given priority. In speaking with farmers, there is no doubt they would prefer to have available a more reliable and long-term base of employees. Farmers would prefer to employ Aussie kids, but, for one reason or another, many of the kids today want to move to the city—to the big smoke—to work and do not want to stay in their home country towns and rural centres. The Palmer United SHEV will support Australia's rural and regional communities by introducing into these communities genuine refugees who are keen to build a new life for themselves and their families in our great country. Genuine refugees will be placed across areas where there is support and the infrastructure to facilitate their integration into Australia and where there are jobs and opportunities for work, study and social integration.

Upon completion of the five-year Palmer United SHEV, and subject to meeting visa requirements, SHEV holders will be able to apply for a number of other onshore visas which could provide a pathway to permanent residency. These visas include a number of different opportunities, including study visas and work visas. The Palmer United safe haven enterprise visa provides a clear, genuine and honest pathway to permanent residency for authentic refugees who are prepared to work hard, contribute to the settlement and integration of themselves and their families into our great, generous and welcoming nation, build a future for themselves and contribute to the continuing growth of our wonderful country—just like many of our forefathers, uncles, aunties and other ancestors have done in the past and will continue to do into the future.

It is also important to note that the Palmer United SHEV will also provide access to: work rights and unrestricted study; employment services and mutual obligation arrangements; Medicare; income support; torture and trauma counselling; translating and interpreting.
services; complex case support; and education for school aged children. The Palmer United safe haven enterprise visa will encourage enterprise through earning and learning, while also strengthening regional Australia.

My dear friend and respected colleague Senator Wang is an example of how Australia can benefit from the wonderful talents and contributions of people from other countries. In 2003, Senator Wang arrived in Australia on a student visa to study urban planning and civil engineering at the University of Melbourne. Senator Wang was a diligent student, and, in 2006, applied for and received permanent residency in Australia. In 2009, Senator Wang gained Australian citizenship. In 2013—and again in 2014—Senator Wang was voted into the Australian Senate to represent his wonderful state of Western Australia. Senator Wang is a shining example of what can be achieved when Australia embraces people from other countries.

In summary, I would like to quote a Japanese proverb: the reputation of a thousand years may be determined by the conduct of one hour. In this Senate on this day, we have the opportunity to put right the disgraceful way our country has been treating asylum seekers who have suffered greatly at the hands of policy which has seen young children—unaccompanied young children—held in detention on Christmas Island. We have the chance to start to put right our reputation abroad—a reputation which has been tarnished by our treatment of desperate people purely seeking to escape from war-torn countries, famine, disease, evil extremists, torture, fascist regimes and heartless violence. We have the chance to work together to put in place legislation and mechanisms to give clarity to the futures of asylum seekers and to provide real opportunities and a clear pathway for genuine refugees seeking to contribute to our country and their own futures as members of our great nation. We have the chance to create history which will re-determine our country's approach to humankind. I cannot allow young children to be kept in detention. I cannot continue to be part of what is Australia's shame. I cannot allow our international reputation to be trashed any further. And, importantly and most critically, I cannot stand idly by and allow my country—my thoroughly decent country of which I am so, so very proud—to continue to treat people in such a deplorable way. To stand idly by knowing that wrongs are happening without intervening is equal to being party to the wrongdoing.

On behalf of the Palmer United Party I would like to thank the government for relenting to our demands to ensure that Australia meets its international obligations. Specifically, I would like to thank the government for agreeing to Palmer United's demands to fast track consideration of asylum seekers, implementing the Palmer United safe haven enterprise visa, providing real and genuine pathway opportunities for refugees to build a life for themselves in Australia while contributing to the ongoing growth of our great nation, removing children from detention, and demonstrating that Australia is a nation of compassion, of humility, of generosity and a nation which acknowledges, values and appreciates the benefits of migration.

Palmer United has worked hard to develop the idea of the safe haven enterprise visa, and it is pleasing to be here today to see our idea implemented, as the Palmer United SHEV will help to build our great nation while helping to rebuild people's lives.

I recognise that the bill in its entirety is not perfect. I agree that there will be need to make improvements to the bill and these amendments over time. However, the key is ensuring that we get our country moving. We cannot keep people locked up any longer. We cannot keep
children locked up any longer. We must do something. We cannot continue to argue about what we must do; we must do something and something that moves our country in the right direction. While people argue, while political parties engage in posturing, while people attempt to point score, human beings including children are being locked up in detention. The Palmer United solution gets people out of detention, gives people hope, gives people a genuine pathway for the future and starts to turn around our badly damaged reputation internationally. This is only the beginning. Once we have ensured the current group of asylum seekers are assisted and the children are removed from detention, we will then start to look at Manus Island and Nauru.

What I do need to let the people of Australia know is that I am personally disgusted by the way our country has treated asylum seekers. What is really concerning is that Australia has been treating asylum seekers this way for years, and I think all of us in this place should shoulder some of the blame. It is unacceptable that Australia has allowed so many asylum seekers — men, women and children — to be kept in detention in such poor conditions.

We cannot send people back to their own countries where they will face harm and persecution. We cannot simply dump them into our society without appropriate support and the opportunity to build a future for themselves so they can become taxpayers and fully participating members of our society. And we cannot lose sight of the fact that our own people need our focus, attention and support as well. We need to move forward, even if we move bit by bit, in the right direction, in the right way.

I would like to assure the people of Australia that I, along with my Palmer United colleague Senator Dio Wang am committed to removing the children in detention from Christmas Island before Christmas. We all should want children in detention to experience the joys of being a kid and experiencing a traditional Aussie Christmas filled with laughter, love and the excitement of opening presents.

**Senator SIEWERT** (Western Australia — Australian Greens Whip) (20:48): I ostensibly rise to move Senator Hanson-Young's second reading amendment. My colleagues have done an excellent job of outlining the Australian Greens' deep concern to this legislation, so I move:

At the end of the motion, add:

but the Senate:

(a) is of the view that there is no impediment to the government processing the claims of the 30,000 asylum seekers who are currently languishing in community and immigration detention; and

(b) urges the government to:

(i) commence processing straight away; and

(ii) release all children from immigration detention immediately.

**Senator CASH** (Western Australia — Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (20:49): I rise to close the debate in relation to the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. I commence by thanking my fellow senators for contributing to this important debate and in particular thank the crossbenchers for the productive and constructive way in which they have approached and engaged with the government.
The measures in this bill provide the government with the necessary tools to tackle the backlog of illegal maritime arrivals, help combat the illegal and dangerous practices of people smuggling by sea and strengthen Australia's ongoing conduct of border security and maritime enforcement operations. The bill deserves the support of all parties. The government is upholding its election commitments to stop the boats and to resolve the legacy caseload, and through this bill these commitments will be met with integrity and with more efficient and effective outcomes for the Australian taxpayer. I commend the bill to the Senate.

The PRESIDENT: The question is that the second reading amendment moved by Senator Siewert be agreed to.

The Senate divided. [20:55]

(The President—Senator Parry)

Ayes ....................32
Noes ....................34
Majority ...............2

AYES

Bilyk, CL
Bullock, J.W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
McEwen, A (teller)
Milne, C
O'Neill, DM
Polley, H
Rice, J
Singh, LM
Urquhart, AE
Whish-Wilson, PS

Brown, CL
Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S
Madigan, JJ
McLucas, J
Moore, CM
Peris, N
Rhiannon, L
Siewert, R
Sterle, G
Waters, LJ
Wright, PL

NOES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ (teller)
Fifield, MP
Lazarus, GP
Macdonald, ID
McGrath, J
Muir, R
O'Sullivan, B
Payne, MA
Ronaldson, M

Back, CJ
Birmingham, SJ
Bushby, DC
Cash, MC
Day, R.J.
Fierravanti-Wells, C
Heffernan, W
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L
Ruston, A
Question negatived.

The PRESIDENT (20:57): The question now is that the bill be read a second time.

The Senate divided. [20:58]

(The President—Senator Parry)

Ayes ................. 34
Noes .................. 32
Majority .............. 2

AYES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ (teller)
Fifield, MP
Lazarus, GP
Macdonald, ID
McGrath, J
Muir, R
O’Sullivan, B
Payne, MA
Ronaldson, M
Ryan, SM
Sinodinos, A
Wang, Z

NOES

Bilyk, CL
Bullock, J.W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
McEwen, A (teller)
Milne, C

Back, CJ
Birmingham, SJ
Bushby, DC
Cash, MC
Day, R.J.
Fieriavanti-Wells, C
Heffernan, W
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L
Ruston, A
Seullion, NG
Smith, D
Xenophon, N

Brown, CL
Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S
Madigan, JJ
McLucas, J
Moore, CM
Thursday, 4 December 2014

SENATE

10319

NOES

O'Neill, DM
Polley, H
Rice, J
Singh, LM
Urqhart, AE
Whish-Wilson, PS

Peris, N
Rhiannon, L
Siewert, R
Sterle, G
Waters, LJ
Wright, PL

PAIRS

Cormann, M
Edwards, S
Johnston, D
Seselja, Z
Williams, JR

Marshall, GM
Wong, P
Dastyari, S
Di Natale, R
Lundy, KA

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (21:01): I table four supplementary explanatory memoranda relating to the government's amendments to be moved to this bill. I also seek leave to move government amendments on sheet HA110, government amendments on sheet GH117, government amendments on sheet GH118 and government amendments on sheet HA108 together.

Leave granted.

Senator CASH: by leave—I move:

(1) Clause 2, page 2 (after table item 4), insert:

| 4A. | Schedule 2, Part 1, Division 2A
| The later of:
| (a) the commencement of the provisions covered by table item 4; and
| (b) the commencement of Schedule 3 to the Migration Amendment (Protection and Other Measures) Act 2014.
| However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

(2) Schedule 2, item 16, page 27 (after line 24), after subsection 35A(3A), insert:

(3B) The purpose of safe haven enterprise visas is both to provide protection and to encourage enterprise through earning and learning while strengthening regional Australia.

Note: If a person satisfies the requirements for working, study and accessing social security prescribed for the purposes of paragraph 46A(1A)(c), section 46A will not bar the person from making a valid
application for any of the onshore visas prescribed for the purposes of paragraph 46A(1A)(b). This does not include permanent protection visas.

(3) Schedule 2, Part 1, page 28 (after line 1), at the end of Division 2, add:

_Migration Regulations 1994_

**18B After subparagraph 1401(3)(d)(i)**
Insert:

(ia) does not hold, and has not ever held, a Safe Haven Enterprise (Class XE) visa; and

**18C After subparagraph 1403(3)(d)(i)**
Insert:

(ia) holds, or has ever held, a Safe Haven Enterprise (Class XE) visa; or

**18D At the end of Schedule 1**
Add:

1404. Safe Haven Enterprise (Class XE)

(1) Form: 790.

(2) Visa application charge:

(a) first instalment (payable at the time the application is made):

(i) for an applicant who is in immigration detention and has not been immigration cleared:

<table>
<thead>
<tr>
<th>Item</th>
<th>Component</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Base application charge</td>
<td>Nil</td>
</tr>
<tr>
<td>2</td>
<td>Additional applicant charge for an applicant who is at least 18</td>
<td>Nil</td>
</tr>
<tr>
<td>3</td>
<td>Additional applicant charge for an applicant who is less than 18</td>
<td>Nil</td>
</tr>
</tbody>
</table>

(ii) for any other applicant:

<table>
<thead>
<tr>
<th>Item</th>
<th>Component</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Base application charge</td>
<td>$35</td>
</tr>
<tr>
<td>2</td>
<td>Additional applicant charge for an applicant who is at least 18</td>
<td>Nil</td>
</tr>
<tr>
<td>3</td>
<td>Additional applicant charge for an applicant who is less than 18</td>
<td>Nil</td>
</tr>
</tbody>
</table>

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

(a) Application must be made in Australia.

(b) Applicant must be in Australia.
(c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Safe Haven Enterprise (Class XE) visa may be made at the same time and place as, and combined with, the application by that person.

(d) An application by a person for a Safe Haven Enterprise (Class XE) visa is valid only if the person:
(i) holds, or has ever held, a Temporary Protection (Class XD) visa or a Subclass 785 (Temporary Protection) visa, including such a visa granted before 2 December 2013; or
(ii) holds, or has ever held, a Safe Haven Enterprise (Class XE) visa; or
(iii) holds, or has ever held, a Temporary Safe Haven (Class UJ) visa; or
(iv) holds, or has ever held, a Temporary (Humanitarian Concern) (Class UO) visa; or
(v) did not hold a visa that was in effect on the person’s last entry into Australia; or
(vi) is an unauthorised maritime arrival; or
(vii) was not immigration cleared on the person’s last entry into Australia.

(e) An application by a person for a Safe Haven Enterprise (Class XE) visa is valid only if the person indicates in writing an intention to work or study while accessing minimum social security benefits in a regional area specified under subclause (4).

(4) The Minister may, by legislative instrument, specify a regional area for the purposes of these regulations.

Note: See also regulation 2.06AAB (visa applications by holders and certain former holders of safe haven enterprise visas).

(5) Subclasses:

790 (Safe Haven Enterprise)

18E After Part 785 of Schedule 2

Insert:

Subclass 790—Safe Haven Enterprise

790.1—Interpretation

790.111

For the purposes of this Part, a person (A) is a member of the same family unit as another person (B) if:

(a) A is a member of B's family unit; or
(b) B is a member of A's family unit; or
(c) A and B are members of the family unit of a third person.

790.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

790.21—Criteria to be satisfied at time of application

790.211

(1) Subclause (2) or (3) is satisfied.
(2) The applicant:
(a) claims that a criterion mentioned in paragraph 36(2)(a) or (aa) of the Act is satisfied in relation to the applicant; and
(b) makes specific claims as to why that criterion is satisfied.
Note: Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of protection visas to non-citizens in respect of whom Australia has protection obligations.

(3) The applicant claims to be a member of the same family unit as a person:
   (a) to whom subclause (2) applies; and
   (b) who is an applicant for a Subclass 790 (Safe Haven Enterprise) visa.

Note: See paragraphs 36(2)(b) and (c) of the Act.

790.22—Criteria to be satisfied at time of decision

790.221
(1) Subclause (2) or (3) is satisfied.

(2) The Minister is satisfied that a criterion mentioned in paragraph 36(2)(a) or (aa) of the Act is satisfied in relation to the applicant.

Note: Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of protection visas to non-citizens in respect of whom Australia has protection obligations.

(3) The Minister is satisfied that:
   (a) the applicant is a member of the same family unit as an applicant mentioned in subclause (2); and
   (b) the applicant mentioned in subclause (2) has been granted a Subclass 790 (Safe Haven Enterprise) visa.

Note: See paragraphs 36(2)(b) and (c) of the Act.

790.222

The applicant has undergone a medical examination carried out by any of the following (a relevant medical practitioner): 

(a) a Medical Officer of the Commonwealth;

(b) a medical practitioner approved by the Minister for the purposes of this paragraph;

(c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

790.223

(1) One of subclauses (2) to (4) is satisfied.

(2) The applicant has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia.

(3) The applicant is under 11 years of age and is not a person in respect of whom a relevant medical practitioner has requested the examination mentioned in subclause (2).

(4) The applicant is a person:
   (a) who is confirmed by a relevant medical practitioner to be pregnant; and
   (b) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and
   (c) who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and
   (d) who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

790.224

(1) A relevant medical practitioner has considered:
(a) the results of any tests carried out for the purposes of the medical examination required under clause 790.222; and

(b) the radiological report (if any) required under clause 790.223 in respect of the applicant.

(2) If the relevant medical practitioner:

(a) is not a Medical Officer of the Commonwealth; and

(b) considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community;

the relevant medical practitioner has referred any relevant results and reports to a Medical Officer of the Commonwealth.

790.225

If a Medical Officer of the Commonwealth considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, arrangements have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.

790.226

The applicant:

(a) satisfies public interest criteria 4001 and 4003A; and

(b) if the applicant had turned 18 at the time of application—satisfies public interest criterion 4019.

790.227

The Minister is satisfied that the grant of the visa is in the national interest.

790.228

(1) If the applicant is a child to whom subregulation 2.08(2) applies, subclause (2) is satisfied.

(2) The Minister is satisfied that:

(a) the applicant is a member of the same family unit as an applicant to whom subclause 790.221(2) applies; and

(b) the applicant to whom subclause 790.221(2) applies has been granted a Subclass 790 (Safe Haven Enterprise) visa.

Note 1: Subregulation 2.08(2) applies, generally, to a child born to a non-citizen after the non-citizen has applied for a visa but before the application is decided.

Note 2: Subclause 790.221(2) applies if the Minister is satisfied that Australia has protection obligations in respect of the applicant as mentioned in paragraph 36(2)(a) or (aa) of the Act.

790.3—Secondary criteria

Note: All applicants must satisfy the primary criteria.

790.4—Circumstances applicable to grant

790.411

The applicant must be in Australia when the visa is granted.

