COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES

Senate

Official Hansard

No. 4, 2015
Thursday, 26 March 2015

FORTY-FOURTH PARLIAMENT
FIRST SESSION—FIFTH PERIOD

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SITTING DAYS—2015

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<th>State or Territory</th>
<th>Term expires</th>
<th>Party</th>
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<tr>
<td>Abetz, Hon. Eric</td>
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**Casual vacancy**

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.

** Casual vacancy to be filled (vice J Faulkner, resigned 6.2.15), 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;
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
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<thead>
<tr>
<th>Title</th>
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<tbody>
<tr>
<td><strong>Prime Minister</strong></td>
<td>The Hon. Tony Abbott MP</td>
</tr>
<tr>
<td><strong>Minister for Indigenous Affairs</strong></td>
<td>Senator the Hon. Nigel Scullion</td>
</tr>
<tr>
<td>Minister Assisting the Prime Minister for the Public Service</td>
<td>Senator the Hon. Eric Abetz</td>
</tr>
<tr>
<td>Minister Assisting the Prime Minister for Women</td>
<td>Senator the Hon. Michaelia Cash</td>
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<tr>
<td>Parliamentary Secretary to the Prime Minister</td>
<td>The Hon. Charles Porter MP</td>
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<tr>
<td>Parliamentary Secretary to the Prime Minister</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>
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<tr>
<td>(Deputy Prime Minister)</td>
<td>The Hon. Jamie Briggs MP</td>
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<tr>
<td>Assistant Minister for Infrastructure and Regional Development</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>
<td>Parliamentary Secretary to the Minister for Foreign Affairs</td>
<td>The Hon. Steven Ciobo MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Trade and Investment</td>
<td>The Hon. Steven Ciobo MP</td>
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<td><strong>Minister for Employment</strong></td>
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<td>Assistant Minister for Employment</td>
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<tr>
<td>(Deputy Leader of the House)</td>
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<tr>
<td><strong>Attorney-General</strong></td>
<td>Senator the Hon. George Brandis QC</td>
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<tr>
<td><strong>Minister for the Arts</strong></td>
<td>Senator the Hon. George Brandis QC</td>
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<tr>
<td>(Vice-President of the Executive Council)</td>
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<tr>
<td>(Deputy Leader of the Government in the Senate)</td>
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<tr>
<td>Minister for Justice</td>
<td>The Hon. Michael Keenan MP</td>
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<tr>
<td><strong>Treasurer</strong></td>
<td>The Hon. Joe Hockey MP</td>
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<tr>
<td><strong>Minister for Small Business</strong></td>
<td>The Hon. Bruce Billson MP</td>
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<tr>
<td>Assistant Treasurer</td>
<td>The Hon. Joshua Frydenberg MP</td>
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<tr>
<td><strong>Minister for Agriculture</strong></td>
<td>The Hon. Kelly O'Dwyer</td>
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<tr>
<td>Parliamentary Secretary to the Treasurer</td>
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<tr>
<td><strong>Minister for Education and Training</strong></td>
<td>The Hon. Barnaby Joyce MP</td>
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<tr>
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<td>Senator the Hon. Richard Colbeck</td>
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<tr>
<td>Assistant Minister for Education and Training</td>
<td>The Hon. Christopher Pyne MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Education and Training</td>
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<td><strong>Minister for Social Services</strong></td>
<td>The Hon. Scott Morrison MP</td>
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<tr>
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<tr>
<td>(Manager of Government Business in the Senate)</td>
<td>Senator the Hon. Marise Payne</td>
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<tr>
<td><strong>Minister for Human Services</strong></td>
<td><strong>Senator the Hon. Concetta Fierravanti-Wells</strong></td>
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<tr>
<td><strong>Minister for Industry and Science</strong></td>
<td>The Hon. Ian Macfarlane MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Industry and Science</td>
<td><strong>The Hon. Karen Andrews MP</strong></td>
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<tr>
<td><strong>Minister for Defence</strong></td>
<td>The Hon. Kevin Andrews MP</td>
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<tr>
<td><strong>Minister for Veterans' Affairs</strong></td>
<td>Senator the Hon. Michael Ronaldson</td>
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<tr>
<td><strong>Minister Assisting the Prime Minister for the Centenary of ANZAC</strong></td>
<td><strong>Senator the Hon. Michael Ronaldson</strong></td>
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<tr>
<td>Assistant Minister for Defence</td>
<td>The Hon. Stuart Robert MP</td>
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<td>The Hon. Darren Chester MP</td>
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<td>The Hon. Malcolm Turnbull MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Communications</td>
<td>The Hon. Paul Fletcher MP</td>
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<tr>
<td>Minister for Immigration and Border Protection</td>
<td>The Hon. Peter Dutton MP</td>
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<tr>
<td>Assistant Minister for Immigration and Border Protection</td>
<td>Senator the Hon. Michaela Cash</td>
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<tr>
<td>Minister for the Environment</td>
<td>The Hon. Greg Hunt MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for the Environment</td>
<td>The Hon. Robert Baldwin MP</td>
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<tr>
<td>Minister for Finance</td>
<td>Senator the Hon. Mathias Cormann</td>
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<tr>
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<tr>
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<td>The Hon. Michael McCormack MP</td>
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<tr>
<td>Minister for Health</td>
<td>The Hon. Sussan Ley MP</td>
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<td>Minister for Sport</td>
<td>The Hon. Sussan Ley MP</td>
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<tr>
<td>Assistant Minister for Health</td>
<td>Senator the Hon. Fiona Nash</td>
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</table>

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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<th>TITLE</th>
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<td>Leader of the Opposition</td>
<td>Hon. Bill Shorten MP</td>
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<tr>
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<td>Senator the Hon. Kim Carr</td>
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<td>Hon. Shayne Neumann MP</td>
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<td>Shadow Minister for Ageing</td>
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<td>Shadow Parliamentary Secretary for Indigenous Affairs</td>
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<td>Shadow Parliamentary Secretary for Aged Care</td>
<td>Senator Helen Polley</td>
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Thursday, 26 March 2015

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

Queensland Government Administration Committee

Meeting

The Clerk: A notification has been lodged for the Select Committee on Certain Aspects of Queensland Government Administration related to Commonwealth Government Affairs to hold a private meeting during the sitting of the Senate today, from 9.45 am.

Senator IAN MACDONALD (Queensland) (09:31): Mr President, I object to that, and I seek leave to make a 30-second statement to indicate why.

Leave granted.

Senator IAN MACDONALD: Thank you, Mr President. I have been advised of this meeting. Three of my colleagues from Queensland who have been regular participants in the meeting have not yet received the draft report and have not been advised of meetings in recent times. For that reason, I object.

The PRESIDENT: Senator Macdonald, the question is: would you like the motion to be put? Any senator can request for the motion to be put.

Senator IAN MACDONALD: I would ask for that, Mr President. That is the procedure?

The PRESIDENT: Yes. Every senator has the right to have these motions put. This is just an automatic consideration of the extension of the right for any senator to have the motion put. The question is that the select committee, as the Clerk indicated, be authorised to meet during the sitting of the Senate today.

Senator MOORE (Queensland) (09:32): Clearly, we are in support of this motion, but as we are waiting for the newly-appointed Senator Gallagher to come in could we defer the actual division until after that occurs?

The PRESIDENT: I am at the will of the Senate: is the Senate happy for this division to be deferred? Yes? We will consider this matter immediately after the swearing-in of the new senator.

Senator Ian Macdonald: It suits the Labor Party.

Senator MOORE: It just shows good manners, Ian.

Senator Cameron: Why are you so cranky all the time, Ian?

Honourable senators interjecting—
The PRESIDENT: Order! On both sides! Senators—I thought we had some goodwill emerging just a moment ago.

PARLIAMENTARY REPRESENTATION
Australian Capital Territory

The PRESIDENT (09:33): I have received through the Administrator of the Commonwealth of Australia from the ACT Chief Minister a copy of the certificate of the choice by the ACT Legislative Assembly of Katy Gallagher to fill the vacancy caused by the resignation of Senator Lundy and I table the document.

Senators Sworn
Senator Gallagher made and subscribed the oath of allegiance.

COMMITTEES
Queensland Government Administration Committee

Meeting

The PRESIDENT (09:38): The question before the chair just prior to the swearing in of Senator Gallagher was that the Select Committee on Certain Aspects of Queensland Government Administration be authorised to meet during the sittings of the Senate today. I will put the question again.

The PRESIDENT: The question is that the Queensland select committee be authorised to meet during the sittings of the Senate today.

The Senate divided. [09:43]

(The President—Senator Parry)

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

AYES

Brown, CL
Cameron, DN
Collins, JMA
Dastyari, S
Gallacher, AM
Hanson-Young, SC
Lambie, J
Lines, S
Marshall, GM
McLucas, J
Moore, CM
O’Neill, DM
Rhiannon, L
Siewert, R
Wang, Z
Whish-Wilson, PS
Wright, PL

Bullock, J W.
Carr, KJ
Conroy, SM
Di Natale, R
Gallacher, KR
Ketter, CR
Lazarus, GP
Ludlam, S
McEwen, A (teller)
Milne, C
Muir, R
Polley, H
Rice, J
Urquhart, AE
Waters, LJ
Wong, P
Xenophon, N
Senator Colbeck did not vote, to compensate for the vacancy caused by the resignation of Senator Faulkner

Question agreed to.

Senator O'SULLIVAN (Queensland—Nationals Whip in the Senate) (09:45): I seek leave to make a one-minute statement.

Leave granted.

Senator O'SULLIVAN: There has been much said recently in this place about continued abuses of processes, and that motion just gave effect, I think, to a departure from what have been reasonable standards here concerning the conduct of these committees.

Honourable senators interjecting—

Senator O'SULLIVAN: Let me finish. It is uncomfortable listening, because you have just given effect to it.

The PRESIDENT: To the chair, Senator O'Sullivan.

Senator O'SULLIVAN: Mr President, we have had a situation where many of us stakeholders from my state have attended and participated in this committee process, and yet we are excluded from notification about the potential of this meeting. We have not seen the draft report, which is a courtesy normally extended to those who have shown interest in a matter and participated, and now we have had a motion by this place to give force to that—a motion that cannot give effect. The time had expired before the motion gave effect, and so I think we should— (Time expired)

Senator Moore: Mr President, on a point of order, we did give leave for Senator O'Sullivan's statement and we allowed it to continue, but I do believe that was a reflection on a decision of this chamber.
The PRESIDENT: Senator Moore, it has to be an unparliamentary or adverse reflection upon a decision of the Senate.

Senator Conroy: What was it? That had to be an adverse reflection.

The PRESIDENT: Order! Senator Conroy, I am not going to argue with you from the chair, and I do not believe there is a point of order from Senator Moore.

Senator Wong: Mr President, on the same point of order, perhaps you could reflect on the Hansard to consider whether or not it was in fact adverse.

The PRESIDENT: I do not need to do that, Senator Wong, and I did consult with the Clerk also during Senator O'Sullivan's speech, and I am satisfied that it was not out of order.

Senator Ian Macdonald: Mr President, I raise a point of order. The motion that has just been passed was concluded after the time scheduled for the meeting that it related to. I am the one government-voting member on that committee. I have received notice of the meeting; my colleagues have not. But I am still here in the chamber as the meeting allegedly is happening. But the meeting could not happen—that is my point of order—because, at the time the meeting should have commenced, everyone was in this chamber dealing with a motion before the chair. I make the point, Mr President, that if you do not agree with me on this matter then, by the time I get there, the meeting will probably be concluded, and that will be typical of the farcical nature of this committee from day one.

The PRESIDENT: Thank you, Senator Macdonald. I will take that as more of a point of clarification as well as a point of order.

Opposition senators interjecting—

The PRESIDENT: Order on my left! In relation to what you have raised, my understanding is that the wording of the motion is to meet 'from', not 'at', so it is quite in order.

BILLS

Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015

In Committee

Debate resumed.

The CHAIRMAN (09:50): The committee is considering the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015. The question before the chair is that Senator Leyonhjelm's amendments (10), (11), (14), (15) and (17) to (25) on sheet 7661 be agreed to.

Senator LEYONHJELM (New South Wales) (09:50): I have spoken on these amendments. They relate to protected class warrants. The intention is, as I said previously, to extend the requirement for a warrant to more than simply journalists. There are others whose data deserves the protection of a warrant regime. They have been well debated and I commend them to the chamber.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (09:51): I have already made my contribution last night in response to Senator Leyonhjelm's arguments.
Senator LUDLAM (Western Australia) (09:51): We indicated our support last night. I am also foreshadowing that we will drop a very similar amendment the Australian Greens drafted when we get to it. I am happy to support Senator Leyonhjelm's amendments.

The CHAIRMAN: We are in continuation from last night so I want to give everybody an opportunity to catch up to where we are. Are there any other speakers on these amendments? The question is that the amendments be agreed to.

The committee divided. [09:55]
(The Chairman—Senator Marshall)

Ayes ...................... 14
Noes ...................... 34
Majority ............... 20

AYES

Di Natale, R
Lambie, J
Ludlam, S
Muir, R
Rice, J
Waters, LJ
Wright, PL

Hanson-Young, SC
Leyonhjelm, DE
Milne, C
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS
Xenophon, N

NOES

Back, CJ
Brandis, GH
Bushby, DC
Edwards, S
Fifield, MP
Gallacher, KR
Lines, S
Macdonald, ID
McEwen, A
McKenzie, B
Moore, CM
O'Sullivan, B
Reynolds, L
Seselja, Z
Sinodinos, A
Sterle, G
Wang, Z

Birmingham, SJ
Cameron, DN
Fawcett, DJ
Gallacher, AM
Ketter, CR
Ludwig, JW
Marshall, GM
McGrath, J
McGrath, J
McLucas, J
O'Neill, DM
Polley, H
Ruston, A
Singh, LM
Smith, D
Urquhart, AE (teller)
Williams, JR

Question negatived.

Senator LUDLAM (Western Australia) (09:58): I foreshadowed this amendment last night. In a way, the amendment of Senator Leyonhjelm that we just voted on really was our fallback. This is probably the most important amendment that the Australian Greens will move during this debate. It is colloquially known as the get-a-warrant amendment. We strongly believe that in 1979, when this act was passed into law, if we had had the multitude of devices, data types and platforms that we have today, the drafters who were considering the
substantial overall of telecommunications interception legislation as they were in 1979 would have looked around the field and said, 'You can tap people's phone, you can read people's email, you can track their movements around the landscape, you can map their social networks and you can find everything about their lives. These things will all be covered by a warrant and what will not be covered by a warrant is simple subscriber data so that agencies can very rapidly establish who owns the handset, who holds a particular prescription for a particular service.'

And so we would have ended up with the same two-tiered system that we have today, but those invasive forms of data access—whether they be tapping the phone call or reading your location as you move around the place—would have been within the warranted regime. I have no doubt about that at all. What we have seen, quite frankly, is the failure of the law to keep up with the march of technology. We still have a fairly robust warranted regime. Last night, Senator Rhiannon pointed out some of its failings, and we are certainly aware of those. We have a robust warranted regime and I think the number is about 4,700. We do not know how many ASIO applies for because that is done through a different process, but the entire law enforcement and anticorruption community around the country has about 4,700 warrants a year.

But, as I have said more times than I care to remember, there are 750-odd thousand applications for warrantless access to people's private information, and that is just because these categories of material basically did not exist in 1979. So while intelligence and policing agencies have been very keen to run the argument that the TI Act needs continual incremental change to keep up with the march of technology, privacy protections have not. That is one of the reasons why opposition to the data retention regime has been so strong; it effectively forces carriers to entrench and embed a broken access system that henceforth will have access to vast new quantities of material.

This is not a view that the Greens are alone in putting forward. It is shared by people as widely separated across the political spectrum as the Institute of Public Affairs—good friends of Senator Brandis—the Law Council of Australia, the telecommunications sector, digital rights organisations like Electronic Frontiers Australia and also Bret Walker SC, who is the former National Security Legislation Monitor. Now, lest anybody fear that I am verballing him, Mr Walker believes that there should be a data retention regime in Australia. But he also believes that it should be circumscribed and that these long-overdue protections of getting a warrant are added. This is what Mr Walker said on 7 August of last year:

It seems to me a warrant is a traditional way by which we say drastic powers ought to be exercised so as to breach what would be otherwise be ordinary personal privacy only when somebody outside the agency, usually a judge or a magistrate, is satisfied that sufficient cause is shown to justify that reversal of what we expect.

This was in an interview that he did with Lateline last year. He goes on:

And if we don't have a warrant system, we don't have that independent umpire to check in the usual way of warrants, making a very formal record, which can be produced later in a court if there's litigation about it. If we don't have that, I fear that there will be an understandable suspicion, hostility, about the operation of agencies, which I stress, we need to be doing a good job.

There is not a word of that with which I disagree, and I think that most right-thinking people would agree with Mr Walker, who has many years of experience in weighing up the checks
and balances. And, as I said, he is a proponent of mandatory data retention. Obviously, we part company on that issue, but it is his view that if the government forces a scheme such as this into existence then for the obvious reasons that I have described today—and for years, actually—we need to bring these huge categories of material into the warranted regime.

The way that the amendment is drafted excludes subscriber data. The argument that is made frequently about those 750,000—or, if you believe the Attorney-General's annual report, the 340-odd thousand warrantless requests—is that the government says, 'Look, a lot of that is for subscriber data. We don't know how many of those requests are for basic subscriber data so we do not propose to drag that information into the warranted regime.' But—quite seriously—if two dozen agencies want to be able to know where you are at any time of the day, or where your mobile phone handset is, and if they want to be able to scrape your email records and work out your whole social graph and know who you are talking to at any given time, get a warrant, Senator Brandis—get a warrant! I commend this amendment to the chamber.

The TEMPORARY CHAIRMAN (Senator Bernardi): Senator Ludlam, I invite you to seek leave to move your amendments.

Senator LUDLAM: Thank you, Chair—I have been here long enough to know that! By leave—I move amendments (22) to (24), (26) and (28) to (35) on sheet 7669 together:

(22) Schedule 1, item 1C, page 23 (line 26), omit "journalist information warrants", substitute "data authorisation warrants".

(23) Schedule 1, item 1C, page 23 (line 28), omit "journalist information warrants", substitute "data authorisation warrants".

(24) Schedule 1, item 5, page 28 (before line 32), before the definition of Defence Minister, insert:

Data authorisation warrant means a warrant issued under Division 4C of Part 4-1.

(26) Schedule 1, item 5, page 29 (lines 9 and 10), omit the definition of journalist information warrant.

(28) Schedule 1, item 6E, page 31 (lines 23 to 30), omit paragraph 176(5)(b), substitute:

(b) unless it is revoked earlier, ends at the time specified in the authorisation, which must be a time that is no later than the end of the period specified under section 180N as the period for which the warrant is to remain in force.

(29) Schedule 1, item 6F, page 32 (lines 7 to 13), omit paragraph 176(6)(b), substitute:

(b) either:

(i) the warrant is revoked under subsection 180N(1); or

(ii) the Director-General of Security has informed the Minister under section 180P that the Director-General is satisfied that the grounds on which the warrant was issued have ceased to exist.

(30) Schedule 1, item 6G, page 32 (lines 17 to 24), omit paragraph 180(6)(b), substitute:

(b) unless it is revoked earlier, ends at the time specified in the authorisation, which must be a time that the end of the period specified under subsection 180U(3) as the period for which the warrant is to remain in force.

(31) Schedule 1, item 6H, page 33 (lines 1 to 3), omit paragraph 180(7)(b), substitute:

(b) the warrant is revoked under subsection 180W(1).

(32) Schedule 1, item 6L, page 33 (line 23) to page 43 (line 28), omit the item, substitute:
6L After Division 4B of Part 4-1

Insert:

Division 4C—Data authorisation warrant

Subdivision A—The requirement for data authorisation warrant

180G The Organisation

An eligible person (within the meaning of subsection 175(2) or 176(2), as the case requires) must not make an authorisation under Division 3 that would authorise the disclosure of information or documents relating to a particular person unless a data authorisation warrant is in force in relation to that particular person.

180H Enforcement agencies

(1) An authorised officer of an enforcement agency must not make an authorisation under section 178, 178A or 180 that would authorise the disclosure of information or documents relating to a particular person unless a data authorisation warrant is in force, in relation to that particular person, under which authorised officers of the agency may make authorisations under that section.

(2) An authorised officer of the Australian Federal Police must not make an authorisation under Division 4A that would authorise the disclosure of information or documents relating to a particular person unless a data authorisation warrant is in force, in relation to that particular person, under which authorised officers of the agency may make authorisations under that Division.

Subdivision B—Issuing data authorisation warrants to the Organisation

180J Requesting a data authorisation warrant

(1) The Director-General of Security may request the Minister to issue a data authorisation warrant in relation to a particular person.

(2) The request must specify the facts and other grounds on which the Director-General considers it necessary that the warrant be issued.

180K Further information

(1) The Minister may require the Director-General of Security to give to the Minister, within the period specified in the requirement, further information in connection with a request under this Subdivision.

(2) If the Director-General breaches the requirement, the Minister may:

(a) refuse to consider the request; or

(b) refuse to take any action, or any further action, in relation to the request.

180L Issuing a data authorisation warrant

(1) After considering a request under section 180J, the Minister must:

(a) issue a data authorisation warrant that authorises the making of authorisations under Division 3 in relation to the particular person to which the request relates; or

(b) refuse to issue a data authorisation warrant.

(2) The Minister must not issue a data authorisation warrant unless the Minister is satisfied that:

(a) the Organisation’s functions would extend to the making of authorisations under Division 3 in relation to the particular person; and

(b) the public interest in issuing the warrant outweighs the public interest in protecting privacy, having regard to:
(i) the extent to which the privacy of any person or persons would be likely to be interfered with by the disclosure of information or documents under authorisations that are likely to be made under the authority of the warrant; and

(ii) the gravity of the matter in relation to which the warrant is sought; and

(iii) the extent to which that information or those documents would be likely to assist in the performance of the Organisation’s functions; and

(iv) whether reasonable attempts have been made to obtain the information or documents by other means; and

(v) any submissions made by a Public Interest Advocate under section 180X; and

(vi) any other matters the Minister considers relevant.

(3) A data authorisation warrant issued under this section may specify conditions or restrictions relating to making authorisations under the authority of the warrant.

**180M Issuing a data authorisation warrant in an emergency**

(1) The Director-General of Security may issue a data authorisation warrant in relation to a particular person if:

(a) a request under section 180J has been made for the issue of a data authorisation warrant in relation to the particular person; and

(b) the Minister has not, to the knowledge of the Director-General, made a decision under section 180L in relation to the request; and

(c) within the preceding period of 3 months:

(i) the Minister has not refused to issue a data authorisation warrant in relation to the particular person; and

(ii) the Director-General has not issued such a data authorisation warrant; and

(d) the Director-General is satisfied that, security will be, or is likely to be, seriously prejudiced if the access to which the request relates does not begin before a data authorisation warrant can be issued and made available by the Minister; and

(e) either:

(i) the issuing of the warrant is authorised under subsection (3); or

(ii) the Director-General is satisfied that none of the Ministers specified in subsection (4) is readily available or contactable.

(2) The Director-General must not issue a data authorisation warrant unless the Director-General is satisfied as to the matters set out in paragraphs 180L(2)(a) and (b).

**Authorisation to issue a warrant under this section**

(3) A Minister specified in subsection (4) may, if he or she is satisfied as to the matter set out in paragraphs 180L(2)(a) and (b), orally give an authorisation under this subsection for the Director-General to issue the warrant under this section.

(4) The Ministers who may orally give an authorisation are:

(a) the Minister; or

(b) if the Director-General is satisfied that the Minister is not readily available or contactable—any of the following Ministers:

(i) the Prime Minister;

(ii) the Defence Minister;

(iii) the Foreign Affairs Minister.
The authorisation may specify conditions or restrictions relating to issuing the warrant.

(6) The Director-General must ensure that a written record of an authorisation given under subsection (3) is made as soon as practicable (but no later than 48 hours) after the authorisation is given.

Duration of a warrant under this section

(7) A data authorisation warrant under this section must specify the period (not exceeding 48 hours) for which it is to remain in force. The Minister may revoke the warrant at any time before the end of the specified period.

Copies of warrant and other documents

(8) Immediately after issuing a data authorisation warrant under this section, the Director-General must give the Minister:

(a) a copy of the warrant; and
(b) a statement of the grounds on which the warrant was issued; and
(c) either:
   (i) a copy of the record made under subsection (6); or
   (ii) if the Director-General was satisfied as mentioned in subparagraph (1)(e)(ii)—a summary of the facts of the case justifying issuing the warrant.

(9) Within 3 business days after issuing a data authorisation warrant under this section, the Director-General must give the Inspector-General of Intelligence and Security:

(a) a copy of the warrant; and
(b) either:
   (i) a copy of the record made under subsection (6); or
   (ii) if the Director-General was satisfied as mentioned in subparagraph (1)(e)(ii)—a summary of the facts of the case justifying issuing the warrant.

(10) Subsection (9) has effect despite subsection 185D(1).

180N Duration of a data authorisation warrant

A data authorisation warrant issued under section 180L must specify the period (not exceeding 6 months) for which it is to remain in force. The Minister may revoke the warrant at any time before the end of the specified period.

180P Discontinuance of authorisations before expiry of a data authorisation warrant

If, before a data authorisation warrant issued under this Subdivision ceases to be in force, the Director-General of Security is satisfied that the grounds on which the warrant was issued have ceased to exist, he or she must:

(a) forthwith inform the Minister accordingly; and
(b) takes such steps as are necessary to ensure that the making of authorisations under the authority of the warrant is discontinued.

Subdivision C—Issuing data authorisation warrants to enforcement agencies

180Q Enforcement agency may apply for a data authorisation warrant

(1) An enforcement agency may apply to a Part 4-1 issuing authority for a data authorisation warrant in relation to a particular person.

(2) The application must be made on the agency's behalf by:

(a) if the agency is referred to in subsection 39(2)—a person referred to in that subsection in relation to that agency; or
(b) otherwise:
   (i) the chief officer of the agency; or
   (ii) an officer of the agency (by whatever name called) who holds, or is acting in, an office or position in the agency nominated under subsection (3).

3. The chief officer of the agency may, in writing, nominate for the purposes of subparagraph (2)(b)(ii) an office or position in the agency that is involved in the management of the agency.

4. A nomination under subsection (3) is not a legislative instrument.

5. The application may be made in writing or in any other form.

Note: The *Electronic Transactions Act 1999* deals with giving information in writing by means of an electronic communication.

180R Further information

1. The Part 4-1 issuing authority may require:
   (a) in any case—the chief officer of the agency; or
   (b) if the application is made, on the agency's behalf, by a person other than the chief officer—that other person;
   to give to the Part 4-1 issuing authority, within the period and in the form specified in the requirement, further information in connection with the application.

2. If the chief officer or other person breaches the requirement, the Part 4-1 issuing authority may:
   (a) refuse to consider the application; or
   (b) refuse to take any action, or any further action, in relation to the application.

180S Oaths and affirmations

1. Information given to the Part 4-1 issuing authority in connection with the application must be verified on oath or affirmation.

2. For the purposes of this section, the Part 4-1 issuing authority may:
   (a) administer an oath or affirmation; or
   (b) authorise another person to administer an oath or affirmation.

The oath or affirmation may be administered in person, or by telephone, video call, video link or audio link.

180T Issuing a data authorisation warrant

1. After considering an application under section 180Q, the Part 4-1 issuing authority must:
   (a) issue a data authorisation warrant that authorises the making of authorisations under one or more of sections 178, 178A and 180, or Division 4A, in relation to the particular person to which the application relates; or
   (b) refuse to issue a data authorisation warrant.

2. The Part 4-1 issuing authority must not issue a data authorisation warrant unless the Part 4-1 issuing authority is satisfied that:
   (a) the warrant is reasonably necessary for whichever of the following purposes are applicable:
       (i) if the warrant would authorise the making of authorisations under section 178—for the enforcement of a serious contravention;
       (ii) if the warrant would authorise the making of authorisations under section 178A—finding a person who the Australian Federal Police, or a Police Force of a State, has been notified is missing;
(iii) if the warrant would authorise the making of authorisations under section 180—the investigation of an offence of a kind referred to in subsection 180(4);

(iv) if the warrant would authorise the making of authorisations under Division 4A—the investigation of a serious foreign contravention; and

(b) the public interest in issuing the warrant outweighs the public interest in protecting privacy, having regard to:

(i) the extent to which the privacy of any person or persons would be likely to be interfered with by the disclosure of information or documents under authorisations that are likely to be made under the authority of the warrant; and

(ii) the gravity of the matter in relation to which the warrant is sought; and

(iii) the extent to which that information or those documents would be likely to assist in relation to that matter; and

(iv) whether reasonable attempts have been made to obtain the information or documents by other means; and

(v) any submissions made by a Public Interest Advocate under section 180X; and

(vi) any other matters the Part 4-1 issuing authority considers relevant.

180U Form and content of a data authorisation warrant

(1) A data authorisation warrant issued under this Subdivision must be in accordance with the prescribed form and must be signed by the Part 4-1 issuing authority who issues it.

(2) A data authorisation warrant issued under this Subdivision may specify conditions or restrictions relating to making authorisations under the authority of the warrant.

(3) A data authorisation warrant issued under this Subdivision must specify, as the period for which it is to be in force, a period of up to 90 days.

(4) A Part 4-1 issuing authority must not vary a data authorisation warrant issued under this Subdivision by extending the period for which it is to be in force.

(5) Neither of subsections (3) and (4) prevents the issue of a further warrant under this Act in relation to a person, in relation to which a warrant under this Act has, or warrants under this Act have, previously been issued.

180V Entry into force of a data authorisation warrant

A data authorisation warrant issued under this Subdivision comes into force when it is issued.

180W Revocation of a data authorisation warrant by chief officer

(1) The chief officer of an enforcement agency:

(a) may, at any time, by signed writing, revoke a data authorisation warrant issued under this Subdivision to the agency; and

(b) must do so, if he or she is satisfied that the grounds on which the warrant was issued to the agency have ceased to exist.

(2) The chief officer of an enforcement agency may delegate his or her power under paragraph (1)(a) to a certifying officer of the agency.

Subdivision D—Miscellaneous

180X Public Interest Advocates

(1) The Prime Minister shall declare, in writing, one or more persons to be Public Interest Advocates.

(2) A Public Interest Advocate may make submissions:

(a) to the Minister about matters relevant to:
(i) a decision to issue, or refuse to issue, a data authorisation warrant under section 180L; or
(ii) a decision about the conditions or restrictions (if any) that are to be specified in such a warrant; or

(b) to a Part 4-1 issuing authority about matters relevant to:
(i) a decision to issue, or refuse to issue, the warrant under section 180T; or
(ii) a decision about the conditions or restrictions (if any) that are to be specified in such a warrant; or

(3) The regulations may prescribe matters relating to the performance of the role of a Public Interest Advocate.

(4) A declaration under subsection (1) is not a legislative instrument.

(33) Schedule 1, item 6V, page 46 (line 11) to page 47 (line 29), omit the item, substitute:

6V At the end of Division 6 of Part 4-1

Add:

182A Disclosure/use offences: data authorisation warrants

(1) A person commits an offence if:
(a) the person discloses or uses information; and
(b) the information is about any of the following:
(i) whether a data authorisation warrant (other than such a warrant that relates only to section 178A) has been, or is being, requested or applied for;
(ii) the making of such a warrant;
(iii) the existence or non-existence of such a warrant;
(iv) the revocation of such a warrant.
Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:
(a) the person discloses or uses a document; and
(b) the document consists (wholly or partly) of any of the following:
(i) a data authorisation warrant (other than such a warrant that relates only to section 178A);
(ii) the revocation of such a warrant.
Penalty: Imprisonment for 2 years.

182B Permitted disclosure or use: data authorisation warrants

Paragraphs 182A(1)(a) and (2)(a) do not apply to a disclosure or use of information or a document if:
(a) the disclosure or use is for the purposes of the warrant, revocation or notification concerned; or
(b) the disclosure or use is reasonably necessary:
(i) to enable the making of submissions under section 180X; or
(ii) to enable a person to comply with his or her obligations under section 185D or 185E; or
(iii) to enable the Organisation to perform its functions; or
(iv) to enforce the criminal law; or
(v) to enforce a law imposing a pecuniary penalty; or
(vi) to protect the public revenue; or
(c) in the case of a disclosure—the disclosure is:
   (i) to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising powers, or performing functions or duties, under the Inspector-General of Intelligence and Security Act 1986; or
   (ii) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under that Act; or
   (d) in the case of a use—the use is by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under the Inspector-General of Intelligence and Security Act 1986.

Note: A defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the Criminal Code).

(34) Schedule 1, item 6X, page 48 (line 1) to page 49 (line 36), omit section 185D, substitute:

185D Notification etc. of authorisations

The Organisation

(1) If:
   (a) a data authorisation warrant is issued under Subdivision B of Division 4C of Part 4-1; and
   (b) the warrant relates to a person who:
      (i) is a journalist; or
      (ii) is an employer of a journalist;

then:

(b) the Director-General of Security must, as soon as practicable, give a copy of the warrant to the Inspector-General of Intelligence and Security; and

(c) the Minister must, as soon as practicable, cause the Parliamentary Joint Committee on Intelligence and Security to be notified of the issuing of the warrant.

(2) If an authorisation under Division 3 of Part 4-1 is made under the authority of the warrant, the Director-General of Security must, as soon as practicable after the expiry of the warrant, give a copy of the authorisation to the Inspector-General of Intelligence and Security.

(3) If:
   (a) the Inspector-General gives to the Minister a report under section 22 or 25A of the Inspector-General of Intelligence and Security Act 1986; and
   (b) the report relates (wholly or partly) to one or both of the following:
      (i) a data authorisation warrant issued to the Organisation in relation to a person who is a journalist, or an employer of a journalist;
      (ii) one or more authorisations referred to in subsection (2) of this section;

the Minister must, as soon as practicable, cause a copy of the report to be given to the Parliamentary Joint Committee on Intelligence and Security.

(4) The Parliamentary Joint Committee on Intelligence and Security may request a briefing from the Inspector-General on:
   (a) a data authorisation warrant; or
   (b) an authorisation or authorisations;

   to which a report referred to in paragraph (3)(b) of this section relates.
Enforcement agencies

(5) If:

(a) a data authorisation warrant is issued to an enforcement agency; and

(b) the warrant relates to a person who:

(i) is a journalist; or

(ii) is an employer of a journalist;

then:

(a) if the agency was the Australian Federal Police:

(i) the Commissioner of Police must, as soon as practicable, give copies of the warrant to the Minister and the Ombudsman; and

(ii) the Minister must, as soon as practicable after receiving a copy, cause the Parliamentary Joint Committee on Intelligence and Security to be notified of the issuing of the warrant; and

(b) otherwise—the chief officer of the agency must, as soon as practicable, give a copy of the warrant to the Ombudsman.

(6) If an authorisation under Division 4 of Part 4-1 is made under the authority of the warrant, the chief officer of the agency must, as soon as practicable after the expiry of the warrant, give a copy of the authorisation to the Ombudsman.

(7) If:

(a) the Ombudsman gives to the Minister a report under section 186J of this Act; and

(b) the report relates (wholly or partly) to one or both of the following:

(i) a data authorisation warrant issued to the Australian Federal Police in relation to a person who is a journalist, or an employer of a journalist;

(ii) one or more authorisations, referred to in subsection (6) of this section, that were made by one or more authorised officers of the Australian Federal Police;

the Minister must, as soon as practicable, cause a copy of the report to be given to the Parliamentary Joint Committee on Intelligence and Security.

(8) The Parliamentary Joint Committee on Intelligence and Security may request a briefing from the Ombudsman on:

(a) a data authorisation warrant; or

(b) an authorisation or authorisations;

to which a report referred to in paragraph (7)(b) of this section relates.

(35) Schedule 1, item 6Y, page 51 (lines 16 to 21), omit paragraphs 186(1)(i) and (j), substitute:

(i) the number of data authorisation warrants issued to the agency under Subdivision C of Division 4C of Part 4-1; and

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:04): The government opposes this amendment for a reason that, towards the end of his contribution, Senator Ludlam adverted to: the volume of warrantless requests, as reported in the most recent annual report of the Attorney-General’s Department, as Senator Ludlam says, was 340,000. It is not suggested—I do not understand it to be suggested—that those requests were irregular or ought not to have been made. What they tell you is the weight and dependence of
the police and the other investigative agencies which have access to metadata under the current arrangements, which are not subject of the regimes provided for by this bill.

Surely, Senator Ludlam and Senator Leyonhjelm, you must see as a matter of common sense that, if that is the demand by the authorities for access to metadata—340,000 a year—there is no practical possibility, none, that a warranted regime could work. None. The sheer volume of the need of the authorities to access metadata precludes the procedure for warrants.

Senator Ludlam, you have never had the obligation, as I do, to issue warrants. I have to issue warrants from time to time under the T(IA) Act and under the ASIO Act. Under those acts, the decision maker is required to be satisfied of certain matters, so the authorities seeking the warrant place a volume of material before me which I consider carefully and, on the basis of that consideration, I make my decision about whether or not to issue the warrant. It is a quasi-judicial act, and it takes quite a period of time. The practical impossibility of that process being undertaken carefully where there are, in the last reporting year, 340,000 access requests should be obvious to you. Contrary to what you say, Senator Ludlam, it is not uniformly the practice in Europe to require a warrant.

Senator BRANDIS: Senator Ludlam: Twelve countries.

Senator BRANDIS: Senator Ludlam, I really wish you would stop interjecting. In this debate you have behaved yourself with a reasonable amount of courtesy and decorum, and I would urge you to continue to do so rather than continue to interject. It is the case in some jurisdictions. It is not the case in other European jurisdictions. I am advised that, according to the most recent report of the United Kingdom’s Interception of Communications Commissioner, Sir Paul Kennedy, the only European countries that require any level of particularised consideration of whether access to metadata is proportionate are France, Ireland and the United Kingdom, and those systems have an internal executive process of authorisation. Most European countries do not require warrants, though I acknowledge, Senator Ludlam, that some do.

The practical problem is not just a problem of volume. Access to metadata is, in relation to the kinds of investigations with which this bill is concerned—that is, serious investigations into things like terrorism, paedophilia, organised and transnational crime, and, if we include the economic regulators, things like cartel conduct, for example—the initial stage of an investigative process. So there becomes what you might call a chicken-and-egg question here. The authorities use access to metadata to establish certain elementary primary facts in order to determine whether or not there is something that requires investigation.

No prosecution could ever proceed on metadata alone. Perhaps that is a point I should have made more often in the debate yesterday. No prosecution could ever possibly proceed on the basis of what was revealed by metadata alone. In the event that access to metadata reveals, for example, the existence of a network, then, in an appropriate case, the authorities can make an application under the TIA Act for a listening device, for example. That power has been in existence for as long as the TIA Act has been in existence—since 1969. In fact, if my memory serves me correctly, it was first introduced into Commonwealth law during the Attorney-Generalship of Sir Garfield Barwick—more than half a century ago. That is the point at which the law appropriately says, ‘If you are going to have a listening device to access someone’s telephone conversations or to access what is on their computer—if you place them under surveillance under the Surveillance Devices Act—that is the point at which you need a
warrant, because that is an intrusive and invasive form of investigation. But it has never been the judgement of this parliament that merely to establish, in a preliminary way, whether, for example, a particular connection was made between two telephone services is a level of intrusion that requires a warrant.

Always we must bear this in mind, Senator Ludlam: there is an explicit prohibition in this legislation against accessing content—an explicit prohibition. To make assurance doubly sure, there is also an explicit provision that says a person’s web-browsing history may never be the subject of the metadata retention regime.

What this bill does is introduce new protections. There is nothing to stop access to metadata at the moment. There is nothing to control or govern or oversee the exercise of the power to access metadata at the moment. Under this bill there are limitations and oversight mechanisms introduced into the law for the first time. The number of agencies that can avail themselves of this power is reduced by more than three-quarters, from 85 at the moment to 21. This limits, in a way that is not part of the existing law, access to metadata. If the authorities want to go one step further and tap somebody’s phone, access their computer or engage in other forms of intrusive investigative activity, they need a warrant—and they should. Nothing in this legislation changes that.