790.5—When visa is in effect

790.511

Temporary visa permitting the holder to travel to, enter and remain in Australia until:
(a) if the holder of the temporary visa (the first visa) makes a valid application for another Subclass 790 (Safe Haven Enterprise) visa within 5 years after the grant of the first visa—the day when the application is finally determined or withdrawn; or

(b) in any other case—the end of 5 years from the date of grant of the first visa.

790.6—Conditions

790.611

Conditions 8565 and 8570.

Note: There is nothing in the Act or these regulations which restricts the ability of the holder of the visa to study or work as he or she sees fit.

(4) Schedule 2, Part 1, page 28 (after line 1), after Division 2, insert:

Division 2A—Safe haven enterprise visas: pathways to other visas

Migration Act 1958

18F After subsection 46A(1)

Insert:

(1A) Subsection (1) does not apply if:

(a) either:

(i) the applicant holds a safe haven enterprise visa (see subsection 35A(3A)); or

(ii) the applicant is a lawful non-citizen who has ever held a safe haven enterprise visa; and

(b) the application is for a visa prescribed for the purposes of this paragraph; and

(c) the applicant satisfies any employment, educational or social security benefit requirements prescribed in relation to the safe haven enterprise visa for the purposes of this paragraph.

Migration Regulations 1994

18G After regulation 2.06AAA

Insert:

2.06AAB Visa applications by holders and certain former holders of safe haven enterprise visas.

(1) For paragraph 46A(1A)(b) of the Act, visas of the subclasses listed in the following table are prescribed:

<table>
<thead>
<tr>
<th>Item</th>
<th>Visa subclass</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Subclass 132 (Business Talent)</td>
</tr>
<tr>
<td>2</td>
<td>Subclass 143 (Contributory Parent)</td>
</tr>
<tr>
<td>3</td>
<td>Subclass 186 (Employer Nomination Scheme)</td>
</tr>
<tr>
<td>4</td>
<td>Subclass 187 (Regional Sponsored Migration Scheme)</td>
</tr>
<tr>
<td>5</td>
<td>Subclass 188 (Business Innovation and Investment (Provisional))</td>
</tr>
<tr>
<td>6</td>
<td>Subclass 189 (Skilled—Independent)</td>
</tr>
<tr>
<td>7</td>
<td>Subclass 190 (Skilled—Nominated)</td>
</tr>
<tr>
<td>8</td>
<td>Subclass 402 (Training and Research)</td>
</tr>
<tr>
<td>9</td>
<td>Subclass 405 (Investor Retirement)</td>
</tr>
</tbody>
</table>
(2) For the purposes of paragraph 46A(1A)(c) of the Act, an applicant for a visa who currently holds, or has ever held, a safe haven enterprise visa must, for a period or periods totalling 42 months (which need not be continuous) while the visa is (or was) in effect, satisfy one of the following requirements:

(a) the applicant does not receive any social security benefits determined under subregulation (3), and is engaged in employment, as determined under that subregulation, in a regional area specified under subclause 1404(4) of Schedule 1;

(b) the applicant is enrolled in full-time study at an educational institution, as determined under subregulation (3), in a regional area specified under subclause 1404(4) of Schedule 1;

(c) the applicant satisfies a combination of the requirements in paragraph (a) and paragraph (b), at different times.

(3) The Minister may, by legislative instrument, make a determination for the purposes of paragraphs (2)(a) and (b).

(5) Schedule 2, page 28 (after line 22), at the end of item 19, add:

(3) The amendments of the Migration Act 1958 and the Migration Regulations 1994 made by Division 2A of this Part apply in relation to an application for a visa made on or after the commencement of that Division.
Add "or safe haven enterprise visas".

(2) Schedule 7, page 111 (after line 4), after item 10, insert:

10A Section 85

Omit "The", substitute "(1) Subject to subsection (2), the".

(3) Schedule 7, page 111 (after line 8), after item 12, insert:

12A At the end of section 85

Add:

(2) Subsection (1) does not apply in relation to temporary protection visas.

(1) Schedule 2, item 31, page 42 (line 3), omit "remain in Australia", substitute "remain in, travel to and enter Australia".

(2) Schedule 2, item 31, page 42 (line 16), after "8503", insert "8570".

(3) Schedule 2, page 44 (after line 10), after item 36, insert:

36A At the end of Schedule 8

Add:

8570 The holder must not:

(a) enter a country by reference to which:

(i) the holder was found to be a person to whom Australia has protection obligations; or

(ii) for a member of the family unit of another holder—the other holder was found to be a person to whom Australia has protection obligations; or

(b) enter any other country unless:

(i) the Minister is satisfied that there are compassionate or compelling circumstances justifying the entry; and

(ii) the Minister has approved the entry in writing.

(4) Schedule 4, item 1, page 57 (lines 20 to 22), omit subparagraph (a)(v) of the definition of excluded fast track review applicant.

(5) Schedule 4, item 1, page 57 (after line 27), after paragraph (a) of the definition of excluded fast track review applicant, insert:

(aa) who makes a claim for protection relying on a criterion mentioned in subsection 36(2) in, or in connection with, his or her application, if, in the opinion of the Minister, the claim is manifestly unfounded because, without limiting what is a manifestly unfounded claim, the claim:

(i) has no plausible or credible basis; or

(ii) if the claim is based on conditions, events or circumstances in a particular country—is not able to be substantiated by any objective evidence; or

(iii) is made for the sole purpose of delaying or frustrating the fast track applicant's removal from Australia; or

(6) Schedule 4, item 1, page 58 (line 2), after "13 August 2012", insert ", but before 1 January 2014, and

who has not been taken to a regional processing country".

(7) Schedule 4, item 2, page 59 (after line 19), after subsection 5(1AC), insert:

(1AD) Despite subsection 44(2) of the Legislative Instruments Act 2003, section 42 (disallowance) of that Act applies to an instrument made under subsection (1AA).

(8) Schedule 4, item 21, page 62 (line 17), after "13 August 2012", insert ", but before 1 January 2014, and

who have not been taken to a regional processing country".

CHAMBER
(9) Schedule 4, item 21, page 63 (lines 13 and 14), omit "and quick", substitute ", quick, free of bias and consistent with Division 3 (conduct of review)".

(10) Schedule 4, item 21, page 68 (lines 25 to 29), omit paragraph 473DD(b), substitute:

(b) the referred applicant satisfies the Authority that, in relation to any new information given, or proposed to be given, to the Authority by the referred applicant, the new information:

(i) was not, and could not have been, provided to the Minister before the Minister made the decision under section 65; or

(ii) is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims.

(11) Schedule 4, item 21, page 72 (line 18), omit "and quick", substitute ", quick, free of bias and consistent with Division 3 (conduct of review)".

(12) Schedule 5, item 7, page 93 (lines 24 to 31), omit subsection 5J(2), substitute:

2 A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.

(13) Schedule 5, item 7, page 95 (lines 15 to 31), omit section 5L, substitute:

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

(a) a characteristic is shared by each member of the group; and

(b) the person shares, or is perceived as sharing, the characteristic; and

(c) any of the following apply:

(i) the characteristic is an innate or immutable characteristic;

(ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;

(iii) the characteristic distinguishes the group from society; and

(d) the characteristic is not a fear of persecution.

(14) Schedule 5, item 7, page 95 (after line 31), after section 5L, insert:

5LA Effective protection measures

1 For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:

(a) protection against persecution could be provided to the person by:

(i) the relevant State; or

(ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and

(b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.

2 A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:

(a) the person can access the protection; and

(b) the protection is durable; and
As a result of the success of the government's strong border protection management policies, the Australian government has been able to restore offshore places within the humanitarian program for vulnerable people waiting overseas to be resettled. The first amendment I am moving proposes to add a new schedule 2A to the bill to progressively increase Australia's humanitarian program over the next four years so that by the financial year commencing 1 July 2018 Australia's annual humanitarian intake will increase from its current level of 13,750 places to 18,750 places. This will be done through two successive increases of 2½ thousand places in each of the 2017-18 and the 2018-19 programs. The government will also maintain the size of the program over the next two years at no less than 13,750 places in each year. The amendments set out these commitments within the Migration Act 1958, and they will provide clarity and certainty for the Australian public. The proposed government amendments will provide certainty about the size of the humanitarian program in the coming years and demonstrate the government's commitment to a strong and orderly humanitarian intake, focused on those overseas most in need of resettlement. The government
considers these amendments to be a public commitment to build on Australia's proud history of resettling refugees and those in humanitarian need.

I am also moving amendments to schedule 2 and schedule 7 to the bill to address concerns raised in relation to the operation of the new safe haven enterprise visa, known as the SHEV, and temporary protection visas, known as TPVs. The first amendment I have moved to schedule 2 is to make clear on the face of legislation that holders of the SHEV will, in certain circumstances, be able to apply for certain types of permanent visas. It was always the government's intention to permit SHEV holders who work or study in regional Australia for at least 3½ years of their visa, and access income support for not more than 18 months in that time, to apply for onshore substantive visas, including permanent visas but not permanent protection visas, provided that they meet the application criteria for those visas.

However, to alleviate concerns about the detail of the operation of the SHEV, it is proposed to clarify that the bar on visa applications by illegal maritime arrivals while lawful noncitizens will not apply to SHEV holders who have met the SHEV work and study requirements and who are applying for a prescribed list of visas. The pathways being proposed will include skilled and family visas and the full list of permanent visas for which SHEV holders may be eligible to apply for will be prescribed in the regulations.

The second amendment I am moving to schedule 2 is to set out the criteria for the grant of the SHEV. Schedule 2 to the bill already creates the SHEV as a new class of visa. This amendment will make it clear to the parliament what the criteria are for the grant of a SHEV and address the scare campaign suggesting that the government does not intend to follow through on the creation of this visa.

The third amendment I am moving to schedule 2 will allow travel in compassionate and compelling circumstances, as determined by the minister, to places other than a country in respect of which a TPV holder or a SHEV holder was found to be eligible for protection. If a TPV holder or a SHEV holder can demonstrate a compelling or compassionate need to travel, they will be able to request permission to do so from the minister. The permission would need to be sought prior to travel and cannot be to the country from which they sought protection.

The amendments I am moving to schedule 7 are in relation to the minister's ability to cap the number of protection visas available in the financial year, which the bill clarifies in this schedule. Capping protection visas is in no way an attempt to resile from Australia's non-refoulement obligations. The amendments I am proposing would ensure that this is the case by preventing the minister from placing a statutory limit or cap on the number of temporary protection visas or safe haven enterprise visas granted in a program year. As a result of these amendments, it will not be possible to use this power to cut the number of temporary protection visas or safe haven enterprise visas available. These amendments will not impact on the power of the minister to place a cap on permanent protection visas. This power, which is clarified in schedule 7 to the bill, is intended to support the government's policy objective by granting only temporary protection to illegal maritime arrivals and encouraging the grant of SHEVs to the benefit of regional Australia.

I am also moving amendments to schedule 4 aimed at increasing the integrity, transparency and accountability of the fast-track process. The first amendment I am proposing to schedule 4 is to clarify on the face of the legislation which IMAs are subject to the fast track. The amendments will expand the definition to clarify that fast-track applicants will include
persons who are an unauthorised maritime arrival and who entered Australia on or after 13 August 2012 but before 1 January 2014 and have not been taken to a regional processing country. This demonstrates the government's commitment to process IMAs currently on Christmas Island through the fast-track assessment process along with the current backlog of IMAs.

Secondly, the proposed amendments to schedule 4 would amend the purpose of the Immigration Assessment Authority, the IAA, from being required to 'pursue the objective of providing a mechanism of limited review that is efficient and quick' to being required to 'pursue the objective of providing a mechanism which is efficient, quick, free from bias and consistent with the code of procedure'. This amendment would clarify the purpose of the IAA and reassure the public that the review by the IAA will be free of bias and consistent with division 3, the conduct of review, as well as efficient and quick.

The third amendment I am proposing to schedule 4 would clarify certain circumstances which may satisfy the IAA that exceptional circumstances exist for providing new information upon the IAA review. The provision will also provide for a new type of new information that can be presented to the IAA by the referred applicant as credible personal information where that new information was not previously known and, had it been known, may have affected the consideration of the fast-track review applicant's claims.

Fourthly, I am moving that schedule 4 be amended to provide a non-exhaustive list of examples of what is considered a manifestly unfounded claim in relation to excluding applicants who make manifestly unfounded claims from accessing the IAA. This amendment will clarify the subjective terminology and provide more detail about who would be captured under this provision. The definition of 'manifestly unfounded' would include but not be limited to: (a) a claim that has no plausible or credible basis (b) a claim that has not been able to be substantiated by any available objective country information or (c) a claim that was made for the sole purpose of delaying or frustrating the fast-track applicant's removal from Australia.

A further amendment to schedule 4 will make two instruments which are currently non-disallowable disallowable. These two instruments are those that the minister is empowered to make under new subsection 5(1AA) to specify in a legislative instrument who may an excluded fast-track review applicant and who may be a fast-track applicant. As the instruments would be made under section 5 of the Migration Act, they would not currently be disallowable. The amendment would enable the instruments to be disallowed and scrutinised by the parliament.

Finally, I am moving amendments to schedule 5 to ensure that concepts under the new refugee framework appropriately interpret Australia's protection obligations consistent with international standards. Proposed new subsection 5J(2) specifies when a person does not have a well-founded fear of persecution because they could avail themselves of protection by a state or non-state actor. This subsection will be amended to adopt a consistent approach with article 7 of the EU qualification directive recast of 13 December 2011, which provides that a person does not have a well-founded fear of persecution if effective protection measures in the receiving country are available to the person where the relevant state or a party or organisation that controls the state or a substantial part of the territory of the state is willing...
and able to provide protection, the person can access that protection and the protection is of a durable nature.

In addition, new subsection 5L of the bill, which defines membership of a particular social group other than family, currently specifies that the standard for a group to be considered to form a particular social group requires satisfaction of both the protected characteristics and social perception approaches. It is proposed to amend this section to instead adopt a standard consistent with the UNHCR position that requires a person to satisfy either approach. These amendments are consistent with well-settled principles of interpretation of the refugee convention both internationally and in Australia.

Collectively, these amendments contribute to the overall integrity of the bill and demonstrate the government's willingness to work with stakeholders to pass this critical legislation. I commend the amendments to the Senate.

Senator HANSON-YOUNG (South Australia) (21:12): I would like to speak to these amendments moved by the government. I obviously have an awful lot of questions for the minister as well in relation to how on earth the government thinks it is appropriate to hold children as hostages in order to change fundamental pieces of legislation to simply grant the minister more power for himself. I have had many debates in this place over asylum seeker and refugee policy and many of them have been pretty undignified, but I must say I have never seen anything so appalling and abusive as I have seen in this place tonight. We heard from Senator Muir, who said he felt he was in such a difficult position—with a choice to vote for a bad bill or a terrible bill, because he was told that, if he did not do what the government wanted, the children would get it. He was told the only way to get these children out of detention was to pass this bill and this package. I have been saying for a number of weeks that the minister was using children in detention as hostages—it was a figure of speech until tonight. Tonight we saw children on Christmas Island being handed the phone number of Senator Muir, and they were asked to call that number and beg that senator to let them out. If that is not treating children as hostages, what is it?

This minister has become one of the most sociopathic people in this country. I want to give you the definition of a sociopath. It is characterised by a lack of regard for the moral or legal standards of society, a master deceiver and manipulator, someone who will do whatever it takes to get what he wants with no regard for consequences. Minister Morrison is a sociopath who has held children as hostages in order to grab the power he wants in this place tonight.

I do not blame Senator Muir. I do not blame any of the members on this crossbench. I do not even blame a number of the backbenchers of the Liberal-National party who I know are appalled at where this government's policy is doing but I sure as hell blame Minister Morrison and Tony Abbott. They have been desperate for months to get a win on this issue. They have done everything they could to make it a hard moral choice for people in this place. What is in this bill is not just temporary protection visas, not just a new visa created to allow people to work. We know there are seven schedules in this piece of legislation and the majority of them do exactly the opposite of helping children and their families resettle properly in this country.

Minister Morrison has held children in detention for months, children he could have been released at any time. The conditions inside the detention centre on Christmas Island are appalling. Children have been abused. They have been raped and their parents have been raped. I am not exaggerating. This is what the evidence has shown. Why did he not get the
children out when they started to be abused? Why did he not let the children out when they called, wrote and begged him to let them go to school six months ago? Why did he not let them out when the Human Rights Commission said they are the most disgraceful conditions children should ever be held in? Why did he not let them out then? Because he was waiting for his prime time to use them as bargaining chips, as pawns in his political play, to get legislation that he wanted through this place which previously had no support in this chamber.