**Senator LEYONHJELM** (New South Wales) (10:13): I indicate my support for the Greens amendment. The Attorney's main objection to this seems to be that it is inconvenient and impractical—on the basis of 340,000 warrants. The question of course arises as to whether or not 340,000 warrants is something we should accept as a reasonable state of affairs anyway. I find it exceedingly disturbing that we should have such a large number of existing intrusions by snoops into our private activities. Indeed, you could argue that instead of being the nanny state we are developing into the spying state.

It is fairly obvious also that, with 21 agencies able to access metadata under the legislation proposed, there will be a need for fewer warrants. If, as the Attorney suggests, their access to metadata will be restricted to serious offences—although I point out that he declined to accept my amendment yesterday to ensure that that was the case—there would also be fewer warrants. The issue under the current regime with 340,000 accesses of existing metadata is that that does not include two years of history. It does not include the extent of the data that is currently accessed. It seems to me not at all unreasonable for a warrant system to apply to the fewer agencies going after serious offenders and more intrusive data.

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:16): Senator Leyonhjelm, can I correct you. It is not 340,000 warrants; it is 340,000 access authorisations. Let me explain to you how this works. Senator Leyonhjelm, you have been in this chamber for almost a year now. Senator Ludlam has been in the chamber for six years. I have never heard from you, Senator Leyonhjelm, and certainly not from Senator Ludlam an argument that the existing provisions of the Telecommunications (Interception and Access) Act are bad. But the authorisation for access to information or documents is contained in a provision of that act. It is in section 178. I understand that section 178 is an original provision of that act. It has been part of the act since 1979.

We discussed last night section 180F, which falls within the same part of the T(IA) Act. It requires, among other things, privacy considerations to be considered before an access
application is made. I want to direct you in particular to section 186, which is the statutory basis of the obligation for there to be a public report on the number of access authorisations made in any given year. The most recent annual report which I have is for 2012-13. At page 47 and following of that report it tabulates the number of authorisations that were made in that year. I think that is where your figure of 340,000 probably comes from.

My point to you, Senator Leyonhjelm, is that it is not as if this is uncontrolled. The fact that there is a public reporting obligation for access applications should demonstrate to you that there is already a level of accountability, as there is through the various parliamentary and executive oversight mechanisms that are already in place. So we are not talking about 340,000 warrants; we are talking about 340,000 access applications which are the subject, transparently, of a public report each year.

I entirely share your sentiments about the need to be vigilant, Senator Leyonhjelm, against intrusions by the state. But that noble sentiment of yours has to be put in the context of what the agencies are asking to do. They are not asking for content. They are not asking for a winding back, degradation or attenuation of the existing warrant regime. The existing warrant regime, which does require a warrant if content is to be sought, remains as it is. The only effect of this bill that is relevant to your argument is to reduce from 85 to 21 the number of agencies that can make access applications.

Senator XENOPHON (South Australia) (10:19): Related to this amendment is a concern, which I think was touched on in questions to the Attorney in the last couple of days. It has been a long committee stage, and I am grateful for the Attorney's patience. I do not want to be otiose or prolix in relation to this, but there is a concern about when warrants can be issued. I appreciate that the RSPCA and the Victorian Taxi Directorate will no longer be able to access metadata, but the concern that has been expressed to me by some constituents this morning relates to alleged copyright violations. Can the Attorney assure us that access to metadata under this regime will not be used to prosecute citizens who happen to have downloaded the latest episode of Breaking Bad. I do not know if it is still being shown.

The TEMPORARY CHAIRMAN (Senator Bernardi) interjecting—

Senator XENOPHON: The Temporary Chairman says that it is no longer in the series. It shows you that my cultural references are not very good. Let's say whatever the latest television programs are that people want to download.

Senator Ludlam: Or Game of Thrones.

Senator XENOPHON: Game Of Thrones is apparently a TV program. Can the Attorney assure us that access to metadata under this regime will not in any circumstances be used for the prosecution of citizens or, indeed, of others that may be downloading content that relates to breach of copyright? I am sorry about my lack of cultural reference. Thank you, Chair, for telling me that Breaking Bad is no longer in the series.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:21): I can give you that assurance, Senator, because what this bill is concerned with is the enforcement of the criminal law. If you look at the 21 agencies listed at section 110A, you will see that they are all crime or corruption investigative agencies. I do not want to be tedious, but I might read them into the record because not everybody appreciates the limitation on the number of
agencies. It will only take me a moment. Under these reforms, the following agencies can access metadata: the Australian Federal Police, the police force of a state, the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Crime Commission, the Independent Commission Against Corruption, the Police Integrity Commission, the IBAC, the Crime and Corruption Commission of Queensland, the Corruption and Crime Commission, the Independent Commissioner Against Corruption. These are different formulae in the different states, apparently. And then there is a power to declare other bodies but none have been declared, and that is subject to the limitations that we have already discussed. That is all. So we are dealing here with the enforcement of the criminal law.

As you know, Senator Xenophon, breach of copyright is a civil wrong. Against that argument two things have been said. First of all, it has been said that there are criminal provisions in the Copyright Act but not in relation to breach of copyright—for example, internet piracy. We deal with that in other ways. Those are civil wrongs. There is no capacity under section 110A of this bill for anyone other than the agencies whose names I have read out to you to make an access application.

The second argument that is used in relation to this issue is that, if there were a party to civil litigation—it does not matter what kind of civil litigation it might be, but for the purposes of this discussion we are talking about copyright—it might seek to subpoena or, by a process that you will remember, Senator Xenophon, known as third party discovery, to obtain the metadata and get at it in that way to make out its case in a civil action. That is dealt with, though, by the new section 281(2), which provides—I am paraphrasing here, but I will ask you to look at it for yourself—that, if a subpoena or a notice of disclosure is directed to a third party that retains metadata, and that metadata is retained or kept solely for the purpose of compliance with that act, then it may not be used in the civil litigation either. This is a compliance obligation. The primary obligation under this bill is a compliance obligation. The reason we are having this debate is that increasingly telecommunications service providers are not retaining metadata and, with the evolution of technology, the only reason they will be expected to retain metadata is to be compliant with the provisions of this act. If the only reason they are retaining metadata is compliance with the provisions of this act, they cannot be answerable in respect of that metadata to a subpoena or a notice for third party discovery in a civil action either, whether it be a breach of copyright claim or any other form of civil claim.

Senator XENOPHON (South Australia) (10:26): I am grateful to the Attorney for his answer, and I am well familiar with third party discovery, Anton Piller orders and pre-action discovery. Sadly, I still keep a practising certificate going so I can do my pro bono work, which always seems to cost me money. But I just go to this issue: the Australian government's Australian Institute of Criminology website has a publication—it is a few years old now, from back in November 2004—by Tony Krone where reference is made to the fact that, as the Attorney points out, the Copyright Act provides civil and criminal sanctions to protect copyright. My question is in respect of, for instance, section 132(1), as it then was, of the Copyright Act, where it was an offence to make, sell, trade or import an article that infringes copyright or to distribute an infringing item for the purpose of trade. Under section 132(2) of
the Copyright Act, there were clearly criminal sanctions. Can the Attorney assure us that, in the course of a prosecution under those sections, citizens who may have downloaded the latest episode of *Game of Thrones* would not be drawn into a criminal investigation in respect of copyright? That is the nub of my question. In other words, where metadata can be used in copyright matters, can citizens' metadata be accessed?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:28): That is not going to happen in relation to citizens, because in the example you have posited you are talking about citizens engaging in a download. That is something which the government yesterday introduced other legislation to deal with by way of the remedy of an injunction—a civil claim. So the example that you have posited is dealt with by the civil law. In particular, I invite you to inspect—no doubt we will be debating it in this chamber when we come back for the budget sittings—the government's copyright and online piracy reforms, which are modelled on the British copyright act and the copyright laws of other European jurisdictions. That is the way in which those matters will be dealt with. Breach of copyright, as I say, is primarily a civil wrong, and a civil action is not what this legislation is concerned with. There is this explicit prohibition, in the section to which I have directed your attention, on accessing metadata retained solely for the purpose of compliance with this act by way of a subpoena or a notice for third party discovery.

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:30): The only agencies that can access metadata are the proposed section 110A agencies. Those agencies include the state police departments and the Federal Police—that is true. But the way the examples you are positing are dealt with will be through civil actions. In particular, the very reason the government is introducing, based on English and other models, a new injunction power to protect intellectual rights is to make sure that these proceedings to protect copyrights are taken in the civil courts.

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:31): There are criminal offences under the Copyright Act. Is that correct?
offence provisions of the Copyright Act are directed to. If that conduct were ever to be the subject of judicial proceedings, they could only ever be civil proceedings—to which this legislation does not apply. No civil litigant, other than through a notice for third party inspection or subpoena issued by the court, could have access to metadata in support of a proceeding like that. Because the obligation being observed by the service providers is an obligation which will now be solely an obligation in obedience to this act, the sole purpose test would, one would expect, be met in every case. So metadata could not be accessed in civil litigation in those circumstances either.

Senator XENOPHON (South Australia) (10:33): Hopefully this is my final question on this matter. Can the Attorney not envisage circumstances where, as part of a criminal prosecution under the Copyright Act—particularly in relation to section 132, subsection 1, and section 132, subsection 2, where we are talking about that commercial grade where people are making money out of that breach of copyright and so it is clearly a criminal offence under the act—metadata may be sought from those who downloaded the material from the unauthorised provider, the copyright breaker, in order to build the case against the person being charged under section 132 of the act? If there is a concession to that effect—if the minister says that is the case—then I do not need to ask anything further on this.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:34): I do not have a copy of the Copyright Act with me in the chamber at the moment, but I am familiar with its provisions. There is no doubt that there are criminal offence provisions in the Copyright Act. Those criminal offence provisions are directed to what one might call large scale or commercial scale theft of intellectual property. They are not concerned with unlawful downloading, for example. They are not concerned with what ordinary citizens may perhaps be doing. That is dealt with through the civil law and it will be dealt with in particular by the industry code that is being developed under the auspices of my department and Mr Turnbull’s department—and, in relation to offshore pirate sites, by the new injunction power that I just mentioned to you, which is the subject of a bill that was introduced into the House of Representatives yesterday.

This bill is about serious crime. It is about terrorism, organised and transnational crime and paedophilia. That is its entire purpose. That is the mischief that the authorities seek to deal with through this bill.

Senator XENOPHON (South Australia) (10:36): I apologise that I keep on asking these questions. I am grateful for the Attorney’s patience. Leaving aside the unauthorised downloading of copyrighted content, when there are big operators who are stealing the intellectual property of a movie studio or a television studio, where they are undertaking a commercial enterprise that is clearly causing serious economic loss to the owners of the copyright—in those cases, given the seriousness of the offence, can metadata be accessed to aid in a prosecution?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:37): I now have a copy of the section I think you are referring to, Senator Xenophon—section 132AI of the Copyright Act. Is that the section you are referring to? I just want to make sure we are not at cross-purposes.
Senator XENOPHON (South Australia) (10:38): I do not think we are at cross-purposes. There are a number of similar sections about breaches.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:38): Is section 132AI the section you are asking about?

Senator Xenophon: Yes.

Senator BRANDIS: Criminal proceedings of that kind are not the purpose of this act.

Senator XENOPHON (South Australia) (10:38): Are there any other parts of the Copyright Act—other than section 132AI—that would be criminal proceedings for the purposes of this act?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:38): No. I do not know how many times I have to say this. It is not the purpose of this act to police or enforce the Copyright Act. It is the purpose of this act to deal with the kinds of conduct—the kinds of pathologies if you like: terrorism, paedophilia and organised and transnational crime. That is why the government is bringing forward this legislation. The agencies set out in proposed section 110A are the law enforcement agencies. The law enforcement agencies deal with the entire corpus of the enforcement of the criminal law, that is true. But just as I said to Senator Leyonhjelm last night: we are not interested in using this complex system to enforce parking tickets, nor are we interested in using it to police intellectual property law, because there are other statutes—other mechanisms—to deal with it.

Senator SINGH (Tasmania) (10:40): Labor does not support the introduction of a general requirement for a warrant to access retained telecommunications data. Labor accepts the findings of the committee on this point. The committee noted that such a requirement would be unworkable and that historical telecommunications data is distinct from those categories of data which the TIA stipulates can only be accessed under a warrant. Labor considers that the protection of privacy and civil liberties that the Greens intend to achieve by this measure are furthered by the safeguards and oversights introduced by amendments to this bill in the other place.

The TEMPORARY CHAIRMAN (Senator Bernardi): The question is that the amendments moved by Senator Ludlam be agreed to.

The committee divided. [10:45]

(The Temporary Chairman—Senator Bernardi)

Ayes ......................15
Noes ......................33
Majority ................18

AYES

Di Natale, R
Lambie, J
Leyonhjelm, DE
Milne, C
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS

Hanson-Young, SC
Lazarus, GP
Ludlam, S
Muir, R
Rice, J
Waters, LJ
Wright, PL
Question negatived.

**Senator LUDLAM** (Western Australia) (10:48): Mr Chairman, I am going to withdraw amendments (1) to (13) on sheet 7670. We dealt with substantially similar issues in further amendments moved by Senator Leyonhjelm.

**Senator LEYONHJELM** (New South Wales) (10:48): I move amendment (12) on sheet 7661:

(12) Schedule 1, item 5, page 28 (before line 32), before the definition of *Defence Minister*, insert:

*content*, in relation to a communication, includes the following:

(a) any speech, music or other sound that forms part of a telephone conversation;
(b) the body of an email;
(c) a short text message sent from one telecommunications device to another;
(d) a website address;
(e) any other user-generated content.

This amendment is intended to provide a definition of 'content' in the legislation. The lack of a definition of content has caused a great deal of industry disquiet.

I have used two sources in developing this definition. One was comments by Malcolm Turnbull, when he was asked to draw a distinction between metadata and content. However, I have also paid attention to the lengthy enumeration of the kinds of information to be retained and now brought into the bill as a consequence of recommendations of the PJCIS. My hope is that, added together, this will ensure that the law enforcement agencies are always able to distinguish between the two—retained data and content.
As we have heard from the Attorney-General, content is not to be retained, and yet content is not defined. I want to fix that. I want to ensure that the agencies do not deliberately or inadvertently intrude on content simply because there is an absence of definition. Perhaps the definition of 'content' that I have put into my amendment could be improved, but once again my aim here is to improve what is a bad law, not perfect it.

So the purpose of the amendment: there is a definition of what data may be retained. There is a clause which says that, for the avoidance of doubt, content is not to be retained, but 'content' is not defined. The purpose of my amendment is to define 'content', to ensure that it is not retained.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:50): Senator Leyonhjelm, this is a very laudable contribution, if I may say so, because your objective and the government's objective are the same, although obviously we approach the same objective in a different way. I am sorry to say, though, Senator Leyonhjelm, that in the government's view your proposed amendment would not have the effect that you wish it to have.

Your amendment, for a start, is an inclusive and therefore a non-exclusive definition, so it leaves the nature of content still as an open-ended category. That is the first point to be made about your amendment. Secondly, your amendment says:

content, in relation to a communication, includes the following:

(a) any speech, music or other sound that forms part of a telephone conversation;
(b) the body of an email;
(c) a short text message sent from one telecommunications device to another;
(d) a website address;
(e) any other user-generated content.

In relation to the first four, Senator Leyonhjelm, there is a lot of content that I can readily call to mind that would not be caught by that definition. For example, moving visual images—videos—would not be caught by that definition. But it may have unintended consequences. There is no definition of 'the body of an email'. I have told you that the address line of an email is regarded as content. It could well be argued that the body of an email is the principal message and not the address line, so it may well be that when a court came to interpret these words, were they to be included, it might have the opposite effect to what you intend. In relation to (e), 'any other user-generated content', that merely repeats without further explication the word 'content'.

So, Senator Leyonhjelm, I think that by this definition you actually narrow the protection. It is the government's intention to broaden the protection. Do not for a moment think, Senator Leyonhjelm—I am sure you would not actually think—that we did not consider this very carefully and did not take advice about the right way to go about this. The very firm view at which the government arrived—and I would commend this view to you, Senator—is to leave 'content' as broadly expressed as possible. It is expressed in section 187A(4) of the bill as 'the contents or substance of a communication', and it could not be more broadly expressed than that. But if we try to list what content is then, by omission, it may well be that we include content within the reach of this bill that we actually want to protect from being accessed by authorities. That is why, in proposed section 187A(4) of the bill, we express 'content' not by
way of definition but as broadly as possible according to the ordinary English language usage of those words, but in section 187AA(1) of the bill, in the table, we describe the metadata narrowly. If you want to limit access to metadata to very strict confines and protect content as widely as possible, that is the way you would do it: you would have a specific definition of 'metadata' and an open-ended, comprehensive or all-embracing definition of 'content'. That is what we have done.

Senator LUDLAM (Western Australia) (10:55): The Australian Greens will be supporting this amendment, notwithstanding Senator Leyonhjelm's acknowledgement that people may quibble with the definition. But we are here to improve bad law, not perfect it. I also—this does not happen all that often, but I am going to do it anyway—acknowledge the distinction that Senator Brandis draws and the difficulty of drawing distinctions between the two. The government believes it has done the best that it can.

The only contribution that I want to make to the debate, in supporting this amendment, is that the distinction between content and metadata is becoming wholly arbitrary. As many smarter people than me, with a better background in this technology than me, have pointed out, metadata in aggregate is content. There is a false distinction that has driven the entire debate: we will protect the phone call or the content of the email behind buttresses of judicial oversight, procedure and reporting, but we will offer no protection whatsoever for the 340,000 warrantless metadata accesses. This implies—actually, it does not imply it, because spokespeople from both the major parties have said this in black and white—that metadata is somehow of a lesser quality and is less invasive. That is simply not true, because that term—which is not a term of art—encompasses such a wide variety of material. Metadata includes simple material like who owns that particular handset or who holds that particular subscription. That is metadata, and we have already agreed that we are not proposing to constrain agencies to require a warrant to get that, because it is reasonably routine. But this same word 'metadata'—with that innocent definition of who owned a particular subscription at a particular time—also covers data that can be used to track your precise location. That is invasive. That is content. It is intrusive. The state should not be able to peer into that material without the same protections that apply to listening to a phone call or reading an email. It is not that hard.

I recognise that legal definitions will always lag behind technology, and that is partly why we are in the mess that we are in, but I fundamentally reject the artificial distinction between content and non-content. Metadata in aggregate is content, and we do nothing to protect that in Australian law. Before you jump up, Senator Brandis, to tell us that that is the prevailing system, that this bill does nothing to make it worse et cetera, I agree with you. The prevailing system is broken, and today you propose to make it worse.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:57): Senator Ludlam, I am not sure if you are an aficionado of Alice in Wonderland, but you have just fallen down the rabbit hole. Your statement, 'Metadata is content,' reveals a fundamental gap in your appreciation of a reality here.

Senator Ludlam: Mr Acting Deputy President, on a point of order, the debate has been pretty courteous and reasonable so far. I did not say, 'Metadata is content.' Please do not mislead the chamber. I said, 'Metadata in aggregate is content.' At least quote me accurately.
The TEMPORARY CHAIRMAN (Senator Bernardi): That is a debating point, Senator Ludlam. Resume your seat.

Senator BRANDIS: Senator Ludlam, perhaps you want to resile from what you said, but at the beginning of your contribution you did not include those qualifying words. You said, 'Metadata is content.' If you want to resile from that now and add a qualification to what you said, we all occasionally misspeak in this chamber, but you actually did say, 'Metadata is content,' and of course it is not.

Although we have all regularly used the word 'metadata' in this debate, of course you rightly say, Senator Ludlam, that 'metadata' is not a term of art. I am sure you will understand that the word 'metadata', which is a jargon phrase of no clear and specific meaning and no technical standing—and I see you nodding in agreement, so we are of a common mind about this—does not appear anywhere in this bill, for that very reason. So, rather than use a jargon phrase of no certain meaning and no technical standing, what the government has set out in the table subjacent to subsection 187A(1)(a) is a description of six categories of information which, in a loose way, we have been referring to in the course of this debate and which has been referred to in the course of public discussion as metadata. But, for the very reason you acknowledge, we have very carefully avoided using this cant, jargonistic phrase of no certain meaning and no technical standing. That is why the legislation has been structured the way it is. I really think, Senator Ludlam—because I know you know a lot about this area; I respect the fact that this is an area of specialist knowledge you have, more so than most in this chamber—you really should reconsider whether you go along with Senator Leyonhjelm's approach here. By defining content to limited categories what Senator Leyonhjelm has done, with respect—inadvertently, I am sure—is to confine the exclusion. Senator Leyonhjelm, who thinks this is a bad bill, would nevertheless want to improve it by making the exclusion of content as comprehensive and all-embracing as possible; but by defining certain categories of content to the exclusion of other potential categories, you are achieving the opposite effect, Senator Leyonhjelm.

As a matter of logic we should leave content as broadly expressed as possible. As I counselled in a slightly different context last night: these are not legal terms of art. Content is not a legal or a technical term. The substance of a communication is not a legal or a technical term. We should avoid an infinite regression into the thesaurus. We should simply use plain English and express that plain English as widely as it can be expressed.

Senator SINGH (Tasmania) (11:02): Labor considers this amendment unnecessary. The committee examined this issue and concluded it unnecessary to insert a definition of content. If I could just quote from the committee's report:

The Committee accepts the evidence provided by industry representatives that content can be reliably separated from data for the purpose of data retention. The Committee notes that, currently, service providers are required by law to separate content from data when complying with historic and prospective data authorisations made under Chapter 4 of the TIA Act.

Senator Leyonhjelm's concerns about the precision of the dataset are adequately addressed by the existing exclusion of content under the TIA Act and by the increased precision of the dataset achieved by amendments to the bill in the other place.

Question negatived.
Senator LUDLAM (Western Australia) (11:04): by leave—I move Australian Greens amendments (25) and (27) on sheet 7669 together:

(25) Schedule 1, item 5, page 29 (after line 8), after the definition of infrastructure, insert:

journalist means a person who is engaged and active in the publication of news and who may be given information by a source in the expectation that the information may be disseminated in the form of:

(a) news, current affairs or a documentary; or
(b) commentary, observations or opinion on, or analysis of, news, current affairs or a documentary.

(27) Schedule 1, item 5, page 29 (lines 26 to 29) omit paragraphs (a) and (b) of the definition of source, substitute:

(a) to another journalist; and
(b) in the normal course of the other person's work as a journalist; and

What we have attempted to do here is important and it was canvassed to some degree in the other place during the debate there last week. The government, for reasons I hope Senator Brandis will explain to us shortly, has a definition of journalist as regards who is actually protected by the clauses the government and the opposition agreed to, to provide for a warrant and the public interest advocate. The definition of journalist therefore becomes fairly central as to who can avail themselves of these protections. Some senators will recall that when we were debating shield laws provisions that made amendments to the Evidence Act, going back now a couple of years, the chamber agreed—do not let me get this wrong, but I seem to recall Senator Brandis was on the same side of this vote as we were; in fact, I think it was unanimous—that the definition of journalist should be framed fairly broadly so that in the event that people needed to avail themselves of the protection of shield laws, we would effectively leave it to the courts to decide whether it was in the public interest that somebody should be protected and allow their source to be protected. The reason for that should seem reasonably obvious: if you are doing investigative journalism or you are reporting in the public interest and you need to protect a source, or if people doing this work want to publicly disclose wrongdoing or corruption—if you have been given information that relates to government corruption or malfeasance or any of the other things the press gallery does every day to keep our democracy strong, if you will; that is probably overstating it a bit, but it is tremendously important—they can get that material into the public domain without being prosecuted. Whistleblowers have their lives ruined. I know Senator Xenophon has had a lot to do with Mr Allan Kessing. This society is tremendously hard on whistleblowers and the protections that do exist have in the past proven quite inadequate at protecting people. But shield laws are one way of keeping a source out of harm's way so that people can anonymously report to journalists stuff that needs to get into the public domain. We framed 'journalists' very broadly, and I will read the definition that is in the Evidence Act at the moment:

... journalist means a person who is engaged and active in the publication of news and who may be given information by an informant in the expectation that the information may be published in a news medium.

Linked to that:

news medium means any medium for the dissemination to the public or a section of the public of news and observations on news.
Those two definitions are deliberately broad, and my recollection is that they were unanimously agreed to by the Senate so that the courts can decide—not on some arbitrary distinction of whether the person got paid to write the piece. Whether they are working for the *Sydney Morning Herald* and whether they are sensible grown-up journalist should not matter. The decision is whether the disclosure is in the public interest. The source should be able to available themselves of the protection and the journalists should not be dragged through the courts and potentially jailed. We agreed to leave that broadly.

The government, in drafting this new category of quasi-warrant to protect journalists, is proposing to narrow the definition. I do not understand why you would do that. I think the standard that we apply for shield laws should apply in this instance. That is why we brought these amendments forward today. Arbitrarily constraining such protections as have managed to be hammered out, we think, are inadequate, but are better than what prevailed before.

I do not see any reason at all why that should depend on whether or not you draw a pay cheque. If it is important work—if it is public interest reporting—and if sources' lives or livelihoods are at risk, then that protection should be offered.

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:08): Before responding to your contribution, Senator Ludlam, if I may say so, you do me less than justice. Not only was I part of the body of opinion in the Senate that supported the shield laws; I actually introduced the legislation.

**Senator Xenophon interjecting**—

**Senator BRANDIS:** Thank you, Senator Xenophon. It was introduced initially as a private senator's bill by me. It was initially opposed by the Labor Party and the Greens. It was, in subsequent months or years, then adopted by the Labor Party, but the legislation was originally introduced by me. So I have nothing but commitment to the idea of the rights of journalists to protect their sources. That is why, although initially it was not part of the bill because journalists and their sources were never the target of this bill, I am quite comfortable with the amendments that were introduced in the House of Representatives by Mr Turnbull and which now comprise division 4C of the bill.

If I may say so, Senator Ludlam, I think you make a very good point. If only for the sake of consistency, I think it is undesirable that there should be different definitions of 'journalism' in different Commonwealth acts. You have instanced the provisions in the Evidence Act that protect journalists, which extend confidentiality to journalists' sources, and which I supported. On reflection, I think the way that it is expressed is a little wide but unfortunately the problem that you identify would not be solved were we to adopt your amendment because there are other definitions elsewhere in the Commonwealth law which apply this definition of 'journalist'. In particular, division 119 of the Criminal Code, subsection 119.23(f), uses this definition of 'journalism'.

You know as well as I do, Senator, that the definition of 'journalist' has been the subject of much public discussion, especially driven by the expansion, beyond the imagination of people even 30 years ago, of the media through which journalism may be published and conducted. But the definition that is preferred here—a person who is working in a professional capacity as a journalist—is not necessarily a contradiction of your amendment. There is no doubt that
it is more generic. It is not a question of whether a person draws a pay cheque, by the way. A person can be working in a professional capacity as a barrister even though he does not render a fee for a particular case. The definition calls attention to the notion that there is such a profession as journalism, whose members consciously identify as such and who observe certain professional standards so that they are recognisable members of a body of people who undertake the same profession. That is the concept sought to be captured here.

It may well be that, given that there are inconsistent definitions of 'journalism' or 'journalist' already in the Commonwealth statues—and, indeed, between the Commonwealth and the states—some regularisation and standardisation should be adopted. But, for the time being, given that this definition is more generic, and is consistent with one of the two definitions currently extant in the Commonwealth statutes, the government prefers to deal with the issue in this way.

Senator JACINTA COLLINS (Victoria) (11:12): Senator Brandis is right that Senator Ludlam makes a good point here. Labor understands that the appropriate definition of 'journalist' at law is an ongoing controversy. We are satisfied that the definition in this bill is appropriate and that judicial interpretation will resolve at least some of the difficulties. I note, though, that it is consistent—as I think Senator Brandis just indicated—with the definition of 'journalist' now incorporated in the Commonwealth Criminal Code.

Senator LEYONHJELM (New South Wales) (11:13): I also indicate that this amendment moved by Senator Ludlam is identical to the amendment which was moved by me. I can assure the Attorney-General that, had the shield laws been introduced when I was a senator, there is absolutely no chance that I would have voted against them—absolutely no chance at all. I am grateful that the Attorney-General acknowledges that it is an issue that there are different definitions of 'journalism'. The one that has been chosen here is the one taken from the Evidence Act, not the Criminal Code. We prefer it. I certainly would encourage the Attorney-General to move towards a consistent definition of journalism in Commonwealth legislation at the earliest opportunity—and today is a good one.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:14): I accept that invitation. It is obviously not desirable that there be inconsistent, or at least different, definitions of the same concept in the statutes. I will, informed by the observations that have been made by senators in this debate, pursue the matter.

Senator XENOPHON (South Australia) (11:14): I indicate that I will support the amendment—a broader definition of 'journalist'—but I do want to acknowledge the Attorney's role in terms of journalist shield laws. In fact, I put it in my own amendments to the bill, along with the member for Denison, Andrew Wilkie, around the same time. I think in terms of the raw politics of it, the fact that the coalition in opposition was prepared to support it, prompted the government of the day to bring that forward, and I think Senator Ludwig did play a very constructive role with respect to that. I am grateful to the Attorney for the role he has played in journalist shield laws, from opposition. You do not have to be in government to come up with good ideas, Attorney. I think that puts it in an historical context. Journalists are in a better position as a result of those shield laws, but my concern is that with the metadata laws they may be in a worse position.
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:15): Thank you, Senator Xenophon and Senator Ludlam. Perhaps one of the reasons I am a little abashed in criticising your definition is I fear that some of those words might have originally been my own!

Question negatived.

The TEMPORARY CHAIRMAN: Senator Leyonhjelm will now not be moving his amendments.

Senator XENOPHON (South Australia) (11:16): by leave—I move amendments (1) and (2) on sheet 7672 together:

(1) Schedule 1, item 6L, page 34 (lines 8 to 10), omit paragraph 180G(1)(b), substitute:

(b) a purpose, effect or likely effect of making the authorisation would be to identify another person whom the eligible person knows or reasonably believes may be a source;

(2) Schedule 1, item 6L, page 34 (lines 26 to 28), omit paragraph 180H(1)(b), substitute:

(b) a purpose, effect or likely effect of making the authorisation would be to identify another person whom the authorised officer knows or reasonably believes may be a source;

These amendments amend the criteria under which an eligible person or enforcement agencies may not make an authorisation for disclosure of information relating to a journalist or their employer unless a journalist information warrant is in force. The amendments alter the provisions to include where the purpose or likely effect of making the authorisation would be to identify another person who is known to be a source, or is reasonably believed to be a source, so that an authorisation cannot be made under these circumstances.

If we can put this in context, what is proposed in the bill in terms of the excluded categories—that is, those categories for which a journalist's information warrant must be sought—is that you need to show if a purpose of making the authorisation would be to identify another person whom the eligible person knows or reasonably believes to be a source. I know this is not competition law, but it does remind me about the debate of the effects test that the Harper review is looking at. In other words, to show purpose, and to simply confine it to purpose, seems to me to be unduly narrow. That is why I have moved an amendment that would allow a broader approach that would allow inclusion of the words 'effect' or 'likely effect'. The argument by those seeking authorisation is: 'This is not our purpose,' but if the effect or likely effect of making the authorisation would be to identify a source, then I think that should be included. I think it is consistent with what the government has put up in this bill. It is intended to have a regime in place to protect journalists' sources. But having it confined simply to purpose, particularly in the context of the public interest advocate regime, where there is not an opportunity for the media organisation to be consulted, I think it is important that we have it as broad and consistent as possible with the purpose of what the government's amendment says. The aim of these amendments is to broaden the circumstances under which information cannot be disclosed without a warrant, to ensure that sources are not inadvertently identified. My concern is that the word 'purpose' is simply too narrow; that it ought to include 'effect' or 'likely effect', because of the debates we have seen in other pieces of legislation about the narrowness of the word 'purpose' in the context of what the government's amendment is trying to remedy.
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:19): The government is not persuaded by that argument. In general, Senator Xenophon, you do make a good point about the importance in legislation that tries to avoid an adverse effect of dealing with both purpose or effect so that volitional conduct—that is, conduct engaged in for a purpose—or unintended conduct that is not intended to have that purpose but might nevertheless have that effect, should both be caught. Then, in certain circumstances, there are powerful logical arguments for doing that, although I myself have never been persuaded that section 46 of the Competition and Consumer Act is one of them. But when we confine what is prohibited to conduct engaged in for a purpose only, as opposed to engaging for a purpose or likely to have an effect, what we focus on really is the motive of the person whose conduct is under scrutiny. What we have heard throughout this debate is that there is a risk that this scheme could circumvent a journalist's capacity to protect their sources by allowing applications for their metadata to identify the source. That is, in essence, what we have been told is the mischief here. The government, after consideration, responded to that by including division 4C into the bill. The mischief that was identified to us was not incidental or second-order effects. The definition that was identified to us was 'conscious, deliberate, purposeful, advertent abuse of the system', and that is what this provision deals with. Your provision would take it a great deal further, but what we are dealing with here is the very mischief that was identified that needed to be corrected by the insertion of division 4C.

Senator XENOPHON (South Australia) (11:21): Does not the Attorney concede that the words 'effect or likely effect' would, whilst making the provision broader in terms of the categories for which a journalist information warrant is required, still be consistent with the aim of the government's amendment—that is, to protect a journalist's source? Or rather—and I will stand corrected—in order for a journalist information warrant to be granted, there is a process prescribed in the bill. The circumstances in which that occurs are now confined in part to showing that there is a purpose for making the authorisation: to identify another person or eligible person. You could have the person seeking the warrant simply say, 'The purpose is not to seek to identify the source, but it could well be an incidental effect to that.' Given the government's negotiation with the opposition and listening to concerns of major media organisations including News Ltd and Seven West in this country, does not the Attorney concede that there may be circumstances when the bill in its current form as proposed by the government would not require an authorisation, because the authority or agency seeking the metadata says, 'This is not the purpose for the authorisation, but it may well be a collateral effect that a source will be disclosed and therefore we do not have to go through this process of the public interest advocate'?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:23): I wish you would not ask me to concede things, because, if I say I concede things to you, it will look as if you have argued me into a corner. I would rather say I acknowledge the point you make. I do acknowledge the point you make, but that is not the reason this provision has been included. The reason this provision has been included is to prevent abuse of the system. Purposeful conduct is the mischief to which we are directing our attention here. I might point out to you that there is not a sole purpose here. Unlike elsewhere in the legislation, there is not a sole purpose test here. So long as it is a purpose, that will be enough to invoke the
protection. If we were going to go further to seek to comprehensively protect journalists or their sources from incidental unintended effects then what you say would be absolutely correct, but that is not what we are seeking to do. It is not what we have been asked to do. What we are seeking to do—what we have been asked to do—is to include, in effect, an anti-abuse provision to prevent the deliberate misuse of this provision to interfere with the confidentiality of the relationship between journalists and their sources. This provision, as I am sure you would acknowledge, does so.

Senator JACINTA COLLINS (Victoria) (11:25): I might take this opportunity to comment not only on these two amendments but the subsequent two sets we will be dealing with in a moment but that are in some sense related. Senator Xenophon’s amendments seek to introduce a different warrant regime for journalists purportedly modelled on the provisions in America, as we discussed earlier in the committee stage. I note that in the other place Labor supported amendments which implemented such a warrant regime being introduced for journalists; however, I should note that those amendments were successful and that the bill before us already incorporates a warrant regime for the protection of journalists and their sources which was not previously in place.

Senator Xenophon would evidently prefer a different model from that agreed between the government and the opposition. It seems that the main focus of the amendments is what Senator Xenophon refers to as ‘contestability’. Senator Xenophon says that his model is based on the law in the United States, though it is not clear precisely what law he is referring to. Of course, as we understand, the Americans do have a very different system from us.

We should be clear: there is no precedent in Australia for warrants to be subject to a contested hearing. Warrants are not issued in an interparties hearing. They are not the subject of a full contested hearing. The reasons for this are obvious. Notifying the subject of a phone tap or a search warrant defeats the purpose of seeking such a warrant. Best practice is, however, for an independent body to appear before the issuing authority and to test the argument of the agencies and argue against the issue of the warrant. In Queensland and Victoria bodies called public interest monitors perform this function. This bill implements best practice through the creation of a public interest advocate modelled on the public interest monitors in Queensland and Victoria. It is the first and only time such special protection has been provided to a warrant scheme at the Commonwealth level.

Though it is inappropriate for warrants to be contested in the way that Senator Xenophon desires, the public interest advocate model ensures that the warrant-issuing process is rigorous and that the issuing—

Senator Xenophon: I rise on a point of order. We have not got to that particular amendment yet. I acknowledge—I concede—that Senator Collins has spoken to the particular amendment that is before us, but I wonder whether it is more appropriate for it to be dealt with—

The TEMPORARY CHAIRMAN (Senator Seselja): I am not going to take too strict an approach on this. People do tend to go a little bit back and forth on these things. Senator Collins has indicated that she is expressing a view in terms of the upcoming amendments, so I am not averse to some discussion of those future amendments.
Senator JACINTA COLLINS: I apologise to Senator Xenophon if he was distracted by Senator Brandis at the outset when I indicated I would be reflecting.

An honourable senator interjecting—

Senator JACINTA COLLINS: Well then, I do not need to apologise. I indicated at the outset that I would be covering the three sets. If you objected to that, Senator Xenophon, you might have responded at the outset. I am of course quite keen to facilitate progress in relation to the consideration of the amendments in this committee stage, so I was seeking to address the three sets at once. If Senator Xenophon can bear with another paragraph then that will conclude my contribution on his amendments.

I was saying that although it is inappropriate for warrants to be contested in the way that Senator Xenophon desires, the public interest advocate model ensures that the warrant issuing process is rigorous and the issuing authority hears strong arguments against the issuing of a warrant. Labor believes that this is the appropriate model overall, thus related to the first two amendments and the subsequent ones. We share Senator Xenophon's goal, however, of protecting journalists and we believe that the model already incorporated in this bill achieves that goal.

Senator LEYONHJELM (New South Wales) (11:30): I will just indicate that I support Senator Xenophon's amendments. I also with his forbearance indicate that I will support his other amendments as well, so I will not need to rise and indicate that verbally.

Senator LUDLAM (Western Australia) (11:30): The Australian Greens will be supporting these amendments. They are consistent with what we have been arguing the whole time. The final model that the government and the Labor Party came to has been quite heavily criticised, but nonetheless Senator Collins is quite right: this framework does not actually exist at the moment and there is no public interest monitor equivalent at a Commonwealth level. That is something that we have argued for.

In the course of the Telecommunications (Interception and Access) Act inquiry that we conducted over the last 15 months or so we heard quite compelling evidence from the public interest monitors in the two states where they do exist that it does not slow down the process. What it does is that it provides a measure of contestability in the warranting process. What they found was that the agencies did take a little while to get used to having interposed in the process somebody they were not used to being there and who would say, 'Does this need to be this broad? Could this be narrower? Could it be for a briefer period of time? Do you need all of these devices?' Eventually, once the agencies got used to having that process of contestability interposed into the process, it streamlined things and it was in the view of the public interest monitor that we took evidence from that it had actually immeasurably improved the process.

But I have seen the crack in the government's armour with the two acknowledgments that have been made: firstly, that metadata is not so completely harmless or innocuous that journalists and their sources do not deserve a measure of protection; secondly, that we would introduce therefore a process that is not really the same as ordinary warrants. It is kind of quasi-warranting process. Also, we would introduce a public interest advocate who performs not an identical role, but a similar role, for this narrow category of professionals, as the government has defined them. We have got problems about the way that it is constructed; but
I think it does open the door to some of the arguments that we have been running for a couple of years now, as the system requires further safeguards.

What Senator Xenophon has done is make the obvious point here that you can put a better lock on the front door and try to protect the journalists a little bit better than they are at the moment, but the back door is wide open. If somebody, for example, publishes a scoop on the horrors that are unfolding on Manus Island and the government wants to know or police agencies or the federal police are instructed to find out who that journalist is talking to, they will need to go through these new procedures that have been put into place. It is my expectation that, of course, the warrant will be issued. It might take a little bit longer and it might have a few more checks and balances in the way, but no doubt the warrant will be issued.