The amendments moved today by the minister do not improve the substance of this bill. The amendments put forward in this piece of legislation do not make any real difference to the use of those SHEVs or those TPVs, despite what the crossbench has been told. There is no way that somebody can honestly believe that there is a pathway to permanency for any of the people in this 30,000 caseload backlog. I want to address the backlog issue because one of the men responsible is the very same man who has now drafted and negotiated this dirty, hostage situation this week and his name is Paris Aristotle.

We have a backlog of 30,000 asylum seekers in this country because Paris Aristotle told Prime Minister Gillard that it would be a good idea to freeze the applications of asylum seekers when they arrive here. He told Prime Minister Gillard at the time that that is how you stop the boats—stop processing people's claims, introduce something called the 'no advantage rule', which would mean that people would not have their claims processed for five or six years—they would not even put a figure on it. The boats did not stop; they kept coming, despite the fact that right in this place we had a debate about that exact piece of legislation which allowed for all of the recommendations that Paris Aristotle and Angus Houston wanted. We had a late night debate, very similar to what is going on here. I was standing right there. That legislation went through, the freeze occurred, the boats did not stop but boy oh boy, the backlog built up.

Now in 2014, two years later, the very same person who created the policy which created this problem is in our crossbenchers' offices this week telling them, 'You have to do something to get these children off Christmas Island. You have to do something to change the laws so that the minister can fast track their applications and please, at least give them temporary protection visas.' They have no hope of putting down roots to rebuild their families in the country in which they deserve to get permanent protection. The very same person set the 30,000 asylum seekers and refugees up to fail from day one. It is appalling.

I want to put on the record today that I was appalled by Senator Xenophon's speech yesterday—the praise for Paris Aristotle, who does not represent the refugee sector in this country, has no authority in this country, is a ministerial adviser. He has negotiated a hostage situation hand in hand with Scott Morrison tonight.

I want those kids off Christmas Island. I want the kids off Nauru. I want the people out of detention on Manus Island. But I do not believe in setting 30,000 people up to fail, giving them false hope that they will get their refugee claims assessed fairly—which they will not, because schedules 4 and 5 scrap their ability to ever have their claims assessed fairly—and pretending that somehow there is a pathway to permanency when the minister has said himself that it is going to be a 'very high bar to get there and good luck to them.' These people are being sold false hope, and who did the final deal but a distraught, broken, abused child on Christmas Island, down the telephone to a compassionate senator who wanted to do the right
thing. This minister has not just used children as a bargaining chip. He has sold them a false dream once more.

We know that when you strip away the ability to have a genuine appeal process, to have cases reviewed, you risk 60 per cent of applications being marked as wrong. Sixty per cent of the children on Christmas Island tonight who will come to Australia will never be given a visa under this legislation. It does not matter how compromising or willing we are to try to move on and give people some form of temporary visa or a SHEV. The reality is, the statistics tell us and past history and evidence show us that if this assessment process is changed the way the minister wants it changed, 60 per cent of those children are never even going to be given a temporary protection visa. This minister is not just a sociopath, not just grabber of power for himself who is prepared to take everything and use children to get it; he has sold senators in this place who are trying to do the right thing a lie. Sociopaths are masters and deceivers and manipulators. That is what we have seen here tonight, colleagues. That is exactly what we have seen here tonight.

I heard Mr Palmer earlier today saying that he had won family reunion as part of this deal. I have looked through the legislation, I have looked through the amendments. There ain't no family reunion in here. We heard that people would be able to have a pathway to permanency. Well it is not in there, and it will not be in there for the majority of people we apparently must do this for to get them off the island. Why didn't the minister act to get those children out of detention when he was told that the conditions were damaging them—months ago? Why has he spent months attacking Gillian Triggs for standing up and saying these kids needed to be off the island and out of detention? Why didn't he act then? Because he was desperate to keep his chips in his pocket for exactly this occasion. Who would have been on the end of that phone call, distressed and crying, if he had already taken all the children out? I am appalled. Many people in this country tonight would be appalled. Using children as hostages is never okay, and only a sociopath would do it.

Senator KIM CARR (Victoria) (21:27): Could I ask the minister if she could show me where in the bill I will find those figures that she read out in support of her amendment to the proposed new schedule 2A. As I understood, Minister, you were suggesting there will be an expansion in the number of humanitarian places. Where will I find those numbers in the bill or the amendment?

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (21:28): The minister has stated publicly on the record that Australia’s humanitarian intake will be increased from its current level of 13,750 places to 18,750 places. He has also stated that this will be done through two successive increases of 2,500 places in each of the 2017-18 and 2018-19 programs. The government will also maintain the size of the program over the next two years at no less than 13,750 places each year. I would also point out, Senator Carr, that one of the fundamental differences between what is occurring under this government and what occurred under the former government is that the places that are within the humanitarian program are going to go to genuine refugees from camps. They are not going to be places that go to people who have arrived illegally by boat. The minister has clearly stated that on the public record.

Senator KIM CARR (Victoria) (21:29): Minister, would you therefore object to us moving an amendment to put those specific figures into this bill?
**Senator CASH** (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (21:29): The minister has gone on the record and fronted TV and stated that this is a commitment that he has made. He will stand by his commitment.

**Senator KIM CARR** (Victoria) (21:30): Minister, the difficulty here is that there is a profound lack of trust and therefore we will be moving an amendment to give effect to the commitment that you have made in the chamber. Could I indicate to the chamber that, with regard to the provisions that the minister has outlined, the opposition will reluctantly support the government amendments on sheet HA108; however, we recognise that the amendments are incredibly weak but better than nothing. They will be improved when we are able to move an additional amendment specifying the precise numbers and, if the minister wishes to provide assistance, we would be delighted, to make sure we get exactly the right numbers that are consistent with what she has given a commitment to tonight.

We have to acknowledge though that this is a humiliating admission by the immigration minister. It is of great concern that he cannot be trusted to honour any commitment to the crossbenchers on the issue of visa protection and has had to provide these public assurances. I am sure we will all feel a lot better if they are written into the act itself. I suppose we should not be surprised about that, given the long litany of broken promises that this government is able to display. The immigration minister has repeatedly demonstrated that he is willing to exercise his powers—I say he is willing to exercise his powers in a quite capricious manner—and he regularly needs to be called to account by the courts. While these amendments will not provide us with enormous satisfaction, they at least will do something to ensure that the minister is held to his commitments.

We cannot support the government amendments on sheet GH118, in essence, because the fast-track arrangements that the government has proposed do not provide sufficient security for proper administrative practice.

We will be opposing the amendments on sheet HA110 simply because the Labor Party is concerned that the SHEV proposal fails to provide adequate security of a pathway to permanency, and, while people are judged to be genuine refugees, we think they are entitled to that. There is a very clear policy that this opposition Labor Party opposes temporary protection visas because they leave people in an unfair state of limbo. They are unable to put down roots and establish themselves in this country and they are unable to become fully functioning contributors to Australian society while they are left in that period of limbo. Our policy is that asylum seekers ought to have a pathway to permanency. The view of the opposition is that the government's proposals fail to meet that test, so we will be opposing those amendments.

**Senator CASH** (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (21:34): On Senator Carr's question with respect to the first amendments that I moved in relation to adding a new schedule 2A to the bill to progressively increase Australia's humanitarian program, I advise Senator Carr that this will be done by way of legislative instrument if the bill passes the Senate—or when the bill passes Senate—and this amendment enables the minister to sign off on the legislative instrument.
Senator KIM CARR (Victoria) (21:35): I understand the point the minister is making. It is the opposition’s preference to move an amendment and test the chamber on that matter, and I trust that that preparation is now being made.

Senator HANSON-YOUNG (South Australia) (21:35): I would like to ask the minister: what is the reason that the 460 children currently detained on Christmas Island could not have been removed from the island and brought to the mainland last week?

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (21:35): In addressing Senator Hanson-Young’s question, the first thing that I would like to remind the Senate of is that it is actually this government that has commenced the process of taking children out of detention. If I could remind the Senate that at the end of the Howard government’s era there were actually no children in detention. Under the former Rudd, Gillard and Rudd governments, vocally supported by Senator Hanson-Young, a total of 8,469 children arrived. There were a record number of children in detention, and in fact in July 2013 there were 1,992. When Labor lost office in September 2013, there were 1,392 children in detention. As a result of the actions of this government in but 14 months, there are now 50 per cent fewer children in detention across the detention network and 75 per cent fewer children in detention on Christmas Island than when the coalition took office in September 2013.

So when Senator Hanson-Young comes into the chamber and claims the moral high ground in relation to children in detention, I would argue that the facts established under this government in relation to the reduction of the number of children in detention clearly show that one of the huge issues with Senator Hanson-Young is that, by her comments that she has placed on the record and her actions, she is responsible for preventing children from being released from detention.

Nothing that Senator Hanson-Young has done in this place has contributed to one child being released from detention but everything that Senator Hanson-Young has done has ensured that children in record numbers—let me just read again the number of children who came here under the former government: 8,469 children arrived under the former government. Everything that Senator Hanson-Young has done for the duration of her time as a senator and her record will show that, unlike my record as a member of the coalition, she is responsible for ensuring that children are placed in detention.

The minister and I, over the period of being in government, have ensured that children are progressively released from detention. As the minister has stated, if the bill passes the Senate, children on Christmas Island will be released prior to Christmas.

I also need to address the comments that Senator Hanson-Young has made in relation to Mr Paris Aristotle. It is widely accepted throughout the community—and, in particular, by those people with whom he works—that Mr Aristotle is a man with a good heart and who, throughout his career, has worked tirelessly with victims of torture.

Through you, Mr Chairman: Senator Hanson-Young, it demeans you when you come into the Senate under parliamentary privilege and make such heinous slurs in relation to Mr Aristotle, purely because he has been able to work with the government and the crossbenchers to achieve what you personally in six years have been unable to achieve and what you going
forward for the rest of your time in this place will be unable to achieve—that is, the release of children from detention.

**Senator LAMBIE** (Tasmania) (21:41): First of all, my concern is that this government has now been in for 15 months. These kids have been sitting there for 15 months, and you want a pat on the back? You have got to be kidding. These kids could have been out 15 months ago.

Secondly, I would like to know whether the good senator over there, if all these kids are not out by Christmas Day, is prepared to put her Senate seat on it and resign.

**Senator HANSON-YOUNG** (South Australia) (21:42): I would just like the minister to clarify the costs of the increased resettlement numbers. Minister Morrison is on the record saying that increasing the humanitarian intake to 20,000 would cost $3 billion over the forward estimates. That is the previous position of the minister, and the argument he has put as to why he could not entertain increasing the humanitarian intake is that it is going to cost $3 billion. I would like to know from Minister Cash where the budget figures are on this and where the $3 billion is going to come from.

**Senator CASH** (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (21:43): Senator Hanson-Young, I think you and I are just going to have to agree to disagree in relation to so much of what you are going to put to me tonight. When it comes to costs, I have to say you are not one who can stand up in this chamber with any form of credibility, given that the policies that you supported so vocally under the former government led to an almost $12 billion cost blow-out for the Australian taxpayer. Everything that this government has done in this portfolio since it came to power has been to (a) restore integrity to our borders, and (b) ensure that taxpayers' money is efficiently spent.

Senator Hanson-Young, what you just do not seem to be able to grasp is that our humanitarian program costs the Australian taxpayer money. That is why it needs to be managed appropriately and that is exactly what we are doing.

**Senator HANSON-YOUNG** (South Australia) (21:44): I suggest to the learned minister that, if she wanted to save money, they would be closing Nauru and bringing the children home from Nauru as well. I would like to know whether the minister has the figures on the resettlement numbers and how it is costing $3 billion, as previously stated by Scott Morrison, the immigration minister. Where are your costs? Are you not going to answer?

**Senator KIM CARR** (Victoria) (21:45): There was one group of amendments I failed to indicate the opposition's attitude towards, and that was sheet GH117. We will be supporting that.

**The CHAIRMAN:** Even though all the government amendments were moved together, because there was a foreshadowed amendment to one of the groups of amendments, and there is an indication that there are different positions on them, I will be putting the amendments in the groups that they are in on the running sheet. So I will be putting four separate questions.

**Senator HANSON-YOUNG** (South Australia) (21:45): I would like to ask the minister why it is that Clive Palmer was led to believe, according to his announcement today, that these amendments would cover family reunion. Could the minister please point to the amendment where family reunion is included?
Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (21:46): Senator Hanson-Young, you would be well aware that there is no family reunion. Again, if you want to stand up and make cute political points, you can, but the facts do not support what you are stating.

Senator HANSON-YOUNG (South Australia) (21:46): I am glad for that clarification because, as I said, I was surprised when I heard Clive Palmer announce that family reunion had been granted and that that was one of the concessions that he was able to get out of the minister. Clearly that is not the case. I thank the minister for the clarification. It seems that, again, Clive Palmer has been sold a pup.

The CHAIRMAN: Can I just remind senators that, while I am happy to let it go from time to time, members of this place and the other place should be referred to by their proper titles, and it should be Mr Clive Palmer.

Senator KIM CARR (Victoria) (21:47): Mr Chairman, I have a question. As I have indicated, we have a foreshadowed amendment. You are not putting that at this stage?

The CHAIRMAN: No. My understanding, given your advice, Senator Carr, is that that would involve government amendments (2) and (1) on sheet HA108. I will not put those amendments until you have had an opportunity to circulate your amendment. The first amendments I will put are government amendments (1) to (3) on sheet GH117. So the question is that government amendments (1) to (3) on sheet GH117 be agreed to.

Question agreed to.

The CHAIRMAN: The question is that government amendments (2) to (4) and (1) on sheet HA110 be agreed to.

The committee divided. [21:53]

(The Chairman—Senator Marshall)

Ayes ...............35
Noes .................31
Majority .............4

AYES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ
Fifield, MP
Lazarus, GP
Macdonald, ID
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L
Ruston, A (teller)
Scullion, NG
Smith, D
Xenophon, N

Back, CJ
Birmingham, SJ
Bushby, DC
Cash, MC
Day, R.J.
Fierravanti-Wells, C
Heffernan, W
Leyonhjelm, DE
Madigan, JJ
McGrath, J
Muir, R
O'Sullivan, B
Payne, MA
Ronaldson, M
Ryan, SM
Sinodinos, A
Wang, Z
Question agreed to.

The CHAIRMAN (21:56): The question is that government amendments (1) to (14) on sheet GH118 be agreed to.

The committee divided. [21:57]

(The Chairman—Senator Marshall)

Ayes ..................... 35
Noes ..................... 31
Majority ............... 4

AYES

Abetz, E .......................... Back, CJ
Bernardi, C ........................ Birmingham, SJ
Brandis, GH ........................ Bushby, DC
Canavan, M.J. ........................ Cash, MC
Colbeck, R ........................ Day, R.J.
Fawcett, DJ ........................ Fierravanti-Wells, C
Fifield, MP ........................ Heffernan, W
Lazarus, GP ........................ Leyonhjelm, DE
Macdonald, ID ........................ Madigan, JJ
Mason, B ........................ McGrath, J
McKenzie, B ........................ Muir, R
Nash, F ........................ O'Sullivan, B
Parry, S ........................ Payne, MA
Reynolds, L ........................ Ronaldson, M
Ruston, A (teller) ........................ Ryan, SM

NOES

Bilyk, CL ........................ Brown, CL
Bullock, J.W. ........................ Cameron, DN
Carr, KJ ........................ Collins, JMA
Conroy, SM ........................ Faulkner, J
Gallacher, AM ........................ Hanson-Young, SC
Ketter, CR ........................ Lambie, J
Lines, S ........................ Ludlam, S
Ludwig, JW ........................ Marshall, GM
McEwen, A ........................ McLucas, J
Milne, C ........................ Moore, CM
O'Neil, DM ........................ Peris, N
Rhiannon, L ........................ Rice, J
Siewert, R ........................ Singh, LM
Sterle, G ........................ Urquhart, AE (teller)
Waters, LJ ........................ Whish-Wilson, PS
Wright, PL
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SENATE

AYES

Scullion, NG
Smith, D
Xenophon, N

NOES

Bilyk, CL
Bullock, J.W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
McEwen, A
Mille, C
O'Neill, DM
Rhiannon, L
Siewert, R
Sterle, G
Waters, LJ
Wright, PL

PAIRS

Cormann, M
Edwards, S
Johnston, D
Seselja, Z
Williams, JR

Wong, P
Di Natale, R
Dastyari, S
Polley, H
Lundy, KA

Question agreed to.

Senator KIM CARR (Victoria) (21:59): I move the opposition amendment on sheet 7646:

(1) At the end of section 39A, add:

(4) To avoid doubt, the minimum total number of Protection (Class XA) visas and Refugee and Humanitarian (Class XB) visas to be determined under subsection (3) for any financial year must not be less than 18,750.