Nonetheless, that is a piece of process that does not exist at the moment. Of course, the agency is just as likely to go through and scrape the phone records of people working on the island and find out which phone numbers come up. If those numbers match those of a journalist, then you do not really need to go any further. It completely renders obsolete the shield laws that everybody on all sides of the debate just argue passionately in favour of. You do not need to take a journalist to court to find out who they have been talking to; you just find out who they have been talking to. That is part of the problem. All sides of politics—even though the government somewhat reluctantly—have recognised that this is an issue, even as the government does continue to try to track down the source of stories that are appearing that it does not like the content of.

What Senator Xenophon's amendment attempts to do—it is difficult to enforce, I suspect, but nonetheless I think the intent is noble—is to ensure that if somebody is reasonably suspected of being a source then they would also be protected. I think that is a noble intention. It goes some way towards improving the kind of protections that most people believe should be in place, but it does not deal with the fundamental issue of the fact that the Australian government is instructing the federal police a reasonable number of times a year to go and find out who is putting unpopular stories into the press. That is disgusting behaviour. We should not be throwing additional procedural hurdles in the way; we should make that very, very difficult to do, if not completely unlawful.

We are happy to commend these amendments to the chamber and hope that they pass.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:35): I cannot let Senator Ludlam get away with that disgraceful remark. The Australian government does not instruct the Australian Federal Police to go after people. That is an attack on the integrity of the Australian Federal Police. The Australian Federal Police are independent of government. There is no possibility that I, as the minister with ultimate responsibility for the Australian Federal Police; or the Minister for Justice, who has immediate responsibility for the Australia Federal Police; or any other minister could ever instruct the Australian Federal Police to carry out any investigation. It is not possible.

Individuals can make complaints to the Australian Federal Police. When I was in opposition, I made a number of complaints to the Australian Federal Police. The Australian Federal Police treat everyone equally. They treat government, opposition, members of parliament and private citizens—everyone—equally. The suggestion that members of a
government could or would instruct the Australian Federal Police and the suggestion that the Australian Federal Police could or would accept such instruction is deplorable.

Senator XENOPHON (South Australia) (11:36): I will not be dividing on this amendment. I appreciate that the government and the opposition have given me their position. If we acknowledge that sources need to be protected, then this amendment would seek to broaden that protection. Sometimes, there could be circumstances where a purpose is not to reveal a source, but it could have the effect of revealing a source; therefore the public interest advocacy regime anticipated in this legislative framework ought to be strengthened according to that. I will not take it any further. I know now to ask the Attorney only to acknowledge something rather than concede. An acknowledgement from the Attorney is probably almost a concession.

Senator Brandis: No, it's not!

Senator XENOPHON: I have upset the Attorney! I will take an acknowledgement from the Attorney. It is better than nothing.

Question negatived.

Senator XENOPHON (South Australia) (11:37): by leave—I move amendments (3) and (7) on sheet 7672 together:

(3) Schedule 1, item 6L, page 35 (after line 28), at the end of section 180K, add:

Note: If further information is required, a Public Interest Advocate must be notified, see section 180X.

(7) Schedule 1, item 6L, page 40 (after line 23), at the end of section 180R, add:

Note: If further information is required, a Public Interest Advocate must be notified, see section 180X.

Amendment (3) inserts a new note at the end of proposed section 180K to specify that a Public Interest Advocate must be notified if further information is required under that section. This is in accordance with proposed section 180X and consequential to my proposed amendments to the section. In essence, proposed section 180K says

(1) The Minister may require the Director-General of Security to give to the Minister, within the period specified in the requirement, further information in connection with a request under this Subdivision.

(2) If the Director-General breaches the requirement, the Minister may:

(a) refuse to consider the request; or

(b) refuse to take any action, or any further action, in relation to the request.

It seems to me that the government’s bill is unclear as to whether the further information that is required by the minister is information that will necessarily be given to the Public Interest Advocate. I am not sure whether it was an oversight or a deliberate policy position, or whether the Attorney would acknowledge or even concede that there ought to be a revisiting of this at some time down the track. The Public Interest Advocate does not have the same access to journalists as exists in, say, the US protocols, which we will talk about shortly. The argument is that if further information is requested then the Public Interest Advocate ought to be aware of that in the context of arguing the public interest case in the issue of a journalist information warrant.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:39): Senator
Xenophon, I do not concede and I do not acknowledge, I actually embrace what you say. Your point is right but it is also a little unnecessary, because of course what these amendments seek to achieve is the process that is envisaged anyway. If you look at the stipulations in proposed sections 180K and 180R you will see that they already require the minister to have regard to submissions made by the Public Interest Advocate in relation to the public interest, so it is necessarily implicit in the bill that the Public Interest Advocate will be given the opportunity to make those submissions. That is what we had envisaged. Perhaps if we had consulted you earlier on, Senator Xenophon, we might have expressed this a little more elegantly. Can I direct you to proposed section 180X(3), which provides that the regulations may prescribe matters relating to the performance of the role of the Public Interest Advocate. Those regulations will be promulgated. I can tell you—and I am not just saying this, by the way, because of what you have said; it is something that we already had in mind to do—those regulations will include a specific stipulation to put beyond doubt the issue that you have raised.

Senator XENOPHON (South Australia) (11:41): I embrace the Attorney's comments. I will not seek to divide on this. I will not withdraw the amendment, but I think from the fact that this was going to happen anyway—I am not a mind reader, Attorney—we are on the same page, or at least on the same drafting page. I am grateful for that, because I think it will make it more robust if the Public Interest Advocate is aware of any additional information in order to argue its case.

Question negatived.

Senator XENOPHON (South Australia) (11:42): by leave—I move amendments (4) to (6), (8) and (9) on sheet 7672 together.

(4) Schedule 1, item 6L, page 36 (lines 5 to 28), omit subsection 180L(2), substitute:

2 The Minister must not issue a journalist information warrant unless:

(a) the Minister has given the Public Interest Advocate reasonable notice of the request for the warrant in accordance with section 180X; and

(b) the Minister has:

(i) given the person to whom the warrant request relates reasonable notice, in writing, of the request for the warrant; and

(ii) invited the person to make a submission on the request; and

(c) the Minister is satisfied that:

(i) the Organisation's functions would extend to the making of authorisations under Division 3 in relation to the particular person; and

(ii) the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the identity of the source in connection with whom authorisations would be made under the authority of the warrant, having regard to the matters in subsection (2B).

(2A) In making his or her decision to issue or refuse a journalist information warrant, the Minister must give greatest weight to the matter mentioned in paragraph (2B)(a).

(2B) For the purposes of subparagraph (2)(c)(ii), the matters are the following:

(a) the public interest in the communication of facts and opinion to the public by a free media, and, accordingly in the ability of the media to access sources of facts on the basis that confidentiality of the identity of the source will be protected;
(b) the extent to which the privacy of any person or persons would be likely to be interfered with by the disclosure of information or documents under authorisations that are likely to be made under the authority of the warrant;

(c) the gravity of the matter in relation to which the warrant is sought;

(d) the extent to which that information or those documents would be likely to assist in the performance of the Organisation's functions;

(e) whether reasonable attempts have been made to obtain the information or documents by other means;

(f) any submissions made by a Public Interest Advocate under section 180X;

(g) any submissions made by the person to whom the warrant request relates;

(h) any other matters the Minister considers relevant.

(5) Schedule 1, item 6L, page 37 (line 26), omit "paragraphs 180L(2)(a) and (b)"; substitute "subparagraphs 180L(2)(c)(i) and (ii)".

(6) Schedule 1, item 6L, page 37 (line 29), omit "paragraphs 180L(2)(a) and (b)"; substitute "subparagraphs 180L(2)(c)(i) and (ii)".

(8) Schedule 1, item 6L, page 41 (line 9) to page 42 (line 10), omit subsection 180T(2), substitute:

(2) The Part 4-1 issuing authority must not issue a journalist information warrant unless:

(a) the Part 4-1 issuing authority has given the Public Interest Advocate reasonable notice of the application for the warrant in accordance with section 180X; and

(b) the Part 4-1 issuing authority has:

(i) given the person to whom the warrant application relates reasonable notice, in writing, of the application for the warrant; and

(ii) invited the person to make a submission on the application; and

(c) the Part 4-1 issuing authority is satisfied that:

(i) the warrant is reasonably necessary for whichever of the purposes set out in subsection (4) is applicable; and

(ii) the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the identity of the source in connection with whom authorisations would be made under the authority of the warrant, having regard to the matters set out in subsection (5).

(3) In making a decision to issue or refuse to issue a journalist information warrant, the Part 4-1 issuing authority must give greatest weight to the matter mentioned in paragraph (5)(a).

(4) For the purposes of subparagraph (2)(c)(i), the purposes are the following:

(a) if the warrant would authorise the making of authorisations under section 178—for the enforcement of the criminal law;

(b) if the warrant would authorise the making of authorisations under section 178A—finding a person who the Australian Federal Police, or a Police Force of a State, has been notified is missing;

(c) if the warrant would authorise the making of authorisations under section 179—the enforcement of a law imposing a pecuniary penalty or for the protection of the public revenue;

(d) if the warrant would authorise the making of authorisations under section 180—the investigation of an offence of a kind referred to in subsection 180(4).

(5) For the purposes of subparagraph (2)(c)(ii), the matters are the following:
(a) the public interest in the communication of facts and opinion to the public by a free media, and, accordingly in the ability of the media to access sources of facts on the basis that confidentiality of the identity of the source will be protected;

(b) the extent to which the privacy of any person or persons would be likely to be interfered with by the disclosure of information or documents under authorisations that are likely to be made under the authority of the warrant;

(c) the gravity of the matter in relation to which the warrant is sought;

(d) the extent to which that information or those documents would be likely to assist in relation to that matter;

(e) whether reasonable attempts have been made to obtain the information or documents by other means;

(f) any submissions made by a Public Interest Advocate under section 180X;

(g) any submissions made by the person to whom the warrant application relates;

(h) any other matters the Part 4-1 issuing authority considers relevant.

(9) Schedule 1, item 6L, page 43 (lines 12 to 28), omit section 180X, substitute:

180X Public Interest Advocates

(1) The Prime Minister shall declare, in writing, one or more persons to be Public Interest Advocates.

Notice to be given to Public Interest Advocates

(2) If a notice is given to a Public Interest Advocate under section 180L in relation to a request for a journalist information warrant, or under 180T in relation to an application for a journalist information warrant, the notice must:

(a) be in writing; and

(b) include:

   (i) the information and material that was provided with the request or application, as the case may be; and

   (ii) the additional information or material (if any) that is prescribed by the regulations.

Further notice if additional information provided

(3) If:

   (a) the Minister requires the Director-General of Security to give further information under section 180K in connection with a request; and

   (b) the Director-General gives the further information or refuses to give the further information;

then the Minister must notify the Public Interest Advocate, in writing, of the further information or the refusal as soon as practicable.

(4) If:

   (a) the Part 4-1 issuing authority requires the chief officer of an enforcement agency, or a person other than the chief of the agency, to give further information under section 180R in connection with an application; and

   (b) the chief officer, or the other person, gives the further information or refuses to give the further information;

then the Part 4-1 issuing authority must notify the Public Interest Advocate, in writing, of the further information or the refusal as soon as practicable.
(5) A Public Interest Advocate may make submissions:

(a) to the Minister about matters relevant to:

(i) a decision to issue, or refuse to issue, a journalist information warrant under section 180L; or

(ii) a decision about the conditions or restrictions (if any) that are to be specified in such a warrant; or

(b) to a Part 4-1 issuing authority about matters relevant to:

(i) a decision to issue, or refuse to issue, the warrant under section 180T; or

(ii) a decision about the conditions or restrictions (if any) that are to be specified in such a warrant.

(6) In making a submission under subsection (5), a Public Interest Advocate must have particular regard to protecting the public interest and the need to act as a contradictor to the person requesting, or applying for, the journalist information warrant.

Regulations

(7) The regulations may prescribe matters relating to the performance of the role of a Public Interest Advocate.

Declaration not legislative instrument

(8) A declaration under subsection (1) is not a legislative instrument.

Amendment (4) amends proposed section 180L(2) to alter the circumstances in which the minister must not issue a journalist information warrant. The changes to the proposed subsection provide that the minister must not issue a warrant where reasonable notice of the request has not been given to the Public Interest Advocate. Further, reasonable notice must also be given in writing to the person to whom the warrant relates. The minister must also invite the person to make a submission on the request. The minister must also be satisfied that the organisation's functions would extend to the making of authorisations regarding that particular person and that the public interest in ensuring the warrant outweighs the public interest in protecting the confidentiality of the identity of the source.

These amendments also provide that the minister must give the greatest weighting to the public interest provisions set out in proposed subsection (2)(b). These amendments will ensure that paramount consideration is given to public interest matters by the minister when considering whether to issue a journalist information warrant. The aim of these provisions is to ensure that the greatest consideration is given to the impact of issuing such warrants on the public interest and to provide basic requirements that must be met in terms of notice to the Public Interest Advocate and in allowing a journalist a right of reply in considering the public interest.

Senator Collins in her contribution made mention of the US system. It is true, as the Attorney has said, that there isn't a system of warrants as such and that the material—metadata—is retained by the NSA. As a result of a very unfortunate raid on Associated Press in Washington DC a couple of years ago, US Attorney General Eric Holder put in a number of protocols which have been evolving, but essentially the general rule is that journalists—media organisations—are consulted before that metadata is accessed so they can argue the access. I think one of the minister's advisers is shaking his head—maybe it is at me; maybe I have that wrong; I will be happy to stand corrected. That is my understanding of the protocols
and guidelines I have seen, and I am sure we will get to this at some other time. I am conscious of the time. Could I get the Chairman's guidance—are we going to 11.50?

The CHAIRMAN: Till 10 past 12.

Senator XENOPHON: I should know this by now, shouldn't I? Thank you.

Senator Brandis: Don't take that as an invitation to go longer!

Senator XENOPHON: No, I will not be prolix or even otiose; I just want to get on with it! In the United States, it can be said that media organisations are, as a general rule, consulted in relation to the access to metadata. That is my understanding of the protocols that have existed. Items (5) and (6) are consequential to the passage of item (4). Item (7) inserts a note after proposed section 180R to specify that the public interest advocate must be notified—that has been dealt with.

Item (8) amends the bill so that the same requirements of the minister as set out in item (4) of my amendments also apply to the issuing authority. This ensures consistency and that the public interest is a paramount consideration in the decision made by any authority in issuing a journalist information warrant. Item (9) amends proposed section 180X, which relates to the public interest advocates. These amendments set out the requirement for a notice to be provided to the advocates in relation to journalist information warrants. The amendments provide that the notice must be provided in writing and include the information or material that was provided with a request or application and any other information as prescribed by regulation.

Further, the amendments include provisions to ensure that the advocate will be provided with any further information requested of the relevant authorities by the minister or issuing authority, or notified if the request to provide information is refused. The amendments also provide that the advocate may make submissions to the minister or the issuing authority about matters relevant to the issuing of the warrant. The advocate may also specify conditions or limitations to be placed on a warrant if necessary. The amendments also specify that the advocate must have particular regard to protecting the public interest and the need to act as a contradictor or devil's advocate to the person requesting the warrant. Further, the amendments provide that the regulations may prescribe matters relating to the role of the public interest advocate and that the declaration made by the minister or by the Prime Minister to declare a person as an advocate is not a disallowable instrument.

The aim of these amendments is to flesh out the role of the public interest advocate to ensure that it has specific roles and duties to maintain the public interest and act as a true advocate. The amendments I propose will provide greater protection for journalists through greater scrutiny of the journalist information warrant process. Without an active, appropriately focused advocate who has the ability to ask journalists or media organisations about aspects of the application, I think the public interest advocate will be quite circumscribed in what they can do. Also, I referred in my speech to the second reading debate to the sorts of concerns that Associate Professor Clinton Fernandes has raised about the public interest advocate, which I will not unnecessarily restate now.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:48): Senator Xenophon, I completely disagree with you. In the government's view, these amendments are
entirely unnecessary and some of the bases upon which you put them forward are wrong in fact.

Let us go back to first principles here. This legislation maintains a status quo, which is a warrantless system. Subject to certain oversight obligations, including a public reporting obligation, which we discussed earlier on, nevertheless, access to metadata as opposed to content is warrantless; access to content requires a warrant. Against that general rule, the government has—without conceding the necessity to do so but I can understand the arguments nevertheless—agreed with the opposition to include a special set of provisions for journalists, in proposed division 4C. Within that special set of exceptions to journalists to protect the relationship between them and their sources, we have, uniquely, required warrants.

Furthermore, in creating the design of the warrant system so far as it applies to journalists, we have included extensive public interest criteria, which are set out in proposed section 180L—public interest criteria that do not exist in that form in other Commonwealth legislation which creates warrant regimes. On top of that—in superaddition to that—we have, by section 180X, created this new office of public interest monitor to act, as you rightly say, as a kind of devil's advocate or an advocate for the public interest, to contest whether or not a warrant should issue.

That is unique. No warrant regime under Commonwealth law includes the creation of a specific public interest advocate whose peculiar role is to make the issuance of a particular kind of warrant contestable. So we have piled Pelion upon Ossa here in order to create as many safeguards as can possibly be made.

But let us remember that what this bill is about is the facilitation of criminal investigations. Although journalists and, indeed, the sources of journalists are not the target or the focus or the purpose of this bill—because, as I said before, I have never met a journalist who was a terrorist or a paedophile or an organised criminal—nevertheless, in the very unlikely situation where the police did want to investigate a journalist or a source in relation to the matters which are the object of this bill, you can immediately see how advance notice to the person who was the subject of their concern would prejudice the investigation.

Senator Xenophon, you say that such a system as you propound exists in the United States. You are wrong. Let me give you the advice that I have in relation to the American system. In the American system, the most recently issued Department of Justice guidelines require that the Attorney-General approve any subpoena ordering a carrier to disclose metadata for the purpose of identifying a journalist source. Those guidelines do not require agencies to notify journalists before such a subpoena is issued. I am informed that they do not. Is that right, Mr Bassi? My adviser Mr Justin Bassi here, who is the person you spied shaking his head before, is extremely well informed about these matters, about the American system. Indeed, I notice he is even wearing his CIA cufflinks today in honour of the occasion—just to feed the paranoia of Senator Ludlam over there. That is not the way the American system works. Your amendments address a problem that does not exist. This legislation could hardly have been based on a more carefully constructed set of safeguards.

**Senator XENOPHON** (South Australia) (11:53): Can the Attorney concede a couple of things? No; can he acknowledge or can he just respond that there is no requirement in this legislative regime on the Public Interest Advocate for the Public Interest Advocate to in any
way necessarily be a devil's advocate, to be a contradicter, in terms of the application being sought?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:54): I do not acknowledge that at all. Section 180X, which sets out the role of the Public Interest Advocate, describes the role of the Public Interest Advocate in subsection (2), which gives the Public Interest Advocate the role to make submissions to a minister about matters relevant to a decision to issue, or refuse to issue, a journalist information warrant under section 180L, or a decision about the conditions or restrictions, if any, that are to be specified in such a warrant. If you go then to section 180L, it states those matters which the minister must have regard to in subsection (2) include the public interest consideration set out with some particularity over six subparagraphs in subsection (2)(b). Those are the very matters, including that elaborately articulated series of public interest considerations which the minister must consider, which the Public Interest Advocate must also consider.

It is not necessarily the case that the Public Interest Advocate will be a contradicter of the minister; but, in an appropriate case, having regard to the public interest considerations, he may be. It is his role to be the Public Interest Advocate. That is the name of the statutory office, and the function of the statutory office is to, as it were, second-guess the minister's judgement in relation to those six particular aspects of the public interest set out in subsection 180L(2)(b).

Senator XENOPHON (South Australia) (11:56): I do not have a set of CIA cufflinks, unlike Mr Bassi. I do not want a set; it's okay. I say this to your advisers; to your team: I have a great regard for them. You have a pretty exceptional team, although some of them did take me to task quoting Taylor Swift rather than Britney Spears. I think we are both missing out on cultural references, Attorney, in respect of that!

Senator Jacinta Collins: You need to get out more.

Senator XENOPHON: Senator Collins, that is right. I do not have a life, not in this place.

Senator Leyonhjelm interjecting—

Senator XENOPHON: I am not being prolix, Senator Leyonhjelm. I do want to put this on notice, because I have made the assertions I have made in good faith in terms of the Department of Justice in the United States and their media policies. I am happy to table or provide a copy of this material to the Attorney's office. It says:

The first and most significant policy change would be to reverse and expand the presumption concerning notice to, and negotiations with, affected members of the news media whenever Department attorneys seek access to their records related to newsgathering activities. In other words, metadata. It goes on to say:

The presumption will ensure notice in all but the most exceptional cases.

I can go on, but that is the basis of the material that I read over a number of months now that there is, as a general policy, an ability to negotiate, an ability for there to be discussions, with media organisations in respect of this. That is the practice following the disastrous Associated Press raid in Washington DC a couple of years ago. That is the distinction. Obviously, there are exceptions that, if it is a matter of urgent national security in the context of people's safety being at risk, those rules are thrown out the window. But, as a general proposition, I am very
happy to provide not a set of cuff links but the material that I have downloaded from the US Department of Justice that does talk about protocols and about how, as a general rule, there are negotiations before the access to metadata. So it is not a criticism of your very fine advisers but the basis upon which I made those statements in relation to that.

Senator LUDLAM (Western Australia) (11:58): Briefly, the Australian Greens will be supporting the amendments that Senator Xenophon has brought forward for the simple reason that anything which improves the operation of the Public Interest Advocate is, we think, a profoundly good idea. Senator Brandis took enormous umbrage a short time ago at my admittedly loose language when I pointed out that the government relatively frequently 'instruct'—which was the word I used—the Federal Police to investigate the source of various leaks. They do not instruct; you are quite right, Senator Brandis. But you regularly refer matters to the Federal Police and then they get to choose. One example that is pretty close to my heart, and Senator Hanson-Young addressed it in her second reading contribution, is that at least eight times which we are aware of the Department of Immigration and Border Protection referred matters that appeared in The Guardian and The West Australian newspapers about sexual abuse, child sexual abuse, violence, self-harm, attempted suicides, rape and catastrophic mistreatment of human beings in our care. Instead of investigating the issues that have been raised in the public interest by these publications, the Department of Immigration and Border Protection—at least eight times that we are aware of—has asked the Federal Police to try and find out who is talking. That is the kind of repellent behaviour that provides part of the reason why we are supporting Senator Xenophon's amendment.

It is my understanding that the way the public interest monitors in Queensland and Victoria work is that they are contractors. They are not there to decide whether or not a particular warrant is in the public interest; they are actually there to push back and argue for the narrowing of warrants—for example, to circumscribe the number of people, the number of devices or whatever it is. They are there to improve the quality, and evidence that we took in our telecommunications interception inquiry, as I mentioned before, indicated that processes improved in Victoria and Queensland as a result. My question to Senator Brandis is: would it be your expectation, on your reading of the way that the government has drafted these amendments, that the Public Interest Advocate, in performing the role that you have established, would be arguing against referrals by the Department of Immigration and Border Protection, or could we expect that those investigations by the Federal Police would continue?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (12:01): I do not know enough about the acts that establish the public interest monitors in Queensland or in Victoria to tell you whether they are specifically mandated by their acts to be a contractor. Obviously, I am not going to talk about particular cases that may be the subject of an investigation or speculate about how this provision might bear on those cases, the facts of which I am not really familiar with.

It is enough to say, I think, that the role of the public interest monitor is to ensure that the public interest considerations that are set out quite exhaustively in the act are properly articulated to the relevant decision maker. It may conceivably be that the public interest monitor independently arrives at the view that the issuance of a warrant is in the public interest, applying those criteria in proposed subsection 180L(2)(b), but that is entirely a matter
for him. If I may use an analogy with the way courts operate, I would envisage that the public interest monitor would be like an amicus curiae: they would bring an independent mind to bear on the application of these statutory tests to the particular case and, if they were of the view that the public interest was not served by the issuance of a warrant, then they would contest the judgement of the minister. If they were of the view that the public interest was not served by the refusal of a warrant, they could contest that judgement too, I dare say. He or she is to be an independent mind to independently assess and, where appropriate, contradict the minister in the assessment of the application of the public interest criteria to a particular request for a warrant.

Senator XENOPHON (South Australia) (12:03): I appreciate the Attorney’s response, but unless they are required to be a contradictor—I am not sure whether the Attorney is proposing to do so in respect of the regulations yet to be promulgated once this bill passes—that changes the very nature of their role, in my view. It makes a very substantial difference in the way that they would deal with particular matters. In the context of these amendments—and in the context of having, in my view and in the views of Senators Leyonhjelm, Ludlam, and the Australian Greens, a more robust mechanism in place—does the Attorney concede that metadata retention can be used for sections 70 and 79 of the Crimes Act, which are the so called leak provisions?

We are talking about the case of Mr Kessing, who maintains to this day his innocence. That was a case where he wrote a report about airport security that was subsequently leaked to The Australian. It was a report that prompted the Howard government, to their credit, to implement a $240 million upgrade to airport security, after a subsequent report by Sir John Wheeler. Does the Attorney acknowledge that, in the context of metadata surveillance, section 70 and 79 of the Crimes Act would be acts to which metadata access would relate?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (12:05): I do not have those provisions in front of me, but I have told you on many occasions now—by reference to the identified agencies and the proposed scope of the act—who can access metadata and for what purposes it can be accessed.

In relation to what you have to say about the public interest monitor, can I just make this point: I do not think that the public interest monitor should necessarily be a contradictor. As Mr Bassi reminds me, there is an intrinsic tension between saying that the public interest monitor should be a contradictor and that the public interest monitor should be independent. If there is a statutory requirement that the public interest monitor has to be a contradictor, then what it means is that the public interest monitor cannot operate independently; he cannot bring an independent mind to bear on his own appraisal of whether the criteria in proposed subsection 180L(2)(b) are satisfied or not. If you say he has a statutory obligation to be a contradictor, you are saying he cannot be an independent officer. I think that that is a very bad principle.

Senator JACINTA COLLINS (Victoria) (12:06): If I might just add to this discussion: not to be contrary, but, Senator Brandis, I do not think that amicus curiae is the best analogy to use in this situation. From a Labor position, we think it is very clear that these provisions have been designed to protect journalists and to advocate the public interest.
Senator XENOPHON (South Australia) (12:07): May I suggest to the Attorney that sections 70 and 79 of the Crimes Act relate, in broad terms, to whistleblowers, to the leak of information. And, as Philip Dorling, the investigative journalist, said, technically you could be done for saying how many paperclips Centrelink has, in respect of that itself being an unauthorised disclosure of information. Whistleblowers will be affected by this in terms of the context of sections 70 and 79, because the AFP is the relevant authority; it is one of the authorities prescribed by this bill.

The consequences of metadata surveillance are that it will be so much easier for sources to be tracked down. It will have an effect on investigative journalism in this country in the sense that sources and journalists will have to avoid pretty much any electronic communication in order to communicate with each other. The consequence of that will be, I think, to make the job of investigative journalists in this country that much more difficult in the context of other legislative frameworks to do with whistleblower protections, to do with sections 70 and 79 of the Crimes Act.

That is why, if there is going to be a public interest advocate—and I commend the government and the opposition for at least having the public interest advocate up there as a matter to be considered in this bill—I agree with the comments of Professor Clinton Fernandes from the Australian Centre for Cyber Security at the University of New South Wales. He said that there is a real problem that the public interest advocate could well be flying blind and have one hand tied behind their back in the absence of knowing, being aware of, what arguments the journalist may have to say, ‘We want to protect the source for these reasons, because there are a whole range of factors that need to be considered in the context of the story that we are investigating.’

I will have a discussion with your advisors and with you, Attorney, if you are minded to, about the US approach. I am only relying on information from the US Department of Justice. But there does seem to be an approach where media organisations are consulted much more comprehensively than is being suggested in this particular bill.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (12:10): The considerations that Senator Xenophon refers to are the very reason we have a public interest monitor, and the public interest is explained in the act.

Progress reported.

PETITIONS

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

Early Learning and Child Care

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

The petition of the undersigned shows:

Access to affordable childcare is vital for parents of young children to participate in the workforce.

Government childcare assistance to families has not kept up with the cost of childcare, resulting in significant increases in families' out of pocket expenses.

Access to quality early learning is vital for Australian children to get the best possible start in life, particularly for children who are disadvantaged and likely to strut school developmentally behind their peers.
There would be significant economic and social benefits to Australia if more families were able to afford quality early learning and childcare.

Your petitioners ask that the Senate:

- Increase funding for early learning and childcare and make it more affordable for Australian families;
- Continue reforms to raise the quality of early learning and childcare; and
- Continue to fund universal access to preschool and kindergarten for all children.

by Senator Xenophon (from 12,259 citizens).

Affordable Child Care

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

The petition of the undersigned shows:

Access to affordable childcare is vital for parents of young children to participate in the workforce.

Government childcare assistance to families has not kept up with the cost of childcare, resulting in significant increases in families’ out of pocket expenses.

Access to quality early learning is vital for Australian children to get the best possible start in life, particularly for children who are disadvantaged and likely to start school developmentally behind their peers.

There would be significant economic and social benefits to Australia if more families were able to afford quality early learning and childcare.

Your petitioners ask that the Senate:

i Increase funding for early learning and childcare and make it more affordable for Australian families;
ii Continue reforms to raise the quality of early learning and childcare; and
iii Continue to fund universal access to preschool and kindergarten for all children.

by Senator Xenophon (from 3,086 citizens).

Petitions received.

NOTICES

Presentation

Senator O'Sullivan to move:

That the Senate recognises:

(a) the addition of Peru as an export market for kangaroo meat, with the first commercial size shipment of about 1 000 kg of product leaving our shores in February 2015 and headed for supermarket shelves in Lima; and

(b) that the Federal Government, through the Department of Agriculture and Austrade, has been working with the Kangaroo Industry Association of Australia and the exporter since 2008 to negotiate market access to Peru, and that these extensive negotiations between Australian and Peruvian authorities included agreements on import conditions, health certification and the process for approval of Australian export establishments.

Senator Whish-Wilson to move:

That the following matter be referred to the Environment and Communications References Committee for inquiry and report by 8 April 2016:
The threat of marine plastic pollution in Australia and Australian waters, with particular reference to:

(a) the review of current research and scientific understanding of plastic pollution in the marine environment;

(b) sources of marine plastic pollution;

(c) the impacts of marine plastic pollution, including impacts on species and ecosystems, fisheries, small business, and human health;

(d) measures and resourcing for mitigation; and

(e) any other relevant matters.

Senator Leyonhjelm to move:

That the Amendment to List of CITES Species, Declaration of a stricter domestic measure, made under subsection 303CB(1) of the Environment Protection and Biodiversity Conservation Act 1999, be disallowed.

Fifteen sitting days remain, including today, to resolve the motion or the instrument will be deemed to have been disallowed.

COMMITTEES

Selection of Bills Committee

Report


Ordered that the report be adopted.

Senator BUSHBY: I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE REPORT NO. 4 OF 2015

1. The committee met in private session on Wednesday, 25 March 2015 at 7.23 pm.

2. The committee resolved to recommend:

That—

(a) the provisions of the Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015 be referred immediately to the Environment and Communications Legislation Committee for inquiry and report by 8 May 2015 (see appendices 1, 2 and 3 for statements of reasons for referral);

(b) the provisions of the Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015 be referred immediately to the Economics Legislation Committee for inquiry and report by 13 May 2015 (see appendices 4 and 5 for statements of reasons for referral);

(c) the Construction Industry Amendment (Protecting Witnesses) Bill 2015 be referred immediately to the Education and Employment Legislation Committee for inquiry and report by 8 May 2015 (see appendix 6 for a statement of reasons for referral);

(d) contingent upon its introduction in the House of Representatives, the provisions of the Copyright Amendment (Online Infringement) Bill 2015 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 13 May 2015 (see appendices 7, 8 and 9 for statements of reasons for referral);
(e) the provisions of the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 13 May 2015 (see appendix 10 for a statement of reasons for referral);

(f) contingent upon its introduction in the Senate, the Food Standards Amendment (Fish Labelling) Bill 2015 be referred immediately to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 12 May 2015 (see appendix 11 for a statement of reasons for referral);

(g) the provisions of the Governance of Australian Government Superannuation Schemes Legislation Amendment Bill 2015 be referred immediately to the Finance and Public Administration Legislation Committee for inquiry and report by 7 May 2015 (see appendix 12 for a statement of reasons for referral);

(h) the International Aid (Promoting Gender Equality) Bill 2015 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 17 June 2015 (see appendix 13 for a statement of reasons for referral);

(i) the provisions of the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 be referred immediately to the Education and Employment Legislation Committee for inquiry and report by 16 June 2015 (see appendix 14 for a statement of reasons for referral); and

(j) the provisions of the Social Services Legislation Amendment Bill 2015 be referred immediately to the Community Affairs Legislation Committee for inquiry and report by 15 June 2015 (see appendices 15 and 16 for statements of reasons for referral).

3. The committee resolved to recommend:

That the following bills not be referred to committees:

- Food Standards Australia New Zealand Amendment Bill 2015
- Norfolk Island Legislation Amendment Bill 2015
- Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015
- A New Tax System (Medicare Levy Surcharge Fringe Benefits) Amendment Bill 2015
- Health and Other Services (Compensation) Care Charges Amendment (Norfolk Island) Bill 2015
- Health Insurance (Approved Pathology Specimen Collection Centres) Tax Amendment (Norfolk Island) Bill 2015
- Health Insurance (Pathology)(Fees) Amendment (Norfolk Island) Bill 2015
- Aged Care (Accommodation Payment Security) Levy Amendment (Norfolk Island) Bill 2015
- Private Health Insurance (Risk Equalisation Levy) Amendment (Norfolk Island) Bill 2015
- Statute Law Revision Bill (No. 2) 2015.

The committee recommends accordingly.

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

- Australian Centre for Social Cohesion Bill 2015
- Automotive Transformation Scheme Amendment (Sustainable Jobs in the Auto Component Industry) Bill 2015
- Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2015
- Corporations Amendment (Publish What You Pay) Bill 2014
- Defence Legislation Amendment (Parliamentary Approval of Overseas Service) Bill 2015
Defence Legislation (Enhancement of Military Justice) Bill 2015
Fair Work (Registered Organisations) Amendment Bill 2014 [No. 2]
Judiciary Amendment Bill 2015
Law Enforcement Legislation Amendment (Powers) Bill 2015
Motor Vehicle Standards (Cheaper Transport) Bill 2014
Social Security and Other Legislation Amendment (Caring for Single Parents) Bill 2014
Tax and Superannuation Laws Amendment (Employee Share Schemes) Bill 2015.

(David Bushby)
Chair
26 March 2015

APPENDIX 1
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015
Reasons for referral/principal issues for consideration:
This bill has the potential to drastically increase the amount of advertising carried by one of Australia's two public broadcasters, SBS. This will have a significantly detrimental impact upon the commercial broadcasting sector and has also been strenuously objected to by consumer groups.
Possible submissions or evidence from:
Seven, Nine and Ten television stations, FreeTV, Save our SBS, SBS, the ABC, the Department of Communications.
Committee to which bill is to be referred:
Senate Standing Committee on Environment and Communications.
Possible hearing date(s):
May and June 2015
Possible reporting date:
August 11, 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:
Communications Legislation Amendment (585 Advertising Flexibility and Other Measures) Bill 2015
Reasons for referral/principal issues for consideration:
   To allow consideration of proposed changes to allow greater flexibility for SBS in relation to advertising.

Possible submissions or evidence from:
   SBS
   FreeTV
   Department of Communications
   Federation of Ethnic Community Council
   Advertising Agencies
   Save Our SBS
   Screen Producer Australia (independent producers' especially documentary makers)

Committee to which bill is to be referred:
   Senate Environment and Communications Legislation Committee

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

Possible reporting date:
   8 May 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:
   Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015

Reasons for referral/principal issues for consideration:
   To consider the impact on the Australian broadcasting industry, in particular commercial television networks.
   To assess the impact on the budget of the Special Broadcasting Service
   To assess the impact of advertising changes on the ability of the SBS to fulfil its charter obligations.

Possible submissions or evidence from:
   Department of Communications
   SBS
   Free TV Australia
   Save our SBS inc.
   Free-to-air Network (Seven, Nine, Ten)
   Advertising companies
Committee to which bill is to be referred:
   Senate Environment and Communications Legislation Committee
Possible reporting date:
   8 May 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:
   Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015
Reasons for referral/principal issues for consideration:
   To consider the potential food safety and regulatory impacts of the bill
Possible submissions or evidence from:
   ACCC, food safety authorities, consumer protection organisations and experts, industry representatives.
Committee to which bill is to be referred:
   Senate Economics Legislation Committee
Possible hearing date(s):
   Determined by committee
Possible reporting date:
   13 May 2015
(signed)
   Senator McEwen
   Whip/Selection of Bills Committee Member

APPENDIX 5
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
   Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015
Reasons for referral/principal issues for consideration:
   It is not clear that the current requirements to report some types of food related deaths, injury and illnesses (events) to the ACCC are duplicative of other requirements, or whether the reporting to the ACCC is the only reporting of such events and/or the only national data collection of such events.
Possible submissions or evidence from:
   Australian Competition and Consumer Commission (ACCC)
Food Standards Australia New Zealand (FSANZ)
Choice
Committee to which bill is to be referred:
Economics
Possible hearing date(s):
29 May 2015
Possible reporting date:
13 May 2015
(signed)
Senator Siewert
Whip/Selection of Bills Committee Member

APPENDIX 6
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee:
Name of bill:
Construction Industry Amendment {Protecting Witnesses) Bill 2015
Reasons for referral/principal issues for consideration:
To ensure a thorough and complete assessment of the potential impact of the bill on workers' rights
Possible submissions or evidence from:
Unions, employers, academics, civil libertarians, Department of Employment
Committee to which bill is to be referred:
Senate Education and Employment Legislation Committee
Possible reporting date:
8 May 2015
(signed)
Senator McEwen
Whip/Selection of Bills Committee Member

APPENDIX 7
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Copyright Amendment (Online Infringement) Bill 2015
Reasons for referral/principal issues for consideration:
It is anticipate that this bill will detail highly controversial measures relating to the ability of the entertainment industry to apply for court orders to force Internet service providers to block overseas file-sharing websites, in order to stop copyright infringement.
It is anticipated that there will be strongly divergent views from different industry sectors, civil society and consumer groups over this legislation, and so the Senate should inquire into the legislation in detail.

In addition, the Government has stated that this legislation is closely linked to a telecommunications industry code currently being considered by industry self-regulatory body the Communications Alliance. The Communications Alliance has published a draft of this code. It is requested that the terms of reference for this bill inquiry include consideration of this industry code, as it is explicitly linked with the Copyright Amendment (Online Infringement) Bill 2015 and they are planned to work in tandem.

Possible submissions or evidence from:

Telcos such as Telstra, Optus, iiNet, Vodafone and TPG, film and TV industry associations and studios, television stations such as Seven, Nine, Ten, SBS and the ABC, Electronic Frontiers Australia, Choice, ACCAN, other consumer organisations, civil liberties groups, search giants and social networking companies such as Google and Facebook and the AIMIA Digital Policy Group.

Committee to which bill is to be referred:

Senate Standing Committee on Legal and Constitutional Affairs.

Possible hearing date(s):

May and June 2015

Possible reporting date:

September 8, 2015

(signed)

Senator Siewert

Whip/Selection of Bills Committee Member

APPENDIX 8

SELECTION OF BILLS COMMITTEE

Proposal to refer a bill to a committee:

Name of bill:

Copyright Amendment (Online Infringement) Bill 2015

Reasons for referral/principal issues for consideration:

Adequacy of proposed measures to prevent online copyright infringement;
Adequacy of proposed measures to ensure that injunctions will not apply to non-infringing online locations.

Possible submissions or evidence from:

Australian Communications Alliance
Australian Digital Alliance
ARIA
APRA
Australian Federation against Copyright Theft
Australian Consumers Association
AIMIA
AHEDA
Australian Publishers Association
Australian Society of Authors

**Committee to which bill is to be referred:**
Senate Legal and Constitutional Affairs Legislation Committee

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

**Possible reporting date:**
12 May 2015

(signed)
Senator Fifield
Whip/Selection of Bills Committee Member

**APPENDIX 9**

**SELECTION OF BILLS COMMITTEE**
Proposal to refer a bill to a committee

**Name of bill:**
Copyright Amendment (Online Infringement) Bill 2015

**Reasons for referral/principal issues for consideration:**
To scrutinise detail of proposed injunction scheme and consider effectiveness and any unintended consequences.

**Possible submissions or evidence from:**
Attorney-General’s Department, Department of Communications, telcos, digital companies, education sector, entertainment industry, the arts community.

**Committee to which bill is to be referred:**
Senate Legal and Constitutional Affairs Legislation Committee

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

**Possible reporting date:**
13 May 2015

(signed)
Senator McEwen
Whip/Selection of Bills Committee Member

**APPENDIX 10**

**SELECTION OF BILLS COMMITTEE**
Proposal to refer a bill to a committee:

**Name of bill:**
Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015
Reasons for referral/principal issues for consideration:
To explore the purpose and effect of Schedule 5 and 6, and to hear from relevant stakeholders regarding their view of the implications of these matters

Possible submissions or evidence from:
- Attorney General's Department
- Law Council of Australia
- State Attorney's General
- Bar Council
- Rob Hulls (Centre for Innovative Justice)

Committee to which bill is to be referred:
- Senate Legal and Constitutional Affairs Legislation Committee

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

Possible reporting date:
13 May 2015

(signed)
Senator McEwen
Whip/Selection of Bills Committee Member

APPENDIX 11
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee:
Name of Bill:
Food Standards Amendment (Fish Labelling) Bill 2015

Reasons for referral/principal issues for consideration:
In undertaking the inquiry, the Committee should consider:
1. The previous inquiry into the labelling of seafood and seafood products by the Senate Rural and Regional Affairs and Transport References Committee;
2. The need for consumers to have access to accurate country of origin labelling for food provided for immediate consumption;
3. The need to support Australian products and producers, and how country of origin labelling can assist in this aim;
4. The current fish country of origin labelling requirements in the Northern Territory; and
5. Any related matters

Possible submissions or evidence from:
- Northern Territory Seafood Council
- Wildcatch SA
- Australian Barramundi Farmers Association
- Australian Prawn Farmers Association
- Restaurant and Catering Australia
Committee to which the bill is to be referred:
    Senate Rural and Regional Affairs and Transport Committee (Legislation)
Possible hearing date(s):
    April 2015
Possible reporting date:
    12 May 2015
(signed)
    Senator Siewert
    Whip/Selection of Bills Committee Member

APPENDIX 12
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee:
Name of bill:
    Governance of Australian Government Superannuation Schemes Legislation Amendment Bill 2015
Reasons for referral/principal issues for consideration:
    To consider the impact of this Bill on the employment conditions and future employment opportunities within the Australian Public Service (APS) of ComSuper employees who will be impacted by the provisions of bill
Possible submissions or evidence from:
    CSC
    ComSuper
    CPSU
Committee to which bill is to be referred:
    Senate Finance and Public Administration Committee
Possible reporting date:
    7 May 2015
(signed)
    Senator McEwen
    Whip/Selection of Bills Committee Member

APPENDIX 13
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee:
Name of bill:
    International Aid (Promoting Gender Equality) Bill 2015
Reasons for referral/principal issues for consideration:
    Two of the Millennium Development Goals (3 and 5) state the importance of gender equality and the empowerment of all women and girls. Our Foreign Minister has stated a recognition that the
empowerment of women and girls is fundamental to promoting economic growth and stronger aid-recipient communities.

An inquiry offers the chance to investigate the following:

Australia's official development and humanitarian assistance does not recognise that simply increasing economic activity in the recipient country fails to address the specific historical and cultural bases for gender inequality.

There is no legislated requirement that gender equality be considered in the delivery of aid programs, regardless of any stated intention.

In some cases, projects with a simple aim of increasing economic activity may indeed exacerbate these problems.

Possible submissions or evidence from:


Committee to which bill is to be referred:

Joint Standing Committee on Foreign Affairs, Defence and Trade (Lee to participate or sub)

Possible hearing date(s):

Post budget, June/August

Possible reporting date:

Post budget, August.

(signed)

Senator Siewert

Whip/Selection of Bills Committee Member

APPENDIX 14

SELECTION OF BILLS COMMITTEE

Proposal to refer a bill to a committee

Name of bill:

Safety, Rehabilitation and Compensation Amendment {Improving the Comcare Scheme) Bill 2015

Reasons for referral/principal issues for consideration:

To ensure a thorough and complete assessment of its potential impact on workers' compensation rights and entitlements, occupational health and safety coverage for workers, and to examine any unforeseen consequences arising from the Bill.

Possible submissions or evidence from:

Unions, employers, academics, Comcare, Department of Employment

Committee to which bill is to be referred:

Senate Education and Employment Legislation Committee

Possible reporting date:

16 June 2015
APPENDIX 15
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee:
Name of bill:
Social Services Legislation Amendment Bill 2015
Reasons for referral/principal issues for consideration:
To better scrutinise the purpose and effects of the Bill.
Possible submissions or evidence from:
Department of Social Services
Patrick McGee, Aboriginal Disability Justice Campaign
ACOSS
Uniting Care
Frank Quinlan, Mental Health Australia
Committee to which bill is to be referred:
Senate Community Affairs Legislation Committee
Possible reporting date:
15th June 2015
(signed)
Senator McEwen
Whip/Selection of Bills Committee Member

APPENDIX 16
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Social Services Legislation Amendment Bill 2015
Reasons for referral/principal issues for consideration:
Denying people in incarceration (but not sentenced to a crime) social security may have a serious impact on their ability to maintain a basic standard of living as they transition out of secure facilities. It may also be a violation of human rights under Australia’s international commitments. These issues should be considered
Possible submissions or evidence from:
Australian Lawyers for Human Rights Northern Territory
Blake Dawson Legal Firm of Sydney
Brain Injury Australia
Central Australian Aboriginal Legal Aid Service
Darwin Community Legal Centre
First People’s Disability Network Australia
Maurice Blackburn Legal Firm of Melbourne
National Council of Intellectual Disability
Northern Australian Aboriginal Justice Agency
Northern Territory Council of Social Services
Northern Territory Legal Aid
Northern Territory Public Guardian (Alice Springs Office)
NSW Council for Intellectual Disability
People with Disability Australia
Synapse of Queensland
Patrick McGee, Guardian, ADJC Coordinator
Professor Eileen Baldry, University of New South Wales and President of the New South Wales Council of Social Services
The Honourable Mr Alistair Nicholson, retired Chief Justice of the Family Court

Committee to which bill is to be referred:
Community Affairs

Possible hearing date(s):
19 May

Possible reporting date:
June 18th 2015

(signed)
Senator Siewert
Whip/Selection of Bills Committee Member

B U S I N E S S

Rearrangement

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:11): by leave—I move:
That consideration of general business under standing order 57(1)(d)(xi) shall not be proceeded with today.
Question agreed to.

Leave of Absence

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (12:11): by leave—I move:
That leave of absence be granted to the following senators for today:
(a) Senator Cormann on account of ministerial business;
(b) Senators Day and Smith on account of personal reasons.
Question agreed to.
Leave of Absence

Senator McEWEN (South Australia—Opposition Whip in the Senate) (12:12): by leave—I move:
That leave of absence be granted to Senator Peris for today, for personal reasons.
Question agreed to.

Rearrangement

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:12): by leave—I move:
That the order of the Senate of 25 March 2015, relating to the hours of meeting and routine of business, be varied as follows:
Omit paragraph (2)(d), substitute:
(d) if discovery of formal business is interrupted by the operation of paragraph (c), it shall be resumed after consideration of the bills listed in that paragraph and, subsequently, government business shall be called on and considered till not later than 2pm.
I seek leave to make a short statement.
Leave granted.

Senator FIFIELD: I do not think the chamber will object to what has been proposed here. Given the number of notices of motion that we have today and the fact that it is probably unlikely that they will be concluded before we hit the hard marker of 12.45, in the event—which I think will be the case—that we finish non-controversial legislation before a lot of time expires, we would return after non-controversial legislation but before question time to the remaining notices of motion that may not be dealt with in the next 30 minutes.
Question agreed to.

NOTICES

Postponement

The following item of business was postponed:
General business notice of motion no. 693 standing in the name of Senator Ludlam for today, relating to the banning of nuclear weapons, postponed till 12 May 2015.

COMMITTEES

Reporting Date

The Clerk: Notifications of extensions of time for committees to report have been lodged in respect of the following:
Legal and Constitutional Affairs References Committee—gun related violence—until 9 April 2015;
Legal and Constitutional Affairs Legislation Committee—Regulator of Medicinal Cannabis Bill 2014—until 21 May 2015;
Rural and Regional Affairs and Transport References Committee—airport and aviation security—until 21 May 2015;
Rural and Regional Affairs and Transport References Committee—Australia's sugar industry—until 21 May 2015
The PRESIDENT (12:14): Does any senator wish to have the question put on any of those motions? There being none, we will move on.

MOTIONS

Centenary of Anzac

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:15): by leave—At the request of Senator Ronaldson, I, and also on behalf of Senators Ronaldson, Scullion, Wong, Milne, Day, Lazarus, Wang, Madigan, Xenophon, Muir and Lambie, move:

That the Senate—

(a) notes that:

(i) 25 April 2015 marks the 100th anniversary of the ANZAC landing at Gallipoli in Turkey,

(ii) the landing marked the beginning of a nine-month long campaign which cost 8,709 Australian lives,

(iii) thousands of Australian personnel were wounded during the Gallipoli campaign,

(iv) Australians fought together with forces from New Zealand, Britain, Ireland, India, Pakistan, Nepal, Bangladesh, Canada and France, and

(v) communities across Australia will mark the 100th anniversary of the landing with commemorative ceremonies across the nation marking ANZAC Day, our national day of commemoration, reflection and remembrance; and

(b) calls on all Australians to participate in ANZAC Day commemorations on 25 April 2015 to reflect, remember and commemorate the service and sacrifice of all Australians who have served in the Australian Defence Force from the First World War until the present day, particularly the more than 102,000 who have made the supreme sacrifice in all wars, conflicts and peacekeeping operations over more than a century of service.

Question agreed to.

BILLS

Judiciary Amendment Bill 2015

First Reading

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:16): At the request of Senator Brandis, I move:

That the following bill be introduced: A Bill for an Act to consolidate the Australian Government Solicitor into the Attorney-General’s Department, and for related purposes. Judiciary Amendment Bill 2015.

Question agreed to.

Senator FIFIELD: 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 FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:16): I table the explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Judiciary Amendment Bill will support the consolidation of the Australian Government Solicitor (AGS) into the Attorney-General's Department.

The decision to consolidate AGS into the Department was announced in the 2014-15 Mid-Year Economic and Fiscal Outlook as part of the Government's Smaller Government Reform Agenda. This is a comprehensive package of reforms designed to improve the efficiency, effectiveness and focus of the Commonwealth public service. When fully implemented, they will reduce the number of government bodies by 251 since the last election. Our efforts to deliver a smaller and more rational government footprint will ensure a more flexible and unified public sector which is better able to respond to emerging pressures and ensure that services are best aligned to the evolving policy priorities of the Government.

The consolidation of AGS into the Attorney-General's Department will create opportunities for greater efficiency in the operation of the consolidated department. But the Government wants to make clear that AGS will maintain its own distinct functional identity within the Department, including the AGS name and its well-regarded independent brand. Its well-deserved professional reputation will be maintained. This will allow AGS to continue to operate effectively on a business as usual basis for its staff and its clients, and with the necessary level of professional independence within the Department.

Consolidation draws on the best aspects of both AGS and the Attorney-General's Department

It is of critical importance that the Government has a strong and expert government solicitor. The decision the government has made is to consolidate the AGS within the Attorney-General's Department, not to abolish it. AGS will continue to be the nation's leading provider of legal services to the federal government and its agencies. In fact, AGS and the Department have operated as one organisation in all but 15 of AGS's 110 years of operation.

AGS lawyers have a special understanding of the context in which the Commonwealth operates – and that the government needs tailored advice and practical solutions. These can be a legal solution, a policy solution or some combination of both. They consider issues from a whole-of-government perspective and take into account broader public policy goals.

The Attorney-General's Department will continue to carry out the central policy and coordinating functions of the Attorney-General's portfolio, with one of its key roles being to provide legal and legal policy advice to the Attorney-General as First Law Officer of the Commonwealth and chief legal adviser to Cabinet. It draws on highly-qualified legal policy
experts and legal practitioners with experience in dealing with a range of high priority, sensitive and time critical matters.

Consolidating the AGS into the Department will strengthen their respective capacities to support the Attorney-General as First Law Officer and chief legal adviser to Cabinet by providing a comprehensive source of authoritative advice on key Commonwealth legal and legal policy issues. It will also ensure that the Department and AGS are well-placed to deliver high quality legal services and legal policy advice on legal issues of importance to the Commonwealth and the most critical matters of state.

**Secretary's Review**

Following consolidation, the Secretary of the Department will conduct a review of legal services to identify efficiencies that can be gained in government legal costs. The review will encompass the role of in-house legal practices in Commonwealth departments and agencies, including how in-house advice is organised, to ensure more coordinated and aligned advice to the Government in the future.

The review will look to the Commonwealth legal services market as a whole and ultimately seek to deliver the best outcomes for the Government from the full array of legal services available.

The terms of reference for this review are yet to be developed, and both Government and private sector stakeholders will be invited to participate in the consultation process for the review. Any savings from the consolidation will also be quantified following this review.

**Key features of the Bill**

Schedule 1 to the Bill will amend the Judiciary Act to support consolidation.

Schedule 1 repeals references to AGS being a statutory corporation and its responsibilities as a separate corporate entity.

Instead, the Australian Government Solicitor will be a senior public servant within the Attorney-General's Department and will oversee a separate legal practice group and report to the Secretary of the Attorney-General's Department. The definition of AGS lawyers is updated to reflect that they will be employed under the Public Service Act 1999 framework working under the direction and supervision of the Australian Government Solicitor.

Consistent with ensuring business as usual and providing minimal change to existing operations, amendments have been made to enable the AGS to continue providing the same legal services to the same range of clients, and to continue to operate on a commercial and competitive basis for the great majority of its work.

Schedule 2 to the Bill makes the necessary consequential amendments to existing Commonwealth legislation with references to the AGS.

This includes amendments to the Director of Public Prosecutions Act 1983 to ensure that the AGS can continue to perform and exercise the Director's functions when requested pursuant to the existing DPP legislation.

Amendments to the Freedom of Information Act 1982 will ensure that AGS continues to be exempt from its operation. This ensures the confidentiality of AGS' legal advice and its relationship with its clients continues to be protected.
Schedule 3 provides transitional arrangements regarding the consolidation. The purpose of Schedule 3 is to ensure certainty and efficiency for existing AGS staff, clients and third parties that regularly engage with AGS.

Transitional matters addressed by the Bill include:

- assets and liabilities of the former AGS
- references in instruments to the former AGS
- legal proceedings of the AGS
- contracts which were entered into by the AGS
- exemption from State and Territory taxation
- reporting requirements of the AGS, and
- employee arrangements of the AGS.

The Schedule includes a general deeming provision to ensure that references in existing Commonwealth laws to AGS are taken to be references to the AGS under its new structure.

Finally, there is also a time limited transitional rule making power to enable a legislative instrument to be made to address unforeseen circumstances or unintended consequences arising from the consolidation within the year following commencement of the Bill.

Conclusion

AGS and the Attorney-General's Department enjoy a very close, productive and professional working relationship and have done so for many years. As I observed earlier, AGS and the Department have operated as one organisation in all but 15 of AGS's 110 years of operation. It has also been said that AGS is the custodian of the Commonwealth's legal corporate memory. This continuity is critical to providing trusted and relevant advice to the Commonwealth on critical issues for the Commonwealth.

Consolidation will only enhance this relationship—a relationship exemplified by the cooperation between AGS and the Department on significant matters such as Operation Sovereign Borders, the Royal Commissions and high priority, sensitive and time critical matters in constitutional law, national security law and public international law.

The Judiciary Amendment Bill will further improve the efficiency and effectiveness of a consolidated AGS in the Department, while at the same time bringing together some of the brightest legal minds in this country, improving the provision of Commonwealth legal services and streamlining the administration of law in Australia.

Debate adjourned.

PARLIAMENTARY ZONE

Approval of Works

The PRESIDENT (12:17): I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the following proposal for work within the Parliamentary Zone which was presented to the Senate on 24 March 2015, namely: Parliament House Security Upgrade Works—Perimeter Security Enhancements.

Question agreed to.
COMMITTEES

Joint Select Committee on Northern Australia

Meeting

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (12:18): I move:
That the Joint Select Committee on Northern Australia be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate, as follows:
(a) Tuesday, 12 May 2015;
(b) Tuesday, 16 June 2015; and
(c) Tuesday, 23 June 2015.
Question agreed to.

Joint Select Committee on Trade and Investment Growth

Meeting

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (12:18): I move:
That the Joint Select Committee on Trade and Investment Growth be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate, as follows:
(a) Tuesday, 12 May 2015;
(b) Tuesday, 16 June 2015; and
(c) Tuesday, 23 June 2015.
Question agreed to.

Finance and Public Administration Legislation Committee

Reference

Senator XENOPHON (South Australia) (12:18): I, and also on behalf of Senator Ludwig, move:
That the following matter be referred to the Finance and Public Administration Legislation Committee for inquiry and report by 13 May 2015:
The proposed Parliament House security upgrade works, including perimeter fencing, internal infrastructure changes and CCTV cameras, with particular reference to:
(a) security and safety considerations;
(b) project management;
(c) value for money;
(d) design integrity;
(e) heritage impact;
(f) moral rights;
(g) impacts on building occupants and visitors; and
(h) any related matters.
Question agreed to.
BILLs

Food Standards Amendment (Fish Labelling) Bill 2015

First Reading

Senator XENOPHON (South Australia) (12:19): I inform the Senate that Senators Lazarus, Lambie, Whish-Wilson, Wang and Madigan have been added as co-sponsors to the bill and I move:

That the following bill be introduced: A Bill for an Act to provide for the accurate labelling of the country of origin for fish, and for related purposes. Food Standards Amendment (Fish Labelling) Bill 2015.

Question agreed to.

Senator XENOPHON: 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.

Senator XENOPHON: I seek leave to make a very short statement.

The PRESIDENT: Leave is granted for one minute.

Senator XENOPHON: Whilst a number of my colleagues on the crossbench are co-sponsoring this bill, I want to acknowledge the non-partisan way the Senate's Rural and Regional Affairs and Transport References Committee worked on the issue of seafood labelling, in particular the chair, Senator Sterle, and his colleagues Senators Bullock Williams, Heffernan, Gallacher, Lines and Macdonald. A very non-partisan approach was taken to tackle this significant issue. I am very grateful for the unanimity of that report. Senator Whish-Wilson was a co-sponsor of the bill. I mention that because I do not want to offend Senator Whish-Wilson, who is sitting here!

Second Reading

Senator XENOPHON (South Australia) (12:21): I table the explanatory memorandum and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

FOOD STANDARDS AMENDMENT (FISH LABELLING) BILL 2015

The introduction of this Bill is timely, given the recent increased awareness of the need for clear and concise country of origin labelling on food. Sadly, this awareness has come as Australians have fallen ill with Hepatitis A as the result of contaminated frozen berries imported from China. It is a great tragedy that people have had to suffer for the Government to take action on food labelling, despite the fact that both the previous and current governments have been well aware of the need for improved standards.

The measures in this Bill directly implement the recommendation from the Senate Rural and Regional Affairs and Transport References Committee inquiry into the current requirements for labelling of seafood and seafood products, which reported on 18 December 2014.
Under the current Standard 1.2.11 of the Australia New Zealand Food Standards Code, country of origin labelling is required for fish, including fish that has been mixed or coated with one or more other foods. This requirement also applies to fish that has been processed in some way, either by cutting or filleting, smoking, curing, pickling or cooking. It is also important to note that in the context of the Code, fish is considered to be "any of the cold-blooded aquatic vertebrates and aquatic invertebrates including shellfish, but does not include amphibians and reptiles".

This Standard, however, includes an exemption for food that is offered for immediate consumption by restaurants, canteens, schools, caterers or self-catering institutions, prisons, hospitals, or other venues listed in the Table accompanying the Standard.

Following its inquiry, the Committee recommended that this exemption be removed, and that country of origin labelling should apply to fish provided for immediate consumption; for example, for fish sold in restaurants, bars and fish and chip shops.

This recommendation follows the removal of the exemption in the Northern Territory, where fish from overseas provided for immediate consumption is required to be labelled as 'imported'. The aim of this is to provide consumers with greater choice and information, and the Committee inquiry found that these measures had high support both from consumers and the food services sector.

The provisions in this Bill will require Food Standards Australia New Zealand (FSANZ) to develop and implement a Standard within 12 months to require country of origin labelling to apply to fish offered for immediate consumption in the food services sector in Australia. The exemption applies to a broad class; however, the Bill defines the food services sector to ensure that the requirements do not have a negative impact on venues where consumers are unlikely to be able to choose between products. For example, the definition in the Bill does not include hospitals, schools, prisons and so on, but does include restaurants, bars and takeaway shops. It also allows the Standard to be applied to other entities if required.

The Bill also exempts the first Standard developed under the Bill from the usual processes that must be adhered to by FSANZ, as the legislation already sets out many of the matters to be included in the Standard that would otherwise need to be determined by these processes. This exemption does not, however, apply to any subsequent Standard developed under these provisions.

Ultimately, this Bill is not just about increasing consumer knowledge and capacity for exercising choice. It is also about supporting Australian produce, and by extension Australian producers, and fostering Australian industry and jobs.

1 Australia New Zealand Food Standards Code - Standard 2.2.3 - Fish and Fish Products, available online: http://www.comlaw.gov.au/Details/F2011C00569.

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

Leave granted; debate adjourned.

MOTIONS

Great Barrier Reef

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (12:21): At the request of Senators Canavan and O'Sullivan, I move:

That the Senate—

(a) supports the Australian and Queensland Governments' release of the Reef 2050 Long-Term Sustainability Plan for the Great Barrier Reef, including the additional $100 million investment to protect the reef;

(b) notes that opposition to this plan is now blatantly focused on stopping coal mines 500 kilometres inland from the reef, not protecting the reef per se; and
(c) supports the Australian and Queensland Governments' investment and campaign against the 'in danger' listing of the reef by the United Nations Educational, Scientific and Cultural Organization given that government efforts have now addressed the key areas of concern raised by the World Heritage Committee, and that such a listing would cause great harm to tourism industries.

Question agreed to.

Senator WATERS (Queensland) (12:22): by leave—I ask that the noes of the Australian Greens be recorded.

The PRESIDENT: So recorded.

Automotive Transformation Scheme

Senator McEWEN (South Australia—Opposition Whip in the Senate) (12:22): At the request of Senators Carr, Xenophon, Muir, Wright, Wang and Lazarus, I move:

That the Senate—
(a) recalls its resolution of 13 May 2009, moved by Senator Cormann, setting out the process to be followed by public sector witnesses who believe that they have grounds for withholding information from Senate committees;
(b) concurs with the statement of Senator Cormann during debate on the motion, in which he said, 'At the end of the day, the final decision on whether to claim a public interest ground for not disclosing information should be made by a minister, with a statement of the ground, and ultimately only the Senate itself can determine whether the claim is accepted';
(c) acknowledges a letter tabled by Senator Cormann on 17 March 2015 in response to an order for the production of documents agreed to by the Senate on the same day, relating to the Automotive Transformation Scheme;
(d) does not recognise that the act of marking documents as 'Protected for reasons of Cabinet confidentiality' is an appropriate basis for making a claim of public interest immunity;
(e) does not accept Senator Cormann's claim of public interest immunity on the grounds that to produce the documents ordered would disclose the substance of Cabinet deliberations which would give rise to harm to the public interest; and
(f) insists that Senator Cormann table the correspondence requested in the order for production of documents agreed to by the Senate on 17 March 2015 by 3.30 pm on 12 May 2015.


The PRESIDENT: Leave is granted for one minute.

Senator FIFIELD: The motion is not correct in its assertion that the government has withheld documents merely because of the markings on the documents. As Minister Cormann explained in his letter to you, Mr President, on 17 March 2015 the basis for the government's claim of immunity is that these documents relate to cabinet level deliberations. The government stands by that statement of fact.

Question agreed to.

Senate Casual Vacancies

Senator McEWEN (South Australia—Opposition Whip in the Senate) (12:23): At the request of Senator Wong, I move:
That the Senate—

(a) notes that former Senator John Faulkner resigned his place as a Senator for the State of New South Wales by letter to the President of the Senate on 6 February 2015;

(b) notes that the vacancy in the representation of New South Wales arising from the resignation of Senator Faulkner was notified to the Governor of New South Wales by the President of the Senate in accordance with section 21 of the Constitution on 9 February 2015;

(c) reaffirms its resolution of 3 June 1992 (reaffirmed on 7 May 1997) in which the Senate:

(i) expressed the view that casual vacancies in the Senate should be filled as expeditiously as possible, so that no state is without its full representation in the Senate for any time longer than is necessary;

(ii) recognised that under section 15 of the Constitution an appointment to a vacancy in the Senate may be delayed because the Houses of the Parliament of the relevant state are adjourned but have not been prorogued, which, on a strict construction of this section, prevents the Governor of the state making the appointment; and

(iii) recommended that all state parliaments adopt procedures for casual vacancies to be filled expeditiously within 14 days after notification of the vacancy, including by recall if necessary;

(d) notes that the New South Wales Houses were prorogued on 2 March 2015, the Legislative Council until 5 May 2015 and the Legislative Assembly until 6 March 2015 on which day it expired prior to an election to be held on 28 March 2015; and

(e) calls on the Government and the Parliament of New South Wales to take all necessary steps to ensure that the people of that state are not denied full representation in the Senate for any time longer than is strictly necessary.

Question agreed to.

Special Broadcasting Service

National Indigenous Television

Senator SIEWERT (Western Australia—Australian Greens Whip) (12:24): I move:

That the Senate—

(a) notes the reports that the Special Broadcasting Service (SBS) may have to cut the specialist news program on its Aboriginal and Torres Strait Islander channel NITV;

(b) recognises the importance of Indigenous news media and the role that NITV reports play in covering a range of breaking news stories that are in the interest of, or from the perspective of Aboriginal and Torres Strait Islander peoples; and

(c) calls on the Government to work with SBS to ensure that this important service is retained.


The PRESIDENT: Leave is granted for one minute.

Senator FIFIELD: Indigenous news and current affairs programming is at the heart of NITV. The government remains strongly committed to SBS delivering news and current affairs which reflects the voice of Aboriginal and Torres Strait Islander communities. Since NITV joined SBS in 2012 and launched as a national free-to-air channel, NITV news has been an integral part of the NITV offering and the channel's commitment to producing news that goes to the heart of communities is paramount.
The government understands that SBS have done comprehensive audience research and analysis of nightly ratings in the 5.30 pm timeslot. NITV news averages 2,000 viewers. SBS said in a statement on 27 February that the NITV team is exploring new opportunities for news and current affairs and challenges to find the right time and the right platform and device that will resonate for audiences. In the same statement, SBS said that news is the largest area of investment for NITV and the level of funding will remain unchanged, with no impact to current budgets or employee resources.

Question agreed to.

COMMITTEES

Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru Committee

Appointment

Senator McEWEN (South Australia—Opposition Whip in the Senate) (12:26): At the request of Senators Gallacher and Hanson-Young, I move:

(1) That a select committee, to be known as the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, be established to inquire into and report by 15 June 2015 on the responsibilities of the Commonwealth Government in connection with the management and operation of the Regional Processing Centre in Nauru (the Centre), with particular reference to:

(a) how the Commonwealth Government is fulfilling its obligations under the Memorandum of Understanding between The Republic of Nauru and the Commonwealth of Australia relating to the transfer to and assessment of persons in Nauru, cost and related issues;

(b) the performance of the Commonwealth Government in connection with the Centre, including the conduct and behaviour of the staff employed at the Centre, to the extent that the Commonwealth Government is responsible;

(c) the Commonwealth Government’s duty of care obligations and responsibilities with respect to the Centre;

(d) the circumstances that precipitated the Moss Review, including allegations made regarding conditions and circumstances at the centre and the conduct and behaviour of staff employed by contracted service providers, the timing of the Commonwealth Government’s knowledge of the allegations, and the appropriateness of the response of the Commonwealth Government to these allegations;

(e) factors relating to the timing of the release of the Moss Review;

(f) the response of the Commonwealth Government to the recommendations of the Moss Review, including timelines for implementation; and

(g) any related matters.

(2) That the committee consist of 5 senators, 2 to be nominated by the Leader of the Government in the Senate, 2 to be nominated by the Leader of the Opposition in the Senate, and 1 to be nominated by the Leader of the Australian Greens in the Senate.

(3) That:

(a) participating members may be appointed to the committee on the nomination of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate or any minority party or independent senator; and
(b) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee.

(4) That 3 members of the committee constitute a quorum of the committee.

(5) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.

(6) That the committee elect as chair a member nominated by the Leader of the Opposition in the Senate and as deputy chair a member nominated by the Leader of the Australian Greens.

(7) That the deputy chair shall act as chair when the chair is absent from a meeting of the committee or the position of chair is temporarily vacant.

(8) That, in the event of an equality of voting, the chair, or the deputy chair when acting as chair, have a casting vote.

(9) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken and such interim recommendations as it may deem fit.

(10) That the committee have power to appoint subcommittees consisting of 3 or more of its members, and to refer to any such subcommittee any of the matters which the committee is empowered to consider.

(11) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.

(12) That the committee be empowered to print from day to day such papers and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (12:26): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator CASH: The government will not be supporting this motion. This is a politically driven motion moved by those who are fundamentally opposed to the government's offshore processing policies. The allegations referred to in this motion have been extensively investigated independently by Mr Philip Moss, the former Integrity Commissioner and former head of the Australian Commission for Law Enforcement and Integrity. The Moss inquiry was a comprehensive investigation which drew information from a wide range of stakeholders, including Serco and the Australian Federal Police. The department has accepted all of Mr Moss's 19 recommendations and has only just commenced implementing its responses. The department will continue to have discussions with the government of Nauru on the best way forward to implement the investigation's recommendations.

The PRESIDENT: The question is that general business notice of motion No. 698, standing in the names of Senator Gallacher and Senator Hanson-Young, be agreed to.
The Senate divided. [12:32]
(The President—Senator Parry)

Ayes ......................31
Noes ......................29
Majority ...............2

AYES

Brown, CL
Cameron, DN
Conroy, SM
Di Natale, R
Gallagher, KR
Ketter, CR
Lazarus, GP
Ludlam, S
Marshall, GM
McLucas, J
O’Neill, DM
Rice, J
Singh, LM
Urquhart, AE
Whish-Wilson, PS
Xenophon, N

Bullock, J.W.
Carr, KJ
Dastyari, S
Gallacher, AM
Hanson-Young, SC
Lambie, J
Lines, S
Ludwig, JW
McEwen, A (teller)
Moore, CM
Rhiannon, L
Siewert, R
Sterle, G
Waters, LJ
Wright, PL

NOES

Abetz, E
Birmingham, SJ
Bushby, DC (teller)
Colbeck, R
Fawcett, DJ
Fifield, MP
Leyonhjelm, DE
Madigan, JJ
McGrath, J
Muir, R
Parry, S
Ronaldsdon, M
Ryan, SM
Seselja, Z
Williams, JR

Back, CJ
Brandis, GH
Cash, MC
Edwards, S
Ferravanti-Wells, C
Johnston, D
Macdonald, ID
Mason, B
McKenzie, B
Nash, F
Payne, MA
Ruston, A
Scullion, NG
Sinodinos, A

Question agreed to.

Senator MADIGAN (Victoria) (12:35): by leave—In principle, I supported the previous motion before the chamber today. Transparency and investigation are paramount, particularly when the target is the treatment of vulnerable people, women and children. However, I am concerned that this motion is too soon, in light of the fact that I have read the Moss review that was handed down only last Friday. I acknowledge the fact that the terms of reference may have been narrow, but I am impressed with the integrity of Mr Moss and the veracity of his findings. This motion called for a report within three months, and I believe that is unrealistic.
If, in three months' time, the government's response to the Moss review has been inadequate, I will support the motion if it is put again.

**Environment and Communications References Committee Reference**

Senator RICE (Victoria) (12:36): I move:

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

The future of Australian forest management, including:

(a) an assessment of past and current management of native forests, including assessment of Regional Forest Agreements in achieving their objectives and those of the National Forest Policy Statement, and other land management mechanisms and programs;
(b) assessment of the economic, environmental and social value of native forests for regional and rural communities, including for recreation and tourism;
(c) assessment of the challenges and opportunities for protecting the environmental values of native forests, including, but not limited to, biodiversity, protections for threatened species, water and bushfires;
(d) the impacts of climate change on native forests and plantations, and the role of native forests and forest management in mitigating the effects of climate change on people and the environment;
(e) assessment of the challenges and opportunities facing the forestry industry, and assessment of actions required to support competitiveness and employment, including but not restricted to innovation and investment, research and development, and the sustainability and management of the plantation forest estate;
(f) assessment of the workforce profile of the Australian forestry and forest products industry and the impacts of forest management regimes, such as Regional Forest Agreements, on employment;
(g) assessment of the most effective mechanisms for ensuring the social, environmental, and economic values of forests are effectively protected and managed for future generations; and
(h) any other related matter.

The PRESIDENT: The question is that business of the Senate notice of motion No. 1 standing in the name of Senator Rice be agreed to.

The Senate divided. [12:37]

(The President—Senator Parry)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>27</th>
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<tr>
<td>Noes</td>
<td>32</td>
</tr>
<tr>
<td>Majority</td>
<td>5</td>
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AYES

Brown, CL
Cameron, DN
Dastyari, S
Gallagher, KR
Ketter, CR
Ludlam, S
Marshall, GM
Bullock, J.W.
Carr, KJ
Di Natale, R
Hanson-Young, SC
Lines, S
Ludwig, JW
McEwen, A (teller)
AYES

McLucas, J
O’Neill, DM
Rice, J
Singh, LM
Urquhart, AE
Whish-Wilson, PS
Xenophon, N

NOES

Abetz, E
Back, CJ
Bernardi, C
Birmingham, SJ
Brandis, GH
Bushby, DC (teller)
Cash, MC
Colbeck, R
Edwards, S
Fawcett, DJ
Fierravanti-Wells, C
Fifield, MP
Johnston, D
Lambie, J
Lazarus, GP
Leyonhjelm, DE
Macdonald, ID
Madigan, JJ
Mason, B
McGrath, J
McKenzie, B
Muir, R
Nash, F
Parry, S
Payne, MA
Ronaldson, M
Ruston, A
Ryan, SM
Scullion, NG
Seselja, Z
Sinodinos, A
Sterle, G
Waters, LJ
Whish-Wilson, PS
Wright, PL
Xenophon, N

Question negatived.

Senator LAMBIE (Tasmania) (12:39): I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for one minute.

Senator LAMBIE: In recent weeks and months there have been a number of issues in this Senate. I have worked cooperatively with the Greens members of this place. In the course of doing business in this chamber I have learnt that there are many issues that we have in common: protection of human rights and civil liberties, opposing supertrawler fishing—

Senator Conroy: Mr President, a point of order: I am seeking clarification on whether that was a real division or not and why the bells rang for only four minutes if it was a real division. I had left the chamber and was not able to get back in a one-minute time frame.

The PRESIDENT: I will deal with that now. Under standing order 101—if there is no ensuing debate between divisions then division bells only need to be rung by one minute. It has been a courtesy extended by the chair on many, many occasions to allow a four-minute division when a number of senators leave or if the nature of the divisions changes. But under the standing orders it is very clear that standing
order 101 says that there is a one-minute division. On top of that, I gave a warning clearly to everyone in the chamber.

Senator Conroy: If it was a real division—the nature of—

The PRESIDENT: Every division is a real division. Senator Lambie has the call.

Senator LAMBIE: stopping cuts to pensions, caring for ADF members and veterans, and mental health. However, this Greens notice of motion that we have just voted on, which essentially refers the Australian forestry industry to a Senate committee, does not fool me. This motion is nothing but another unnecessary attack on the Australian forestry industry and in particular the Tasmanian forestry industry.

If there is going to be any inquiry into the forestry industry it should be how the Greens members of this parliament used taxpayers funds to destroy a sustainable, honourable industry which employed lots of workers in Tasmania and around the country. This is nothing but a witch-hunt, and I strongly oppose it, which has now just been voted away.

MOTIONS
Coal Seam Gas

Senator WATERS (Queensland) (12:41): I move:

That the Senate—
(a) notes:
   (i) the concern expressed by regional communities about the impacts on food security and water resources from coal seam gas, shale gas and tight gas, and
   (ii) that the Federal Government has power to regulate the conduct of constitutional corporations, including corporations involved in coal seam gas, shale gas and tight gas mining; and
(b) agrees that:
   (i) food security and water resources should be prioritised over coal seam gas, shale gas and tight gas mining, and
   (ii) the Federal Government should use its constitutional powers to regulate the conduct of corporations undertaking coal seam gas, shale gas and tight gas mining.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (12:42): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator NASH: I have consistently said that if there is going to be a negative impact on prime agricultural land then coal seam gas mining should not occur. The government opposes this motion. The government does not make policy on the run in response to Greens notices of motion in the Senate, and we will not dignify the Greens' cheap political stunt with our vote.

The PRESIDENT: The question is that the motion moved by Senator Waters be agreed to.
The Senate divided. [12:44]
(The President—Senator Parry)

Ayes ................. 11
Noes ................. 44
Majority ............ 33

AYES
Di Natale, R
Lazarus, GP
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS
Xenophon, N
Hanson-Young, SC
Ludlam, S
Rice, J
Waters, LJ
Wright, PL

NOES
Bernardi, C
Brown, CL
Bushby, DC
Carr, KJ
Colbeck, R
Dastyari, S
Fawcett, DJ
Fifield, MP
Gallagher, KR
Johnston, D
Leyonhjelm, DE
Ludwig, JW
Marshall, GM
McEwen, A (teller)
McKenzie, B
Moore, CM
O'Neil, DM
Payne, MA
Ryan, SM
Seselja, Z
Sinodinos, A
Urquhart, AE
Birmingham, SJ
Bullock, J.W.
Cameron, DN
Cash, MC
Conroy, SM
Edwards, S
Ferravanti-Wells, C
Gallacher, AM
Heffernan, W
Ketter, CR
Lines, S
Macdonald, ID
Mason, B
McGrath, J
McLucas, J
Nash, F
Parry, S
Ruston, A
Seullion, NG
Singh, LM
Sterle, G
Williams, JR

Question negatived.

BILLS

Public Governance and Resources Legislation Amendment Bill (No. 1) 2015

Second Reading

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

Senator CAMERON (New South Wales) (12:46): I rise today to speak on the Public Governance and Resources Legislation Amendment Bill (No. 1) 2015. This bill is another stage in the financial framework reform process that Labor commenced when in government.
We initiated a review process, the Commonwealth Financial Accountability Review, which involved two years of detailed consultation and consideration of issues. This culminated in the development and passage of the Public Governance, Performance and Accountability Act 2013. The new legislation, which replaced the old Financial Management and Accountability Act and the Commonwealth Authorities and Companies Act, established an integrated financial management framework for entities within the Commonwealth. The concept was to design an appropriate framework that would improve the performance, accountability and risk management across government.

The 44th Parliament has dealt with a number of pieces of legislation relating to the implementation of the framework governed by the Public Governance, Performance and Accountability Act 2013 which Labor has supported. The bill before the Senate today continues the reform process we put in place to ensure the continual effective operation of the financial framework. This bill may be the first in a series of bills that may be introduced and developed in the future that would continue to improve the financial framework arrangements. This would be similar to the series of financial framework legislation amendment bills that Labor put through the parliament when we were in government to deal with similar issues to the previous financial framework legislation.