I have circulated on sheet 7646 an amendment to the government's amendment (2) to give effect to the numbers—the 18,750—that the minister has outlined to the chamber is the government's commitment. The simple proposition here for senators to consider is that if the government is happy to promise this increase in numbers of the annual refugee intake to 18,750 and to do so in front of TV cameras it should have absolutely no problem in giving that commitment to the Senate and having that commitment written into this legislation. I am concerned that the government has said many things in public but failed to deliver on those things when it has actually had the chance in government. There is obviously a long track-record. To resolve this matter I would seek the support of the Senate so that we do not have a
situation whereby the government says, 'No cuts to the ABC, no cuts to SBS, no cuts to education—

Senator Cameron: No change to pensions.

Senator KIM CARR: no cuts to the pension.' There is a long, long litany of crimes here. This is a very simple proposition that will give an opportunity for the minister's commitment to be put into the legislation.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (22:01): If I could briefly respond to the amendment moved by Senator Carr on behalf of the opposition. Senator Carr, you have previously been in government. Does what you are asking mean that every time a public commitment is made it has to be legislated? I would put it to you that that is completely unrealistic. The minister has given a clear commitment publicly. He has given the commitment to the crossbenchers. I have recommitted the government and reiterated the commitment in my address tonight, which is recorded in Hansard, that we are by legislative instrument proposing that we will:

… add a new schedule 2A to the bill to progressively increase Australia's humanitarian program over the next four years so that by the financial year commencing 1 July 2018 Australia's annual humanitarian intake will increase from its current level of 13,750 places to 18,750 places.

This is a commitment that the minister has given to the crossbenchers. It is a commitment he has made publicly. We stand by our commitment.

Senator LAMBIE (Tasmania) (22:03): I would like to see this done because I have seen so much lying go on in this place in the last 5½ months; it is disgraceful. There is no trust left between that lot over there and me. There is no trust left between the Clive Palmer party and me. I too, as a new crossbencher, would like to see this go through. I want you to stand by what you are going to do. There is no reason why you cannot all vote on this.

Senator Back interjecting—

Senator LAMBIE: You want to talk honourable? Let us be honourable, about as honourable as you were with the Defence Force the other day. Let us be honourable. Let us see it. I want you to put this bill where your mouth is. I want to see this go through the Senate. I want to see this in black and white. I want to see this mean something and I am sure every other Australian wants you to do this as well.

Senator XENOPHON (South Australia) (22:05): I support this in principle. I have received an undertaking, as have other crossbench colleagues who support this measure. I would like to get a time frame as to when the legislative instrument will be introduced. I think it is reasonable to know that. If the legislative instrument is not introduced, I think the government knows that it will be a massive breach of faith and that the government cannot expect any cooperation from me on any future piece of legislation if the undertaking is broken. I think that is fairly clear.

Senator HANSON-YOUNG (South Australia) (22:06): I rise to give the Greens support for this amendment. It seems pretty basic that if the government is going to make a promise to increase the humanitarian intake until after the next election then at the very least it should put its money where its mouth is and put that promise into legislation. We have ended the year—

Honourable senators interjecting—
The CHAIRMAN: In case it has escaped the attention of senators, I actually really enjoy chairing the committee. I am quite happy to stay all night, but we will have some order.

Honourable senators interjecting—

The CHAIRMAN: It is pointless my bringing the Senate to order if senators then simply start interjecting once again.

Senator HANSON-YOUNG: Thank you, Chair. This amendment would put into legislation the commitment that we have been told has been undertaken by the Abbott government. I just want to point out that we are ending a year in which, during the last 12 months, we have seen broken promise after broken promise within 12 months of an election. The commitment that has been given to crossbenchers in this place is that the—

Senator Bernardi interjecting—

The CHAIRMAN: Senator Bernardi, you are not in your place. You should not be interjecting in any case, but it is even more disorderly to be doing it from where you are.

Senator HANSON-YOUNG: Thank you, Chair. I never thought of Cory Bernardi as a gentleman, so I think he is proving himself in showing appalling behaviour tonight. I am more than happy to have a debate with Senator Bernardi any time, but perhaps he would have the courtesy to allow people to finish speaking. The point I am making here is that, if the government honestly want to show that they are committed to increasing the humanitarian intake and expect both the public and the Senate to believe that that will be honoured after the next election, put your money where your mouth is and make sure it is in the legislation tonight. I cannot see why that would be such a problem from a government who desperately want the public and the parliament to believe them.

Senator LEYONHJELM (New South Wales) (22:08): While I have substantial sympathy for this amendment, I will not be supporting it. I discovered after the event that Minister Morrison has agreed to an increase in the humanitarian intake as a result of my representations, plus those of Senators Day and Xenophon. I also understand that the cost of humanitarian refugees is quite considerable, and to increase the number in this manner would be a very big burden on the budget. As senators will know, that is something of major concern to me. However, I am also pleased that the minister has agreed to allow those on bridging visas and, of course, TPVs and SHEVs to work. Therefore, those who do will pay taxes and will come off social welfare. That will contribute to the cost of an increase in humanitarian intake, which, as I said, I regard as quite important.

Senator DAY (South Australia) (22:09): I, too, will be opposing this. I, too, have had a personal commitment from the minister regarding this increase. I am fairly new here, but I can guarantee the minister in this place that, if I make a commitment to do something, I will do it—and I expect the minister to reciprocate. His commitment to increase the humanitarian intake is a worthy commitment, but I do not think that enshrining it in legislation is the way to go. I do take the minister at his—

Opposition senators interjecting—

The CHAIRMAN: Order!

Senator DAY: By regulation by legislative instrument.
Senator KIM CARR (Victoria) (22:11): I draw the attention of those who have just spoken to what the words in the current bill actually say. It says the minister 'may' by legislative instrument determine a minimum total number of protection class visas and refugee and humanitarian class visas. There is a real issue here. You believe you have been given an assurance. The PUP senators were given an assurance some months ago which they believe was reneged upon. That is why there has been this considerable delay in having this matter put before the chamber. I urge you to think carefully about assurances you have been given. Therefore, you have this opportunity here to have the assurance you have stated actually put into the legislation.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (22:11): I understand that the minister was able to make the legislative instrument subject to, obviously, royal assent of the bill, and the minister has given me a commitment that that would be done by 1 January 2015 on the basis that royal assent has been given to it.

The CHAIRMAN: The question is that the amendment moved by Senator Carr to government amendment (2) on sheet HA108 be agreed to.

The Committee divided. [22:17]

(The Chairman—Senator Marshall)

Ayes ......................31
Noes ......................33
Majority ..............2

AYES

Brown, CL
Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S
Madigan, JJ
McEwen, A
Milne, C
O'Neill, DM
Polley, H
Rice, J
Singh, LM
Waters, LJ
Wright, PL

Bullock, J W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Peris, N
Rhiannon, L
Siewert, R
Urquhart, AE (teller)
Whish-Wilson, PS

NOES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ
Fitfield, MP

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Cash, MC
Day, R.J.
Ferravanti-Wells, C
Heffernan, W
Thursday, 4 December 2014

NOES
Lazarus, GP
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L
Ruston, A
Scullion, NG
Smith, D
Xenophon, N

Leyonhjelm, DE
McGrath, J
Muir, R
O'Sullivan, B
Payne, MA
Ronaldson, M
Ryan, SM
Sinodinos, A
Wang, Z

PAIRS
Bilyk, CL
Dastyari, S
Di Natale, R
Lundy, KA
Sterle, G
Wong, P

Seselja, Z
Johnston, D
Edwards, S
Williams, JR
Macdonald, ID
Cormann, M

Question negatived.

The CHAIRMAN (22:19): The next questions I intend to go to are government amendments (2) and (1) on sheet HA108.

Senator KIM CARR (Victoria) (22:19): There is one question I would seek advice on. On the issue of cost for these additional places: what is the government's cost?

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (22:20): The minister has indicated it is approximately or around $100 million.

Senator KIM CARR (Victoria) (22:20): The difficulty we have is that there have been various estimates given publicly. The minister on previous occasions has spoken of $3 billion out of the budget. Is the $100 million now the official estimate?

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (22:20): I am advised that it is the minister's estimate for this particular 7½ thousand.

Question agreed to.

Senator HANSON-YOUNG (South Australia) (22:21): I move amendment (8) on sheet 7629:

(8) Clause 2, page 2 (table item 2), omit the table item.

And the Greens oppose schedule 1 in the following terms:
(1) Schedule 1, page 5 (line 1) to page 23 (line 13), to be opposed.

Schedule 1 of the bill relates to the maritime powers being inserted into the Migration Act to overrule international law on the high seas. This schedule effectively allows, at the command of the immigration minister, our Navy and our customs officers to be directed to act illegally on the high seas. We know of course that there have been terrible situations where our Navy officers have been asked to do things that no person working for the Australian government
and in the name of the Australian people should be asked to do. We know that because we saw it. We saw officers only this week pour their hearts out on the 7.30 program over the types of activities they had been asked to undertake whilst intercepting and turning around boats.

This schedule is all about removing Australia’s obligations under international law and allowing the command of the immigration minister to reign high. This is an immigration minister who is already drunk on power. He already thinks he can do whatever he wants and now he wants to be able to tell our Navy to not follow international law.

Senator KIM CARR (Victoria) (22:23): I indicate that the opposition will be supporting the Greens on this. We oppose schedule 1 on the grounds that this represents a very clear attempt by this government to undermine the High Court. It is a very shoddy exercise here. The government is attempting to undermine a case that is currently before the High Court. A little while back this government took into custody 157 people and detained them on a prison ship for over a month. When that matter was brought to the attention of the courts this government protested vigorously and sought to undertake these measures to undermine the court proceedings.

This schedule, if carried, would scuttle the High Court case. It would render the precedent value of the present proceedings redundant. That is a case which is fundamentally about the powers of the government under the Maritime Powers Act. The High Court has a legitimate function to perform in assessing the government's actions. This is not about this chamber making a pre-emptive decision on that matter; it is about whether or not the High Court is an appropriate place to evaluate the government's actions.

It is simply inappropriate to walk down this path when the case is currently before the court. After the court has made its decision, then the government I believe would be entitled to put a proposition to the parliament, but I put to this chamber that to do so while the proceedings are under way is totally inappropriate. We strongly believe that this is not an appropriate use of this chamber. We ought to ensure that the proceedings before the court run their course. The High Court should be allowed to continue the work it has been able to do and that is why we are opposing this schedule.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (22:26): I advise that the government will not be supporting Senator Hanson-Young's proposal. Schedule 1 of the bill clarifies a range of matters relating to the exercise of maritime powers. Maritime powers are used to respond to a range of threats to Australia’s national interests, including the smuggling of contraband goods, protecting Australia’s fisheries, protecting our ocean and coastal ecosystems from environmental damage, and countering people smuggling. The amendments to the Maritime Powers Act are focused on strengthening Australia’s maritime enforcement framework and will provide greater clarity to the ongoing conduct of border security and maritime enforcement operations. These amendments do not seek to create new powers beyond what is already available to maritime officers; instead they clarify the intended operation of those powers and their relationship with the law.

If I can also address the comments that Senator Carr has made in relation to the matter that is currently before the court, there is nothing unusual about amendments to legislation wholly or partly in response to issues raised in a court case. Court cases can help to reveal when a
piece of legislation is not being interpreted in a manner consistent with parliament's original intention, allowing parliament to address and rectify this through amendments. The proposed amendments do not affect the case before the High Court or undermine the ability of the court to consider and pass judgement on the applicable law, neither do they prevent the members from considering the court's judgement in time. The government is conscious that any potential adverse decision by the High Court will see people smugglers send the message that Australia is open for business. Introducing these amendments now will also limit the ability of people smugglers to trick vulnerable people into believing this message.

Senator KIM CARR (Victoria) (22:28): Minister, there is a pretty serious question here. You are quite right that parliaments do amend laws after courts have decided on a matter. It is very unusual to proceed in this fashion while a court case is actually underway.

The CHAIRMAN: The question is that schedule 1 stand as printed.

Question agreed to.

The CHAIRMAN: Senator Hanson-Young, your amendment (8) was really consequential on being successful with your opposition to schedule 1, so I think that has disposed of that, unless you have any objection. Senator Carr, (1) and (2) on sheet 7617 effectively were the same questions, so they are also disposed of, unless there is any objection. We now move to Australian Greens' opposition to schedule 2, which is outlined on sheet 7629, if that is convenient to you, Senator Hanson-Young.

Senator HANSON-Young (South Australia) (22:29): The Australian Greens oppose schedule 2 in the following terms:

(2) Schedule 2, page 24 (line 1) to page 49 (line 23), to be opposed.

The Greens propose to delete schedule 2 from the bill. We know that much debate around this legislation has been focused on schedule 2. This is the part of the bill that includes legislating for temporary protection visas and allowing for regulations for SHEVs. The reason, fundamentally, the Greens do not support this schedule is because people who have been found to be legitimate, genuine refugees after all of the anguish they have been through—fleeing their homelands and going through the detention process—under this schedule will continue to live in limbo, effectively for the rest of their lives. Many of the 30,000 we are currently talking about are already having to live in the community in limbo. There is absolutely no genuine pathway to permanency outlined in this schedule at all. It is a long road—

The CHAIRMAN: Senator Hanson-Young—

Senator HANSON-Young: I have this really irritating voice next to me and then I realise it is Senator Bernardi.

The CHAIRMAN: I know; I can hear it from here. I was not hearing it clearly. Senator Bernardi—

Senator Bernardi interjecting—

The CHAIRMAN: No, take your seat—take your own seat.

Senator HANSON-Young: Sometimes I wonder whether we should have breathalysers at the doors in this place.
The CHAIRMAN: Senator Hanson-Young, resume your seat. There is no requirement for that. Senator Bernardi, I would ask you to remain quiet—silent, in fact.

Senator Bernardi interjecting—

The CHAIRMAN: If you are seeking to lag in Senator Lazarus as well, I am sure he will appreciate that. But you are the one I can hear, and I ask you to remain silent while Senator Hanson-Young is speaking.

Senator HANSON-Young: As I was saying, this schedule, as it currently stands, does not create a permanent pathway for refugees. People who have been through the process and have been assessed as a refugee under the current schedule do not have a pathway to permanency. If you are on a temporary protection visa, you will never be given a permanent visa. That is what the minister has said, and that is what this piece of legislation currently before us tonight does. You may be able to opt to go on to the newly created SHEV under this schedule, but it is going to be damn hard for you to ever be able to apply for a permanent visa.

That is not just me saying that, it is the minister himself. The immigration minister himself stood up and said: 'There will be no permanent protection for refugees in this country. Good luck to them if they think they're going to get permanency, but it is a very high bar.' They are the minister's own words, that is the sentiment as outlined in this schedule. It is a pipe dream to think that there is any pathway to permanency under this schedule. It allows for the continued torture of people who just want to start putting their lives back together. You have to remember that this is for people who have already been assessed to be refugees. They have been in detention for years, many of them in the community on bridging visas for years—in limbo, not knowing what their future holds. Under this schedule they will stay there effectively forever. There is no pathway to permanency; it is a pathway to nowhere. That is why it needs to be removed.

Senator KIM CARR (Victoria) (22:33): Labor is resolutely opposed to the use of temporary protection visas as a quick fix to deal with men and women and children who are currently awaiting processing in Australian funded facilities. Temporary protection visas simply place people in a prolonged state of limbo. They serve as a stopgap that keep people in a cycle of uncertainty. They prevent them from contributing to the community and forging proper links in Australia.

When the parliament, and particularly this chamber, rejected the immigration minister's policy of bringing back temporary protection visas in December last year, the minister, in an act of petulance, stopped processing people—yes, that is right, Minister; I see you are in the chamber. You are clearly here because you cannot trust your senators to do the government's dirty work! We all understand the protocols here, and that is essentially why you are here. I see you nodding vigorously there, but the fact remains that you acted in a completely petulant manner because this chamber chose to reject the policy position that you adopted.

Any claim that TPVs serve as a deterrent to people seeking to risk their lives coming to Australia by sea is simply wrong. Australia has in fact been taken off the table with the regional settlement arrangements, which were introduced by Labor in July last year. This issue has absolutely nothing to do with any person who may seek to come here by boat. It relates to people already in detention who arrived before 19 July last year. For that group of
people, Labor believe we need to have a sensible policy that sees them processed and, if they are found to be genuine refugees, allowed to settle in Australia.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (22:36): I rise to advise that the government will not be supporting the item moved by Senator Hanson-Young. This is where the government, the Greens and the opposition truly do part company. This is where the difference between how you manage your borders and whether you manage them with integrity or whether you let the people smugglers take control of Australia's borders becomes apparent. We have often stated this on this side of the chamber. In fact, we have said it since that fateful day in August 2008, when the then minister for immigration, Senator Chris Evans, commenced the wind back of the former Howard government's strong border protection policies, which had done what this government, under Minister Morrison, has done—that is, stopped the boats. We had always said that we would bring temporary protection visas back as part of our suite of policies—and why. The question we need to ask ourselves tonight is: why? The reason is evidenced in the facts. If you put the sugar on the table and you give the people-smugglers a problem to promote, they will. That product is a permanent visa in Australia. You take the sugar off the table, you take the product, the promise—Senator Whish-Wilson interjecting—

The CHAIRMAN: Senator Whish-Wilson, you will cease interjecting.

Senator CASH: You take the product off the table. You take permanent protection off the table, and the vile people-smugglers, who deal in human misery, no longer have a product to sell. That is exactly what this schedule does. Tonight we bring an end to 50,000 people coming here illegally by boat because the people-smugglers had a product to sell. Tonight we will put an end to the deaths at sea that occurred because the people-smugglers were able to market permanent protection in Australia. We know that in excess of 1,200 people were promised permanent visas in Australia and that they risked their lives to get here, and they did not get here—they died making the voyage. Tonight we put an end to that. We also put an end to the in excess of $11½ billion in cost blow-outs that the former government, so vocally supported by Senator Hanson-Young, oversaw because they failed to understand that permanent protection visas are the one thing that people-smugglers use to market their vile trade. I am going to end by reading from a recent transcript of the 7.30 program. This is what we are ending tonight. The reporter says:

Norris spent much of that time on patrol boats, including this one, HMAS Albany. He intercepted and boarded dozens of asylum seeker vessels.

Troy Norris, one of our ADF members, who routinely witnessed large-scale human degradation and misery, said this:

At the time you run on adrenaline. You are just trying to do the best you can to get as many people out of the water as quickly as possible. There's so many people on the water and they all look the same. All you see is a head and a face. That was one of the most difficult aspects of the recovery of the people in the water that are alive was the fact that you're playing God. And, I didn't like that too often—too much.

The reporter then says:

Often Troy Norris faced a different horror: retrieving the dead, including children.

Troy Norris responds:
They become quite bloated, very unrecognisable and there's only one way to pull them in and that's to grab 'em and, you know, try and chuck 'em in the boat. And sometimes you'd go to pull these people in the boat and all you'd end up with is a handful of flesh. They're just stripped to the bone. And after seeing stuff like that, it's pretty hard to forget.

And that is why, Senator Hanson-Young, the government is not supporting your amendment.

**Senator HANSON-YOUNG** (South Australia) (22:41): I thank the minister for clarifying why they so desperately want schedule 2 to be left in there, and for explaining clearly that the arrangement and the deal done between Clive Palmer, Nick Xenophon and Scott Morrison does not deliver permanent protection.

**The CHAIRMAN:** Senator Hanson-Young, I have drawn your attention to this matter of addressing people by their correct titles.

**Senator HANSON-YOUNG:** I apologise, Chair. The deal done between Mr Palmer, Mr Xenophon and Mr Morrison—

**Honourable senators:** Senator!

**The CHAIRMAN:** That is good enough for now. That is all right.

**Senator HANSON-YOUNG:** is clearly not delivering any type of permanent protection to the 30,000 asylum seekers and refugees that are here. This is why this schedule should be deleted, because it does not deliver anything of the sort in terms of a pathway to permanency. That is clear. The minister has tonight made that crystal clear—the government has no intention of giving anybody a permanent visa. Of course, things like family reunion, as we have heard already tonight, are not included in this piece of legislation. All we see is a bill riddled with a grab for power by the immigration minister in order to pick and choose who he wants to come to this country and who he does not—not based on what Australia's obligations are and not based on need but based on who Mr Morrison, the immigration minister, wants to allow into this country and who he does not. How has he done this? He has done this by manipulating the good will, the compassion and the desire in this place of people to give hope and decency to asylum seekers and refugees.

We have had the minister use children as bargaining chips to deliver a deal that the minister here tonight has just confirmed does not give any permanent visa. It does not deliver one permanent visa. It does not deliver family reunion. We have seen children used as a bargaining chip—that is the way it rolls with this minister. I wonder if that is the type of leadership that the Liberal Party want to see leading their party.

We know that Minister Morrison desperately wants to become the next prime minister of this country, a man who has used children as a bargaining chip as part of his blackmail politics and, we have heard tonight, to deliver a deal—the Mr Palmer, Senator Xenophon, Minister Morrison deal—which does not even stack up to the things they have been promised.

**The CHAIRMAN:** The question is that schedule 2 stand as printed.

The Senate divided. [22:49]

(The Chairman—Senator Marshall)

Ayes .....................33
Noes .....................30
Majority ...............3

CHAMBER
AYES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ
Fifield, MP
Lazarus, GP
Macdonald, ID
McGrath, J
Muir, R
O'Sullivan, B
Payne, MA
Ronaldson, M
Scullion, NG
Smith, D
Xenophon, N

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Cash, MC
Day, R.J.
Fierravanti-Wells, C
Heffernan, W
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L
Ryan, SM
Sinodinos, A
Wang, Z

NOES

Bilyk, CL
Bullock, J.W.
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S
Madigan, JJ
McLachan, J
Moore, CM
Peris, N
Rhiannon, L
Siewert, R
Sterle, G
Whish-Wilson, PS

Brown, CL
Cameron, DN
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
McEwen, A (teller)
Mlne, C
O'Neill, DM
Polley, H
Rice, J
Singh, LM
Waters, LJ
Wright, PL

PAIRS

Cormann, M
Edwards, S
Johnston, D
Ruston, A
Seselja, Z
Williams, JR

Di Natale, R
Wong, P
Dastyari, S
Carr, KJ
Urquhart, AE
Lundy, KA

Question agreed to.

Senator HANSON-YOUNG (South Australia) (22:52): The Australian Greens oppose item (3) on sheet 7629 in the following terms:

(3) Schedule 3, page 50 (line 1) to page 56 (line 5), to be opposed.
This amendment deals with schedule 3 of the bill. Schedule 3 gives incredible power to the immigration minister to effectively hold this chamber over a barrel when it comes to the regulations in relation to a number of visas—not just temporary protection visas, not just the SHEVs. It covers a raft of visas, including the permanent protection visas to which, as we have heard from Minister Cash tonight, the government is so vehemently opposed. They so hate the idea of giving genuine refugees permanent protection—or any type of permanent visa.

Schedule 3 effectively allows for the minister to dictate to this place that it is his way or the highway. If a regulation for a visa is made and if we senators do not agree with that regulation, for whatever reason, if we were to disallow any of those regulations it makes any current application for any one of those visas invalid. What an incredible amount of power to hand to a minister who we know cannot be trusted to do the right thing when it comes to treating people fairly, who cannot be trusted to look after children in his care.

Senator HANSON-YOUNG: This schedule hands an incredible amount of power to a minister who simply does not deserve it. He has not earned it, he cannot be trusted with it, and we know what this minister does when he does not get things his own way. He holds children as hostages. That is what we have seen happen here tonight. That is what we have seen happen over the last few weeks.

Government senators interjecting—

Senator HANSON-YOUNG: I can see that I am agitating some of the people on the other side. They hate hearing the truth. They hate hearing that the person who is going to lead their party uses children as bargaining chips. They cannot stand the idea that the next leader of the Liberal government is going to be a man who is so drunk with power, so obsessed with his own authority that is prepared hold children as hostages just to get his own way. This schedule hands ultimate power to this minister and it is why it needs to be deleted.

If this chamber were to roll over on this schedule, we would effectively be saying we have no role in scrutinising regulation or legislation in this place. We know what this government does with legislation. We saw the crossbench having to fix it only a few weeks ago when it came to the FoFA laws. We know they cannot be trusted when it comes to legislation, and here we have the minister saying, 'You know we can't be trusted, so we're going to take away the total ability for you to fix it in the future.'

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (22:56): I advise the government will not be supporting this amendment.

Senator KIM CARR (Victoria) (22:56): The opposition will be supporting this amendment. It is a simple administrative matter.

The CHAIRMAN: The question is that schedule 3 stand as printed.

The committee divided. [23:01]

(Ayes.................48

Noes......................10

CHAMBER
Thursday, 4 December 2014  SENATE  10351

Majority................38

AYES

Abetz, E
Bernardi, C
Bullock, J.W.
Cameron, DN
Carr, KJ
Colbeck, R
Conroy, SM
Faulkner, J
Fierravanti-Wells, C
Gallacher, AM
Ketter, CR
Leyonhjelm, DE
Ludwig, JW
McEwen, A
McKenzie, B
Moore, CM
Nash, F
O'Sullivan, B
Peris, N
Ronaldson, M
Ryan, SM
Singh, LM
Smith, D
Wang, Z
Back, CJ
Bilyk, CL
Bushby, DC (teller)
Canavan, M.J.
Cash, MC
Collins, JMA
Day, R.J.
Fawcett, DJ
Fifield, MP
Heffernan, W
Lazarus, GP
Lines, S
Marshall, GM
McGrath, J
McLucas, J
Muir, R
O'Neil, DM
Payne, MA
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Sterle, G
Xenophon, N

NOES

Hanson-Young, SC
Ludlam, S
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS
Lambie, J
Milne, C
Rice, J
Waters, LJ
Wright, PL

Question agreed to.

Senator HANSON-YOUNG (South Australia) (23:04): by leave—I move Greens amendments (1) and (2) on sheet 7630 together:

(1) Clause 2, page 2 (table item 4), omit the table item, substitute:

4. Schedule 2, Part 1, Division 2, Immediately after the commencement of the provisions covered by table item 3.

(2) Schedule 2, page 27 (after line 24), after item 16, insert:

16A After section 35A

Insert:

35B Purpose of safe haven enterprise visas

It is the intention of the Parliament that unauthorised maritime arrivals who entered Australia by sea after 13 August 2012 and before 19 July 2013 and who satisfy the criteria for a protection visa are to be granted safe haven enterprise visas that:
(a) require them to live in regions of Australia that are suffering from labour shortages; and
(b) allow them to work and study; and
(c) give them access to social welfare benefits and services on the same basis as a person who holds a permanent protection visa; and
(d) allow family reunions; and
(e) in certain circumstances, may become permanent protection visas.

35C Regulations prescribing safe haven enterprise visas must be made

(1) Regulations making provision, in accordance with section 35D, for safe haven enterprise visas must be in force at the start of 1 February 2015.

(2) If regulations making provision for safe haven enterprise visas in accordance with section 35D are not in force at the start of a day after the end of January 2015, then, on and after that day:

(a) an eligible person (within the meaning of section 35D) may make a valid application for a permanent protection visa despite anything else in this Act, the regulations or the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014; and
(b) subject to paragraph (a), the application is to be determined under this Act, and the regulations, as in force on 1 November 2014.

(3) In applying this Act and the regulations as in force on 1 November 2014 for the purposes of this section and section 35D, disregard any amendment or provision that was made or enacted after that day but purports to have retrospective effect.

35D Safe haven enterprise visas

(1) Regulations making provision for safe haven enterprise visas must:

(a) provide for safe haven enterprise visas to be granted to any eligible person who satisfies the criteria for a protection visa under this Act, and the regulations, as in force on 1 November 2014; and
(b) provide for safe haven enterprise visas to be valid for 5 years; and
(c) provide for safe haven enterprise visa holders to have access to family reunions; and
(d) subject to subsection (2), make it a condition of a safe haven enterprise visa that the holder live in a declared area of Australia while the visa is in force.

(2) The regulations must prescribe exceptions to the condition in paragraph (1)(d) for holders of safe haven enterprise visas who cannot, because of age or health or caring responsibilities, reasonably be expected to comply with the condition.

(3) The holder of a safe haven enterprise visa is to receive social welfare benefits and services from the Commonwealth on the same basis as a person who holds a permanent protection visa, and the regulations may make such modifications of other Acts and instruments as are necessary to ensure that this occurs.

(4) If, for each day in a period of 42 months (or each day in multiple periods that together amount to 42 months), a holder of a safe haven enterprise visa:

(a) complies with the conditions of the visa; and
(b) either:

(i) does not receive social security benefits under the Social Security Act 1991; or
(ii) is covered by an exception prescribed in accordance with subsection (5);

then, at and after the start of the day after the end of the period or the last of the periods, as the case may be, the visa is taken to be a permanent protection visa.
(5) The regulations must prescribe exceptions for the purposes of subparagraph (4)(b)(ii) for days on which a holder of a safe haven enterprise visa:

(a) is unable to work because of age or health or caring responsibilities; or

(b) is undertaking full-time study (including days on which the visa holder is on a normal break between periods of full-time study).

(6) In this section:

Declared area of Australia means an area of Australia that is declared, by legislative instrument, in accordance with the regulations.

Eligible person means the following people:

(a) a person who:

(i) became an unauthorised maritime arrival on or after 13 August 2012 and before 19 July 2013; and

(ii) is in Australia;

(b) a person prescribed by the regulations.

These amendments deal directly with the deficiencies of the current SHEV arrangement. The deal between Mr Palmer, Senator Xenophon and Minister Morrison does not include a permanent visa for people at the end.

If somebody has been found to be a genuine refugee—they have had their assessments, they have had their case looked at and they are given refugee status—and is then put onto a SHEV, a safe haven enterprise visa, and they fulfil the requirements set out in that visa, working for 3½ years in a rural area or studying and not draining welfare, then after the five years why do they not get a permanent visa? If the SHEV is designed as a pathway to permanency once you have proven not just that you are refugee but that you have the good character to be able to rebuild your life and contribute to this country then after you have met the requirements of the SHEV you should be given a permanent visa. Why continue to play a game with people's lives and require them to get a different type of visa, go on to another temporary visa, never really finding that pathway to permanency?

These amendments put a genuine pathway to permanency into the SHEV—exactly what Mr Palmer wanted and just like we have heard from the crossbenchers that they want to see. That is currently not in the legislation. It was not in the government's amendments as negotiated between Mr Palmer, Senator Xenophon and Minister Morrison. That deal did not include a pathway to permanency. If we accept that that is important, if people prove that they are worthy of being able to stay in this country, let's give them permanency at the end of that SHEV process. That is what these amendments seek to do.

Senator Kim Carr (Victoria) (23:07): We will be supporting these amendments.

Senator Cash (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (23:07): The government will not be supporting the amendments.

The Chairman: The question is that amendments (2) and (1) on sheet 7630 be agreed to.

The committee divided. [23:12]

(The Chairman—Senator Marshall)
Ayes ......................32
Noes ......................34
Majority .................2

AYES

Bilyk, CL
Bullock, J.W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Peris, N
Rice, J
Singh, LM
Urquhart, AE
Whish-Wilson, PS

Brown, CL
Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S
Madigan, JJ
McEwen, A (teller)
Milne, C
O'Neill, DM
Rhiannon, L
Siewert, R
Sterfe, G
Waters, LJ
Wright, PL

NOES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ
Fifield, MP
Lazarus, GP
Macdonald, ID
McGrath, J
Muir, R
O'Sullivan, B
Payne, MA
Ronaldson, M
Ryan, SM
Simodinos, A
Wang, Z

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Cash, MC
Day, R.J.
Fierravanti-Wells, C
Heffernan, W
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L
Ruston, A
Scullion, NG
Smith, D
Williams, JR

Question negatived.

Senator KIM CARR (Victoria) (23:15): by leave—I move opposition amendments (1) to (13) and (20) to (26) on sheet 7636 together:

(1) Clause 2, page 2 (table item 8), omit the table item.

(2) Schedule 2, item 1, page 24 (lines 14 to 16), omit paragraph (c) of the note.

(3) Schedule 2, item 1, page 24 (line 17), omit "or temporary".

(4) Schedule 2, item 2, page 24 (line 23), omit "and temporary".
(5) Schedule 2, item 3, page 25 (line 3), omit paragraph 31(2)(f).
(6) Schedule 2, item 5, page 25 (lines 19 to 22), omit subsection 35A(3).
(7) Schedule 2, item 5, page 25 (line 24), omit "and temporary".
(8) Schedule 2, item 19, page 28 (after line 19), after subitem (1), insert:

1A A valid application for a Protection (Class XA) visa made before the commencement of Division 1 of this Part and not finally determined immediately before that commencement is, at and after that commencement, taken to be, and always to have been, a valid application for a permanent protection visa.

(9) Schedule 2, item 20, page 29 (line 13), after "class", insert "(other than a protection visa)".
(10) Schedule 2, item 20, page 30 (lines 1 and 2), omit "protection visas and any other classes of visas", substitute "any classes of visas (other than protection visas)".
(11) Schedule 2, heading to Part 4, page 35 (lines 1 and 2), omit "and temporary protection visas".
(12) Schedule 2, item 26, page 35 (lines 13 to 15), omit paragraph (c) of the note.
(13) Schedule 2, item 26, page 35 (line 16), omit "or temporary".
(20) Schedule 2, item 53, page 49 (lines 18 to 20), omit "Temporary Protection (Class 18 XD) visa by the operation of paragraph 2.08F(1)(b) of these Regulations (as inserted by Division 2 of that Part)", substitute "protection visa by the operation of item 19 of that Schedule".
(21) Schedule 2, item 53, page 49 (lines 21 to 23), omit the note.
(22) Schedule 3, item 1, page 50 (line 12), omit paragraph 31(3A)(c).
(23) Schedule 3, item 6, page 52 (line 2), omit paragraph 46(5)(c).
(24) Schedule 3, item 7, page 52 (line 14), omit paragraph 46AA(1)(c).
(25) Schedule 3, item 12, page 55 (table item 3), omit the table item.
(26) Schedule 3, item 12, page 56 (line 2), omit "and temporary".