The vast majority of the amendments contained in this bill are housekeeping items of a technical nature and are uncontroversial. Some of the proposed changes that are in this bill relate to the amendments that were unable to be made at the time of the Public Governance, Performance and Accountability Act when it took effect on 1 July 2014. This was for various reasons. As a result of further consultation with relevant entities, these amendments can now be made to the relevant legislation to ensure that they interact properly with the new financial framework.

I will go briefly through the contents of the bill. Schedule 1 of the bill amends sections of the Public Governance, Performance and Accountability Act 2013 which relate to definitions, corporate plans, arrangements for GST and streamlining the administration of transfer of functions between non-corporate Commonwealth entities. These amendments ensure a continuation of the arrangements that were in place under the previous financial framework, as well as providing sufficient flexibility in relation to corporate plans.

Schedule 2 of the bill amends sections of the Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014 which relate to reporting periods, Commonwealth repayments and other items which ensure the improved operation of the financial legislation.

I will return to schedule 3 later. Schedule 4 of the bill ensures that the Clean Energy Regulator and the Climate Change Authority are listed entities for the purpose of the new financial framework. These are sensible and necessary amendments to make.

Schedule 5 of the bill amends 22 acts, including the Australian National Registry of Emissions Units Act 2011, the Financial Framework (Supplementary Powers) Act 1997 and the National Land Transport Act 2014, to align and harmonise them with the Public Governance, Performance and Accountability Act to ensure there is consistency with the new financial framework. These amendments do not change any of the policies or statutory functions contained in the legislation that is sought to be amended.
Schedule 6 of the bill makes amendments to a series of acts which are, in the main, minor, technical in nature and uncontroversial, such as amendments to the Reserve Bank Act, the Industrial Chemicals (Notification and Assessment) Act, the Future Fund Act and the Health Insurance Act. There are also amendments to the Air Services Act, which will provide Airservices Australia with an increased ability to manage foreign currency risk effectively—that is, by managing foreign currency exposure on operating expenses including insurance premiums and technical support services worth around $5 million to $15 million per annum. Similar statutory powers to manage foreign currency risk already reside with the Export Finance and Insurance Corporation, the Reserve Bank and Australia Post.

Schedule 6 also includes amendments to the Australian Trade Commission Act relating to the inclusion of domestic tourism as part of the Austrade chief executive officer’s function. The shadow minister for tourism, Mr Albanese, the member for Grayndler in the other place, made some substantial remarks in relation to this amendment. He is a passionate champion of tourism. Schedule 7 of the bill relates to transitional provisions relating to legislative instruments and transitional rules that the Minister for Finance can make. Again, these are uncontroversial.

Labor ensured this bill was referred to the Senate Finance and Public Administration Legislation Committee to give us assurance that there were no issues with the legislation before us today. In particular, sections of the bill that we sought assurance on included schedule 3, which relates to the removal of body corporate status from the Clean Energy Regulator and the Climate Change Authority. Page 4 of the committee’s report said:

In its submission the Clean Energy Regulator stated that it had been consulted on the proposed amendments to its enabling legislation and ‘fully supports them’. The proposed amendments in schedule 6, relating to the Auditor-General Act, would expand the current exemptions to disclosing information on proposed audit reports to drafts, extracts of proposed reports and any other reports, including drafts, which are created for the purpose of preparing a proposed audit report. The current exemption means that, unless the Auditor-General’s permission is granted, people who have been provided with a proposed audit report for comment cannot provide it to others. There is a two-year imprisonment penalty attached to this unauthorised disclosure. The amendment in this bill would also extend the imprisonment penalty to the unauthorised disclosure of the drafts and other extracts that I described earlier. We just want to make sure that there are no issues with these provisions of the bill. The recommendation of the Senate Finance and Public Administration Legislation Committee was that the Senate pass the bill.

I note that this bill was debated in the other place in the week that the most recent so-called ‘repeal day’ was scheduled. I remind the House of the situation the last time the parliament dealt with legislation relating to public governance, when Labor successfully moved amendments to save the Commonwealth Cleaning Services Guidelines only to see them abolished in another way 24 hours later. The same government that gave $1.1 billion in new tax breaks back to multinationals cut the pay of the cleaners who clean their offices by $2 an hour. That is an amount that is probably not much to those of us who enjoy the job of representing our constituents in this place, but I can assure honourable senators that losing $2 an hour causes considerable pain to those who work as cleaners. The deception perpetrated by this government on this issue was deplorable. The lowest paid people in parliament suffering
the biggest cuts—it is just crazy. It is ideology gone mad and it is not a proper policy position to be adopted. But that is what the coalition has done. That is what this government is about—look after the big end of town and then the bottom end can look after itself. That is why we were presented with a budget that targets the lowest paid in this country—a budget that targets those who cannot look after themselves, a budget that is about unfairness and a budget that has been rejected by the population of this country. I think it epitomises the ideology of this government when it can take $2 an hour from a cleaner and give billions of dollars back to its mates at the big end of town.

Notwithstanding that, Labor understands the necessity of a well-functioning financial framework. We are providing our support for this bill, as it is necessary for the continual improvement of the financial framework and is a further aspect of the reform process that we put in place when we were in government. I just wish it had not been used to attack some of the poorest and weakest people in this parliament.

Senator RYAN (Victoria—Parliamentary Secretary to the Minister for Education and Training) (12:57): I will not bother engaging with Senator Cameron's sledging other than to commend the bill to the Senate.

The PRESIDENT: The question is that the bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

The PRESIDENT (12:58): 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 and Training) (12:58): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Parliamentary Service Amendment Bill 2014
Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator CAMERON (New South Wales) (12:58): The Parliamentary Service Amendment Bill 2014 amends section 65A of the Parliamentary Service Act 1999 to provide that the Commissioner of the Australian Federal Police, or a deputy commissioner or a senior executive AFP employee who is nominated by the Presiding Officers, may be a member of the Security Management Board. It also expands the existing function of the board to include the operation of security measures.

Currently, the legislated membership of the Security Management Board, section 65A(2), is the Secretary of the Department of Parliamentary Services or a senior executive service employee of that department nominated by the Presiding Officers in writing, an SES
employee of the Department of the Senate nominated by the President of the Senate in writing, and an SES employee of the Department of the House of Representatives nominated by the Speaker of the House of Representatives in writing.

Currently, the legislated function of the security management board in section 65A(5) is to provide advice as required to the Presiding Officers on security policy and the management of security measures for Parliament House. The bill passed the House of Representatives on 26 November 2014 and was referred to the Senate Finance and Public Administration Legislation Committee for additional scrutiny to ensure that everything was all right with the provisions of this bill. The committee reported on 2 March 2015, recommending that the bill be passed without amendment.

I particularly note the advice from the Clerk of the House of Representatives that:
... it seems entirely appropriate for a senior representative of the AFP to be included as a fourth member of the SMB.

Also, the clerks of the House of Representatives and the Senate both agree that amending the function of the security management board to include the operation of security measures was right. The Clerk of the House of Representatives said it was 'sensible' and the Clerk of the Senate said that it would:
... would put beyond doubt that the Board can and should examine matters related to the operation of Parliament House Security.

Following the report of the Senate Finance and Public Administration Legislation Committee's inquiry into the bill, Labor sought greater assurance that the role of the security management board would not be elevated as a result of these changes and that it would retain its advisory function rather than take on a decision making role. I emphasise that under the Parliamentary Service Act 1999, both as it currently stands and under the proposed amendments, it is the Presiding Officers—that is, the President of the Senate and the Speaker of the House of Representatives—who act on the advice of the security management board.

In order to protect its prerogative, the Senate had to manage its own security and also protect the rights of senators to be consulted on changes to security arrangements. Labor developed a proposal that has strengthened the role of the Senate Standing Committee on Appropriations and Staffing in the oversight of security matters. under Senate standing order 19(3), the Senate Standing Committee on Appropriations and Staffing:
... shall consider the administration and funding of security measures affecting the Senate and advise the President and the Senate as appropriate.

Labor sought a referral to the Procedure Committee proposing changes to the standing orders to change the name of the committee to appropriations, staffing and security and to increase its responsibilities to include the operation of security measures affecting the Senate. The Deputy President of the Senate will be included in the membership of the committee, joining the President, four senators nominated by the Leader of the Government in the Senate, four senators nominated by the Leader of the Opposition and other non-government senators. I also note that any senator is able to attend these meetings.

The Leader of the Opposition in the Senate wrote to the President of the Senate requesting that he use his authority to refer the proposed changes to the Senate Standing Committee on Procedure for inquiry and report, which is the usual practice. The Procedure Committee
reported to the Senate on this matter earlier this week. Labor view the Senate's role in the oversight of security matters concerning the Senate and Parliament House very seriously. I am pleased that earlier today the Senate agreed to a reference initiated by Labor to Finance and Public Administration Legislation Committee concerning proposed Parliament House security upgrade works. Changes to the Senate's internal governance of security matters allow Labor to support the bill in the Senate without amendment.

**Senator WRIGHT** (South Australia) (13:04): I stand to speak about the Parliamentary Service Amendment Bill 2014 and in particular schedule 1, about which the Australian Greens have some concerns. That is because it is the view of the Greens that this schedule both create an unnecessary position on the security management board and formalises operational measures as part of the boards remit, both of which the Australian Greens believe are regrettable.

Schedule 1 of the bill seeks to formalise an Australian Federal Police position on the security management board. Whether it is the commissioner or another representative as listed, the Greens believe that this is unnecessary. That is because section 65A of the Parliamentary Service Act 1999 already permits the board to invite the heads of other organisations to attend or to be represented at its meetings. The Australian Greens believe that this discretionary power is sufficient and it is not necessary to formalise that particular position.

In addition, the expansion of the board's remit to include the operation of security is also of concern, particularly in light of recent developments— that was subsequently reversed— about face coverings in parliament and also recent steps that have been taken with respect to the introduction of firearms within the chambers of parliament. The Australian Greens are gravely concerned that these developments have seen a move towards what really can be characterised as the militarisation of public space in Australia. It is our view that these changes in the bill will further this trend.

The Australian Greens do not support firearms being carried inside the parliament. We believe that this is a clear divergence from the long-standing practice and convention in the Westminster system, which is that no arms are carried in houses of parliament. We are concerned that this particular change seeks to embody rhetoric of fear in practice by integrating it into our discussions about our parliament and our security. We have to ask just what kind of message are we sending to the greater Australian public if we say that parliamentarians cannot go about their business without being surrounded by armed security.

The fact is that the Australian Greens believe firmly that more guns do not make people safer. We do not want militarisation of our public spaces and we believe that Australians do not want that either. That particularly includes parliament. We do not want to go the way of America, where it is claimed that only a good guy with a gun can stop the bad guys. That is not the experience in Australia. It has never been the case in Australia and it should not start now.

In particular, the Australian Greens are very concerned about the political context for the changes that are proposed in this bill. We are living in a time when we have seen, regrettably,
a ratcheting up of rhetoric around national security, particularly by the government. Yes, there are serious national security concerns to be had. There is a willingness on the part of the Australian public to engage in thoughtful discussion about how that has to be managed, but there is also a strong view among many that the rhetoric has been employed by the government for its own political ends. We have seen comments and speeches by ministers and especially the Prime Minister which have actually served to heighten fear and division in the Australian community.

Ironically, and unfortunately and destructively for the fabric of Australian society, this rhetoric actually risks making our security worse, not better, particularly for individual Australians, some of whom have become the focus of fear, hatred and increased ugly prejudice from other Australians. We have seen increases in attacks and bullying through some kind of xenophobia or misunderstanding against Muslim women and other women and men who happen to wear headgear, not just Muslims but Sikhs and people from other religious and ethnic backgrounds. That is not a good thing for Australia; it is a destructive thing for Australia. I have heard anecdotes from parents even about children being bullied, and about increased bullying, in schools because of their religious or ethnic background.

The Australian Greens believe that true security in Australia relies on cohesion and unity brought on by policies, rhetoric and leadership that actually bring out the best in us as a people, by the sort of leadership that actually plays to the strengths that we all know we have in multiculturalism, by the sort of leadership, speeches and values enunciated by our leaders that highlight and reinforce the decency and common values that we share, such as the idea that people in Australia should have a fair go. That is what has attracted so many people to come from other places to make a home here and is what has made such loyal citizens of people who have come and become Australian citizens. It is those values and that leadership which will enable Australians ultimately to stand together to refute the horror and cruelty that is so un-Australian and that is personified by organisations like ISIS.

Coming back to the bill under discussion, the Greens do not support moves towards the militarisation of our public spaces, including the parliament. We are concerned that this bill is a step towards that outcome. The Australian Greens believe that this bill can be seen as representing another attempt to scare people into believing that we are unsafe and divided. The Greens will continue to rebut what we see as the unnecessary, sometimes fear-driven, self-serving, and ultimately destructive and counterproductive rhetoric of the government when it comes to national security.

The PRESIDENT (13:10): In closing the debate on the bill I thank senators for their contributions. I particularly note Senator Cameron's comments in relation to the Presiding Officers still retaining the authority and there being no erosion in the ability of the parliament to make decisions vested through the President and the Speaker of the House of Representatives. I note also the comments made by Senator Wright in relation to the militarisation of parliament and stress that this bill in no way moves in that direction. This bill simply provides a permanent voice from the Australian Federal Police to provide advice with the other board members to the Presiding Officers. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.
Third Reading

The PRESIDENT (13:11): As no amendments to the bill have been circulated, I propose to move the third reading unless any senator requires that the bill be considered in Committee of the Whole. I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

MOTIONS

Legal Aid

Senator WRIGHT (South Australia) (13:13): I move:

That the Senate—

(a) notes the effects of Commonwealth funding uncertainty on the legal assistance sector, including the possible closure of community legal centres, staff loss, a reduction in services to clients and declining staff morale;

(b) acknowledges that, unless this uncertainty is addressed and funding restored, critical services directed at family violence, child protection, disability and mental health and services to regional, remote and Aboriginal and Torres Strait Islander communities may be irrevocably compromised;

(c) accepts the findings of the Productivity Commission’s 2014 report on access to justice, which recommended an additional $200 million in Commonwealth, state and territory funding be provided for civil legal assistance services to address urgent need; and

(d) calls on the Federal Government to immediately address the funding uncertainty and include increased funding for the legal assistance sector in the 2015-16 Federal Budget.


The PRESIDENT: Leave is granted for one minute.

Senator CAMERON: Labor notes the letter earlier this month from all state and territory attorneys-general calling on the Abbott government to reconsider its current proposal for a national funding agreement for legal assistance. It is extraordinary that the attorney-generals from across Australia—Liberal and Labor—have united to condemn Senator Brandis’s cuts to legal aid, community legal centres and Aboriginal and Torres Strait Islander legal services. The Abbott government’s cuts to the legal assistance sector are already being felt by the most vulnerable Australians. Cuts to community legal centres mean that the assistance available to families experiencing domestic violence has already been affected. Aboriginal and Torres Strait Islander legal centres do invaluable work in Indigenous communities and they also have had their funding cut. (Time expired)

The PRESIDENT: The question is that the motion moved by Senator Wright be agreed to.
The Senate divided. [13:18]

(The President—Senator Parry)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>................. 15</th>
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<tr>
<td>Noes</td>
<td>................. 32</td>
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<tr>
<td>Majority</td>
<td>........... 17</td>
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**AYES**

- Di Natale, R
- Hanson-Young, SC
- Lambie, J
- Lazarus, GP
- Ludlam, S
- Madigan, JJ
- Muir, R
- Rhiannon, L
- Rice, J
- Siëwert, R (teller)
- Wang, Z
- Waters, LJ
- Whish-Wilson, PS
- Wright, PL
- Xenophon, N

**NOES**

- Abetz, E
- Bullock, J.W.
- Bushby, DC (teller)
- Cameron, DN
- Colbeck, R
- Dastyari, S
- Edwards, S
- Fawcett, DJ
- Fifield, MP
- Gallagher, AM
- Gallacher, KR
- Ketter, CR
- Leyonhjelm, DE
- Lines, S
- Marshall, GM
- Mason, B
- McEwen, A
- McGrath, J
- McKenzie, B
- McLachlan, J
- Moore, CM
- ONeill, DM
- O'Sullivan, B
- Parry, S
- Ruston, A
- Ryan, SM
- Seselja, Z
- Singh, LM
- Sinodinos, A
- Sterle, G
- Urquhart, AE
- Williams, JR

Question negatived.

The **PRESIDENT** (13:20): I advise senators that there may be further divisions.

**Trans-Pacific Partnership Agreement**

**Senator WHISH-WILSON** (Tasmania) (13:20): I seek leave to amend general business notice of motion No. 695.

Leave granted.

**Senator WHISH-WILSON:** I move the motion as amended:

That the Senate—

(a) notes that the Malaysian Government:

(i) is undertaking a cost-benefit analysis of the impact of the Trans-Pacific Partnership Agreement (the Agreement) to inform its cabinet and parliamentary decision making processes prior to signing any deal, and

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**CHAMBER**
(ii) is stating that they will not sign the Agreement unless it proves to be in Malaysia's interest to do so; and

(b) calls on the Australian Government to request that the Productivity Commission undertake a comprehensive socio-economic cost-benefit inquiry into the impact of the TPP on Australia; and

(c) reiterates the order of the Senate of 11 December 2013 requiring the Minister representing the Minister for Trade to table the full text of the Agreement at least 14 days before signing.

Mr President, I seek leave to make a very short statement.

The PRESIDENT: Leave is granted for one minute.

Senator WHISH-WILSON: Any thinking, intelligent person would think it was reasonable, before this country—

Senator Abetz interjecting—

Senator WHISH-WILSON: I will take that interjection—there may not be as many as I would hope in the chamber, but nevertheless! Any intelligent person would think it would be a very reasonable thing to do before our country signed up to one of the biggest deregulation agendas it has seen, in the Trans-Pacific Partnership Agreement, to at least do a social and economic cost-benefit analysis. That is exactly what Malaysia are doing and they are not going to sign this deal unless it is in their country's interests. The only reason we do not do it in this country is that the political imperative is that this government wants to sign up to trade deals to get more headlines. This analysis is something this country needs to do. We need scrutiny on this secretive deal and this is a measure that I ask the Senate to support.

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

The Senate divided. [13:26]

(The President—Senator Parry)

Ayes .................33
Noes ..................27
Majority ..............6

AYES

Bullock, J.W.  Cameron, DN
Carr, KJ  Collins, JMA
Conroy, SM  Dastyari, S
Di Natale, R  Gallagher, AM
Gallagher, KR  Hanson-Young, SC
Ketter, CR  Lambie, J
Lazarus, GP  Ludlam, S
Ludwig, JW  Madigan, JJ
Marshall, GM  McEwen, A (teller)
McLucas, J  Moore, CM
Muir, R  O'Neil, DM
Rhiannon, L  Rice, J
Siewert, R  Singh, LM
Sterle, G  Urquhart, AE
Wang, Z  Waters, LJ
Whish-Wilson, PS  Wright, PL
Xenophon, N

CHAMBER
Question agreed to.

Research and Development

Senator RHIANNON (New South Wales) (13:29): I seek leave to amend general business notice of motion No. 689 standing in my name for today.

Leave granted.

Senator RHIANNON: I move the motion as amended:

That the Senate—

(a) notes that science and research are crucial to Australia’s wellbeing and economy, but that funding for science, research and innovation is currently at a 30-year low; and

(b) calls on the Government to:

(i) put funding for research and science on a secure footing, with long-term legislated funding guarantees that last longer than the yearly budget cycle or the 3-year political cycle,

(ii) reverse the decision not to proceed with funding for the Future Fellowship program and guarantee that funding of the National Collaborative Research Infrastructure Strategy will not come at the expense of other areas of the research and education budget, and

(iii) commit to an increase in science and research funding in the budget.


The PRESIDENT: Leave is granted for one minute.

Senator FIFIELD: The coalition government, despite commentary to the contrary, has continued to invest in science. Across the government we are investing $9.2 billion this year alone in science, research and innovation—$5.8 billion of that over the next four years for science and research in the industry and science portfolio alone and $3 billion for CSIRO over the next four years, with funding increases year on year over the forward estimates. Science funding in the industry and science portfolio will increase by $16.8 million over the forward estimates and there will be new investments of $181.2 million to secure operation of vital scientific assets and promote the benefits of science in the community. In addition, the
government will invest $12 million to improve the focus on science, technology, engineering and mathematics in primary and secondary education through the Industry Innovation and Competitiveness Agenda. I should also point out some other things, but sadly time will elude me.

Question agreed to.

Fifth Community Pharmacy Agreement

Senator DI NATALE (Victoria) (13:30): I move:

That the Senate—

(a) notes the findings of the Australian National Audit Office (ANAO) performance audit into the Administration of the $15 billion Fifth Community Pharmacy Agreement (the Agreement); and

(b) that the ANAO found:

(i) expected net savings under the Agreement are not clearly documented,

(ii) there is no straightforward means for the Parliament and other stakeholders to know the expected or actual cost of key components of the Agreement,

(iii) there were persistent shortcomings in record keeping by the Department of Health (the department) in that:

(A) it failed to keep a record of its meetings with the Pharmacy Guild,

(B) it failed to take minutes of those meetings, and

(C) it did not prepare agreed notes of what had been discussed,

(iv) the decision by the department not to prepare an official record of discussions over a $15 billion funding agreement is not consistent with sound practice,

(v) the department reallocated funds without prior ministerial approval, including to a $5.8 million communication strategy to be delivered by the Pharmacy Guild,

(vi) the department did not secure ministerial approval before reallocating funding of $7.3 million originally approved by ministers,

(vii) that department records indicate that in its preparations for the Agreement negotiations and implementation, the department did not:

(A) develop a risk management plan,

(B) develop a probity plan or consult with a probity advisor,

(C) complete specific conflict of interest declarations for members of its negotiation team, or

(D) develop a strategic implementation plan,

(viii) it would be of benefit for the department, in consultation with the Department of Finance, to clarify the basis on which it treated the Pharmacy Guild as the sole recipient of grants of Commonwealth financial assistance intended to be distributed by the Pharmacy Guild to pharmacy owners, and that the department was unable to provide evidence that the relevant funds were authorised by ministers as grants to the Pharmacy Guild, and

(ix) that including patient co-payments in cost estimates had the effect of significantly overstating the cost to government of the Agreement by approximately $2.2 billion.

Question agreed to.
Duck Hunting

Senator LEYONHJELM (New South Wales) (13:31): I, and also on behalf of Senators Muir and McKenzie, move:

That the Senate notes that:

(a) there has been a successful start to the Victorian duck hunting season, with hunters demonstrating their commitment to conserving wetlands and observing game and firearms laws;
(b) the Victorian Game Management Authority has observed increased involvement of family groups;
(c) more than 20 000 licensed duck hunters contribute substantially to the Victorian economy and community each year; and
(d) a study commissioned by the Victorian Department of Environment and Primary Industries estimated that hunting by game licence holders contributed $439 million to the Victorian economy in 2013, and had a total employment impact of 2 382 jobs.

Question agreed to.

Senator SIEWERT (Western Australia—Australian Greens Whip) (13:31): by leave—Mr President, I ask that the Australian Greens’ opposition to that motion be recorded, please.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator O’Neill) (13:32): The President has received letters from party leaders requesting changes in memberships of committees.

Senator RYAN (Victoria—Parliamentary Secretary to the Minister for Education and Training) (13:32): by leave—I move:

That senators be discharged from and appointed to committees as follows:

Abbott Government’s Budget Cuts—Select Committee—
Appointed—Participating member: Senator Gallagher

Community Affairs Legislation and References Committees—
Appointed—Participating member: Senator Gallagher

Economics Legislation and References Committees—
Appointed—Participating member: Senator Gallagher

Education and Employment Legislation and References Committees—
Appointed—Participating member: Senator Gallagher

Environment and Communications Legislation and References Committees—
Appointed—Participating member: Senator Gallagher

Finance and Public Administration Legislation and References Committees—
Appointed—Senator Gallagher

Foreign Affairs, Defence and Trade Legislation and References Committees—
Appointed—Participating member: Senator Gallagher

Health—Select Committee—
Appointed—Participating member: Senator Gallagher

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CHAMBER
Legal and Constitutional Affairs Legislation Committee—
Appointed—
Substitute members:
Senator Hanson-Young to replace Senator Wright for the purposes of the committee's inquiry into the provisions of Migration Amendment (Strengthening Biometrics Integrity) Bill 2015
Senator Ludlam to replace Senator Wright for the purposes of the committee's inquiry into the provisions of the Copyright Amendment (Online Infringement) Bill 2015
Senator Moore to replace Senator Collins for the consideration of the 2014-15 additional estimates on 27 March 2015
Participating members: Senators Gallagher and Wright
Legal and Constitutional Affairs References Committee—
Appointed—Participating member: Senator Gallagher
National Broadband Network—Select Committee—
Appointed—Senator McEwen
Rural and Regional Affairs and Transport Legislation and References Committees—
Appointed—Participating member: Senator Gallagher
Scrutiny of Bills—Standing Committee—
Appointed—Senator Gallagher
Northern Australia—Joint Select Committee—
Appointed—Participating member: Senator Gallagher
Electoral Matters—Joint Standing Committee—
Appointed [for the purposes of the committee's inquiry into the 2013 election]—Participating member: Senator Gallagher
National Capital and External Territories—Joint Standing Committee—
Appointed—Senator Gallagher
Public Accounts and Audit—Joint Statutory Committee—
Appointed—Senator Gallagher
Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru—Select Committee—
Appointed—
Senators Carr, Gallacher and Hanson-Young
Wind Turbines—Select Committee—
Appointed—Participating member: Senator Gallagher.
Question agreed to.
BILLS

Omnibus Repeal Day (Spring 2014) Bill 2014
Consideration of House of Representatives Message
Message received from the House of Representatives returning the Omnibus Repeal Day (Spring 2014) Bill 2014, acquainting the Senate that the House has disagreed to the amendments made by the Senate, and desiring the reconsideration of the amendments disagreed to by the House.

Ordered that consideration of the message in Committee of the Whole be made an order of the day for the next day of sitting.

Migration Amendment (Protection and Other Measures) Bill 2014
Returned from the House of Representatives
Message received from the House of Representatives agreeing to the amendments made by the Senate to the bill.

Enhancing Online Safety for Children Bill 2014

Enhancing Online Safety for Children (Consequential Amendments) Bill 2014
Assent
Messages from the Governor-General reported informing the Senate of assent to the bills.

Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015
In Committee
Debate resumed.

The TEMPORARY CHAIRMAN (Senator O'Neill) (13:34): The question is that Senator Xenophon's amendments (4), (5), (6), (8) and (9) on sheet 7672 be agreed to.

Senator XENOPHON (South Australia) (13:35): I reiterate and indicate that the amendments I have moved would require the Public Interest Advocate, in addition to having broader powers, to be a contradicitor—in other words, to be a genuine devil's advocate in relation to a journalist's information warrant being obtained. A key element of it, which has similarities and parallels with the American system or the American approach to this, is that, as a general rule, there will be consultation with media outlets. The Americans—our closest allies—do not have a problem when seeking journalists' metadata to consult, as a general principle—

Senator Bernardi: They believe in free speech. And they wouldn't agree to section 18C.

Senator XENOPHON: I am not going to get into a debate about section 18C. I am pleased that Senator Bernardi—without verballing him—is enamoured with the American approach to freedom of speech, which would be consistent with protecting journalists' sources in order that—

Senator Bernardi interjecting—

The TEMPORARY CHAIRMAN: Senator Xenophon, I urge you to ignore the interjections of Senator Bernardi.
**Senator XENOPHON:** Madam Temporary Chairman, can I say that your urging is very wise. It is easy to be distracted by my colleague from South Australia. Consideration must be given to this amendment, because our public interest advocates will be flying blind. They will not have access to journalists. They will not be able to speak to journalists or to media organisations to ask, 'What is this about?' as they do in the US, as a general principle, unless it is a matter of an emergency in terms of security and the like, in terms of an imminent risk. They will not be able to do that. There ought to be that level of scrutiny; otherwise, my fear is contained in the words of Philip Dorling, a great investigative journalist, in a piece on 17 March headed 'Security laws bring us closer to the day when journalists will be jailed for reporting'. May I add to that that it will also bring us closer to the day where it will be much easier for sources to be exposed as a result of metadata surveillance. This is not about making us safer; this is about sections 70 and 79 of the Crimes Act in terms of whistleblowers who release, in an unauthorised fashion—which is extremely broad under sections 70 and 79—information which governments may find embarrassing.

The classic case is that of a person I have enormous respect for, Allan Kessing, who, to this day—and I absolutely believe him—was not responsible for leaking the reports he prepared as a Customs officer in the early 2000s in relation to security breaches and terrorist threats at Australian airports. Those reports found their way into The Australian newspaper in 2005, as memory serves me correctly. He was dragged through the courts and was convicted, notwithstanding maintaining his innocence. The material which I have not seen contained in those reports, I understand, was mirrored in the report of the Rt Hon. Sir John Wheeler, who prepared a report for the Howard government. As a result of the triggering of the exposure in The Australian newspaper of material written by Mr Kessing, there was a massive $200-plus million upgrade of airport security in this country. It was clearly embarrassing to the government of the day.

This metadata law will make it much easier for those that have gone to journalists with information to be tracked down. You can triangulate the information: you can find out the time of call, where it was made, who contacted whom and at what time. Metadata allows you to do that. You do not actually need to look at the content; you will have enough information there to have a successful prosecution under sections 70 and 79. I agree with Mr Dorling's recent piece in The Canberra Times that, in respect of section 70 of the Crimes Act, it makes it an offence for Commonwealth official to disclose any government information without proper authorisation. He makes the point:

This is the basic law that makes it a crime to leak any government information – from the highest cabinet secrets or the number of paperclips used in a local Centrelink office.

That is why it can be abused. What I am proposing would strengthen protection for journalists; it would be a much stronger and much more robust regime of public interest advocates. I commend the amendments. I indicate that, in respect of these amendments, I feel so strongly about them that I will be seeking to divide on this issue.

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (13:41): I am sorry, Senator Xenophon, that I did not hear your contribution. I have just been out announcing more good news from the Abbott government. So I am sorry that I was a little late in coming back into the chamber.
Senator XENOPHON (South Australia) (13:41): It is a tough job, but somebody has to do it, Attorney! Just to recap: I maintain my position in respect of these amendments. I believe that public interest advocates will have one hand tied behind their backs and will be blindfolded in the absence of having access to journalists’ information or access to be able to speak to journalists about the issuing of these warrants. That is my position; I will not go over it ad nauseam. I will be seeking to divide, because this is one particular issue that I think ought to be divided on. I feel very strongly about it. I will not take it any further.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (13:41): Senator Xenophon, I note your position and I do not agree with it, for the reasons I explained before. In speaking to your amendment, if I may, I wanted to deal with a remark that Senator Collins made before the debate adjourned earlier in the day. Senator Collins said that the purpose of the public interest monitor was to protect journalists. That is not correct. The purpose of the public interest monitor—

Senator JACINTA COLLINS: Advocate.

Senator BRANDIS: is to protect the public interest, as is made clear from proposed section 180X. The public interest is defined by proposed section 180L(2)(b) of the bill, and there are various elements of the public interest, all of which the public interest monitor is there to protect.

Senator Ludlam: Advocate.

Senator BRANDIS: I am sorry—the public interest advocate; I was thinking of the states. The elements of the public interest, which are anatomised in proposed subparagraph (b) of subsection (2) put first and foremost the interest in the protection of privacy. That is appropriate. And that will protect journalists and their sources. That is an indication, a direction, to the public interest advocate to have that in mind. But also, the public interest is defined in terms of the gravity of the matter in relation to which the warrant is sought, the extent to which the information or the documents would be likely to assist in the performance of ASIO’s functions, and other matters as well. So the public interest advocate certainly is there to protect journalists, but that is an incorrectly narrow conception of the public interest advocate’s role. The public interest advocate’s role is to protect the public interest. The ‘public interest’ is defined by the bill. The rights of journalists and the protection of privacy are one of those public interests, but they are not the only one.

Senator JACINTA COLLINS (Victoria) (13:44): I do not want to occupy too much of the committee’s consideration time, but I would not want to be verballed by the minister on this occasion. My notes of what I said earlier are in front of me. I disagreed with his analogy of the amicus curiae role.

The TEMPORARY CHAIRMAN (Senator O’Neill): The question is that amendments (4) to (6) and (8) and (9) on sheet 7672 moved by Senator Xenophon be agreed to.
The committee divided. [13:49]
(The Temporary Chairman—Senator O'Neill)

Ayes ...................... 15
Noes ...................... 30
Majority .................... 15

AYES
Di Natale, R
Lambie, J
Leyonhjelm, DE
Muir, R
Rice, J
Wang, Z
Whish-Wilson, PS
Xenophon, N

Hanson-Young, SC
Lazarus, GP
Ludlam, S
Rhiannon, L
Siewert, R (teller)
Waters, LJ
Wright, PL

NOES
Birmingham, SJ
Bullock, J.W.
Cameron, DN
Colbeck, R
Edwards, S
Fifield, MP
Ketter, CR
Ludwig, JW
McGrath, J
McLucas, J
Nash, F
O'Sullivan, B
Ruston, A
Singh, LM
Sterle, G (teller)

Brandis, GH
Bushby, DC
Carr, KJ
Collins, JMA
Fawcett, DJ
Gallagher, KR
Lines, S
McEwen, A
McKenzie, B
Moore, CM
O'Neill, DM
Polley, H
Seselja, Z
Sinodinos, A
Urquhart, AE

Question negatived.

Senator WANG (Western Australia—Palmer United Party Whip in the Senate) (13:52): I move Palmer United Party amendment (1) on sheet 7690:

(1) Schedule 1, item 6L, page 43 (after line 28), at the end of Subdivision D, add:

180Y Notification of access by Organisation

Scope

This section applies if:

(a) a journalist information warrant has been issued in relation to a person under Subdivision B; and

(b) an authorisation was made, under section 175 or 176, under the warrant.

Notification

If the Director-General of Security is satisfied that the disclosure under the authorisation is no longer required, and is not likely to be required, in connection with the purpose for which the authorisation was made, the Director-General must, as soon as practicable, notify the person:
(a) that a journalist information warrant was issued in relation to the person; and
(b) that an authorisation was made under section 175 or 176; and
(c) whether any information or documents were disclosed in accordance with the authorisation.

180Z Notification of access by enforcement agency

Scope

(1) This section applies if:

(a) a journalist information warrant has been issued in relation to a person under Subdivision C; and
(b) an authorisation was made, under section 178, 178A, 179 or 180, under the warrant.

Notification

(2) If the Part 4-1 issuing authority is satisfied that the disclosure is no longer required, and is not likely to be required, in connection with the purpose for which the authorisation was made, the Part 4-1 issuing authority must, as soon as practicable, notify the person:

(a) that a journalist information warrant was issued in relation to the person; and
(b) that an authorisation was made under section 178, 178A, 179 or 180; and
(c) whether any information or documents were disclosed in accordance with the authorisation.

In this public debate about data retention it is a little unfair to the media that they have sometimes been accused of self-interest. The media plays a very important role—as important as politicians—in a democracy. They review our work, they scrutinise our work—just as we are doing today in this chamber. We are reviewing and scrutinising an important bill. My amendment simply introduces one little measure to improve transparency in the implementation of this law. It requires individuals to be given notice after the investigation is closed so that the individual can be made aware that their data was looked at. In my view it should have no impact on investigations at all. In another sense, it does increase transparency and tackle the fear of the unknown. When a journo knows his data has been looked at—probably a year or two since the investigation was under way—he will then realise 'I am here, I am fine, my contacts are fine,' so it tackles the fear of the unknown and I think over time if this legislation is passed and implemented smoothly it may increase the comfort of the general public about their data being looked at.

I think this bill is a good attempt by the government and the opposition to strike a balance between law and order and the requirement to maintain the right to privacy. Again, because technology is improving and changing so rapidly, this bill is merely one step in the direction of catching up with technology changes. We will be reviewing this legislation from time to time and when required we will be making changes accordingly. In that process, as I said, the media and journalists play a very important role in getting feedback from the public to the politicians so they know how the legislation is working and whether we should make further changes. I hope the Senate can accept my amendment.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (13:55): Senator Wang, the government does not support your amendment, and there is a very simple reason why. I understand the sentiment behind the amendment, and indeed I share a lot of that sentiment, but one must always bear in mind that what we are talking about here is
investigations, and what you particularly have in mind with your amendment are investigations conducted by the national security agency.

It has never been the practice for ASIO to advise people who may have been the subject of investigations that were concluded without any adverse finding or assessment of them but those investigations had been in being. There is a very important practical reason for that. At the time the investigation is being undertaken, those who carry out the investigation cannot know where the investigation will lead. An investigation is not undertaken for no reason; an investigation is undertaken because the relevant officers are of the view that there is something to be investigated—a matter of security concern, in this case. But they cannot know what conclusions or outcomes their investigation might disclose and therefore, in carrying out the investigation, it would put them in an impossible position to be unaware of whether or not, in the event that the investigation was resolved without any adverse finding against a person, their investigative steps and conclusions may nevertheless be communicated to the person.

I have worked with ASIO as their minister for long enough to know that the nature of the investigations they undertake are very complex; the fact that an investigation may involve one individual and one particular line of inquiry may bear directly upon another individual and raise more serious issues in relation to that other individual. It would be an unreasonable constraint upon officers carrying out an investigation if they were not to know whether or not the facts found in the investigation might subsequently be publicly, or privately for that matter, disclosed.

Senator LUDLAM (Western Australia) (13:58): The Greens will be supporting Senator Wang's amendment. To me it goes to attention to detail and it would appear to be reasonably common sense that if material is no longer required in connection with the kind of investigations or authorisations that the Attorney-General refers to, there is absolutely no reason why you would not let the journalist in question know that their material had been accessed. I think it is a matter of common courtesy, apart from anything else, but it is also a matter of due process. This is a government that has made numerous referrals to the Federal Police to try to track down who is talking to journalists. This is not an issue that is happening in a vacuum. It is not an academic question. We strongly believe that once those investigations have concluded, or if that material has been found to be no longer necessary, of course the journalist in question should be notified, so I am happy to commend this amendment to the Senate and I congratulate Senator Wang for his contribution to the debate.

Progress reported.

MINISTERIAL ARRANGEMENTS

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:00): I advise the Senate that Senator Cormann, the Minister for Finance, will be absent from question time today as he is travelling to China to represent Australia at the Boao Forum for Asia Annual Conference 2015. In his absence, questions on the Finance, Treasury, Assistant Treasury and Small Business portfolios should be directed to me.
QUESTIONS WITHOUT NOTICE
Economy

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:00): My question is to the Minister representing the Prime Minister, Senator Abetz. I ask whether the minister can confirm that the Prime Minister made the following statement last week in his courtyard, and I quote:

… a ratio of debt to GDP at about 50 or 60 per cent … is a pretty good result looking around the world …

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:01): As is the wont of the Leader of the Opposition in the Senate—the worst finance minister Australia has ever had—and the Australian Labor Party, they seek to take words out of context. In the courtyard, the Prime Minister gave a media conference and, during the course of that conference, he indicated the debt trajectory that the former finance minister left this country and the coalition to fix up to protect future generations. The debt trajectory that Senator Wong and her colleagues had the Australian budget on would have seen a debt trajectory way above that which we are now looking at. It was in that context that he said that a substantial decline from Labor's trajectory to what it current is—

Senator Moore: Mr President, I rise on a point of order on direct relevance to the question. We are getting a lot of background, but it was a very clear question: did the Prime Minister say the words 'a ratio of debt to GDP at about 50 or 60 per cent is a pretty good result looking around the world'? I actually let the clock run until more than half the answer was given.

The PRESIDENT: Thank you, Senator Moore. I do believe that, just before coming to your feet, the minister was about to directly answer that. So I think we are about to find out.

Senator ABETZ: Seeking to pick out a few words from a general statement or from a paragraph is as disingenuous as you can get. A party that told the Australian people that the deficit in their last budget would be $18 billion, which blew out to $48 billion, now trying to lecture us as to good economic stewardship is absolutely unacceptable from our point of view. (Time expired)

Senator Moore: Mr President, I rise on a point of order again on direct relevance to the specific question—in no way lecturing; just wanting to know whether that statement was correct or not.

The PRESIDENT: Thank you, Senator Moore. I will remind the minister of the question. The minister has 24 seconds in which to answer.

Senator ABETZ: We know the games that those opposite play in trying to pick out a few words in relation to a whole host of words, taking them out of context and then trying to spin them in a manner that would misrepresent that which was being asserted. So just as Mr Shorten said that 2015 would be the year of ideas, does not mean Labor has never had any ideas. (Time expired)

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:04): Mr President, I ask a supplementary question. Can the minister confirm that the Prime Minister
said yesterday in question time when this same quote was put to him, 'I never said that. I never said that'? Can the minister explain why the Prime Minister denied the truth?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:04): I am sure the Hansard of the House of Representatives speaks for itself.

Senator Conroy: It was a press conference.

Senator ABETZ: Mr President, it was not a press conference—to deal with the silly interjection from Senator Conroy. I was asked about what the Prime Minister had said during question time yesterday. That is the fact. That is the question—that is, unless Senator Wong gone on a frolic of her own in asking this question without your permission, Senator Conroy. I do not know whether or not that is the case.

What I can say to you in response to the question is that I am sure the House of Representatives Hansard will speak for itself as to what the Prime Minister said. And, if it needs correction, I am sure the Prime Minister's office will deal with it. I do not know what the Prime Minister said yesterday but, if it was said in the House, I have no doubt that Hansard captured it. (Time expired)

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:05): Mr President, I ask a further supplementary question. Is the Prime Minister's claim yesterday 'I never said that. I never said that.' as honest as his claim before the election that there would be 'no cuts to education; no cuts to health; no changes to the pension; no changes to the GST; and no cuts to the ABC or SBS'? How can the Australian people trust anything that this Prime Minister says?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:06): That question comes from the former minister and her party that promised the Australian people that there would be no carbon tax; from a government that promised that they would turn back the boats and then never did! Senator Wong, who promised a budget deficit of $18 billion and then let it blow out to $48 billion, hardly has any credibility in this space.

Senator Wong: He is a liar.

The PRESIDENT: Senator Wong, you will have to withdraw that.

Senator Wong: I withdraw.

Senator ABETZ: That is the first decent thing the Leader of the Opposition in the Senate has said this question time, and I congratulate her for it.

We as a government are determined to do the right thing by the Australian people. And when Labor goes to the election promising $5 billion worth of cuts to help the budget situation, and we then put that before the Australian people and Labor votes against it—(Time expired)

Legal Aid

Senator MASON (Queensland) (14:07): My question is to the Attorney-General, Senator Brandis. Can the Attorney-General update the Senate on the government's recent announcement on the Commonwealth's contribution to legal assistance?
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:07): I of course note that this is Senator Mason’s valedictory question, something that I must note with a good deal of nostalgia. There will be many occasions in coming days and week to felicitate you, Senator Mason, and celebrate your contribution to this chamber over the last 15 years, but may I say during the course of question time today that it has been a distinguished contribution and a great association.

At one o’clock this afternoon I was able to announce more good news from the Abbott government—that the changes to the Commonwealth’s contribution to legal assistance, announced from 1 July 2015, will not proceed. That means that the final two years of supplementary funding previously allocated to community legal centres will be restored, with benefits to 61 centres. Funding to the Indigenous Legal Assistance Program will be restored so that in 2015-16 and 2016-17 the MYEFO savings measure will not take effect, and funding from the Expensive Criminal Cases Fund will be restored, so that savings measure will not take effect. The aggregate effect of these announcements will be to restore $25.5 million in Commonwealth contribution over the next two years to Commonwealth legal assistance. That will mean that community legal centres—

Senator Kim Carr: I thought we weren’t going to have any cuts.

Senator BRANDIS: Indigenous legal assistance and state and territory legal aid commissions will continue to have their current funding. I said in an answer to a question two days ago that there have been no cuts, and there have not been, and after 1 July there will be none.

Senator MASON (Queensland) (14:10): Mr President, I ask a supplementary question. Can the Attorney-General advise the Senate of steps the government is taking to deliver funding certainty to providers of legal assistance and the members of our community who depend upon them?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:10): Yes, I can, and in fact the announcement I made at one o’clock this afternoon will restore that certainty. As I acknowledged, as the national partnership agreement, which is a quadrennial agreement, moved to the expiry of its term on 30 June 2015 there was concern entertained by some in the legal assistance sector as to what would happen from 1 July. The 2013 MYEFO announcement did foreshadow that cuts would be made after 1 July 2015, although I am at pains to point out to Senator Mason that those cuts have not taken effect yet. And as a result of the decision made by the Prime Minister, in consultation with myself and with my friend Senator Nigel Scullion and my friend Senator Michaelia Cash in recent days, those cuts will not take effect. There will be no diminution in Commonwealth legal assistance arising from that decision. (Time expired)

Senator MASON (Queensland) (14:11): Mr President, I ask a further supplementary question. Will the Attorney-General tell the Senate what further steps the government is taking to put legal assistance on a sustainable footing for the future?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:11): Yes, I
can. Over the past 18 months the government has carefully examined legal assistance funding to ensure that it is directed to front-line services. When we came to power we found that a substantial proportion of the legal assistance budget was directed to so-called policy work or advocacy work—useful work, but not as important in the scheme of things as actually helping people in need. So, our approach to the provision of legal assistance, has been to put clients before causes. Where you have needy people, vulnerable people, in need of support, their needs come before the advocacy of causes, and I do not relent that for a moment. That approach, together with the announcement I made at one o’clock today, should restore any lingering uncertainty from the sector. (Time expired)

**Defence Procurement**

**Senator CONROY** (Victoria—Deputy Leader of the Opposition in the Senate) (14:12): My question is to the Minister representing the Prime Minister, Senator Abetz. I again refer to the government's decision to appoint an expert advisory panel to oversee your sham competitive evaluation process for submarines. I also refer to reports that industry representatives have wondered how this process can possibly be fair, with one CEO saying: 'It looks to me like the decision might already have been made. This whole process clearly favours Japan.' Minister, is he correct?

**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): The simple fact is that the unnamed source is incorrect. That which motivates this government is not trying to do a deal or not do a deal with Japan. What motivates this government is getting the best defence materiel that this nation can possibly get to serve the defence needs of our nation whilst also serving the best interest of the Australian taxpayer. So, what we want is quality submarines—

**Senator Conroy:** Built in Japan.

**Senator ABETZ:** at a reasonable price.

**Senator Cameron interjecting**—

**Senator ABETZ:** What Senator Cameron is championing is that if those two factors come into play it must be in Japan. We have not come to that conclusion. What we have said is that we want to socialise this with a number of countries such as—as I understand it, and I will correct the record if need be, and possibly Senator Brandis can help—Germany, France and Japan. They are on the list, and we are looking to see the very best result that we can get, keeping in mind that it was the Australian Labor Party that, whilst in government for six years, did nothing whatsoever to develop the new generation of submarines that this country needs for its strategic defence. So, having done nothing for six years, they now come into this place pretending to champion the cause of Australian-made submarines.

If Senator Conroy and his colleagues before him had done the right thing, this process would have been well and truly in place, and indeed building should have been commencing. But, when we came into government, we realised that the promises that the Labor Party had made about how far they had gone down the road were shallow, hollow and untrue. (Time expired)

**Senator CONROY** (Victoria—Deputy Leader of the Opposition in the Senate) (14:15): Mr President, I ask a supplementary question. Is retired commodore Terrance Roach correct
when he says: 'If we don't build the submarines—design and build the submarines—here, they'll be much more difficult to sustain them in the future?'

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:16): I do not pretend to be an expert in relation to that particular aspect of the assertion made by the gentleman to whom Senator Conroy refers. However, I repeat that what we want is the best possible platform for Australia's defensive strategic needs at the best possible value for money—and, of course, trying to get as many Australian jobs as possible. Indeed, as the Prime Minister has said—

Senator Conroy: As possible. As possible.

Senator ABETZ: Senator Conroy says, 'As possible.' Well, we deal in possibilities; Labor deal in impossibilities, in fantasies. That is why they went to South Australia saying they had done all this work on the submarine program when they had done zilch—nothing whatsoever. And that is the mess we are cleaning up, like we did with your Australia Network and the NBN. (Time expired)

Senator CONROY (Victoria—Deputy Leader of the Opposition in the Senate) (14:17): Mr President, I ask a further supplementary question. Will the minister confirm the government's commitment before the last election to build 12 submarines in Adelaide? And will the Prime Minister support Labor's bipartisan approach to build those submarines and maintain and sustain our next generation of submarines here in Australia and reverse his captain's pick to build our next fleet of submarines in Japan?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:17): It is very difficult to try to do anything with the Labor Party on a bipartisan basis because the loyalty they pledge and declare to their own leaders is thrown out the door at a whim, as Mr Rudd and Ms Gillard can both testify to. So, when Senator Conroy comes into this place, hand on heart, saying, 'Trust me; trust me; we will be true on this occasion,' I pick up the phone to Mr Rudd and Ms Gillard and say, 'Are these people worthy of my trust?' and they tell me no.

Senator Cameron: Mr President, I raise a point of order on relevance. The key issue in this question was: will the government meet its commitment to build the 12 submarines in Adelaide? That is the issue, nothing more, nothing less.

The PRESIDENT: Thank you. On the point of order, Senator Abetz?

Senator ABETZ: Mr President, once again Senator Cameron, like his leader before him yesterday, tries to reinvent the question. The question also asked whether or not we would join in Labor's bipartisan pledge, and of course that is to what I was responding.

The PRESIDENT: Minister, have you concluded your answer?

Senator ABETZ: I have indeed.

Honourable senators interjecting—

The PRESIDENT: Senator Edwards and Senator Conroy—Senator Cameron. Senator Cameron!

An honourable senator: A Freudian slip, Mr President!

The PRESIDENT: It was very Freudian! Senator Bernardi on a point of order?
Senator Bernardi: No, I have a question.

The PRESIDENT: I am not going to call you at the moment, Senator Bernardi.

Senator Bernardi: But no-one else is seeking the call. Nobody else is seeking the call, Mr President.

The PRESIDENT: Order, Senator Bernardi! The common practice in question time is that I normally indicate—

Senator Bernardi: But, if they are asleep, Mr President, I am allowed to seek the call.

The PRESIDENT: No, that is not the case, Senator Bernardi. I was not going to call the next questioner until there was order in the chamber.

Honourable senators interjecting—

The PRESIDENT: And I am still waiting. Order on both sides! Thank you.

Organisation for Economic Co-operation and Development

Coal Industry

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:19): My question is to the Minister representing the Prime Minister, Senator Abetz. Can the minister confirm that the Australian government instructed its officials to oppose moves within the OECD's Export Credit Group to stop financial assistance for coal plants in developing countries? If so, why?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:20): The very first thing that I think should be understood is that there are well over 1,000 million people in the world without a regular or decent supply of electricity, living in absolute, grinding poverty. And there is no doubt that, if we are to lift those people from that grinding poverty, we need to provide them with a relatively cheap and reliable energy source. We believe that that can be best provided, in the short term at least, by clean coal such as that which Australia exports.

It is interesting that on this occasion the Australian Greens would have us champion the cause of, as I understand it, the United States in the OECD, whereas on this occasion we are in fact in lock step with our near Asian neighbours such as Japan and Korea. So those that continually assert that we should be engaging with our Asian neighbours only do so when it suits them and then hide behind—if I can quote them back at themselves—the skirts and the petticoat of the United States when it suits them. What we have—

Honourable senators interjecting—

Senator ABETZ: Or the forelock tugging—whatever terminology you might want to use. That is what the Australian Greens continually direct at us, and here they are saying we should be championing the same cause as the United States, when we are saying we are in lock step with Japan and South Korea, our near Asian neighbours. We will announce in due course that which we believe ought to be occurring, but negotiations are occurring. (Time expired)

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:22): I take that as a 'yes'—that the officials were instructed to do that. I ask a supplementary question, Mr President. Given that the Prime Minister, Treasurer Hockey, the Minister for the Environment
and now you, Senator Abetz, are all using lines straight out of the PR document of Peabody Energy, America's biggest coal company—the 'coal lifts people out of poverty' routine—can you confirm that Peabody's instructions have now been given to the whole of the Liberal Party for their talking points on coal? (Time expired)

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:23): I can assure Senator Milne that I was not aware of whatever that company's name was, but they adopted what is a very common-sense statement—that is, that coal genuinely has the capacity to lift people out of poverty. If it is a fact, I do not care if Senator Milne says it, I will adopt it. I do not care who says something if it is an objective fact. I would encourage anybody else to tell us how else you can lift people out of poverty other than through an energy supply that is reliable and cheap. Whatever company it was that may have said it, it is a statement of truth, a statement that we support. The cleaner the coal they can use, the better—and who has some of the cleanest coal in the world? We have. (Time expired)

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:24): Mr President, I ask a further supplementary question. Given the government's attack on the renewable energy target, the Renewable Energy Agency and the Clean Energy Finance Corporation and, now, the promotion of and opposition to curbs on coal, will the government now admit that it is the wholly owned subsidiary of the coal industry?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:24): What a bizarre question from the Leader of the Australian Greens—who succeeded a leader who promoted a coal-fired power station for my home state of Tasmania against a renewable energy supplier of hydro-electricity. The hypocrisy and the duplicity is galling. Everybody in this place knows that you can support coal-fired power stations and a renewable energy target. They are not inconsistent. We are pursuing both in a sensible manner while you, Senator Milne, and the Australian Greens, in your ideological-driven hatred of hydro-electricity, have come unstuck 30 years later—when you and your cohorts in Tasmania champion a coal-fired power station against a sustainable renewable energy supply of hydro. (Time expired)

Centrepay

Senator CAMERON (New South Wales) (14:25): My question is to the Minister for Human Services, Senator Payne. I refer to the Chief Executive Officer of the Consumer Action Law Centre, Gerard Brody, who says that consumer lease companies like Radio Rentals are providing high-cost credit arrangements to welfare recipients through Centrepay and that:

Often the costs are three to five times the value of the goods that are being rented …

Can the minister confirm that this is correct?

Senator PAYNE (New South Wales—Minister for Human Services) (14:26): I very sincerely thank Senator Cameron for that question. It has only taken 18 months, 23 Senate sitting weeks, 86 Senate question times and 367 opposition questions without notice that for Senator Cameron to have whatever modicum of intestinal fortitude it requires to stand up in this place and ask me one question.

Government senators interjecting—
Senator PAYNE: And I am extraordinarily grateful!

Senator Cameron: Mr President—

The PRESIDENT: Order on my right! I think I can anticipate what your point of order is going to be, Senator Cameron. Minister, please come to the question.

Senator PAYNE: I understand that Senator Lines is moving further down the chamber and encroaching on Senator Cameron. She has his back—there is no question about that.

Honourable senators interjecting—

The PRESIDENT: To the question, please, Minister.

Senator PAYNE: I think that 18 months, 23 Senate sitting weeks, 86—

Senator Wong: On a point of order, Mr President: the minister has been on her feet for some time. She just flagrantly ignored your direction to her to return to the question—or your reminder to her. She may not have noticed, in her desire to run through the statistics she keeps, that the question is about welfare recipients and the high cost of credit arrangements. These are important matters and we would appreciate it if she responded to them.

The PRESIDENT: Minister, I do draw your attention to the question and I ask that you do come to the question.

Senator PAYNE: I actually think it is extremely important to place on the record the complete lack of focus of the shadow minister on his portfolio.

Opposition senators interjecting—

The PRESIDENT: Order! Minister, to the question, please.

Senator PAYNE: It is about time that Senator Cameron actually participated genuinely. Is he taking pay for this job, Mr President?

Senator Wong: Mr President—

The PRESIDENT: Minister! Senator Wong, I think I can deal with this.

Honourable senators interjecting—

The PRESIDENT: Order on my left! On both sides!

Senator Wong: He is the president! He has told you three times. You're behaving like a student politician, Marise!

Honourable senators interjecting—

The PRESIDENT: Order, on my right and on my left! Order! Senator Payne, I will ask you to address the question. I know we allow some preamble. That has gone on for too long. I would draw your attention to the question and ask that you address the question.

Senator PAYNE: I am very happy to address the 368th question without notice from the Labor opposition in this chamber, and the first from the shadow minister for human services on the portfolio human services. In relation to Centrepay and the question raised by the shadow minister, I repeat: we have worked over some period of time to better protect the recipients of Centrelink payments who are engaged with Centrepay undertakings. We have a number of agreements with the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission and the Australian Energy Regulator,
which particularly enabled Centrelink to exchange information about the businesses that participate in Centrepay. As well—

**Senator Cameron:** Mr President, I raise a point of order on relevance. I was asking about the cost of these rented pieces of equipment that are three to five times the value of the goods that are being rented. The minister has not gone anywhere near that question.

**The PRESIDENT:** Senator Cameron, you had a number of points and then the final part of your question was, 'Can the minister confirm that this is correct?' I think the minister is addressing components of your preamble to your question.

**Senator PAYNE:** Of course, what Senator Cameron fails to say in his answer is that the arrangements, I might note, were introduced by the previous government. I would note that the report Senator Cameron referred to is not a report of government— *(Time expired)*

**Senator Jacinta Collins:** How many days have you been minister?

**Senator PAYNE:** Longer than you.

**The PRESIDENT:** Senator Collins. You are not to interject.

*Senator Back interjecting—*

**The PRESIDENT:** And nor are you, Senator Back.

**Senator CAMERON** (New South Wales) (14:32): Mr President, I ask a supplementary question. Does the minister stand by her claim that for some customers accessing high-cost credit through Centrepay 'is really their only access to any form of credit'. Is the minister unaware of alternative low-cost providers that are available for the purchase of household goods, like Good Samaritan microfinance?

**Senator PAYNE** (New South Wales—Minister for Human Services) (14:33): I thank the senator for the question, his first supplementary question to me as Minister for Human Services. What I would say is that there is a small number of no-interest loan scheme arrangements and low-interest loan scheme arrangements, and also a number of emerging players—I suppose would be the term—in the market who are interested in participating far more than was the case previously. Consumer leases of the nature to which Senator Cameron has referred have for a number of people, particularly in very remote parts of Australia, often been their only recourse for obtaining goods of this nature. They are welfare recipients who do not have the sort of credit rating that enables them to participate in the full financial market, and that is a very important aspect of what we are currently considering and a very important aspect of the negotiations that we are undertaking with the authorities to which I referred earlier. *(Time expired)*

**Senator CAMERON** (New South Wales) (14:34): Mr President, I ask a further supplementary question. What action has the minister taken to protect Centrelink clients from consumer leases that exploit the vulnerable? Or is Credit Suisse correct when they say in their recent report on the risks in payday lending and goods rentals that significant changes to Centrepay would require a change of government?

**Senator PAYNE** (New South Wales—Minister for Human Services) (14:34): I can say with absolute confidence that Credit Suisse is wrong in a number of aspects in that report, and that is just one of them. The Assistant Treasurer, Mr Frydenberg, and I—completely coincidently as it happens—met last week on this issue to discuss Centrepay and to discuss
aspects in which Treasury may be engaged in assisting Centrelink to address some of the concerns that have been raised with us. This is not something that has been around—

**Senator Cameron:** Just fix it! We don't need to know—

**The PRESIDENT:** On my left. You have the call, minister.

**Senator PAYNE:** ASIC, the ACCC, the Australian Energy Regulator—we are addressing these issues. *(Time expired)*

**Gas Prices**

**Senator MADIGAN** (Victoria) (14:36): My question is to the minister representing the Minister for Industry and Science, Minister Ronaldson. The east coast gas market has changed due to the trebling of gas demand from LNG exports and the increases in gas prices being demanded by gas producers. The recent Deloitte Access Economics modelling showed that the higher gas prices will have impacts across the whole economy from manufacturing and agriculture to construction and transport. This is on top of the impacts to pensioners who are struggling to heat their homes and the thousands of Australians who will simply be unable to pay the new gas prices being demanded. When will the government address the approaching loss of over 200,000 manufacturing jobs that this will cause and the impacts upon every household of these increased gas prices?

**Senator RONALDSON** (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:37): I thank Senator Madigan for his question and also acknowledge his long, deep and abiding interest in this matter and for giving me some advance notice of his question. I will say at the start that I do not agree with the assertion that there may be a loss of over 200,000 manufacturing jobs due to increases in gas prices. However, I will say to Senator Madigan that the government shares your concerns regarding gas prices that are faced by consumers and industry. That is why we worked hard to deliver the abolition of the carbon tax, and this has directly benefited Australian households and businesses by placing downward pressure on gas bills.

But the senator is, indeed, absolutely right that natural gas has an important role to play in Australia's energy future, and we have been very clear that we support the responsible development of gas. State and territory governments, which have primary responsibility for onshore development, are the main regulators of the activity. Australia has ample reserves of natural gas to meet both domestic and export demand, and the challenge we face, as Senator Madigan knows, is getting the gas out of the ground in time to meet the needs of gas users. The government believes that increasing overall gas supply is the best way to ensure customers have access to competitively priced gas and an assured supply. Queensland and South Australia have multiple projects underway, whereas some other states have halted the development of gas resources, placing pressure on available gas supplies and gas prices. The government will continue to work with state governments to ensure that adequate gas supply is maintained and that domestic customers can access a competitive price.

**Senator MADIGAN** (Victoria) (14:39): Mr President, I ask a supplementary question. Can the government explain why Australian households and businesses are being hit hard by increases in gas prices when world prices of all petroleum based products, including oil, gas and LNG, have halved in recent times? Is there any link between the fact that most of the gas

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production here in Australia is controlled by a small group of producers and competition is almost non-existent.

Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:39): I will just say to Senator Madigan that this, of course, is not a straightforward issue, and I extend an invitation to you to discuss these matters personally with the minister, if you would like to do so. In direct response to your question, as I said before, onshore development is largely a state responsibility, but this government has always supported the responsible development of world-class gas resources. As older gas fields become depleted they have been replaced by new sources of gas that are deeper, tighter and more costly to develop. As I said earlier but I will say again, we believe that increasing overall gas supply is the best way to ensure customers have access to competitively priced gas. The gas on the east coast is also becoming an internationally tradeable commodity, with the development of technology that can liquefy natural gas and transport it overseas. I appreciate the senator's point in relation to these increases. The spot prices for gas in international markets has also fallen, and I would expect that, as the Australian market links more closely with the global market, there will also be pressure— (Time expired)

Senator MADIGAN (Victoria) (14:40): Mr President, I ask a further supplementary question. Minister, we do not have time for further review and ad hoc answers. Given lower world prices of petroleum products, why are government policies continuing to enable the subsidising of cheap gas exports to regional manufacturing competitors at the expense of Australian jobs and Australian manufacturers?

Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:41): Senator Madigan, I do not think I have been able to do appropriate justice to your question in the time allowed. Minister Macfarlane will assist you with that. I would note that consumers are not subsidising exporters and the gas market is competitive and supports different deals at different times. It is these deals and these contracts with customers that underpin investment and supply and transport infrastructure. Australia has ample reserves of natural gas to meet both domestic and export demand, and there are many opportunities that come from being part of the global market. In Queensland, for example, where the first big projects are underway to develop CSG for export, regional areas are flourishing. In Queensland, gas projects will create 30,000 construction jobs and 17,000 ongoing jobs from 2020, and Australia's LNG exports are expected to grow nationally to over $60 billion in 2017-18. Many of these are state issues. But the government agrees more need to be done to— (Time expired)

Indigenous Communities

Senator REYNOLDS (Western Australia) (14:42): My question is to the Minister for Indigenous Affairs, Senator Scullion. Can the minister explain to the Senate how the coalition government is supporting the delivery of municipal and essential services in remote Indigenous communities?

Senator SCULLION (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (14:42): I thank Senator Reynolds for the question. This government is focused on delivering better outcomes for Aboriginal and Torres Strait Islander communities and ensuring that our first Australians can expect the same—if not better—
levels of service as other Australians. That is why we have been working with state
governments to reform the delivery of municipal and essential service in remote Indigenous
communities to ensure services like rubbish collection and the provision of water and power
are provided by state and local government with funding provided by the Commonwealth
financial assistance grants, as they are in every other community. What needs to be put on the
public record is that communities are not closing and services have not been reduced.

Municipal and essential services are continuing to be delivered by the Commonwealth until
the end of June, when the Western Australian government has agreed to take over these
services. The Premier of Western Australia, Colin Barnett, confirmed that services would
continue when he spoke on the steps of the Western Australia house of parliament last week
and said no Aboriginal people would be forced to move from their traditional lands and
communities. Last month, the Western Australian government confirmed that the funding
provided by the Commonwealth would keep all community funding arrangements in place. It
is great to see that state governments are taking up their responsibilities for Indigenous
communities, something it does for every other town, city and state. This government will
continue working with state and territory government to ensure that services are delivering
outcomes for Aboriginal and Torres Strait Islander communities by making sure that
governments work better and are more focused on delivering services on the ground.

**Senator REYNOLDS** (Western Australia) (14:44): Mr President, I ask a supplementary
question. Can the minister update the Senate on the future of service delivery for these
communities? Also, can he advise what damage there has been from the scaremongering
about the closure of these communities?

**Senator SCULLION** (Northern Territory—Minister for Indigenous Affairs and Leader of
The Nationals in the Senate) (14:44): As I said, the Western Australian government have
confirmed that services are continuing in remote communities in Western Australia. No
communities have been closed because of the transition and services will continue at existing
levels from 1 July 2015. I can advise that, rather than using my position to speculate and
create unnecessary fear, I have been working with ministers in Western Australia and other
states to ensure there is no closure of communities.

**Senator Lines:** I bet they welcomed you with open arms!

**Senator SCULLION:** I am disappointed, Senator Lines, with senators opposite who are
making claims that communities are closing or, even worse, that traditional owners are being
forced off their land when they know this is not the case. It is unhelpful when senators
opposite are tweeting that traditional owners have been forced off the land when they know
this is not the case. So I call on those opposite to take a lead from this government and focus
on delivering better outcomes for our first Australians, rather than misleading them.

**Senator REYNOLDS** (Western Australia) (14:45): Mr President, I ask a further
supplementary question. Will the minister inform the Senate how the reforms to municipal
and essential services in remote communities have contributed to this government's efforts to
deliver better outcomes for Indigenous Australians?

**Senator SCULLION** (Northern Territory—Minister for Indigenous Affairs and Leader of
The Nationals in the Senate) (14:45): I thank the senator, again, for the question. This
government is focused on making a change in Indigenous affairs and achieving actual results
for Aboriginal and Torres Strait Islander communities. Under successive governments, billions of dollars have been spent over decades with little to show in remote communities. The continuation of municipal and essential services funding, just in remote Aboriginal communities, is the kind of complicated arrangement that plagued Indigenous affairs under the former Labor government. Instead of supporting complicated bureaucratic funding arrangements, we are focussing on our three priorities in Indigenous affairs: children need to attend school on a more regular basis; adults need to be engaged in work, training for jobs and more purposeful activities; and we need to keep Indigenous communities safe. This is what Indigenous communities have been asking for and telling me, and that is why these are the government's priorities in Indigenous affairs.

**WestConnex**

*Senator RHIANNON* (New South Wales) (14:46): I direct my question to the Minister representing the Minister for Infrastructure and Regional Development, Senator Cash. How does the government justify contributing $500 million to the WestConnex motorway project in Sydney and another $3 billion in grants and loans for the project when Infrastructure Australia's assessment of the project found major weaknesses in the business plan, including a failure to account for the induced trips motorists would have to make and no allowance made for cost blow-outs?

*Senator CASH* (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:47): I thank Senator Rhiannon for the question. I am sure that I have already answered the question, but I will commence my answer by yet again asking myself, "Why do the Greens hate infrastructure so much?" It is a little bit like when the senator from Victoria, Senator Rice, asked me a question in relation to the East West Link. Why do you hate projects which ensure that the people of the states in which the projects are being built get jobs? This is a good project.

In terms of the Infrastructure Australia assessment: on 23 February 2015, Infrastructure Australia released their assessment of WestConnex, judging it as 'threshold', which indicates that the project has strong strategic and economic merit. Senator Rhiannon, which part of 'strong strategic and economic merit' do you not understand?

*Senator Abetz:* The whole lot!

*Senator CASH:* The whole lot, exactly, although it is a little unfortunate. That is exactly right! I again, for the benefit of those from New South Wales, outline the benefits of WestConnex. It will provide 33 kilometres of continuous traffic-light-free motorway to link western and south-western Sydney with the CBD, Kingsford Smith airport and the port precinct. That is a good thing. WestConnex will remove well-known bottlenecks in the M4 and M5 corridor and improve traffic flows, colleagues, by bypassing up to 52 sets of traffic lights. The benefits of the WestConnex project do not stop there. It will take 3,000 trucks per day off Parramatta Road. Again, I ask: what do the Greens have against infrastructure projects that create jobs, boost productivity—*(Time expired)*

*Senator RHIANNON* (New South Wales) (14:49): Mr President, I ask a supplementary question. Could the minister—

*Government senators interjecting—*

**The PRESIDENT:** Order! On my right. I need to hear the question.
Senator RHIANNON: Could the minister answer this question rather than go into her bombastic abuse mode. Considering Infrastructure Australia's assessment shows that the WestConnex business case wrongly estimated project costs because they did not follow the guidelines, resulting in a potential cost blow-out of hundreds of millions of dollars, does the minister now accept that it would be a better use of money to invest in public transport to reduce traffic on Sydney roads and fix congestion in the long term? (Time expired)

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:50): No, I do not agree with the proposition that Senator Rhiannon has put. But as my colleague, Senator Abetz, has said: the Soviet Union was very good at building certain types of infrastructure. But could I just go back to the WestConnex project because all jokes—being the Greens—aside, I have to say: this is a very serious project and it will deliver serious economic benefits to the people of New South Wales. That is what those on this side of the chamber want: we want to ensure that the people of New South Wales have jobs. That is what this project will provide. We want to ease congestion on the roads. That is what this project will provide. I note, however, that Senator Rhiannon, being the Greens transport spokesperson, wants to close the Kingsford Smith airport but she does not want an airport at Badgerys Creek. At the same time—(Time expired)

Senator RHIANNON (New South Wales) (14:51): Mr President, I ask a further supplementary question. Minister, could you answer the question this time rather than being so inaccurate and being a Cold War warrior. In 2014, the minister promised to enshrine—

Honourable senators interjecting—

The PRESIDENT: Order! Senator Rhiannon, start again. We will start the clock again.

Senator RHIANNON: My question is to the minister. In 2014 the minister promised to enshrine certainty, transparency, focus and a national purpose in infrastructure planning, development and delivery. But yesterday he refused to produce key documents on the WestConnex project because he deemed it not in the public interest. Minister, given that it is the public that is funding this project, why is releasing this information not in the public interest? In whose interest is it to keep the business case and traffic modelling secret—your developer mates?

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:53): I have to say that, given the mention of communism, the Cold War, the old Soviet Union and being—what was it?—a warrior for communism, I almost wish that I could defer to Senator Mason to answer this question. I wish I could defer to Senator Mason on his final question time to answer the question because I am sure, Senator Mason, you would have a lot to say in relation to the proposition that Senator Rhiannon has put forward.

The PRESIDENT: Keep to the question, Minister.

Senator CASH: Quite seriously—

Senator Milne: I rise on a point of order. A question was asked about releasing the business case. If it is in the public interest to release that business case, please release it.
The PRESIDENT: There is no point of order, Senator Milne. I remind the minister that she has 24 seconds in which to answer the question that was asked.

Senator CASH: In relation to the order for the production of documents and the response that I provided on behalf of Minister Truss yesterday, it clearly sets out in the order why the minister responsible believed it is not in the public interest to disclose the documents. Senator Rhiannon, when it comes to things like commercial confidentiality et cetera—(Time expired)

Migration

Senator STERLE (Western Australia) (14:54): I am a bit nervous. I may need protection because my question is to the Assistant Minister for Immigration and Border Protection, Senator Cash! Can the minister confirm that today the Full Court of the Federal Court has ruled that the minister's determination on work rights in the off-shore oil and gas industry is invalid, finding the minister's actions were 'not authorised', 'invalid' and 'sought to reverse the parliament's intentions'.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:55): Yes, I can confirm that today the full bench of the Federal Court did uphold the MUA's appeal. We are currently considering the decision.

Senator Sterle, if you want to come in here and be proud of your side's efforts to close down the offshore oil and gas industry then, quite frankly, you should hang your head in shame, because those of us on this side of the chamber will take every step that we can to ensure that one of the most productive industries—not just in this country, but globally—is able to do business.

Look at the offshore oil and gas industry. This accounts, in terms of the Australian economy—Senator Sterle, let me give you a lesson, which your mates in the MUA clearly have not given you—for 2½ per cent of gross domestic product, generating $28 billion a year in revenue. On this side we want to ensure that they are able to continue to generate those levels of money and, if possible, to increase. The sector, Senator Sterle—through you, Mr President—employs 2,500 people, and it is estimated that the number of flow-on jobs is at least 10,000.

What those on the other side just do not understand is that if you take steps to destroy this industry your people will lose their jobs. I am actually taking steps to try and protect the jobs of those in the MUA. Everything you are doing, Senator Sterle, is completely contrary to that, and you should hang your head in shame.

Senator STERLE (Western Australia) (14:57): Mr President, I ask a supplementary question. I proudly ask the minister, will the minister take responsibility for her unlawful actions and outline to the Senate the consequences for workers in the offshore oil and gas sector?

The PRESIDENT: Order! I am just wondering whether that is completely in order, Senator Sterle, when you refer to the minister's 'unlawful actions'.

Senator Wong interjecting—
The PRESIDENT: If you just bear with me, Senator Wong, I am going to invite the minister, if she wishes, to answer the question. Senator Wong, do you still wish to raise a point of order?

Senator Wong: My point is, perhaps, to assist. The quotes were 'invalid', 'not authorised' and 'sought to reverse the parliament's intention'. If you rule that we should repeat those rather than 'unlawful', so be it.

The PRESIDENT: It was the inference about the minister that I was concerned with.

Senator Wong: The actions are invalid; that is unlawful, with respect.

The PRESIDENT: I just feel as though that has reflected on the minister, but I will allow the minister to answer the question if the minister wishes to.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:57): In relation to the decision of the Federal Court, as I have said I am aware of it. We are currently considering the decision.

In relation, though, to the broader issue of the offshore oil and gas industry, as I have stated and as I will continue to state, and as one of the former respected ministers in your government, Martin Ferguson, would adhere to—he would agree, given his current position—we should be taking steps to ensure the success and the viability of the offshore oil and gas industry. So, Senator Sterle, seriously, if you do not want to listen to me—and it is fine if you do not—why don't you pick up the phone and speak to the former minister for resources, Martin Ferguson? He will give you a lesson in what your mates in the MUA are trying to do to this industry. And I can tell you: it is not good for the workers.

Senator STERLE (Western Australia) (14:59): Mr President, I ask a further supplementary question, and I am proud to say that the MUA are my mates. Will the minister now stop thumbing her nose at the parliament and work with industry stakeholders—including the MUA—to fix the mess you have created?

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (15:00): You really do not want to get someone on this side started on messes that have been created, because we would be here all afternoon telling those on the other side about the messes that you created and that we are currently cleaning up. Senator Sterle, you asked me a question in relation to the immigration portfolio. Believe you me, you do not want to get me started.

Senator Moore: Mr President, I rise on a point of order on direct relevance to the question. Could you redirect the minister's attention to the question.

The PRESIDENT: Minister, I do point you to the question that was asked. You have 35 seconds in which to answer the question.

Senator CASH: All I can say is that we on this side of the chamber will take the steps necessary to ensure that one of the most profitable industries in this country is able to continue to operate in this country. If those on the other side want to stick up for their union mates, that is their decision. But I can tell you that sticking up for your union mates will actually endanger jobs within the sector.
Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (15:01): Mr President, despite the next question being to me, I do ask that further questions be placed on the Notice Paper.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Answers to Questions

Senator CAMERON (New South Wales) (15:02): I move:

That the Senate take note of the answers given by ministers to questions without notice asked by Opposition senators today.

It is no wonder that the Australian public have lost all confidence and all trust in this rabble of a government sitting across here. This is a government that has absolutely no idea about the issues that affect ordinary people. Nothing could have been clearer in the strident response from the Minister for Human Services, Senator Payne, to a legitimate question about how we look after some of the poorest and the most underprivileged people in this country. Senator Payne had an opportunity for two minutes to say that she cares about what happens to people who are unemployed or who rely on a pension, and people who are being ripped off by unscrupulous companies. But what did she do? She spent about one minute and 20 seconds of that response not caring about what is happening to the poor and not caring about what is happening to people who are being exploited. All she did was to try to score political points. The public are over these political points. The public want governments that care about communities. The public want governments that care about jobs, that want to do something about jobs, that want to get kids into apprenticeships, that want to get kids off the dole but do not want to push them in for six months with absolutely no income and force them to rely on charities. Being strident and being uninformed—like Senator Payne was today—is not a good example of how a government should work. You cannot just care about political points. You have got to care about the Australian public.

When people go to the ballot box in New South Wales on Saturday they can look at the quality of the senators, the ministers and the MPs in New South Wales. And Senator Payne epitomises this uncaring approach from this government. They only want to look after the big end of town. They only want to look after their mates who will pull up in their Bentley and hand over the brown paper bag for their election funds. That is the people that they want to look after. They do not care. They do not care about the workers in Penrith, they do not care about the people in Blacktown, they do not care about the people in Mt Druitt. All they care about is the big end of town. Let me tell you, Mike Baird is no different. He wears the same blue tie, he belongs to the same party and he takes the same political position—that is, they do not care about those who are in trouble.

Nothing could epitomise this more than the response of the federal coalition and the New South Wales Liberal government to the bushfires in the Blue Mountains. When you hear Senator Payne stand up saying that things are under consideration, remember she told the people in the Blue Mountains—those who had been moved out from getting any support from the federal government—that that would be ‘under active consideration’. These are people who could not get into their homes, people who could not get out of their homes, people who had lost their fridges, people who had lost their food. People who had to go into hotels were
told, 'You are on your own.' But what they actually did was tell the people in the Blue Mountains that the issue of providing support was 'under active consideration'. So when you hear the Liberals talk about 'under consideration' and 'under active consideration', you know that this is another way of not delivering for people in New South Wales. We have got two MPs up in the Blue Mountains: we had Mrs Louise Markus, the member for Macquarie, who was absolutely silent. She is one of the worst members of parliament ever in this country. And there is Mrs Roza Sage, the state member, who is absolutely pathetic. She did not raise her voice against Blue Mountains people getting their wages and their entitlements cut.

Senator Ian Macdonald: Mr Deputy President, I rise on a point of order. Under the standing orders is it appropriate for this senator who has an unenviable reputation for abuse to speak to other members of other houses of parliament in the way and give them the descriptions that this senator has?

The DEPUTY PRESIDENT: Yes. I have been listening carefully, and I do not think Senator Cameron has breached the standing orders. Senator Cameron, you have the call.

Senator CAMERON: Ms Sage and Ms Markus—absolutely pathetic, incompetent, unable to represent their electorates. (Time expired)

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (15:07): I am delighted to take part in this debate. Who did Senator Cameron just seek to demonise? Louise Markus, the member for Macquarie. He said 'one of the worst ever'. What did he ever say against Craig Thomson, the member for Dobell? Absolutely nothing. And there you have a window into the moral standards of the New South Wales Labor Party represented by Senator Doug Cameron in this chamber. Louise Markus is a wonderful person and wonderful human being who has a genuine heart for her electorate, and he demonises her in favour of Craig Thomson. Let us not be mistaken that this Senator Doug Cameron was the same Senator Doug Cameron who weaved the magic numbers within the Labor Party to allow Senator Macdonald's namesake, the corrupt Ian Macdonald, to retain his endorsement in New South Wales. So, if the people of New South Wales want to do a compare and contrast, let them do so on the basis of the words that have just come out of Senator Cameron's own mouth.