The opposition opposes schedule 2 in the following terms:
(14) Schedule 2, items 29 to 31, page 35 (line 24) to page 42 (line 16), to be opposed.
(15) Schedule 2, item 37, page 44 (lines 11 to 14), to be opposed.
(16) Schedule 2, Division 2, page 44 (line 15) to page 46 (line 11), to be opposed.
(17) Schedule 2, items 40 and 41, page 46 (lines 16 to 21), to be opposed.
(18) Schedule 2, item 43, page 46 (lines 25 to 28), to be opposed.
(19) Schedule 2, items 45 to 50, page 47 (lines 4 to 24), to be opposed.

These amendments go to the question of TPVs. The Labor Party remains—I have stated this position very clearly—absolutely opposed to TPVs.

Senator Brandis interjecting—

Senator KIM CARR: Sorry, what was that? Here we go! Lord Brandis wants to cut in. Lord Brandis, who sits there in his slothful manner, wants to cut in and wants to question whether or not we have real conviction on this matter.

Senator Bushby: Mr Chairman, I raise a point of order. Senator Carr knows that he needs to refer to senators in this place by their correct titles.

The CHAIRMAN: Yes, he does indeed. I again remind senators to refer to other senators by their correct titles.
Senator KIM CARR: Under the Howard government there were 11,000 TPVs issued. Of those, 9,800 were made permanent. This demonstrates, on the historic record, that overwhelming numbers of people on TPVs deserved to have permanency. These sets of amendments put our long- and well-held view of the failure of this TPV regime, and I would urge the Senate to support them.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (23:16): The government will not be supporting the amendments.

Senator HANSON-YOUNG (South Australia) (23:16): The Greens will be supporting these amendments. We are very clearly on the record saying that temporary protection visas are only given to people who have already been found to be worthy and needing protection. It simply adds more pain and more suffering to people and does not allow refugees to rebuild their lives in this country. It does not allow them to put roots down, start contributing properly, allow their kids to go to school and know that they will become Australian citizens and proud members of our Australian community. Temporary protection visas last time around, under John Howard, were a fundamental failure of policy. It is why they did not work. It is why, under John Howard, they had to be quietly reversed for person after person after person. They did not stop the boats. All they did—

Senator Bernardi interjecting—

The CHAIRMAN: Order! Senator Hanson-Young, please resume your seat. Senator Bernardi, I would kindly ask you to resume your own seat.

Senator HANSON-YOUNG: Of course these amendments to remove and to delete temporary protection visas are important. Under the John Howard government, temporary protection visas encouraged women and children onto boats. Temporary protection visas kept genuine refugees in limbo in the community for years, suffering unnecessarily. They do not allow people who are genuine refugees who need protection, who deserve protection and who want to contribute to our nation the ability to rebuild their lives or to have certainty around what their kids are going to do and what jobs they are going to take. Temporary protection visas were a fundamental failure of policy last time they existed, and they will be again. That is why the Greens support deleting them from the bill.

The CHAIRMAN: The question is that the amendments be agreed to.

The Committee divided. [23:24]

(The Chairman—Senator Marshall)

Ayes .................... 32
Noes .................... 34
Majority .............. 2

AYES

Bilyk, CL
Bullock, J.W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S

Brown, CL
Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S

CHAMBER
Thursday, 4 December 2014  
SENATE  

AYES

Ludwig, JW  
Marshall, GM  
McLucas, J  
Moore, CM  
Perris, N  
Rhiannon, L  
Siewert, R  
Urquhart, AE  
Whish-Wilson, PS  
Madigan, JJ  
McEwen, A (teller)  
Milne, C  
O'Neill, DM  
Polley, H  
Rice, J  
Singh, LM  
Waters, LJ  
Wright, PL

NOES

Abetz, E  
Bernardi, C  
Brandis, GH  
Canavan, M.J.  
Colbeck, R  
Fawcett, DJ  
Fifield, MP  
Lazarus, GP  
Macdonald, ID  
McGrath, J  
Muir, R  
O'Sullivan, B  
Payne, MA  
Ronaldson, M  
Ryan, SM  
Sinodinos, A  
Wang, Z  
Back, CJ  
Birmingham, SJ  
Busby, DC (teller)  
Cash, MC  
Day, R.J.  
Fierravanti-Wells, C  
Heffernan, W  
Leyonhjelm, DE  
Mason, B  
McKenzie, B  
Nash, F  
Parry, S  
Reynolds, L  
Ruston, A  
Scullion, NG  
Smith, D  
Xenophon, N

Question negatived.

The CHAIRMAN (23:26): The question is that items 29 to 31, 37, 40, 41, 43 and 45 to 50 and division 2 of schedule 2 stand as printed.

Question agreed to.

The CHAIRMAN: Senator Hanson-Young, we might move to your amendments on sheet 7641.

Senator HANSON-YOUNG (South Australia) (23:27): I am not proceeding with amendments (2) to (7), (9) to (12) and (19) to (25) on sheet 7641, amendment (1) on sheet 7649 and amendment (8) on sheet 7641. The Greens oppose schedule 4 in the following terms:

(4) Schedule 4, page 57 (line 1) to page 89 (line 22), to be opposed.

This amendment deletes schedule 4 of the bill. Schedule 4 of the bill is what has been dubbed the fast-track legislation. This is the schedule that fundamentally changes the way people will have their refugee assessment made. The minister has argued that it creates a rapid process for asylum seekers who will be assessed under this caseload of 30,000. In reality, what this will do is strip away people's ability to appeal decisions and to ensure that the correct information about their cases is what is being used to make their assessments. It strips their ability to have
their cases reviewed by the Refugee Review Tribunal. These amendments are all about the
government trying to make it as hard as possible for somebody to be found to be a genuine
refugee.

This schedule was the most fundamental concern of refugee advocates and lawyers who
submitted to the Senate's inquiry into this piece of legislation. It is stripping away people's
ability to ensure that they get a fair hearing, that after all these years of being locked in
detention and then dumped in the community with nothing, people are being asked to be fast-
tracked, shunted through a system where they do not have appeal rights, where they do not
have the ability to make sure that the information they put forward is correct, and the minister
himself is allowed to have such ultimate power that he can put big crosses next to these
people's names and no-one is going to be able to have that reviewed or to know that those
crosses that the minister has put next to their refugee assessment will be reviewed.

It is important to note that those who are found under this process to not be owed
protection will become unlawful citizens—no right of appeal, no ability to check that the
minister has made the right assessment. And they become unlawful citizens. And what
happens then? Those people will go back into immigration detention, awaiting deportation.
This whole argument that this is about getting people out of detention is actually a furphy, and
this schedule exposes that. We know that over 60 per cent of cases are overturned because the
first decision made was the wrong one. That means that over 60 per cent of the 30,000 people
are going to not be found to be owed protection if this schedule passes. That does not mean
that they are not refugees; it just means that the minister does not have to admit that a mistake
was made. It makes it easier for him to stick them back into detention or on a plane back to
Kabul, or to Quetta, or to whatever other place from which they have fled persecution.

The reason this is so fundamental is that it is about life and death. This is about how you
assess somebody to be a refugee. We have spent most of the night in this place debating what
happens once somebody is found to be a refugee—whether they get a temporary visa, whether
it is a pathway to permanency—when in actual fact this is the crux of it: the minister wants
the power to give fewer visas to people, full stop. He wants to be able to put more people on a
plane and deport them back to danger. The schedule is fundamentally flawed. It is abhorrent
to the rule of law, and it must not proceed.

Senator KIM CARR (Victoria) (23:32): The opposition was intending to move
amendments in similar terms for the removal of schedule 4. Schedule 4 as it is currently
presented—and if the Senate agrees—would have the effect of removing access to the
Refugee Review Tribunal for certain asylum seekers to whom the government has given fast-
track applications—a somewhat Orwellian concept. Now, in lieu of the Refugee Review
Tribunal, the government is proposing that asylum seekers who have had their application for
protection denied will be directed to a new body called the Immigration Assessment
Authority. And one of the fundamental principles of administrative arrangements in this
country is the access that people have to review of decisions that are taken by officers,
providing—I think appropriately—a provision for natural justice and the opportunity to have
decisions actually reviewed. And because of the very high percentage of cases that are
actually overturned by the review mechanism, it is quite clear that such a body is necessary.

The new body the government is proposing—and if you support the measures in this bill
you will be supporting this new body—will conduct only limited merit review of decisions,
and it would deny the application for protection of applicants on the basis of a paper review. It will be on the papers; it will not necessarily be through any proper judicial standard of review. Unsuccessful asylum claimants will not have an opportunity to appear before such a body to actually argue their case. The review will be conducted by bureaucrats in a closed office. Asylum seekers will not have the opportunity to even make written submissions. Asylum seekers will not have the opportunity to be notified of adverse findings about them or respond to those findings. They will be denied the right of legal representation.

Now, I ask you to think about the implications of that. In any proper judicial process in this country you would have an expectation of legal representation. You would have an expectation that you would be told about the proceedings. You would have an expectation that you would actually be able to present your case. But under this measure none of those basic provisions or legal protections in this country are allowed. There are no prescribed grounds for a review to be conducted by such a body. It is a process that is entirely at the discretion of the reviewer. This strikes me as being fundamentally at odds with the judicial principles that we would have expected in this country.

Furthermore, the immigration assessment authority lacks institutional independence from the executive of government, which I would put to you is one of the touchstones of judicial review. But you do not have the minister ring up and put the fix in, and that is what these proposals would allow. You must have a legal process that stands up to scrutiny. And the IAA reviewers will not be employed by an independent statutory authority—which of course is the case with the Refugee Review Tribunal, or the Administrative Appeals Tribunal. Rather, these reviewers will be regular public servants employed under the Public Service Act. In performing their reviews, they will be required to comply with the practice directions and guidelines imposed by their superiors.

So, this is a proposition that provides no confidence of independent judicial review. What this measure suggests to me is a somewhat pale imitation of current practices with the Refugee Review Tribunal and falls dramatically short of the basic principles of fairness. I ask this chamber to consider the implications of endorsing such a process for people who have a genuine need to have their decisions reviewed by a proper, fair process. Simply put, if this proposition is upheld, asylum seekers will not be afforded natural justice. The basic principles of reasonable administrative decision making that we have all come to expect will be abandoned.

I think we would all defend an open and transparent review process, which of course the Refugee Review Tribunal upholds. That is to be scrapped and replaced with a team of bureaucrats, sitting in closed offices, subject to the direction of government and lacking the institutional independence of the Refugee Review Tribunal. That would mean that the government would take control of the review processes, when administrative decisions—as we all know, because of the representations we all have to take—have so often been demonstrated to be incorrect. The proposition that you have been asked to endorse is a 'trust me, trust the government' approach to justice. That is fundamentally contrary to the principles of the way in which our legal system is operated in this country. Rights and obligations of asylum seekers should not be at the mercy of executive government. Asylum seekers are entitled to a fair and independent, a transparent and credible, forum to have their claims assessed properly. That is why Labor senators will be opposing schedule 4 of this bill.
Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (23:40): The government will not be supporting the amendment moved by the Australian Greens. Despite the statements made by Senator Hanson-Young and reiterated by Senator Carr, I can confirm to the Senate that the bill does not make any change to the judicial review rights. The bill contains the necessary procedural safeguards to ensure a fair process. Natural justice requirements will be observed as the IWA will be supported with a code of procedure in relation to the reviews that it conducts. So I confirm that there is no change to the judicial review rights.

The CHAIRMAN: The question is that schedule 4 stand as printed.

The committee divided. [23:45]

(The Chairman—Senator Marshall)

<table>
<thead>
<tr>
<th>Ayes</th>
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<th>Majority</th>
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<td>34</td>
<td>32</td>
<td>2</td>
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</tbody>
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AYES
Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ
Fifield, MP
Lazarus, GP
Macdonald, ID
McGrath, J
Muir, R
O’Sullivan, B
Payne, MA
Ronaldson, M
Ryan, SM
Sinodinos, A
Wang, Z

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Cash, MC
Day, R.J.
Fieravanti-Wells, C
Heffernan, W
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L
Ruston, A
Seullion, NG
Smith, D
Xenophon, N

NOES
Brown, CL
Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S
Madigan, JJ
McEwen, A (teller)
Milne, C
O’Neill, DM
Polley, H

Bullock, J.W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Peris, N
Rhiannon, L
Question agreed to.

The CHAIRMAN (23:47): Senator Hanson-Young, the result of that division makes your amendment (11) on sheet 7629 redundant. And, Senator Carr, I believe that it makes your amendment (2) on sheet 7637 also redundant. We now move to Greens amendment (5) on sheet 7629.

Senator HANSON-YOUNG (South Australia) (23:47): The Greens oppose schedule 5 in the following terms:

(5) Schedule 5, page 90 (line 1) to page 100 (line 16), to be opposed.

I know everybody is keen to get out of here, and we are moving through the amendments as quickly as we can, so I will continue. This amendment is in relation to deleting schedule 5, which is the schedule that removes the refugee convention from the Migration Act, effectively allowing the minister of the day, the government, to determine what a refugee is, the definition of a refugee, and how international law will be applied in this country. It is an abusive use of power by this minister. It would be a fundamental change to the way Australia deals with our obligations under international law and would send a significant message to the international community that Australia does not care about the refugee convention. This schedule cannot stand the way it is. It is wrong to delete the refugee convention from Australia's law books. It does not matter how much you want to spin it. Why does it need to be done? Because Minister Morrison does not want to have to abide by the obligations as outlined by the refugee convention. If he did, it would not matter. We asked the department, during the inquiry into this, when has this ever occurred before, where you put in the government of the day's own interpretation of our obligations under international law? They could not tell us, because it has not happened. Why hasn't it happened? Because it is wrong. When we abide by international law you put that in your legislation, you say we stick by the convention and you get on and stick by the rules you have signed up to. The schedule should be deleted.

Senator KIM CARR (Victoria) (23:50): We will be supporting the motion to delete schedule 5.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (23:50): The government will be opposing the amendment moved by the Australian Greens. I again confirm for the chamber that, despite the statements made by Senator Hanson-Young, these amendments do not attempt to displace Australia's obligations under the refugees convention. The new statutory refugee framework is consistent with Australia's obligation under the refugees convention and in no way resiles from Australia's nonrefoulement obligations under the convention. Putting our international obligations into the relevant act will actually serve to
strengthen them. We are a sovereign nation and this will ensure that our laws are determined by Australians and the Australian parliament.

The CHAIRMAN: The question is that schedule 5 stand as printed.
The committee divided. [23:55]
(The Chairman—Senator Marshall)

Ayes ....................34
Noes ....................32
Majority ...............2

AYES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ
Fifield, MP
Lazarus, GP
Macdonald, ID
McGrath, J
Muir, R
O'Sullivan, B
Payne, MA
Ronaldson, M
Ryan, SM
Sinodinos, A
Wang, Z

Back, CJ
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Cash, MC
Day, R.J.
Fierravanti-Wells, C
Heffernan, W
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L
Ruston, A
Scullion, NG
Smith, D
Xenophon, N

NOES

Brown, CL
Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S
Madigan, JJ
McEwen, A (teller)
Milne, C
O'Neill, DM
Polley, H
Rice, J
Singh, LM
Urquhart, AE
Whish-Wilson, PS

Bullock, J.W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Peris, N
Rhiannon, L
Siewert, R
Sterle, G
Waters, LJ
Wright, PL

Question agreed to.
The CHAIRMAN (23:57): Senator Hanson-Young, I believe that would make your amendment (12) now redundant, so we should now move to opposition amendments (2) and (3) on sheet 7638.

Senator KIM CARR (Victoria) (23:57): Mr Chairman, I believe that the previous Greens amendment would make those provisions now redundant as well, so I do not wish to proceed.

The CHAIRMAN: We should then move to opposition amendment (1) on sheet 7639.

Senator KIM CARR: Mr Chairman, I wish to move amendment (1) on revised sheet 7639, with a further—

Lights in the chamber having dimmed—
Honourable senators interjecting—

The CHAIRMAN: Order! This is not the most exciting thing that has happened tonight. I believe there is enough light for us to continue, so we will press on.

Senator KIM CARR: I would also seek to further amend amendment (1) on revised sheet 7639, clause (iv), which currently says: 'conceal a physical, psychological or emotional disability', to change the word 'emotional' to 'intellectual'. I move revised amendment (1):

(i) Schedule 5, item 7, page 94 (line 3), at the end of subsection 5J(3), add:

; or (c) without limiting paragraph (a) or (b), require the person to do any of the following:

(ii) conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;

(iii) alter his or her political beliefs or conceal his or her true political beliefs;

(iv) conceal a physical, psychological or intellectual disability;

(v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;

(vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.