But the reason I want to be part of this debate this afternoon is to remind all honourable senators of the great words of the former Prime Minister John Howard, who said, 'Never rely on a quote alleged by your political opponents, especially those in the Australian Labor Party.' Today in question time Senator Wong sought to put me certain alleged quotes from Prime Minister Abbott. Allow me to read into the Hansard the full quote of what the Prime Minister said:

Debt as a percentage of GDP, which would have been 120 per cent under the policies of the former government, is about 60 per cent under the policies of this government.

Listen to this:

Now, that's too high. We want to get it in a much, much better situation than that.

Oh. Why would Senator Wong refuse to put that into the quote to contextualise that which the Prime Minister had said? Because she went on a deliberate campaign to misrepresent that which the Prime Minister had said. He then went on to say:
We'd like over time to achieve this green line, but a ratio of debt to GDP at about 50 or 60 per cent is a pretty good result—

and what were the words missing?

looking around the world, 120 per cent is a dire result and that's what we were going to have under the policies of the former government.

Senator Wong is an intelligent human being and therefore you cannot assume anything other than that she may have done this deliberately. When you read the words of the Prime Minister saying that a debt ratio of 60 per cent is:

… too high. We want to get it in a much, much better situation than that—

you have a clear understanding from the Prime Minister of Australia that he is going to continue to deal with the situation.

The Labor Party legacy of 120 per cent was dire. At the moment, we have a trajectory of about 50 to 60 per cent. In anybody's language, halving that debt trajectory is good news. However, it is not enough, and that is what the Prime Minister himself said when he said:

Now, that's too high. We want to get it in a much, much better situation than that.

And so let's just get this exceptionally clear: we as a government are determined to clean up the mess by the Australian Labor Party—especially that left by the failed Minister for Finance, the now Leader of the Opposition in this place. The sad thing is that each and every time we try to fix their mess they deliberately stand in the way—standing in the way in circumstances where their own policies of saving five thousand million that they took to the election that they then vote against after they get defeated, deliberately seeking to avoid the issues of the day.

Senator O'NEILL (New South Wales) (15:13): I rise on the back of that speech that we have just heard from Senator Abetz to say that we as the Labor Party will stand in the way every single day that this government tries to roll over the Australian people and completely reject any of the claims that they made before the election. The fact is this government has a massive trust deficit and it will never overcome the trust it has broken with the Australian people. That is because they absolutely said one thing before the election and have been delivering a completely different thing since they got in the place. Before the election there would be no cuts to education, no cuts to health, no changes to the pension, no changes to the GST and no cuts to the ABC or SBS, for good measure. And what do we have? The Prime Minister arrives and he says, in a manner of words, 'I didn't say that.'

And we hear it again. He made a number of comments last year in the lead-up to the budget. He claimed at that point in time that a ratio of 14 per cent debt to GDP was a 'debt and deficit disaster', and on the back of that he went ahead and created the most appalling budget it has been my great displeasure to witness in my entire life in this country. He could not have constructed a more unfair budget, and in doing so he revealed the Liberal Party and everything it stands for both here in the federal parliament and in the state of New South Wales. If they can take a knife to education, they will slash and burn. If they can take a knife to health, they will cut it and they will scalp away at it until it is a shadow of its former self. They are determined to break access for every Australian to education and health. They want to set up a two-tier, Americanised system where the rich get richer, and can access health and
education, and the poor do not even get a look in. That is what they are in the business of constructing right now.

What did they do the minute they got in here? They said, 'Debt and deficit. Debt and deficit.' They drew everyone's attention to a fake emergency. Then they went ahead and, in their very first budget, they cut $50 billion out of health—but that was not quite enough. They had a crack at education, which was their next target, of $30 billion. Mike Baird followed that lead with a $1.7 million cut from education, axing the jobs of 1,100 teachers and staff and cutting courses such as the second-chance HSC syllabus, tourism, hospitality and IT. Access was wiped for young people on the Central Coast, where youth unemployment is hitting nearly 22 per cent. But Mike Baird says, 'Let's cut TAFEs and get rid of it.' He has the hide to call it the Smart and Skilled program. It is dumb and it is removing any opportunity for skills for young people. There is a pattern here: say one thing before the election, get in and then cut like crazy in health and education. This is what is going on with this government.

What can we hope for from them? In the lead-up to this next budget, he we are hearing them one day saying, 'It is a debt and deficit disaster,' and they are getting ready to kill us again in the budget. The next day they say, 'It is really not that bad.' The Prime Minister actually did say those very words. He said:

… a ratio of debt to GDP at about 50 or 60 per cent is a pretty good result …

It is for this year, because he has decided that it is. Last year, 13 per cent was a disaster. We have him saying, 'I never said that. I never said that.' People know what they heard this Prime Minister say. They know that he promised not to cut health and education and they can see exactly what he did. There are massive cuts to health and education. We should be very, very worried that if a Baird government gets into New South Wales in the next 48 hours, we will see the end of a powerful state giving this government the sort of scrutiny that it deserves.

At the moment, there is no consultation with experts across the fields. The government are just making of their policies they go, flip-flopping from one day to another, to the point where an eye roll from the Foreign Minister has now secured foreign investment. I can only hope that Christopher Pyne and Ms Ley—

**Senator Abetz:** That's Mr Pyne to you.

**Senator O'Neill:** I can only hope that Mr Pyne and Ms Ley can actually develop their eye rolling skills to adequate sufficiency that they might also save a little bit of money for health and education for this nation. In the meantime, the people of New South Wales should be aware: if you believe in health and if you believe in education and a fair go, Labor is the only way to vote on Saturday.

**Senator Bernardi** (South Australia) (15:18): I perfectly understand the theatre of politics and I do understand that those on the opposite side are meant to come into this place, pluck figures out of the air and just read the talking points that they have been given. But I would implore upon them, if they are genuine about the crisis of confidence that is engulfing politics in this country, to actually speak the truth. That is because what we have is people like Senator Cameron and Senator O'Neill coming here and reading verbatim what is put in front of them, with no regard to the veracity of the claims that they make.
Senator O’Neill has reflected about changes to health and changes to education. Let us put this in perspective: there are no changes in the forward estimates and, in fact, there are actually improvements in the forward estimates from when we came into government for health, pensions and education. But what Senator O’Neill is referring to is these ridiculous last-minute decisions of their government, which said, ‘In 2020, 2025 or 2050, we are going to put more money into something.’ The money was never there. It was a figment of the then Prime Minister’s—I cannot even recall who was, quite frankly; it could have been Mr Rudd or Ms Gillard—imagination. It was a falsehood peddled upon the Australian people.

The result of that is that we have the likes of Senator Cameron and Senator O’Neill coming in here, who make the spurious claims and who pluck elements of a speech and then try to portray that without any context around it. It is demeaning. I have respect the Senator O’Neill. I even have respect to Senator Cameron, albeit that he is part of the socialist mob and a much different philosophical line than myself. He does believe in something. But this diminishes them in the public capacity.

Let me make the point that the crisis of trust in politics and politicians in this country is born of the actions of the New South Wales Labor Party and the federal Labor Party, because the federal Labor Party backed up that man who abused the trust of many thousands of union members, Mr Craig Thomson. Mr Craig Thomson, we will recall, was a man who used hard-earned money of those low-paid workers from the Health Services Union for prostitutes and to rent the red ruby room in New South Wales for his prostitutes. What sort of betrayal of trust is that? We also know that those on the other side—including Senator Dastyari, as he was the shop steward for the Labor Party at the time—spent hundreds of thousands of dollars of Labor Party funds defending Craig Thomson, defending the indefensible.

**Senator O’Neill:** Eleven NSW Liberals were removed!

**Senator BERNARDI:** Senator O’Neill is here defending it again. It diminishes you in the public square, Senator O’Neill. If you want to uphold yourself as someone of integrity, you do not come in here and defend the actions of Senator Dastyari and the disgraced Craig Thomson. You come in here and you condemn the bad and corrupt Ian Macdonald and you condemn the bad and corrupt Eddie Obeid. You condemn the grubbiness, the filth and the disgust that the New South Wales electorate exposed and turfed out. That is what you do if you want to be a person of integrity, but no: we have the defenders of it on that side. Let me make this point: when the people of New South Wales return a Baird Liberal government this weekend, what we will see is the extinguishment and demise of that small man of Australian politics, whose vision for this country is so myopic and so short-sighted that he is already under enormous pressure in his own party. That man is Mr Bill Shorten.

He is a man who has no plan for this country. He is a man who is prepared to sacrifice the future of our children, who is prepared to stand in the way of returning the budget to surplus, who is prepared to stand in the way of making progress to fix the mistakes of the previous government. He is a man the Australian people cannot trust. If you doubt that, ring Mr Rudd, ring Ms Gillard, and say, ‘Can you trust Mr Shorten?’ The answer to that is no. He is an impediment to this country becoming all that it can be. Shame on you for defending him.

(Time expired)

**Senator LINES** (Western Australia) (15:23): I rise to take note of answers to questions that Labor asked in question time today. I will focus particularly on the answers Minister
Scullion gave on issues around homelands in Western Australia. This is a subject that is near and dear to my heart and a subject that I have raised in this place on three or four occasions. I have to say that Senator Scullion's response today was completely incorrect. The Premier of Western Australia has stood up and said to Aboriginal people in Western Australia, without a skerrick of consultation, that 273 homeland communities are not viable.

The back story is that, about three months ago, Minister Scullion stood in this place and said that WA welcomed the opportunity to lose $90 million in funding to homeland communities and that it welcomed the opportunity to take control of municipal services in those communities. Nothing could have been further from the truth, because at the same time that Minister Scullion was making those claims Mike Nahan, the Treasurer, and Colin Barnett, the Premier, were well and truly saying the opposite. They were absolutely sheeting home the blame for the state of homeland communities, for having these potential forced closures, absolutely at the feet of the Abbott government. Somehow, today, it is Labor that is scaremongering. I cannot believe the hypocrisy that goes on in here; I seriously cannot. We have a Liberal Premier in Western Australia who does not even know where these communities are—would not have a clue, does not have a list—but who announces out of the blue, without consultation, that 273 groups of people will lose their homes.

Let us look at some of the rural towns in Western Australia where white fellas live that perhaps are not viable. There is no threat to them. This is an attack on Aboriginal people right across the country by the Abbott government and by Liberal state governments, particularly the Western Australian government.

Last year, the Abbott government received a report from Twiggy Forrest, but it was a bit too far to the right for them. They said at that time there would be no BasicsCard. Now what are they doing? Another backflip, and it looks as though Aboriginal people in this country will be forced onto some kind of cashless economy. That came from their billionaire mate Twiggy Forrest, who would not have a clue what it is like to live the tough life that some Aboriginal people in Western Australia and across the country live. They demonise Aboriginal people and the communities they live in. Many of those communities are very, very successful, but that fact completely passes Premier Barnett and Minister Scullion by, because they do not know anything about them.

The Premier of Western Australia is yet to consult with Aboriginal communities. He is yet to consult with one, single homeland about what its future will be after the two years—the mere pittance the Abbott government has given to homeland communities to survive on—runs out. There has been not a skerrick, not a word, nothing. Last week we saw thousands and thousands of Western Australians march on the state parliament and let Premier Barnett and his mean-spirited Liberal government know in no uncertain terms that the Western Australia community would not cop people being thrown off their homelands.

Since making the announcement that homeland communities would close, directly as a result of the withdrawal of funding by Minister Scullion, Premier Barnett has backpedalled a little bit, saying that nobody will be forced off their lands. But if they have their water cut off or their school is closed or there is no electricity they will be forced off their lands. WA has a long history of forcing Aboriginal people off their lands, ignoring the fact that many of them have viable businesses there. There is very strong micro-tourism going on, but does either Minister Scullion or Premier Barnett bother to inform himself about that? Of course they
don't. It is long over time that Aboriginal people, particularly in Western Australia, were treated with respect and dignity and not forced to leave their traditional lands. It shows just how out of touch are the Abbott government and the government of Western Australia that they continue to demonise Aboriginal people in the communities they live in. It is time to sit down and talk.

Question agreed to.

Organisation for Economic Co-operation and Development

Coal Industry

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:28): I move:

That the Senate take note of the answer given by the Minister for Employment (Senator Abetz) to a question without notice asked by Senator Milne today relating to financial assistance for coal plants in developing countries.

What is shocking for the Australian community to know is that the Abbott government has instructed its officials overseas to oppose moves within the OECD's Export Credit Group when it is moving to try to curb financial assistance for coal plants in developing countries. Australia is in there saying, 'No, don't do that,' and blocking efforts by the OECD to reduce fossil fuel subsidies and coal plants in developing countries. What sort of a shocking outcome is that? Australia has again gone rogue in international fora, this time using its power to push coal in an era of climate change. It is so obvious that this is being done simply to prop up Australian coal exports. It is simple as that.

It is really interesting—and Senator Abetz fell absolutely into the trap in the question today. What he got up and did was use exactly the same lines as the Prime Minister, as the Treasurer, Mr Hockey, and as the Minister for the Environment, Greg Hunt, did, and all the lines are straight out of Burson-Marsteller, one of the biggest PR companies in the world, who pushed cigarettes into Asia for years in acting for the tobacco industry. They are now acting for Peabody Energy, an American based company that is one of the largest coal producers in the world, and they came up with this idea that they would push energy poverty as being the world's No. 1 human and environmental crisis—and guess what? Coal is the answer. The Prime Minister has clearly distributed this rubbish public relations material from Burson-Marsteller for Peabody Energy and pushed it, so it is now the talking point of cabinet. When I asked Senator Abetz he fell straight into it, jumping up and talking about energy poverty, which are the exact lines out of here, as indeed the Treasurer did last year when he stood up before the G20. He talked about his concern about global energy poverty and the need for coal. What is even worse is that the Treasurer, Joe Hockey, organised for Peabody coal to give a presentation at the G20 for them to push their 'Coal is good for humanity; coal is good for getting people out of poverty' lines.

Now we find they are doing it inside the OECD, and my question is: are they also doing it in negotiations with China over the new infrastructure bank? The investment mandate for that bank will be important. The World Bank is moving away from funding fossil fuel projects and the Asian Development Bank is the same. What we have ended up with now is that the OECD is moving to curb fossil fuel subsidies and stop the rollout of coal fired power plants in developing countries. Australia is getting desperate, blocking the OECD moves, and no doubt will be looking to the China infrastructure bank to see if they will allow money to be spent on
coal fired power stations. Wouldn't that be a great thing? Australia joins up to an infrastructure bank that is going to use funds to roll out coal fired power stations—and guess what? Australia is a major exporter of coal into the region. It will be very interesting because China has taken a strong stand on coal, has capped coal imports into China and is massively going with renewables.

It is an extraordinary thing when you have a situation where it is 'Vote 1 Peabody Energy and cut out the middleman'—and I am referring here to the Abbott government. Why would you bother voting for the Liberal Party when you can vote straight for Peabody Energy and get it done? When I was first elected in Tasmania, the graffiti in Hobart was 'Vote 1 North Broken Hill and cut out the middleman'. That was referring to the then Liberal Premier of Tasmania, Robin Gray. Then we had 'Vote 1 Gunns and cut out the middleman'. That was referring to both Liberal and Labor premiers. Now we have 'Vote 1 Peabody Energy, vote 1 coal and cut out the middleman'. That is exactly where we are going in this country, where the Abbott government is the wholly owned subsidiary of the coal industry. How else could you possibly justify the Treasurer of Australia at the G20 organising for Peabody coal to give a presentation on coal developed by Burson-Marsteller, PR company? Their press release at the time cited the statistics for Australia. In their press release they actually cite how much coal Australia has to export.

So I would be very interested to know what engagement the Australian government has had with Burson-Marsteller and Peabody Energy, where the money has come from and who is talking to whom—because what is clear is that, every time you hear a minister, this is what they are quoting. *(Time expired)*

Question agreed to.

**BUDGET**

**Consideration by Estimates Committees**

*Senator RUSTON* (South Australia—Deputy Government Whip in the Senate) (15:34): On behalf of the respective chairs, I present additional information received by committees relating to the following estimates:

Additional estimates 2013-14—

Environment and Communications Legislation Committee—Additional information received on 23 March 2015—Environment portfolio.

Legal and Constitutional Affairs Legislation Committee—Additional information received between 4 December 2014 and 26 March 2015—Attorney-General's portfolio.

Budget estimates 2014-15 (Supplementary)—

Environment and Communications Legislation Committee—Additional information received between 20 November 2014 and 11 March 2015—Communications portfolio.

Finance and Public Administration Legislation Committee—Additional information received between 11 February and 24 March 2015—

Finance portfolio.

Indigenous issues across portfolios.

Parliamentary departments.

Prime Minister and Cabinet portfolio.
Legal and Constitutional Affairs Legislation Committee—Additional information received between 5 December 2014 and 26 March 2015—
Attorney-General's portfolio.
Immigration and Border Protection portfolio.
Rural and Regional Affairs and Transport Legislation Committee—Additional information—
Agriculture portfolio.
Infrastructure and Regional Development portfolio.
Additional estimates 2014-15—
Foreign Affairs, Defence and Trade Legislation Committee—Additional information received between 25 February and 25 March 2015—Defence portfolio.

COMMITTEES
Joint Standing Committee on Treaties

Report

Senator RUSTON (South Australia—Deputy Government Whip in the Senate) (15:34): On behalf of Senator Fawcett, I present the 147th report of the Joint Standing Committee on Treaties: Treaties tabled on the 18th of June, the 24th of November and the 2nd of December 2014. I move:
That the Senate take note of the report.
I seek leave to incorporate the tabling statement in Hansard.
Leave granted.
The statement read as follows—
Senate
Tabling Statement
Report 147:
Treaties tabled on 18 June, 24 November, 2 December 2014 and 25 February 2015
Senator Fawcett
Joint Standing Committee on Treaties

Mr President, today I present the Joint Standing Committee on Treaties' Report 147.

The Report contains the Committee's views on three proposed treaties: the World Trade Organization Protocol Amending the Marrakesh Agreement Establishing the WTO and including the Agreement on Trade Facilitation, the First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, and the Treaty on Mutual Legal Assistance in Criminal Matters between Australia and Vietnam.

Mr President, the WTO Agreement on Trade Facilitation is an important step forward in developing a multilateral trade system. It is a significant milestone; the first major agreement concluded since the WTO was established in 1995. The aim of the agreement is to increase transparency and remove red tape relating to customs regulations and procedures across international boundaries. It is estimated that, if the agreement is fully implemented, it could add $US1 trillion to the world economy and create 21 million jobs by cutting trade costs. Mr President, it is vitally important for Australian businesses and industry to benefit from this global economy.
Despite the hard work being done to remove tariff barriers, it is often the behind-the-scenes non-tariff barriers that discourage trade participation. Mr President, complex paper-work or the fear that perishable goods will be held up in foreign ports can stop an Australian business from taking advantage of the opportunities provided by trade agreements. This agreement will make a difference in this regard.

Mr President, the ASEAN-Australia-New Zealand Free Trade Area is Australia’s largest free trade agreement, accounting for 18 per cent of our total trade in goods and services and worth $121.6 billion in 2013-14. With a combined population of 650 million people, the parties to this agreement account for $4.1 billion of global GDP. It is important that Australian businesses and industry can make full use of the agreement.

The amendments to the agreement are designed to simplify and harmonise administrative requirements. Again the paper-work will become simpler, easier to fill out and comply with. By making trade easier for Australian exporters and importers, the amendments are expected to encourage better use of the agreement.

Mr President, mutual assistance treaties develop and strengthen Australia's capacity to fight international crime. Currently Australia is party to 29 such agreements. The treaty on mutual legal assistance between Australia and Vietnam provides for the two countries to exchange information and evidence for investigating or prosecuting serious crimes. It will make sure that criminals cannot evade justice solely because evidence of their criminal activity is located in another country.

Mr President, Vietnam is already a valuable Australian partner in the fight against transnational crime in our region and this agreement will strengthen that relationship. This agreement will complement existing treaties between the two countries on extradition and transfer of sentenced persons.

Mr President, the Committee supports the ratification of these three treaties.

Mr President, on behalf of the Committee, I commend the Report to the Senate.

Senator RUSTON: I seek leave to continue my remarks later.
Leave granted.

DELEGATION REPORTS
Parliamentary Field Visit to Jordan, Turkey and Lebanon

Senator RUSTON (South Australia—Deputy Government Whip in the Senate) (15:34): by leave—On behalf of Senator Bushby, I present the report of the parliamentary field visit to Jordan, Turkey and Lebanon, which took place from 10 to 19 November 2014.

MINISTERIAL STATEMENTS
Murray-Darling Basin Plan

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture) (15:35): On behalf of the Minister for the Environment, I table a ministerial statement on the Murray-Darling Basin Plan and seek leave to incorporate the statement in Hansard.

Leave granted.

The statement read as follows—

I rise to update the House on the Government’s policy priorities in regards to the Murray Darling Basin Plan.

Water reform in our nation has progressed over many years and I speak on this matter today as one of many, from both sides of the House, who have been given the responsibility of managing this nationally important issue.
I acknowledge the work by former Prime Minister John Howard and Malcolm Turnbull as the Minister for Water and their courage to continue on the path of bold reforms in the water sector, building on the COAG reforms of the mid-1990s and the National Water Initiative and Living Murray Program from the early 2000s.

On a continent such as ours, with such variable climatic conditions, managing water resources sensibly, equitably and sustainably, is the most important aspect of Commonwealth’s role in leading the nation’s water reform agenda.

The making of the Basin Plan in 2012 by the then Minister for Water Tony Burke, with the bipartisan support of the Coalition, represented the culmination of twenty years of substantial water reform.

Under Prime Minister Abbott, each state has now signed up to the Intergovernmental Agreement for Implementing Water Reform in the Murray Darling Basin, a historic achievement that all members of this parliament and state Parliaments can be proud of.

This Plan is the epitome of bipartisanship, recognition of the dire situation highlighted by the millennium drought and shows what can be achieved through Federal and state collaboration, negotiation and cooperation.

I have only been in this portfolio a short time, but I immediately commenced travelling throughout the regions of the Murray-Darling Basin listening to and observing the concerns of all sectors of the community.

I have travelled the length of the Murray, I have visited parts of the Goulburn and Murrumbidgee Rivers, and I have travelled to Menindee Lakes to see the dire situation with their water shortage, with water now only remaining in Copi Hollow. I look forward to continuing my travels down the Darling with the Members for Parkes and Maranoa after Easter.

No matter where I go, it is clear to me are two key issues facing communities in the Basin; the first is the policy fatigue that has set in after more than twenty years of water reform and secondly the sense of urgency for certainty regarding the implementation of the Basin Plan.

The communities of the Murray-Darling Basin understand the need for the reforms that have gone ahead, but they – rightly – want assurances that the implementation of these water reforms will achieve a win-win-win that delivers good outcomes for the environment and a good outcome for the farmers and irrigators, as well as the communities and businesses in the Basin.

I want to make it abundantly clear that the Coalition Government is committed to delivering the Basin Plan, in full and on time. The Coalition is completing the water reforms that we started. It is what we pledged and we are delivering.

However, we recognise the concerns and challenges that the plan creates for some communities and we must, and we will, find a way to deliver the best possible outcome for Basin communities and the environment.

It is our responsibility to ensure the long term environmental and business sustainability for our communities to prosper.

The Coalition is cognisant of the need for certainty for all businesses to enable them to invest in the future of their community and industry. This is true from the north of the Basin to the south, as it is from the east to the west of the Basin.

We are listening to environmentalists, to townspeople, to farmers, to irrigators, to businesses, tourism operators, to industry and to fishermen alike. Every person and every group in the Basin matters and they must all be considered. This is why we are aiming to implement the Basin Plan to achieve a win-win outcome and provide a level of certainty that has been missing.
This is why we are now moving to legislate the 1500 gigalitre cap on water buybacks in the Basin, to place a ceiling on the amount of water recovery that can be achieved through water purchase, in line with the Coalition's Water Recovery strategy released in June 2014.

To date, 1162 gigalitres has been recovered through water purchase, 607 gigalitres recovered through investment in infrastructure projects and a further 182 gigalitres through other state recovery actions. That's 1951 gigalitres – 71 per cent of the water recovery required under the plan.

There is still more to be done, but it needs to be done with the least detrimental impact on all sectors of the community.

For the remaining water recovery efforts, we have prioritised the remainder of the Basin Plan funding for investment in infrastructure, particularly through more efficient on- and off-farm irrigation systems, and environmental works and measures, to achieve the outcomes of the Basin Plan to the full extent.

People often talk about the Snowy Hydro Scheme as the biggest infrastructure project that rural Australia has ever seen. While the project is an impressive hydrological engineering feat, let me tell you the $820 million Governments spent over 25 years, pales in comparison to the $13 billion that will be spent implementing the Basin Plan reforms.

From now until 30 June 2019 the Australian Government will spend $2 million per day, investing in infrastructure right across the Basin, investing in the future of sustainable farming and irrigated agriculture, and investing in our environmental sustainability as well as community sustainability, all with a level of certainty.

That is $2 million per day invested into our regional communities.

We will do this working in partnership with our state counterparts who are key and critical to delivering the Murray Darling Basin reforms.

Throughout my travels with local members I have seen the positives of this investment by the Commonwealth Government.

With Sharman Stone, Member for Murray, I visited the diary farm of Nick and Nicole Ryan who have upgraded their farm with laser leveling and automated, pressurised pipe and riser irrigation technology. Irrigating paddocks through automation reduces watering time and delivers water to the soil more efficiently and effectively, reducing the volume of water required to maintain healthy pastures and reducing salinity impacts. These infrastructure works increase farm productivity and reduce the labour demands of farming, all the while delivering water savings for the environment.

I also visited Deniliquin with Sussan Ley, Member for Farrer, where I saw infrastructure investment in new remote controlled regulators and metering and met with the Wragge family, a father and son rice growing team. Again they are benefiting from on-farm laser levelling, which is reducing the amount of water needed, but also increasing crop yield.

Innovation is the Australian way and this rice farmer is looking for further means to increase his yield per hectare – he is doing this by putting fresh water eels into the flooded paddocks, which is achieving the dual benefit of eel production for market, but also improving their environmental footprint through bug control, as the eels feed on the insects, reducing pesticide and input costs.

I encountered similar stories of efficiency and effectiveness in the electorate of Tony Pasin, Member for Barker visiting grape and citrus growers who are achieving similar feats of increased efficiency and productivity.

While in Renmark, I also visited the Chowilla Regulator, which is an impressive example of the types of works we can develop to achieve better environmental outcomes through the more effective control and delivery of water and, just like irrigators, achieve a more efficient use of water.
This project is part of the $1 billion for the Living Murray works developed for environmental icon sites in the Murray system; the regulator will allow for regular inundation of up to 50 per cent of the 17,750 hectares of wetlands.

I also saw the fish ladders and gates in action, which now span the entire length of the Murray River restricting the passage of non-native carp which destroy our river system, whilst providing safe passage for our native species, an environmental engineering feat in itself.

Similarly, the Koondrook Pericoota forest works on the New South Wales side of the Murray, which covers 32,000 hectares of floodplain and is home to a significant bird, fish and native flora populations, including the iconic river red gums and black box colonies.

Over $100 million invested through the Living Murray initiative is finally delivering water to the wetland and I have seen the success of the recent environmental watering – with trees, the bush scrub and wildlife responding slowly, but positively.

Andrew Broad, Member for Mallee, and Michael McCormack, Member for Riverina, who despite the distance between their electorates, have good examples of the positives from Government investment in off-farm irrigation delivery infrastructure.

In the Sunraysia, Lower Murray Water are converting their channel system to pipe, which reduces water losses during delivery and improves water quality to the farmer, through $103 million in Federal Government investment.

In the Murrumbidgee I saw the innovation and drive from Coleambally Irrigation, to deliver world's best practice farming techniques and water management. They also highlighted increased investment in the region due to more efficient water delivery and certainty of access through these irrigation networks.

In a sign of confidence in the future of irrigated agriculture, six local cotton farmers have banded together, investing $24 million to build a cotton gin – I was so impressed at the enthusiasm in this small, but dynamic community.

I met with Leeton Mayor Paul Maytom who was upbeat about the investment the reforms were delivering to his community; however, when meeting with him and local businesses such as Sunrice, Walnuts Australia and JBS Meat, they highlighted the need for certainty from Government – the need for the 1500 gigalitre cap to be legislated.

At the end of the day, all of the above projects are investment into agriculture that are delivering improvements for our farmers and water for the environment.

We recognise the challenges for all groups, from townspeople, to farmers, to irrigators, and environmentalists, to businesses, tourism operators, and industry, and to fishermen alike, indeed everyone. That is why we are determined to deliver a triple bottom line outcome; the Basin as a whole depends on it.

As I said, delivering the Plan it is not without challenges or issues that we must address, but we will work with the states to finesse and deliver a Plan that meets this aim, and we will make sure it is effective.

From my visits to the Basin, I can see and understand the emotions, but I can only address the facts, and I will address the facts.

I have clearly heard the concerns surrounding the Constraints Management Strategy and the delivery of environmental water.

I thank those groups on the Edward and Murrumbidgee Rivers that showed me around their farms and highlighted the issues in some of the modelling and what the models mean for those on the ground.

It is clear this is an area that states need to examine more thoroughly as part of the development of the Sustainable Diversion Limit Adjustment Mechanism.
I have listened to the calls for improved transparency and greater community engagement. I have directed the Murray-Darling Basin Authority, the Department of the Environment and the Commonwealth Environmental Water Holder to address this with a level of urgency.

There will be challenging times as we again go through dry periods as we did with the millennium drought, as much as we will go through challenging times during excessive wet periods as we did in 2010, 2011 and 2012.

As Dorothea McKeller wrote those immortal words in the poem *My Country* on the deck of Torryburn House, near Gresford in my electorate of Paterson, this is a land of sweeping plains, of rugged mountain ranges, of droughts and flooding rains.

We, and I mean all of us, need to take people on the journey with us, we need to provide greater certainty, so that communities can understand where the journey in these reforms will take them, from now to 2019 and of course beyond.

We need to work together in a bipartisan way, to provide a level certainty, to address the challenges together, with our Basin communities, not against them. Communities have a need and right to know what the plan will deliver and what their future holds.

We need to build a strong future in the Murray-Darling Basin and this is why the next step to legislate the 1500 gigalitre cap is so important as means of providing confidence and certainty to Basin communities as a whole, they deserve nothing less.

**PARLIAMENTARY REPRESENTATION**

*Australian Capital Territory*

The PRESIDENT (15:35): I table the original certificate received through the Administrator of the Commonwealth of Australia from the Chief Minister of the ACT of the choice by the legislative assembly of the ACT of Senator Gallagher to fill the vacancy caused by the resignation of Senator Lundy.

**BILLS**

*Private Health Insurance Amendment Bill (No. 2) 2014*

First Reading

Bill received from the House of Representatives.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture) (15:36): 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 COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture) (15:36): I move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*
The Private Health Insurance Amendment Bill (No. 2) 2014 implements a part of the 2014-15 budget measure “Smaller Government—additional reductions in the number of Australian Government bodies” by transferring the functions of the Private Health Insurance Ombudsman to the Office of the Commonwealth Ombudsman from 1 July 2015. The consolidation of these functions will reduce duplication, improve coordination and increase efficiency in delivering the Ombudsman’s services to the community.

It is important to note that there is expected to be no impact upon the services provided to policy holders. The Private Health Insurance Ombudsman will continue to provide education and advice services to consumers as well as assist in resolving private health insurance complaints. The Private Health Insurance Ombudsman will also keep its consumer website which will continue to be managed by Private Health Insurance Ombudsman staff transferring to the Office of the Commonwealth Ombudsman.

The transfer of the Private Health Insurance Ombudsman to the Office of the Commonwealth Ombudsman will result in direct savings to industry. As the Private Health Insurance Ombudsman operates on a cost recovered basis, all savings made will be directly reflected in reduced levies payable by the private health insurance industry.

As part of the transfer of functions, the opportunity has been taken to streamline some of the investigative procedures of the Private Health Insurance Ombudsman with those of the Commonwealth Ombudsman. This deregulation of the Private Health Insurance Ombudsman will lessen the administrative burden placed upon the Commonwealth Ombudsman by aligning complaints handling and investigation processes between the agencies. These administrative efficiencies are expected to enhance the flexibility and responsiveness of complaints handling, and ensure that consumer complaints are resolved expeditiously and satisfactorily, helping patients get the best value from their insurance.

Further, under the Private Health Insurance Act 2007, the only statutory process available to the Private Health Insurance Ombudsman to gather information was to make a formal written request for information or records to the subject of a complaint. However, consistent with information gathering powers in the Ombudsman Act 1976, the Private Health Insurance Ombudsman will now be able to either request information and documents from a person, or formally require the production of information or records by written notice. This will allow for a more graduated information gathering approach, which will in turn provide for increased consumer protection and an expedited complaints resolution process.

Finally, this Bill will make a minor amendment to the Private Health Insurance Act 2007 to remove references to the "Base Premium" which were intended to be removed by the Private Health Insurance Legislation Amendment Act 2014 passed by the parliament earlier this year. Unfortunately, due to an unintended delay in the granting of Royal Assent these references were not removed.

The removal of remaining references to the concept of a base premium will not affect how the current premiums reduction scheme is applied for insurers and relevant policy holders and the simplified calculation of the Australian Government Rebate on private health insurance will remain in place.

This Government has long acknowledged the important role that private health insurance plays throughout the Australian healthcare system, and is committed to supporting Private Health Insurance now and into the future.

The PRESIDENT: In accordance with standing order 115(3), further consideration of this bill is now adjourned to 12 May 2015.
Debate resumed on the motion:

That the Senate condemns the Abbott Government for its litany of broken promises which are hurting low- and middle-income earners, harming the economy, damaging business and consumer confidence, costing jobs, undermining fairness, and changing Australia for the worse.

Senator POLLEY (Tasmania) (15:38): I rise today to draw attention to the shameful treatment that this Liberal government has displayed towards Australian pensioners. Those on the other side should be ashamed of themselves. The Labor Party is built on a narrative and a set of values that include fairness, opportunity, education, pensions and better health. They are the issues which we hold great store in. When I look at the Liberal Party, it strikes me that the only narrative and the only set of values that they have is what this government has demonstrated over and over again since they came into government—that is, they promised to be a government of adults but what we see day after day in this chamber is that they are a government of backflips, a government in chaos and a government that is built on lies. They were untruthful when it came to the policies that they were espousing before the election.

If you recall, Mr President, just before the election the now Prime Minister, Tony Abbott, said on national television that there would be no change to the pension—none at all. He was adamant about that. He even said the same thing on the Insiders with Barrie Cassidy, on 1 September 2013. He gave an assurance: no change to the pension, no cuts to the pension. That was the promise this Prime Minister made to 3.7 million pensioners around Australia. He repeated that assurance on the eve of the election. This turned out to be a deceitful statement which those in the community had relied on. They thought they could rely on the then opposition leader to uphold his commitment, particularly to Australian pensioners, that there would be no change to the pension.

It does not matter how many times those on the other side in this place and in the other place come out and accuse Labor, accuse us, of misleading the community and running a scare campaign, because the reality is that pension indexation will change; it will have an effect on the daily living standards of our Australian pensioners—people who rely on what is already a limited income. It was a very dishonest statement. It was shameful that when the now Prime Minister went to the election he made those commitments. We have seen since he has come into power that he has broken that promise. As I said, this will have an effect on the living standards of Australian pensioners. It will have an effect on those people who go into aged care facilities. It will have an effect on the aged care sector, because, as we know, 85 per cent of the pension of those who are living in an aged care facility is taken to cover that expense. It is so disappointing that those who are most vulnerable in our community are the ones whom this government have chosen to attack.

There was the commitment that there would be no change to the pension, the commitment that there would be no cuts to education, the commitment that there would be no cuts to health and the commitment that there would be no change to the GST. What have we seen already? The New South Wales election is on Saturday, and we have seen Mr Hockey once again trying to play politics. We have heard in this chamber again today that Western Australia wants to have a larger cut of the GST. I have to say on behalf of my home state of Tasmania that we will never support it. We are a Commonwealth so that we can ensure that smaller
states like Tasmania and South Australia are protected from the larger states who want a larger slice of the cake.

We recently saw in the budget something that was going to impact on the majority of people in this country. People who voted for this government believed that the commitments of those opposite would be honoured when they came into power. It was a very clear message that the Prime Minister gave to the Australian people when he said that there would be no cuts to health, yet we have seen such cuts taking effect in my home state. We have also seen it with the commitment given to no cuts to education. This has led to the Australian community clearly making their views known to government members that they are not going to tolerate the deregulation of universities. They are not going to stand by while regional campuses like the Tasmanian University, particularly the Launceston campus and the north-west coast Burnie campus, are run down. This government has already cut $30 million from the university's budget. This will have an enormous effect on young people living in Tasmania. We already have a very low retention rate when it comes to further education and young Tasmanians pursuing a tertiary education At the same time, we have seen the effects of the cuts that have been made to the TAFE sector. All of these have an enormous impact on our local communities.

It was written in the budget for every Australian to see that what this government wants to do is cut the indexation rate of the pension, cut the deeming threshold for the pension, and increase the age for the age pension to a level that would make it the highest in the developed world. It truly is a shameful and despicable act that this Liberal government would pick on those most vulnerable in our community. This act will, in fact, destroy the standard of living for our Australian pensioners — those who rely on the support of this government. As I said, this will have an impact on the ability of the residential aged care sector to provide the best possible care. Their funding will be cut at a time when we know the aged care sector is facing continued pressures in relation to infrastructure — particularly in my home state of Tasmania, where there are a lot of facilities and not-for-profit organisations that simply do not have the reserves to update facilities or build new ones.

This government continues to attack those people most in need. Today the Attorney-General did yet another backflip, this time on funding for legal assistance. When you move around your local communities and talk to your constituents, you find constant confusion. People really feel unsettled because they cannot rely on this government — what they say one day is completely different from what they say the next day. A lot of organisations in social services and the not-for-profit sector rely on assistance to run their programs. In my own community, the not-for-profit sector is already cutting positions. People are losing their jobs — and these are people with a wealth of experience. Because of this government's funding cuts, that experience and corporate knowledge is being lost to the sector.

I am really concerned about the impact all this is having, not only on our pensioners and those on limited incomes but on health in general — through increased uncertainty, funding cuts to the hospital system and the proposed GP tax. All of those things are of concern within the community. We have seen the unemployment rate increase under this government. This was going to be a government of infrastructure investment and increasing employment opportunities. Unfortunately, we have seen no action on these issues.

I seek leave to continue my remarks later.
Leave granted; Debate adjourned.

COMMITTEES

Consideration

The following orders of the day relating to committee reports and government responses were considered:

Procedure—Standing Committee—First report of 2015—Appropriations and Staffing Committee; Cross-bench committee membership, chairing and order of speakers; Powers of Chair in relation to disorder; Language of matters raised under standing order 75; Changes to standing and other orders relating to estimates hearings. Motion of the chair of the committee (Senator Marshall) to take note of report agreed to.

Legal and Constitutional Affairs References Committee—Comprehensive revision of the Telecommunications (Interception and Access) Act 1979—Report. Motion of Senator Wright to take note of report agreed to.

Legal and Constitutional Affairs References Committee—Work undertaken by the Australian Federal Police's Oil for Food Taskforce—Report. Motion of the chair of the committee (Senator Wright) to take note of report agreed to.

Scrutiny of Bills—Standing Committee—Inquiry into the Business Innovation and Investment Programme—Report. Motion of Senator Polley to take note of report agreed to.

Migration—Joint Standing Committee—Inquiry into the Business Innovation and Investment Programme—Report. Motion of Senator Polley to take note of report agreed to.

Environment and Communications References Committee—National Landcare Program—Report. Motion of Senator McEwen to take note of report called on. Debate adjourned till the next day of sitting, Senator McEwen in continuation.

Human Rights—Joint Statutory Committee—20th report of 44th Parliament—Human rights scrutiny report. Motion of Senator Fawcett to take note of report called on. On the motion of Senator McEwen the debate was adjourned till the next day of sitting.

Intelligence and Security—Joint Statutory Committee—Review of the declaration of al-Raqqa province, Syria—Report. Motion of Senator Fawcett to take note of report agreed to.