I understand that this is likely to attract the support of the chamber. The government is supporting it. These measures are being moved in the light of the changes the government is making. This is being moved because the replacement of the refugee convention with these preferred interpretations of convention obligations requires much closer definitions of the so-called modifications that people have to enter into if they are to attract support. As a consequence, I believe they are self-evident requirements, and I commend them to the chamber.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (23:59): The government will be supporting the amendment moved by Senator Carr, and I confirm the further amendment in relation to paragraph (iv), replacing the word 'emotional' with 'intellectual'.

Friday, 5 December 2014

The CHAIRMAN: The question is that amendment (1) on sheet 7639 (revised) be agreed to.

Question agreed to.
The CHAIRMAN: We will now move to Australian Greens amendment (6) on sheet 7629.

Senator HANSON-YOUNG (South Australia) (00:00): The Greens oppose schedule 6 in the following terms:
(6) Schedule 6, page 101 (line 1) to page 109 (line 28), to be opposed.

This will be the final amendment that I will move tonight. There are some other amendments on the sheet—

Honourable senators interjecting—

The CHAIRMAN: Order!

Senator HANSON-YOUNG: Sometimes I think this place is full of toolies at schoolies.

Honourable senators interjecting—

The CHAIRMAN: Senator Hanson-Youn, there is no need for any commentary. Please resume your seat again. The Senate should come to order. Senator Hanson-Youn, you have the call.

Senator HANSON-YOUNG: This will be the final amendment that I will move tonight. I have other amendments on the sheet, but in the spirit of getting everybody out of here, I will leave them—

Honourable senators interjecting—

The CHAIRMAN: Order!

Senator HANSON-YOUNG: Well, I am happy to stay, but I think everyone wants to go home.

The CHAIRMAN: Please resume your seat, Senator Hanson-Youn. If senators could assist the Chair and remain silent. Senator Hanson-Youn, you have the call.

Senator HANSON-YOUNG: This amendment is in relation to schedule 6. It is the schedule that effectively renders babies born in Australia stateless. It says that those babies who are born here in Australia to asylum seeker parents, whether they are born in a hospital in Perth, in Adelaide or in Brisbane, will be classified as unauthorised maritime arrivals. This schedule is designed to keep those babies in limbo, along with their families. And, of course, one of the most awful parts of this schedule is that it is retrospective. We know that over 100 babies have been born here in Australia. They were delivered like any other baby. They arrived in the way that any other children in this country have. They are not maritime arrivals, and yet this schedule renders them to be unauthorised maritime arrivals.

Furthermore, of those who have already been born, 24 of them, tomorrow when this bill passes, will be on a plane to Nauru. The minister has said that the moment this bill passes those 24 babies, who were born here in Australia, will be on a plane to Nauru. It is putting children back in detention. I see that the minister is here in the chamber tonight, and he is grinning. I find that appalling. Twenty-four babies born in Australia are going to be sent to Nauru under this schedule. It needs to be deleted.

Senator KIM CARR (Victoria) (00:04): We support schedule 6 of the bill.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (00:04): The government
is opposing the amendment moved by Senator Hanson-Young relating to children born to IMAs. I believe I answered a question from Senator Madigan today in relation to this. The current state of the law is that babies born to mothers who are UMAs are expressly covered by the definition of UMA in section 5AA of the act.

The CHAIRMAN: The question is that schedule 6 stand as printed.

Question agreed to.

The CHAIRMAN: Senator Hanson-Young, you are not proceeding with any more of your amendments?

Senator Hanson-Young: That is correct.

Senator KIM CARR (Victoria) (00:05): by leave—I move opposition amendments on sheet 7640 together:

(1) Schedule 2, item 39, page 46 (lines 14 and 15), omit the item, substitute:

39 Regulation 2.06AA

Omit "Protection (Class XA) visa" (wherever occurring), substitute "protection visa".

(2) Schedule 7, item 2, page 110 (line 10), after "visas", insert "(other than protection visas)".

(4) Schedule 7, item 6, page 110 (line 22), omit "including", substitute "other than".

(6) Schedule 7, item 16, page 112 (line 3), omit "The", substitute "Subject to subitem (1A), the".

(7) Schedule 7, item 16, page 112 (after line 8), after subitem (1), insert:

(1A) However, the amendments made Part 1 of this Schedule do not prevent a protection visa being granted in relation to an application for a Protection (Class XA) visa made before the commencement of that Part (including such an application that is deemed to be an application for another kind of visa by another provision of this Act).

(8) Schedule 7, item 16, page 112 (lines 9 to 21), omit subitems (2) to (4).

The opposition also opposes schedule 7 in the following terms:

(3) Schedule 7, item 4, page 110 (lines 17 and 18), to be opposed.

(5) Schedule 7, items 13 to 15, page 111 (lines 9 to 14), to be opposed.

Put simply, we are very concerned to ensure that we protect the principle of having protection visa applications dealt with within 90 days. We believe that reporting on the 90-day rule has been an important accountability measure to ensure that the government operates in a timely way in assessing protection applications. At the end of Labor's period in office, about half of all protection applications were decided within 90 days. However, the most recent report, on 1 March 2014 through to 30 June 2014, indicated that only 14 per cent of cases were determined within the 90-day period. Because this government has an obsession with secrecy, we are concerned to ensure that there are accountability mechanisms built into the legislation. So we will oppose any attempt to water down the 90-day rule.

The CHAIRMAN: I need to put this question in two parts. The first part is that the amendments be agreed to.

Question negatived.

The CHAIRMAN: The next question is that items 4 and 13 to 15 of schedule 7 stand as printed.

Question agreed to.
The CHAIRMAN: The question is that the bill, as amended, be agreed to.

The committee divided. [00:11]

(The Chairman—Senator Marshall)

Ayes ...................... 34
Noes ...................... 32
Majority................. 2

AYES

Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ
Fifield, MP
Lazarus, GP
Macdonald, ID
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Ruston, A
Seallion, NG
Smith, D
Xenophon, N

NOES

Brown, CL
Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S
Madigan, JJ
McEwen, A (teller)
Milne, C
O’Neill, DM
Polley, H
Rice, J
Singh, LM
Urquhart, AE
Whish-Wilson, PS

Bullock, J.W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Peris, N
Rhiannon, L
Stewart, R
Sterle, G
Waters, L J
Wright, PL

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading
Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (00:14): I move:

That the bill be read a third time.

The PRESIDENT: The question is that the bill be now read a third time.

The Senate divided. [00:15]

(The President—Senator Parry)

Ayes ....................34
Noes ....................32
Majority .................2

AYES
Abetz, E
Bernardi, C
Brandis, GH
Canavan, M.J.
Colbeck, R
Fawcett, DJ
Fifield, MP
Lazarus, GP
Macdonald, ID
McGrath, J
Muir, R
O'Sullivan, B
Payne, MA
Ronaldson, M
Ryan, SM
Sinodinos, A
Wang, Z

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Cash, MC
Day, R.J.
Ferravanti-Wells, C
Heffernan, W
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Reynolds, L
Ruston, A
Scullion, NG
Smith, D
Xenophon, N

NOES
Brown, CL
Cameron, DN
Collins, JMA
Faulkner, J
Hanson-Young, SC
Lambie, J
Ludlam, S
Madigan, JJ
McEwen, A (teller)
Milne, C
O’Neill, DM
Polley, H
Rice, J
Singh, LM
Urquhart, AE
Whish-Wilson, PS

Bullock, J.W.
Carr, KJ
Conroy, SM
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Peris, N
Riannon, L
Siewert, R
Sterle, G
Waters, LJ
Wright, PL

Question agreed to.
Bill read a third time.

COMMITTEES

Australia Fund Establishment
Foreign Affairs, Defence and Trade References Committee

Membership

The PRESIDENT (00:18): Order! I have received letters from party leaders requesting changes in the membership of various committees.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (00:18): by leave—I move:

That senators be discharged from and appointed to committees as follows:

Australia Fund Establishment—Joint Select Committee—
Appointed—Participating member: Senator Wang

Foreign Affairs, Defence and Trade References Committee—
Appointed—
Substitute member: Senator Rhiannon to replace Senator Ludlam for the committee’s inquiry into Australia’s bilateral aid program in Papua New Guinea
Participating member: Senator Ludlam.

Question agreed to.

BILLS

Building Energy Efficiency Disclosure Amendment Bill 2014

First Reading

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (00:19): 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 FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (00:19): 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—

This Government is committed to supporting Australian businesses through cutting red tape, and improving energy productivity to deliver positive outcomes for all Australians.

The Commercial Building Disclosure program, supported by the Building Energy Efficiency Disclosure Act 2010, continues to represent one of the most cost-effective opportunities to reduce the use of energy in commercial buildings and improve productivity across the sector.
Since its commencement in November 2011, the CBD program has transformed the commercial property market. Office buildings with better energy efficiency ratings consistently deliver greater returns for investors, and energy efficiency is now considered a normal part of commercial property transactions.

Commercial building and energy efficiency stakeholders have been actively engaged in the CBD program and continue to support its important role in driving energy productivity across Australia's property sector.

The Building Energy Efficiency Disclosure Amendment Bill I bring before you today has been generated in response to requests from industry stakeholders since the inception of the CBD program. It contains a number of improvements to the original Act that will streamline the administration and reduce the regulatory burden on business.

The Bill will enable building owners to respond to unsolicited offers—an uninvited request to sell or lease office space—without having a Building Energy Efficiency Certificate in place.

The Bill will allow businesses the ability to nominate a commencement date for a Building Energy Efficiency Certificate (BEEC) which is later than the date of issue. This will provide greater flexibility for businesses wishing to proactively maintain current BEECs for their property portfolios.

The Bill will remove the need for new owners and lessors to reapply or pay the application fee for fresh exemptions if there is a valid one in place for a building, and it will allow transactions between wholly-owned subsidiaries to be excluded from disclosure obligations.

Finally the Bill will remove the requirement for pages of standard energy efficiency guidance text on the BEEC. Instead building owners will be able to access live and interactive online information about improving energy efficiency for their individual office buildings.

All up the Bill will lead to an estimated $600,000 worth of reduction in regulatory burden on businesses.

Debate adjourned.
In February this year, CCTV images from the parliamentary security system were used by the Department of Parliamentary Services—DPS—in investigating a staffing matter. These included images showing a DPS employee placing an envelope under the door of Senator Faulkner's office at Parliament House.

Senator Faulkner asked questions about the operation of the CCTV system during estimates hearings in May, raising two concerns:

First—that the use of the CCTV system to investigate a staffing matter breaches the CCTV Code of Practice.

And Second—that DPS was improperly monitoring interactions between its employees and his office.

The CCTV system is governed by a Code of Practice, which lists the purposes for which it may be used. The Secretary of DPS, Ms Carol Mills, told the estimates hearing that "there may have been an inadvertent … breach of the statement of purpose".

After being told that breach "may involve" footage of someone providing information to him, Senator Faulkner raised the matter with the President as a matter of privilege. He said "It is a serious breach that a senator in this parliament is being spied on in that way as they go about the proper conduct of their duties.

Two matters were referred to the Privileges Committee.

The chief concern was that use of the CCTV system to identify persons providing information to senators may interfere with the performance of senators' duties. If people apprehend that their interactions with senators are monitored, they may be deterred from providing such information, limiting the information available to senators and constraining their capacity to put matters before parliamentary committees.

That concern is heightened in this case, because DPS administers the CCTV system. Unauthorised use of the CCTV system could impede the Finance and Public Administration Committee's oversight of DPS if people are deterred from providing information relevant to that oversight. This risk can only be avoided if the use of the system is strictly controlled. The allegation that it has been used for unauthorised purposes is therefore a serious one.

The other concern raised was the question whether disciplinary action was taken against a person in connection with her providing information to a senator: inflicting any penalty upon a person in connection with their providing information to a senator may be dealt with as a contempt, if the information is sufficiently connected to parliamentary business.

Both of these matters may be dealt with by the Senate as contempts.

The main evidence before the committee is a submission from DPS and additional documents provided on 11 November.

Before turning to the substance of those documents, I must deal with a serious matter concerning the evidence given by the DPS Secretary to the estimates hearing on 26 May.

According to the submission, the Secretary was informed on 27 February that CCTV images showed a DPS employee placing a "brown envelope" under Senator's Faulkner's office door. The entire submission is founded on the Secretary's response to that discovery. This was represented as a "conscious decision" about how to proceed and an instruction as to the use of those images.

Yet, the Secretary told the estimates hearing—three months later—that the incident had only been brought to her attention as questions were asked during the hearing. When asked directly whether the matter involved a person or people providing information to Senator Faulkner, Ms Mills replied "That is what I am looking into. That is the issue that was brought to my attention today …"
The submission and additional documents cast considerable doubt upon the evidence given by the Secretary. This is dealt with in the report under the heading Contradictory Evidence, which I intend to draw to the attention of the Finance and Public Administration Legislation Committee. The Privileges Committee considers that misleading the legislation committee in these circumstances is a serious breach of accountability and probity.

Let me turn to the main arguments put forward.

A theme repeated throughout the submission is that DPS officers could not have known that the interaction caught on camera related to parliamentary business, and so could not be said to be obstructing it. Whatever the merits of that case, the additional documents provided on 11 November entirely dispose of this line of argument.

When the discovery of the footage was communicated to DPS officers, they immediately associated the envelope with Senator Faulkner's participation in Senate estimates, and with DPS' appearances there. This email exchange directly contradicts conclusions DPS is asking the committee to accept and undermines the factual basis of legal advice it had also provided.

DPS also argues that the disciplinary proceedings can't have been initiated as a result of the provision of information to Senator Faulkner—the timing doesn't allow it. The committee accepts this argument.

However the email exchange I referred to demonstrates the risk in allowing the use of CCTV images in these circumstances. The officers involved drew adverse inferences from the discovery of the footage and communicated these to the Secretary. It is impossible to establish whether that information influenced those officers' decisions—or the Secretary's decisions—in the subsequent stages of the investigation or a series of later employment decisions affecting the employee.

If any action was taken against the employee in connection with the provision of this information to Senator Faulkner, it would be open to the Senate to deal with that action as a contempt.

The submission argues that Senator Faulkner has not been "hampered or obstructed" in collecting information, citing as evidence the fact that the employee apparently returned to him with concerns about the investigation.

The fact that the employee found another way to communicate with Senator Faulkner does not deal with the broader question whether other people may be deterred from providing information to senators. This incident has similarities to allegations aired in the media 3 years ago that security cameras were used to try to identify whistleblowers providing information to Senator Faulkner. Records indicate that the CCTV system has now been used for other purposes involving staffing matters, which may add further to people's apprehension about being monitored.

Such apprehensions may discourage people from providing information to senators, limiting the information available to them and affecting their committee work—an improper interference.

DPS submits that there can be no finding of improper interference where its actions in using CCTV footage was authorised under, and in accordance with the Code of Practice.

The argument is inconsistent with well-established principles about the powers, privileges and immunities of the parliament, and the manner in which they constrain administrative action. An act which is otherwise "lawful" or "proper" or "authorised" may nevertheless amount to a contempt.

The CCTV system in Parliament House, like other security and information systems, is managed by DPS, under the authority of the Presiding Officers, on behalf of the Parliament. Its authority is clearly constrained by the powers, privileges and immunities of the Houses and their members. In any question of parliamentary administration, proper regard needs to be given to these matters.

The committee has particular concerns about the accountability in the use of the system, particularly accountability to the Presiding Officers and to the Parliament itself. These concerns are detailed in chapters 3 and 4 of the report.
The committee also has concerns arising from the disregard for the powers, privileges and immunities of the parliament which has been on display during the investigation of this matter. Senior officers in the parliamentary service should have a well-developed understanding both of the operations of the parliament and the limitations of their administrative authority, in particular they must give primacy to parliamentary powers in balancing the competing priorities to which they may need to have regard.

The committee has concluded that the use of CCTV images in this matter occurred without proper authorisation and in circumstances in which people may be understandably apprehensive about being monitored in similar circumstances in the future.

The committee considers that there are serious difficulties with the interpretation of the existing Code of Practice, and gaps in accountability in the use of the CCTV system.

The committee is required to consider what action is necessary to protect the Senate, its committees and senators against acts which might obstruct them in the performance of their functions.

The committee does not consider it necessary, however, to contemplate a finding of contempt. In this case, corrective action lies within the power of the Presiding Officers.

The committee recommends that the Presiding Officers instigate the development of a new Code of Practice which restores the focus on matters of security and safety; and emphasises accountability to the Presiding Officers and the Parliament, with appropriate regard for the primacy of the powers, and immunities of the Houses and their members.

That committee in particular recommends that the review process involve consultations with member and senators and other building occupants, and give consideration to the matters dealt with in this report.

The committee also recommends that senior officers in DPS involved in the administration of the CCTV system and other systems managed on behalf of the Parliament undertake some structured training to acquaint themselves with the principles of privilege.

Finally, the committee recommends that the attention of the Finance and Public Administration Legislation Committee be drawn to the matters set out under the heading Contradictory evidence, relating to the misleading evidence given at its estimates hearing on 26 May 2014.

Senator JACINTA COLLINS: by leave—in addition to the comments I have incorporated, I would like to express the thanks of the committee for the work undertaken by the Deputy Clerk in preparing the report, and my own personal thanks go to the other members of the committee. This has been a difficult and very important matter for the Senate and in relation to accountability in this parliament. There are some very serious issues dealt with in the report about maintaining parliamentary privilege and maintaining the privilege that we all often take for granted within this house.

Mr President, I also need to take this opportunity to thank you and Madam Speaker for the responses that you have made to recommendations from the committee along the way. Some very important issues have occurred during the process of this investigation. Firstly, you have reinstated the essence of the original code that we established to manage the use of CCTV footage within the parliament and, secondly, you have agreed to ensure that the cameras in this place are not focussed directly on the operations of members and senators within the Senate. These are two very important issues and we thank you for addressing them during the course of our inquiry. The third issue that I should highlight is the recommendation that we have made, which you have already instituted in part, which is that we completely review the code and how it operates, and the accountability within that code. Unfortunately there are
some serious indications that the accountability of the code has not been operating as it should and we will address these issues in some further detail in the new year.

The final matter is a reference back to the Finance and Public Administration Committee with respect to some misleading evidence put before it. I bring that to the attention of Senator Bernardi, as chair of the Finance and Public Administration Committee, for them to review and consider. (Time expired)

Senator FAULKNER (New South Wales) (00:24): I thank the Privileges Committee—

The PRESIDENT: Senator Faulkner, you will need to seek leave as there is no motion before the chair.

Senator FAULKNER: I seek leave to speak on the tabling of the Privileges Committee report.

The PRESIDENT: Is leave granted?

Senator FAULKNER: I can seek leave for one minute. If I am unable to have leave of the Senate I will seek leave to incorporate my remarks into Hansard. Of course I have not had an opportunity to show those remarks to senators in the chamber. Senators would be aware that this issue related directly to me, and I at a minimum would seek the leave of the Senate to incorporate remarks into the Hansard.

Leave granted.

The speech read as follows—

I thank the Privileges Committee for its exhaustive inquiry and unanimous report on this matter.

I note the committee's strong recommendations and look forward to their early implementation.

Of course I would not expect the Privileges Committee to recommend a finding of contempt on this matter.

In fact, I appreciate that the Privileges Committee has always had a focus on taking corrective action, and this Report is very consistent with that longstanding tradition.

Mr President, in February 2014, CCTV images of a DPS employee placing an envelope under the door of my parliamentary office were used by DPS officials in an investigation of a staff management issue.

My own involvement in this matter began at the Budget Estimates hearing into DPS on the 26 May 2014.

It only became clear to me then that DPS officials had used the CCTV system in contravention of its Code of Practice.

The only purposes for the use of such cameras and the images they capture are outlined in the Code. These purposes do not include tracking or monitoring the movements of DPS staff members, or other citizens, properly and lawfully engaging with Senators.

And in my view, the use of CCTV footage and images as outlined in this Report — for purposes outside the Code of Practice — does represent an egregious improper interference with the free performance of my duties as a senator.

The Privileges Committee's findings in this Report of the Department of Parliamentary Services performance, and in particular the performance of its Secretary, is devastating.

In fact, the Committee finds that the DPS Secretary has given clearly contradictory evidence and has misled the Senate Finance and Public Administration Legislation Committee.

Let me quote from Chapter 2 of the Report
Under the heading "Contradictory evidence" on page 9 this Report states:

2.2 It is necessary first, however, to deal with contradictions between the evidence the department provided at the May estimates hearing, its submission and additional documents provided on 11 November 2014.

2.3 The DPS Secretary told the estimates hearing in May 2014 that the matter now referred to the Privileges Committee had only come to her attention on the day of that hearing, on the basis of inquiries she made after questions were asked of the Senate department.

So, Mr President, let's be very clear about this, the Secretary of DPS gave evidence in Senate Estimates that she had only just become aware of the issue that same day. "That is what I am looking into. That is the issue that was brought to my attention today..."

But documents provided to the Privileges Committee told a different story.

The Privileges Committee Report notes:

2.6 The DPS submission contradicted the Secretary's evidence at estimates. It stated that the discovery of footage showing the employee placing an envelope under a senator's office door was communicated to the Secretary on 27 February, three months prior to the hearing.

The Privileges Committee Report goes on to state:

2.9 Despite her evidence to the estimates hearing that the matters now referred to the Privileges Committee first came to her attention during those hearings, these documents demonstrate that the Secretary was made aware of all aspects of the incident as it transpired. In particular, the documents show:

• that when Ms Mills approved a preliminary code of conduct investigation on 25 February she also approved the release of still photographs from security cameras

• that the request which Ms Mills approved on 25 February informed her that the CCTV system had already been used to gather information on the matter

• that the discovery of footage showing the employee placing an envelope under Senator Faulkner's office door was communicated to Ms Mills on 27 February.

The Report goes on. I quote the next paragraph:

2.10 The Secretary's response is contained in an email to one of her staff.

You may be aware that contact by individuals with parliamentarians is not something that we monitor in order to provide privacy to them in the conduct of their business. Happy to discuss.

And then more:

2.11 The submission and additional documents cast considerable doubt upon the evidence given by the Secretary. The committee has not been able to reconcile the evidence given at the estimates hearing with the submission and documents which DPS has subsequently provided, and considers that the Finance and Public Administration Legislation Committee was misled about the Secretary's knowledge of the events that led to this inquiry.

I am pleased the Privileges Committee has chosen to publish the relevant documents so that they are now available to the Finance and Public Administration Legislation Committee to consider.

But it doesn't end there.

Paragraph 2.13 of the Privileges Committee report highlights just how serious the problems are:

2.13 There should be no doubt, however, that the committee considers the misleading of the legislation committee in these circumstances to be a serious breach of accountability and probity.

I repeat that — "a serious breach of accountability and probity"
Paragraph 2.52 of the Report notes the Committee's concern about the DPS's attitude to using Parliament House's CCTV system, and states:

The fact that DPS seems to consider that there might be circumstances in which the unauthorised surveillance of a parliamentarians' office might not be contrary to privilege is of concern to the committee.

And in relation to whether the use of CCTV footage of a staff member leaving an envelope under my door in Parliament House was according to the rules — an issue I have raised in a very forthright way in Estimates — the committee concludes in Chapter 3, at paragraph 3.44 of its Report:

...that the use of the CCTV system was not properly authorised under the Code of Practice.

The Report from the Privileges Committee identifies misleading and contradictory evidence provided by the Secretary of DPS to a Senate Committee.

It also shines a light on the flagrant misuse of CCTV cameras in Parliament House.

Let me reinforce my longstanding view that we should accept nothing other than the highest standards of public administration from any Parliamentary Department.

A parliamentary department should be an exemplar. But DPS is not.

The findings of this damning report, that the Secretary:

• has misled Senate Committees, and
• has given contradictory evidence, and
• has overseen the unauthorised use of CCTV,

reinforces my view — publicly stated — that DPS is the worst run government department in the Commonwealth of Australia.

I commend this report.

I sincerely hope it is read and acted upon.

BUSINESS

Days and Hours of Meeting

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (00:25): I move:

That the Senate at its rising adjourn until Monday, 9 February 2015 at 10 am or such other time as may be fixed by the President or, in the event of the President being unavailable, by the Deputy President and that the time of meeting so determined shall be notified to each senator.

Question agreed to.

Leave of Absence

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (00:25): I move:

That leave of absence be granted to every member of the Senate from the end of the sitting day today to the day on which the Senate next meets.

Question agreed to.
STATEMENTS  
Valedictory  

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (00:26): I seek leave to make a short statement.

Leave granted.

Senator ABETZ: As we break to celebrate Christmas and the New Year, it is my prayer and wish that all Australians might enjoy the true blessings of Christmas.

As we reflect on 2014, we have much to be thankful for: the largest contingent of crossbenchers in the Senate since Federation; the certainty of courteous and professional staff who maintain this building and this institution in every respect—from the physical needs of the building to the specialist advice of the Clerk and her staff. I note that today marks the Clerk's halfway mark in her 10-year term. Another certainty, unfortunately, is leaving us and that is Alan Porritt, a photographer at Parliament House since 1976. We wish him well.

Can I especially thank our families who put up with so much—the hours we keep, the travel and all the interruptions in family life. I particularly want to thank our spouses and families for their forbearance. I would also like to thank the Chaplain of the Parliamentary Christian Fellowship, the Reverend Peter Rose, who has a great heart for our nation, for his support of all parliamentarians. Can I personally thank you, Mr President and your deputy and if I might say—without saying too much more—that I think the Senate chose exceptionally wisely in appointing you and the deputy. Can I personally thank the leadership team on my side—my deputy Senator George Brandis, the Leader of the Nationals Senator Scullion, the Manager of Government Business Senator Fifield, the whips team of Senators Bushby, Ruston and Fawcett, the Nationals’ whip Senator O’Sullivan and our two previous whips, Senators McKenzie and Kroger.

Can I also thank the opposition for keeping me and the government on our toes. As we prepare for 2015 we should remember that 2015 will be the 800th anniversary of the sealing of the Magna Carta. So we are part of a very rich tradition of parliamentary processes that we should never forget. As the hour is late, can I thank everybody for their cooperation with the government throughout the year; and I wish all the colleagues on all sides of the chamber a very happy and blessed Christmas. God bless.

Senator CONROY (Victoria—Deputy Leader of the Opposition in the Senate) (00:29): I seek leave to make a short statement.

Leave granted.

Senator CONROY: I would like to associate myself and the opposition with Senator Abetz's good wishes and goodwill for a safe and happy Christmas to all in Australia.

I would also like to thank the President, Senator Parry, who is approaching six months in the role. The role of the President is challenging but is one that is essential to the operation of the chamber. We appreciate your good humour in conducting the role—

Opposition senators interjecting—

Senator CONROY: especially today! We congratulate the Deputy President, Senator Marshall, on his election and thank him for his role in the chair in fulfilling the
responsibilities that fall to the Deputy President. He is of course known for his sense of humour. To the Leader of the Government in the Senate, Senator Abetz, it has not been an easy year for the government; he continues to be a worthy adversary in the chamber, and we wish him a very happy Christmas.

The Leader of the Opposition in the Senate is unfortunately not present as she is attending a meeting of the Australia Indonesia Business Council; we thank her for her work during the year. To the other leaders of parties and independent senators, while I am sure we have all enjoyed each other’s company over the past year—or six months for the newer ones—I am sure we would agree that a break from each other is a good thing! Unlike some of you, I have not been on the receiving end of Christopher Pyne’s Christmas SMSs—

An honourable senator: There is still time!

Senator CONROY: There is still time. We can all share the joy, Senator Lazarus.

To the Manager of Opposition Business in the Senate, Senator Moore, and her staff, particularly Clare Nairn: a hard job done superbly, and always keeping ministers relevant at question time. To the Opposition Whip, Senator McEwen, and staff of the whip's office and the deputy opposition whips, Senator Bilyk and Senator Urquhart, no-one would deny that the whips and their staff are among the hardest working people in this place. They above all others deserve the coming break.

To the Clerk, Rosemary Laing; the Deputy Clerk, Richard Pye; the Clerk Assistant, Brien Hallett; the Clerk Assistant (Table), Chris Reid; the Clerk Assistant (Procedure), Maureen Weeks; the Usher of the Black Rod, Rachel Callinan; and all the staff of the Department of the Senate, the Clerk leads an outstanding team. We are exceptionally well served by the Department of the Senate, whether it be in chamber management, procedural advice, services to senators, committee support or in other ways.

Thanks of course to the Department of Parliamentary Services, especially the Parliamentary Library, the Parliamentary Budget Office, Hansard, security, maintenance and ancillary staff that do so much to ensure the smooth running of Parliament House.

To the Labor Senate team, I want to thank my colleagues for their efforts this year, particularly the Senate team post 1 July. Our team has both advanced Labor's agenda and held the government to account. I wish you all a happy and safe break and look forward to seeing you all in the new year. To the staff of Labor senators, many staff are coming to the end of their first year or part thereof in opposition. I want to thank all of them, but particularly those who signed up to serve the new opposition. In all things we do, we rely on the assistance and counsel of our staff, and I thank them for their service on behalf of all the Labor senators.

Let me conclude by thanking all those Labor members and supporters throughout Australia who continue to maintain their rage and enthusiasm. Merry Christmas to all and have a great break.

Senator MILNE (Tasmania—Leader of the Australian Greens) (00:33): Mr President, I would like to make a short statement.

Leave granted.

Senator MILNE: I too want to thank the Clerk and the Clerk’s office, all of the Senate staff, the Hansard staff, the Comcar drivers and, in particular, the gardeners. I really enjoy the
gardens in this building. As you walk around during the year, being out there is something that brings joy to our lives. I want to thank them particularly. Of course, I want to thank all my colleagues and their staff, particularly my whip, Rachel Siewert, who has done a great job.

I want to wish everyone from all political parties and their staff a happy Christmas, and peace and goodwill. But I have to say I am struggling with the upbeat mood that has suddenly come over the chamber because, as we extend the compliments of the season to one another—and so we should—I struggle with the fact that we have denied peace and goodwill to some 30,000 people, and I feel very sad about that.

Senator SCULLION (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (00:34): I seek leave to make a short statement.

Leave granted.

Senator SCULLION: I would just like to add my thanks to the leaders around the room and particularly to the parliamentary staff, from the Comcar drivers, who pick us up in the morning and then return us in various states in the evening, to the full spectrum of parliamentary staff that just make our life livable in a sense. They are almost like a second family to us, and my thanks go out to them. Again, a recognition to our families: it is a very special time. We are often separated for long periods of time. This is probably the time of the year where we spend some significant time with our families, so I take this opportunity to ensure that you all go home to your families and have a very special time celebrating Christmas. I am really looking forward to seeing you all back here again next year.

Senator LAZARUS (Queensland—Leader of the Palmer United Party in the Senate) (00:35): Mr President, I seek leave to make a short statement.

Leave granted.

Senator LAZARUS: Firstly, I just want to thank everybody for their well wishes. I got into a bit of trouble on Monday, and I diced with death. I thank everybody for their well wishes. No, I am only kidding; it was only a kidney stone, so I am fine! Everyone is happy.

I would just like to wish everybody a merry Christmas. I would like to thank you, Mr President, and of course the clerk and the Senate team for your patience with us newbies. I am here standing up and representing Palmer United but also all of us newbies. We do appreciate your patience. It is six months into the job, and I think we have done okay, guys.

We look forward to next year, and I just want to thank everybody associated with this place. It is a big organisation, and it is a well-run machine. I would just like to wish them all a very merry Christmas and wish everybody here a happy new year. Thank you all, particularly from me and Dio, for making us feel very welcome in this place. Thank you very much.

The PRESIDENT (00:36): Thank you, senators. I am not going to repeat all the fantastic statements that all the leaders have made and that Senator Lazarus has made on behalf of the crossbench, but I do not want that in any way to diminish my heartfelt thanks to all those that were mentioned. I sincerely think this place is run very well, and all the people who were thanked deserve those thanks.

Could I thank you, my colleagues, for your patience and your contribution. I feel as though I should give some senators a Christmas present—it would be the standing orders wrapped up...
in a suitable paper with certain annotations to certain pages and, in particular, standing order 203, Senator Conroy. You might need to study that over the break!

Please go home to your families and to your friends and to your states, your electorates, and enjoy what break you can have. We use this word 'break' often, and quite often we go home to do a lot of work and we get a minimum time down. So please enjoy. Come back refreshed.

Senator Lazarus, we will start a bit sharper next year, and the latitude from the chair might diminish a little bit. I am sure you have had your good six months of training.

But thank you all. It has been very good, and I know you all put some tremendous work into this place and representing your home states. Whilst it has been a bit of a battle here in the last week or two, I think we have ended on a slightly better note, and I am sure we will all go away as friends.

The chamber attendants I think were thanked, but thank you, Clerk. I do particularly thank the chamber attendants again—but they were thanked, I believe, in the earlier statements. Have a very safe and happy Christmas.

**Senate adjourned at 00:38 (Friday)**

**DOCUMENTS Tabling**

The following documents were tabled by the Clerk pursuant to statute:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]

- *A New Tax System (Family Assistance) (Administration) Act 1999—Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2014 (No. 1)* [F2014L01628].

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**CHAMBER**
Public Governance, Performance and Accountability Act 2013—

Commonwealth ceasing to be a member of Medibank Private Limited—2 December 2014.

Commonwealth participating in the formation of Horticulture Innovation Australia Limited.