Economics References Committee—Privatisation of state and territory assets and new infrastructure. Motion of Senator McEwen to take note of report called on. Debate adjourned till the next day of sitting, Senator McEwen in continuation.

Finance and Public Administration References Committee—Domestic violence in Australia—Interim report. Motion to take note of report called on. On the motion of Senator McEwen the debate was adjourned till the next day of sitting.

National Broadband Network—Select Committee—Second interim report. Motion to take note of report called on. On the motion of Senator McEwen the debate was adjourned till the next day of sitting.

Economics References Committee—Need for a national approach to retail leasing arrangements—Report. Motion of Senator Bilyk to take note of report agreed to.

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Australia's trade and investment relationship with Japan and the Republic of Korea—Government response. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McEwen the debate was adjourned till the next day of sitting.

Education and Employment References Committee—Principles of the Higher Education and Research Reform Bill 2014, and related matters—Report. Motion of Senator Bilyk to take note of report called on. On the motion of Senator McEwen the debate was adjourned till the next day of sitting.
National Disability Insurance Scheme—Joint Standing Committee—Progress report—Implementation and administration of the National Disability Insurance Scheme—Government response. Motion of Senator Siewert to take note of document called on. On the motion of Senator McEwen the debate was adjourned till the next day of sitting.

Foreign Affairs, Defence and Trade References Committee—Report—Korea-Australia Free Trade Agreement—Government response. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McEwen the debate was adjourned till the next day of sitting.

Intelligence and Security—Joint Statutory Committee—Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014—Advisory report. Motion of Senator Bilyk to take note of report agreed to.


Environment and Communications References Committee—Report—Environmental offsets—Government response. Motion of Senator Bilyk to take note of document called on. On the motion of Senator Hanson-Young the debate was adjourned till the next day of sitting.

Rural and Regional Affairs and Transport References Committee—Current requirements for labelling of seafood and seafood products—Report. Motion of Senator Bilyk to take note of report agreed to.

Legal and Constitutional Affairs References Committee—Incident at the Manus Island Detention Centre from 16 February to 18 February 2014—Interim and final reports. Motion of Senator Bilyk to take note of report called on. On the motion of Senator Hanson-Young the debate was adjourned till the next day of sitting.

Community Affairs References Committee—Extent of income inequality in Australia – Bridging our growing divide: inequality in Australia—Report. Motion of the chair of the committee (Senator Siewert) to take note of report called on. On the motion of Senator Hanson-Young the debate was adjourned till the next day of sitting.

Health—Select Committee—First interim report. Motion of Senator Seselja to take note of report agreed to.

AUDITOR-GENERAL’S REPORTS

Consideration

The following order of the day relating to reports of the Auditor-General was considered:

Auditor-General—Audit report no. 25 of 2014-15—Performance audit—Administration of the Fifth Community Pharmacy Agreement: Department of Health; Department of Human Services; Department of Veterans’ Affairs. Motion of Senator Di Natale to take note of document agreed to.

BILLS

Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015

In Committee

Debate resumed.

The TEMPORARY CHAIRMAN (Senator Bernardi) (15:49): The question is that Palmer United Party amendment (1) on sheet 7690 be agreed to.

(Quorum formed)
Senator LEYONHJELM (New South Wales) (15:52): I rise simply to indicate my support for Senator Wang's amendment (1) on sheet 7690. It is a relatively mild amendment. I must say I take issue with Senator Wang's suggestion that this is the only aspect of the bill that requires fixing. I think there is a great deal more that requires fixing and that there are much bigger issues than this one. But, if this amendment were to be adopted, it would at least improve the bill in a marginal fashion. I endorse the amendment.

Senator JACINTA COLLINS (Victoria) (15:53): I remind those listening that Senator Wang's amendment would provide for the notification of journalists after the fact that a warrant has been issued in relation to their telecommunications data. This bill already reflects protections for journalists arising out of the joint committee's considerations and recommendations and is implementing the warrant regime for journalists that Labor argued for and achieved in the other place. We believe that those amendments to the bill already provide ample oversight of access to the telecommunications data of journalists.

The bill in its amended form provides that the IGIS, the Ombudsman and the committee itself will be notified when a journalist's data is accessed. These bodies are well placed to make inquiries and to ascertain whether this access was indeed appropriate. Labor appreciates that Senator Wang has been concerned, as I indeed mentioned that Labor was, that the way in which this bill has proceeded has not brought the public with it, and we appreciate his efforts to deal with this aspect, but we think the arrangements as reflected in the bill now are satisfactory.

Senator XENOPHON (South Australia) (15:54): I was just being told by Senator Leyonhjelm that I am too polite, which is probably true. I will try and mend my ways, Senator Leyonhjelm. I indicate that I do support Senator Wang's amendment. I think it does make an improvement. I agree with Senator Leyonhjelm that it needs to go much further, but it is an improvement. It leads to an important question for the Attorney: can the Attorney confirm that, if a media outlet, at any time, indicates that it has been the subject of a journalist information warrant, that itself is a criminal offence punishable by a two-year jail term?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (15:55): Senator Xenophon, the bill provides that disclosure of a warrant is an offence.

Senator XENOPHON (South Australia) (15:55): I have discussed this privately with the Attorney. If a media organisation, on a daily or weekly basis, says on its website, 'We have not been subject to any journalist information warrants for our metadata,' and then they suddenly stop saying that, could that imply that they have been subject to a warrant? I have not articulated it very well, but that is one of the arguments that has been put to me by someone who is concerned about this legislation. In other words, it is what they refer to—I do not think it is quite a term of art—as almost a 'warrant canary'. I am glad that it amuses the Attorney. But, if you had been saying that you had not had a warrant and you then stay silent on it, that might imply that you then do have a warrant. So, could the fact that you say that you do not have a warrant itself be a criminal offence?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (15:56): No, Senator, not in the circumstances you posit. As you say, you did raise this with me privately. I have reflected on the question: definitely not. Sometimes the law will attribute conduct to a
person because of other aspects of their conduct, sometimes even their silence. That would be called, in these circumstances, constructive disclosure rather than actual or deliberate disclosure. But merely to remain silent would certainly not, in my view—and I have spoken with others as well—constitute constructive disclosure.

Senator XENOPHON (South Australia) (15:57): I thank the Attorney for his answer. But, further to his answer, this is not a case of mere silence. Say the scenario is one where, at 8 am every day, a media outlet announces, or a journalist says on their website, 'I have not been the subject of a journalist information warrant.' But, after 380 days of doing this, one day they stop saying that. Could that in itself go beyond silence to actually imply that they have been subject to a warrant? That would be a reasonable conclusion that people would reach. Could that previous conduct, saying that they had not been subject to it, imply that they have disclosed that they have been subject to a warrant?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (15:57): No, simply because the organisation that you posit has not done anything to invite the inference which, according to your scenario, would be drawn. Merely not to say something would not be enough; there must be a positive act. So, the answer to your question, Senator Xenophon, is still no.

The TEMPORARY CHAIRMAN (Senator Bernardi): The question is that Palmer United Party amendment (1) on sheet 7690 moved by Senator Wang be agreed to.

The committee divided. [16:02]

(The Temporary Chairman—Senator Bernardi)

Ayes ......................16
Noes ......................44
Majority ...............28

AYES

Di Natale, R
Lambie, J
Leyonhjelm, DE
Milne, C
Rhiannon, L
Siewert, R (teller)
Waters, LJ
Wright, PL

Hanson-Young, SC
Lazarus, GP
Ludlam, S
Muir, R
Rice, J
Wang, Z
Whish-Wilson, PS
Xenophon, N

NOES

Abetz, E
Bernardi, C
Brandis, GH
Bullock, J.W.
Cameron, DN
Cash, MC
Conroy, SM
Edwards, S
Fierravanti-Wells, C
Gallacher, AM

Back, CJ
Birmingham, SJ
Brown, CL
Bushby, DC
Carr, KJ
Colbeck, R
Dastyari, S
Fawcett, DJ
Fifield, MP
Gallagher, KR

CHAMBER
Thursday, 26 March 2015

NOES

Johnston, D
Lines, S
Macdonald, ID
McEwen, A
McKenzie, B
Moore, CM
O'Sullivan, B
Polley, H
Ronaldson, M
Ryan, SM
Seselja, Z
Uqrahat, AE (teller)

Ketter, CR
Ludwig, JW
Mason, B
McGrath, J
McLucas, J
O'Neil, DM
Parry, S
Reynolds, L
Ruston, A
Seullion, NG
Sinodinos, A
Williams, JR

Question negatived.
Progress reported.

PARLIAMENTARY REPRESENTATION

Valedictory

Senator MASON (Queensland) (16:06): This is the last time I will have the honour of addressing the Australian Senate. While of course I am very sad to be leaving, the overwhelming sense I have is one of gratitude and thanks—sincere thanks to have been given the greatest honour and the greatest privilege of my life, to sit with my colleagues in this place. I still come in here and look around—it is not that I am not paying attention, Mr President—but sometimes I think I have been kissed by a rainbow. There is nothing very special about me, but I have been very lucky. I am sad to leave but I am very thankful to have been here.

I want to say two things in my final contribution in this place: thank you and goodbye. I will start with thank you. Thank you, of course, first to my family—to my mother Beverley, my brothers David and Richard and sister Kathryn, and my eldest nephew Alexander, thank you for your love and support. I am not quite sure whether you ever thought that going into politics was a good idea for me but I keep thinking of my late father. When I was a little boy he was a newsagent and there were three professions that he particularly disliked—lawyers, academics and politicians! Fortunately my dear mother was much more understanding. To all my Canberra mates who I grew up with, thank you so much for the pizza and the coffee and the red wine and the beer and the steaks at the Kingo. Thanks too to my mate Jack Fisher. All of us who work here in this parliament owe a lot to those who make our working life much easier. Senate transport—Peter and Ian: thank God, no more 6.05 am pick-ups from Bruce to the Senate. They are tired of them, and perhaps I am as well.

There are sound and vision and Hansard. I have a particular relationship with sound and vision, Mr President, as you know. I love them but my love has never been reciprocated. I have got into a lot of trouble in recent times for being perhaps a little bit too voluble. My defence has always been that that was how I used to lecture to my students. That wicked Senator Ludwig would say, 'Brett, that is why no-one ever came to your lectures, or if they did that is why they are deaf.' I can now reveal some secrets because I have been reminded that this is the last time I can speak under privilege. I remember you, Mr President, pulling me...
aside when you were Deputy President and saying, 'Brett, if you don't tone it down, we are going to slap across your face a sticker saying "OH&S noncompliant".' But thank you to sound and vision—I will miss you, you will not miss me.

I love the Senate attendants dearly but I have been asking for 15 years for a gin and tonic to get me through question time, and I still have not got one. To Dr Rosemary Laing, the Clerk of the Senate, and her team, I thank you so much. Rosemary will never admit this, but I used to work with the Senate Clerk a long, long time ago. She denies it of course, saying, 'The bloke just looked like you.' I am not quite sure whether Rosemary was my last supervisor at the Attorney-General's Department many years ago, but my final supervisor's report, which was very short, read: 'Brett John Mason: Not amenable to instruction.' Rosemary, if it was you, I do not hold it against you because every Liberal leader since John Howard would agree with you.

I thank all those who have helped me with my political career, first and foremost the people of the great state of Queensland. All senators from Queensland would be aware that we are often accused of being rough diamonds. That might be so but, just like them, if you cut and polish us the right way—isn't this right, Larissa?—we sparkle. My thanks go to those who gave me a mere chance when few did, starting with the then Liberal Party president Bob Carroll all the way through to the LNP president Bruce McIver, vice-president Gary Spence and state director Brad Henderson and all the team. From the very beginning I have been very lucky to have the greatest possible support from the youth movement of our party, both the Young Libs originally and then the Young Liberal National Party, and also the student clubs from Matt Boland and Gerard Paynter through to Rod Schneider, Ben Riley and Luke Barnes. Gentlemen, thank you so much.

For all my faults, I have had wonderful staff over the last 15 years, and all of us who serve in this place know that without your staff you are nothing. I am so very grateful to all those I have worked with. Four people who have worked in my office have gone into politics. Of course they are all much better politicians than me—including the member for Moncrieff and now Parliamentary Secretary to the Minister for Foreign Affairs, who stole my portfolio, Mr Ciobo—he was always a very cunning employee! Of course Saxon Rice was on the front bench of Campbell Newman's government, Adrian Schrinner is Deputy Lord Mayor of Brisbane and of course there is the member for Bonner, Ross Vasta. Thanks to all those who ran my office—Robyn, Patrick, Ted, Tim, Paul, John and Alex—and thanks to those who still work with me, Phoebe, Mitch, Jack and Emma. Thanks to all those others who have put up with me.

I just cannot let this moment go by without thanking the poor guy who had to put up with me for about 13½ of the last 15 years, and many of my colleagues here know him—Dr Arthur Chrenkoff.

Senator Abetz: Hear, hear!

Senator MASON: You are right, Leader, to say 'Hear, hear!' All my colleagues respected Arthur much more than they respected me. Every time people came into the office they were never after me, they were always after Arthur. Arthur's story is really Australia's achievement. He came to Australia from pre-Solidarity Poland as a 16-year-old, and he could not say a word of English—although he did tell me the other day that he could say 'Hi'—but within two years he was the dux of his high school.
He then went to law school at the University of Queensland and he was near the top of his class. He did a PhD. He is extremely smart, and everyone asks, 'Why the hell, Brett, if he is that smart did he end up working with you?' I ask myself that all the time, but I am so very grateful that he did. Not only did he lift me out of the difficult times in politics—which all of us have; all of us share that—but he also gave great purpose to politics. He tried to give me poise, but he never quite managed that. But he gave politics great purpose, and I can never thank him enough.

I should also thank the Prime Minister for his grace and good humour over the last few weeks—and the Minister for Foreign Affairs, Julie Bishop, and the Department of Foreign Affairs and Trade for giving me the most enjoyable job of my life. Just after the ministry was decided, I received a call from Julie Bishop. Julie said, 'Brett, you've been offered the second best job in government.' I had been in politics a while and my cynical ears went up—but do you know what? Julie was right. It was the most enjoyable job I have ever, ever had. To work with Julie and to represent our beautiful country overseas was a great honour.

I must say that it all started rather well. I had just got off the plane coming back from Canberra and the phone rang and it was the foreign minister, it was Julie: 'Brett, what are you doing Thursday at lunch time?' I said, 'I'm very busy here in Brisbane. I am extremely busy. I have briefings to attend and I have no time for anything'—no time for idle chatter. Julie said, 'I need someone to go Sydney to have lunch with Angelina Jolie. Brad is stuck in LA and can't make it.' I went, 'Well, let me just check my diary; I think I can squeeze her in.' I remember thinking to myself as I got into the car, 'This is definitely going to be the portfolio for me!'

When I was a little boy, about five years old, I remember running across a car park and I was being chased by three women. That has not happened in a while! Actually, they were three nuns in full habits. It was 1960s Australia. They were bearing down on me like the fleet air arm of the Ursuline nuns. They caught me in the end and I remember being carried back to my primary school and thinking, 'Oh, dear, my brief life is over and I will no doubt be buried in some lonely corner of the schoolyard and never heard from again—or, worse still, the nuns will call my parents.'

I remember sitting outside the office of Mother Superior, Sister Bede, while she phoned my poor mother. Sister Gerard sat down next to me—she was my teacher—and said, 'Brett, good little boys do not stab nuns with pencils. Do not do that.' I will never forget what she did next. She sat next to me and said, 'Whenever you feel angry or frustrated or scared, just remember you have a guardian angel sitting on your left shoulder,' and I remember thinking, 'Umm, a guardian angel on my left shoulder.' I was very small and I was very skinny, but I was also very cunning. I thought to myself, 'Maybe I can train this guardian angel to wreak havoc on the nuns'—but I was told that that was not part of God's plan. But there have been a couple of times in my political career when I have looked across to my left shoulder and thought, 'Mate, wake up; I need a bit of help here.'

I remember very well October 2003 and the 12-month anniversary of the Bali bombing. I am sure many senators would remember that. The commemorative service was held in the Great Hall, and who should sit next to me at the service but Senator John Faulkner, who was then Leader of the Opposition in the Senate, during the Howard government. He sat next to

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**CHAMBER**
I hear you are having some trouble, Comrade,' and I said, 'Yes, John.' He said, 'I'll give you some advice. In this game and in life sometimes you need a bit of scar tissue. It looks to me like you don't have very much of it. When you have that you will be a much better politician and a much better person. You will be able to take disappointments rather better and you won't get knocked out with the first punch.' I will never forget that. From that time on—about a dozen years ago—politics has always looked up for me, and I thank John for that.

For many years I was very lucky to share a unit with Peter Costello and Richard Alston—whom many will remember—and then of course Senator Colbeck. I remember Peter Costello telling me, 'It's a sad truth, Brett, but there are many lonely people in parliament—too many lonely people.' Well, I can honestly say that I have never found parliament lonely—never for a second. From the time I first entered this place I have been sustained by marvellous Liberal colleagues—and I mean that; sustained—and I will miss all of them, every one of them, ably led of course by Senator Abetz. I think the Liberal senators are quite a handsome bunch, perhaps led by the Queenslanders. The Senate is different. It is a special place. There is no elected chamber in this country that is so rich in its camaraderie, and that makes us, all of us, different. I was very, very lucky to be elected to this chamber.

Right in front of me I have a note: 'For God's sake, don't forget the Nats!'—because I would not want Senator Cameron to remind me! Well, how could I ever forget the Nats?—given that I am now half a Nat myself, as a member of the LNP. Of course, in recent times there has been a concerted effort, led by Senator O'Sullivan, with Senator Canavan and Senator McKenzie and others, who have tried to reinvent me as an inner-urban Nat. Sadly, Barry, the makeover failed. I am not sure, but perhaps the French eau de Cologne did not go with the R.M.Williams boots! Or it might have been the patent leather shoes and the shearing sheds. Nonetheless, thanks for trying. It is a funny thing, but I have always got on with the National Party, from when I first arrived. Senator Nash, Senator Scullion, Senator Williams: thank you so much. You have been wonderful colleagues. I know you wanted me to be the Nat from Newstead, but I am remaining the Tory from Teneriffe.

I want to do something perhaps a bit unusual. I would like to pay tribute also to the opposition and the crossbenchers. Never once in more than 15 years has there ever been a cross word from the Australian Labor Party, the Australian Greens or the crossbenchers to me outside this chamber—ever, not once, in 15½ years. And I sort of think that the forbearance of you and your team, Senator Wong, is quite miraculous, really, given that I have been at times rather loud, volatile and sometimes extremely naughty, and we have been involved in some very big debates. I want to thank you, Senator Wong, and Senator Milne and the Greens, for always treating me with the greatest courtesy outside this chamber. And to the crossbenchers: many of you are new, and initially I noticed this great bafflement and bewilderment but in recent times a greater savvy and a great scepticism of politics and government. It is not always a bad thing.

I am very lucky to still be here. In 2010 I was elected, the sixth senator elected for Queensland, on a very fine distribution of preferences. I was very, very lucky to be elected. It was very difficult, because the minor parties, very naughtily, were cross-preferencing each other, and it looked rather grim. When I saw Ron Boswell this morning—apparently he wants my casual vacancy!—he said, 'The transition will be seamless.' Ron, in his typical fashion—
you know what he is like—rang me up and said: 'Brett, I've looked at the figures, and you're buggered. You're not going to win.' And I said, 'Oh, thanks.' He said: 'But look, I'll tell you what: leave it with me and I'll speak to Reverend Nile and the Christian Democrats and some of the Christian groups and I'll see what I can do for you. Just hold on.' Well, Ron did that, and Senator Joyce, as he then was—now the member for New England—helped, and a few others, who cannot be named, stepped in to assist. And I did receive the preferences of the Christian Democrats, and I want to thank Reverend Nile for that—a lot. Of course, I also, quite awkwardly, received the preferences of the Australian Sex Party. God works in mysterious ways! I am never quite sure. But I should take this opportunity to thank Fiona Patten, who did seem to get the joke. I think Ms Patten is now a member of the legislative council—

A government senator: In Victoria.

Senator MASON: Yes, in Victoria. That is right. I remember waking up very tired and very emotional on the Sunday after the August 2010 election. It was a very close election, as senators will recall. It was before seven in the morning, and I had had a big night, and on my telephone were five missed calls. Who do you think would be ringing me with five missed calls by 10 to seven in the morning? Ron Boswell. I phoned him back, and he was screaming: 'Have you won? Have you won?' I said: 'Well, apparently, yes. The ABC website's predicting that the LNP will pick up three senators—just.' He said: 'See? All my work with the Christian groups got you across the line.' Sadly, I had to inform Ron that it was slightly more complicated than that, and that the final distribution of preferences—the reason I was finally elected—were from the Australian Sex Party. There was this awkward silence on the phone. He said, 'For God's sake, Brett, don't tell anyone!' I said, 'Well, it is on the ABC website, Ron.' Ron was quite emotional and quite distressed. He said, 'Look, there are only two things for it; you've got to do two things straightaway.' I asked, 'What's that?' And he said, 'First of all, ring up your mother and tell her you've been re-elected as a senator for Queensland.' I said, 'Okay; I'll do that straightaway, Ron.' He said, 'Secondly, go straight to church, get down on your knees and beg God for forgiveness.'

I have spent 15 years going to the gym every morning—even though it does not look like it! And on my way back to my office I often look across to the National Museum of Australia, which some senators may know was of course formerly the site of the Royal Canberra Hospital, where I was born. I was reflecting on that the other day, and I thought, 'God—imagine being over 50 years old and having come only a couple of hundred metres across the lake.' I thought to myself, 'It's not much of a life.'

In parliament today we are blessed by having senators from all around the world, from all the continents, who have made their way here, some from Europe and North America, some from Asia and some from just across the lake. But we are all here really for the same cause. It is to imagine or reimage a better Australia. That is why we are here, and I want all my Senate colleagues to know that, even though I will no longer be here, I will continue to dream that dream with you, always.

Mr President, it has been the greatest privilege, the greatest honour, of my life to serve in this place. It really has been. It is an honour that will never be exceeded. But what has made it such a very great pleasure is the support, the camaraderie and the good humour of all my
fellow senators. Mr President, I thank you so much, Sir; and to all my colleagues: thank you and goodbye.

BILLs

Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015

In Committee

Debate resumed.

The TEMPORARY CHAIRMAN (Senator O’Neill) (16:38): The next amendments are Senator Xenophon’s amendments (10) to (12) on sheet 7672.

Senator XENOPHON (South Australia) (16:38): by leave—I move amendments (10) to (12) on sheet 7672 together:

(10) Schedule 1, item 6V, page 46 (lines 13 to 31), omit section 182A, substitute:

182A Disclosure/use offences: journalist information warrants

(1) A person commits an offence if:

(a) the person discloses or uses information; and

(b) the information is about any of the following:

(i) whether a journalist information warrant (other than such a warrant that relates only to section 178A) has been, or is being, requested or applied for;

(ii) the making of such a warrant;

(iii) the existence or non-existence of such a warrant;

(iv) the revocation of such a warrant; and

(c) the person knows that the information is about a warrant as set out in paragraph (b); and

(d) at the time of the disclosure or use, the matter to which the warrant relates is ongoing.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person discloses or uses a document; and

(b) the document consists (wholly or partly) of any of the following:

(i) a journalist information warrant (other than such a warrant that relates only to section 178A);

(ii) the revocation of such a warrant; and

(c) the person knows that the document consists (wholly or partly) of the warrant or the revocation of the warrant; and

(d) at the time of the disclosure or use, the matter to which the warrant relates is ongoing.

Penalty: Imprisonment for 2 years.

(11) Schedule 1, item 6V, page 47 (before line 4), before paragraph 182B(a), insert:

(aa) both:

(i) the disclosure or use is by a person working in a professional capacity as a journalist; and

(ii) the information or document is disclosed or used in that capacity for the purpose of disseminating information on a matter of public interest; or

(12) Schedule 1, item 6X, page 48 (before line 1), before section 185D, insert:
185CA Evidentiary certificate relating to ongoing Ombudsman matter
(1) The Director-General of Security or the Deputy Director-General of Security may issue a written certificate signed by him or her setting out:
   (a) whether a matter involving the grounds on which a journalist information warrant was issued is ongoing; and
   (b) whether the matter was ongoing on a specified date.
(2) A document purporting to be a certificate issued under subsection (1) by the Director-General of Security or the Deputy Director-General of Security and to be signed by him or her:
   (a) is to be received in evidence in an exempt proceeding without further proof; and
   (b) is, in an exempt proceeding, prima facie evidence of the matters stated in the document.
Note: An evidentiary certificate issued under this section relates to an offence under section 182A.

185CB Evidentiary certificate relating to ongoing enforcement agency matter
(1) A certifying officer of an enforcement agency may issue a written certificate signed by him or her setting out:
   (a) whether a matter involving the grounds on which a journalist information warrant was issued is ongoing; and
   (b) whether the matter was ongoing on a specified date.
(2) A document purporting to be a certificate issued under subsection (1) by a certifying officer of an enforcement agency and to be signed by him or her:
   (a) is to be received in evidence in an exempt proceeding without further proof; and
   (b) is, in an exempt proceeding, prima facie evidence of the matters stated in the document.
Note: An evidentiary certificate issued under this section relates to an offence under section 182A.

Amendment (10) amends the offences in the bill related to the disclosure and use of journalist information warrants. This amendment limits the offence to ensure it only applies when a person knows that the information disclosed or used relates to a journalist information warrant and that the matter to which the warrant relates is ongoing. The aim of this amendment is to ensure openness and transparency and, in practical terms, to allow reporting on matters that may, in the past, have related to journalist protection warrants. While acknowledging that such an offence provision may be necessary to protect ongoing investigations, these amendments prevent the offence from becoming a barrier to sharing information in the public interest.

Amendment (11) seeks to clarify the defences available to someone charged with the disclosure or use of information relating to journalist information warrants. It provides that disclosure or use by a journalist for the purpose of disseminating information in the public interest is a defence. In conjunction with the amendments in amendment (10), this amendment will ensure that journalists are free to report on matters of public interest even if they are the subject of a journalist information warrant.

Amendment (12) allows the Director-General of Security or Deputy Director-General of Security to provide evidentiary certificates relating to whether a matter involving the grounds on which a journalist information warrant was issued is ongoing and whether the matter specified was ongoing on a particular day. These provisions are consistent with others in the act relating to the issuing of evidentiary certificates. Under the same conditions, a certifying officer of an enforcement agency may issue a written certificate relating to the same matters.
Again, this is consistent with existing provisions for the use of evidentiary certificates in the act.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (16:40): The government does not support these amendments. Section 102A makes it an offence for a person to use or disclose information about a journalist information warrant. The offence is punishable by two years imprisonment. Pursuant to section 5.6 of the Criminal Code, this offence will be committed where a person uses or discloses information and is reckless as to whether that information is about a journalist information warrant. Amendment (10) would make disclosure an offence only where the person who discloses the warrant knows that the information is about a journalist information warrant relating to an ongoing matter. The offence provisions serve the dual purpose of ensuring the security and integrity of investigations are maintained against unlawful disclosure and protecting the reputation and privacy of subjects of investigations.

Prohibitions on use and disclosure exist so that any private information, even the mere fact that a person has come to the police's attention, is not incidentally used to embarrass, humiliate or harass the person. Given the sensitive nature of TIA Act powers, for those prohibitions to be meaningful they must be backed up by criminal penalties. The media cannot have it both ways. They have sought protections relating to the identification of their sources, yet they are looking to be able to disclose the information about the target of the warrant—that is, the source. The offence provision is consistent with those already in place in relation to other warrants, including telecommunications interception warrants and stored communications warrants. These offences exist in both Commonwealth and state legislation, including relating to surveillance device warrants. These provisions create a need to know within an agency to protect the privacy of the person who is the subject of the warrant.

Senator JACINTA COLLINS (Victoria) (16:42): I could refer to my earlier comments, Senator Xenophon, but I will add an additional point on these amendments, especially for your staff. The provisions regarding unauthorised disclosure that a warrant has been sought are standard in warrant schemes. I think I can elaborate on Senator Brandis's comments that the explanatory memorandum sets out the rationale for these provisions. Let me read those:

153. Section 182A makes it an offence for a person to use or disclose information about whether a journalist information warrant, has been, or is being requested or applied for, the making of such warrant, the existence or non-existence of such a warrant and the revocation of such a warrant. The maximum penalty for this offence is 2 years imprisonment. Section 182A is consistent with equivalent offence provisions already in place in relation to other warrants, including telecommunications interception warrants and stored communications warrants. These provisions create a "need-to-know" within an agency to protect the privacy of the person who is the subject of a TIA Act warrant.

Senator LUDLAM (Western Australia) (16:43): The Australian Greens will be supporting this amendment for the reasons outlined briefly by Senator Xenophon.

Senator XENOPHON (South Australia) (16:43): I thank the government and the opposition for their response, but let us put this into perspective. If a journalist discloses after the fact, when, as set out in this amendment, it is clearly in the public interest, that there has been a journalist information warrant sought or obtained—when there is no longer any issue about it being detrimental to the work of the security agency or the authorities but is in fact
actually in the public interest—that would still be a criminal offence. How, from a public policy point of view, can that be desirable? There is a threshold in this amendment that says it must be in the public interest for a journalist to disclose that there was a warrant issued.

It might be five years down the track or 10 years down the track. Does that mean forever and a day that this will be secret? Does this mean that in 10 years' time, 20 years' time, 30 years' time or 40 years' time, if this bill is in its current form, that journalists will not be able to ever report that a warrant was sought for their metadata even when the exigency or the need for the warrant is no longer apparent and it is also positively in the public interest to disclose that? That is what disturbs me: that fact that we could end up seeing journalists being jailed for disclosing something that would be clearly in the public interest.

Question negatived.

Senator LEYONHJELM (New South Wales) (16:45): I withdraw amendment (26) on sheet 7661.

Senator LUDLAM (Western Australia) (16:46): by leave—I move Australian Greens amendments (36), (37), (38), (39) on sheet 7669 together, as these amendments are all relevant to the same clauses:

(36) Schedule 2, items 3 and 4, page 56 (line 12) to page 62 (line 4), to be opposed.

(37) Schedule 2, item 6, page 63 (lines 6 to 10), omit the item, substitute:

6 Subsection 5(1) (definition of criminal law-enforcement agency)
Omit "paragraphs (a) to (k)", substitute "paragraphs (a) to (l)".

(38) Schedule 2, item 7, page 63 (lines 11 to 13), omit the item, substitute:

7 Subsection 5(1) (definition of enforcement agency)
Repeal the definition, substitute:

enforcement agency means:
(a) the Australian Federal Police; or
(b) a Police Force of a State; or
(c) the Australian Commission for Law Enforcement Integrity; or
(d) the ACC; or
(e) the Australian Customs and Border Protection Service; or
(f) the Crime Commission; or
(g) the Independent Commission Against Corruption; or
(h) the Police Integrity Commission; or
(i) the IBAC; or
(j) the Crime and Corruption Commission of Queensland; or
(k) the Corruption and Crime Commission; or
(l) the Independent Commissioner Against Corruption; or
(m) a body or organisation responsible to the Ministerial Council for Police and Emergency Management-Police; or
(n) the CrimTrac Agency; or
(o) any body whose functions include:
(i) administering a law imposing a pecuniary penalty; or
(ii) administering a law relating to the protection of the public revenue.

(39) Schedule 2, item 8, page 63 (lines 14 to 24), to be opposed.

As to these amendments, we covered—whether it was last night or the night before, I now cannot remember; it has all started to run together—the issue of the government being able to effectively move the goalposts in terms of categories of data that could be added to the scope of the bill once it is enacted, the number of service providers and companies who could be brought within the scope of the bill and, the third issue, the fact that Attorney-General can unilaterally add agencies to the bill.

The Attorney-General has made much—and I acknowledge the significant change and a significant improvement in the regime that prevails in Australia to date—of narrowing roughly 80 agencies, to use the rule of thumb figure. In theory, it could be much larger than that, because there are in excess of 500 local government authorities in this country. They can, in theory at least, acquire metadata on a warrantless basis by just directly contacting the phone and internet companies. This bill narrows the range of agencies to just under two dozen. But, of course, the door as it closes on one side opens on another: the Attorney-General has allowed himself to unilaterally add agencies back into the bill. We are going back to some of the arguments that we had earlier about this strange 40 sitting day lag that appears where the minister can add an agency; 40 sitting days can pass, which will be six or eight months down the track; and then the parliament is asked to ratify the decision.

Maybe before we go to the substance of the amendments, because what we are proposing to do is remove that power so that if another agency is to come back into the scheme and be able to access people's metadata on a warrantless basis, we believe that is something that the parliament should be engaged in at the beginning of the process and not the end. Just before I put the amendments, what I would like to do is seek your advice, Attorney-General, on what criteria you will bear in mind when agencies come knocking on your door seeking to be included back into the scheme.

That is because, as you have identified earlier in the debate, some—when you read the Telecommunications (Interception and Access) Act annual reports—agencies like Centrelink and a number of others that have no criminal law enforcement role are among the largest users of these authorisations. I want to know what criteria will guide you when Centrelink, if we take them as an example, come knocking at your door—if they are not already there—seeking to be reincorporated within the scheme.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (16:49): I will answer your question in a moment, Senator Ludlam. Thank you at least for having the good grace to acknowledge the reduction of the number of agencies to 21 from 85, which is a very substantial improvement on the status quo. That is the point I have been making all along. I tried to make it in my speech winding up the second reading debate. The way this debate has proceeded, you could be forgiven for thinking—if you were not familiar with the legislation and were listening in—that this is an invasion of peoples' liberties, whereas in fact what it does is attenuate very significantly and subject to much more rigorous oversight conduct which at the moment is lawful.

Coming directly to your question, the answer is in accordance with the criteria actually set out in section 110A(4). The criteria that the minister must have regard to in considering
whether to make a declaration is set out there, particularly in subsection (c). The minister is, among other things, required to comply with the Australian Privacy Principles, with a binding scheme that provides for the protection of personal information and with other matters which you can read yourself. This is not an ungoverned discretion. It is a discretion that is governed by the specific matters set out in proposed subsection 110A(4)(b). Because these are amendments to the Telecommunications (Interception and Access) Act, the discretion is governed generally by the criteria set out in section 180F. That is augmented and strengthened by this bill, which deals with the overarching considerations to be had regard to in accessing information.

You, in an exuberantly rhetorical way, said that the minister can unilaterally add agencies. As a matter of fact, the minister cannot unilaterally add agencies. What the minister can do is promulgate a legislative instrument which adds agencies. But as you well know, legislative instruments are subject to disallowance by either house of parliament.

Lastly, the 21 agencies are set out in the act not by function but by name. In the existing TIA Act additional agencies can be added. That is how we got to this forest of agencies with the capacity to access metadata under the existing act: they do not have to be named agencies; they can be agencies that answer a functional description. That is removed under this act, so that, once again, is a protection which does not exist under the existing law.

Senator LEYONHJELM (New South Wales) (16:53): I moved identical amendments to those of Senator Ludlam, so therefore I am speaking in support. I have proposed these amendments in order to prevent regulatory creep through the addition of further agencies. The Telecommunications (Interception and Access) Act—

The TEMPORARY CHAIRMAN (Senator O'Neill): Just to clarify, Senator Leyonhjelm, you actually circulated these rather than moved them.

Senator LEYONHJELM: I did not move them; you are quite correct. I circulated them, yes. They are on the running sheet showing as identical to mine, that is all. Under the Telecommunications (Interception and Access) Act, the distinction between a criminal law enforcement agency and an enforcement agency allows for some agencies that have enforcement functions but not criminal law enforcement functions to have limited access powers. In order to have full access powers an agency must have a criminal law enforcement function.

I take the point that, under this bill, the agencies with access will be named in the bill. I think that is an excellent idea, but this takes account of the fact that additional agencies can be added. The amendment seeks to prevent regulatory creep by omitting proposed definitions of 'criminal law enforcement agency' as set out in clause 110A and 'enforcement agency' as set out in clause 176A altogether and reverting to the current approach in the telecommunications interception act of setting up these agencies in the definitions section. There is an express reference to the Australian Customs and Border Protection Service in the definition of enforcement agency in amendment (38). By virtue of this amendment, the only way for new agencies to be added will be by an amending act, which will enhance parliamentary scrutiny and oversight, and the distinction between criminal law enforcement agency and enforcement agency is thus preserved.
This approach also ensures that ASIC and ACCC do not get themselves onto the list of government approved, government sanctioned nosy parkers. Those two agencies already have large and intrusive powers, sometimes in excess of those enjoyed by agencies more properly considered criminal law enforcement bodies. Those powers should not be further expanded, particularly as they may be used to pursue trivial infractions such as collusion among service stations over petrol prices.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (16:55): I obviously have a fundamental disagreement with you about this. The Australian Competition and Consumer Commission and the Australian Securities and Investments Commission are the two principal economic regulators in this country. They keep the operation of our free market system honest and they ensure that markets operate free of abusive conduct or manipulative conduct.

I think it is a very superficial view, if I may say so, to think that the kind of market manipulation, cartel conduct or abuse of market power which it is the responsibility of the Australian Competition and Consumer Commission to police and to enforce the provisions of its act with a view to preventing is a trivial matter. I say this with some feeling because for several years before I came to this place this is what I did. Competition law was my field of practice, and I acted for the ACCC and against the ACCC on many occasions. I have seen in my own professional experience many, many instances of very serious market manipulation, cartel conduct and collusive behaviour at the expense of consumers, which it is absolutely in the public interest to prevent. There are criminal penalties now under the Competition and Consumer Act.

In relation to the Australian Securities and Investments Commission, that is the principal corporate regulator in this country. It is our principal guardian against white-collar crime and commercial fraud within the corporate sector. The thought that either the ACCC or, even more so, ASIC do not have a very important law enforcement, including criminal law enforcement, role is quite wrong. An article by Mr Greg Tanzer in this morning's Australian Financial Review has been drawn to my attention. Mr Tanzer, as you may know, is a commissioner of ASIC, who argues very strongly for the retention of urgency within the list of relevant criminal law enforcement bodies. Mr Tanzer says, among other things:

… in the two years to November 2014 ASIC used telecoms data in more than 80 per cent of our insider trading cases.

He goes on to say that the powers sought here are no different in kind than existing powers under the TIA Act already. Mr Tanzer writes:

Changes to the TIA Act do not give law enforcement agencies any new powers but aim to ensure crucial existing powers retain their utility and are not eroded because of profit-driven changes in commercial practices.

Telecoms data is crucial in combating corporate crime.

I know you take a libertarian point of view and I know that is one of the points of difference between you and perhaps the Greens senators. May I say, through you, Madam Temporary Chairman O'Neill, to the Greens senators: the Greens senators have always been at the absolute forefront in their outrage at corporate crime and white-collar crime in this country. I can understand Senator Leyonhjelm's libertarian, anarcho-capitalist point of view, which I do
not share but I understand, but I cannot for the life of me understand why the Greens would wish to disable the investigatory capability of the agency charged with policing against white-collar crime from having a power akin to police forces and anti-corruption bodies which it has at the moment but would not have if this amendment were to be carried.

Senator LEYONHJELM (New South Wales) (16:59): Thank you, Attorney. I must admit I am a little confused. I thought this bill was all about serious crime—terrorism, paedophilia and organised crime are the terms I think that I have heard you use several times. White-collar crime, I suppose, at its most extreme end could perhaps be called organised crime, but it absolutely could not be called paedophilia or terrorism. Insider trading, as I am sure you are aware, is not actually illegal in some countries, including across the ditch in New Zealand. It certainly does not qualify as serious organised crime.

This reinforces, I guess, my prediction that this is mission creep—this is regulatory creep. We are not just talking about serious crimes. This legislation will be used for all kinds of crimes. I doubt very much whether its impact on terrorism or paedophilia or serious organised crime will be very great at all, but it will be very substantial on matters that really do not warrant such intrusive powers.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:01): Obviously, corporate crime is not terrorism and corporate crime is not paedophilia, but I would maintain unhesitatingly that serious organised corporate fraud, market manipulation, insider trading and white-collar crime at the serious end absolutely are forms of organised crime. We obviously have a philosophical difference about that. And it is not mission creep, as you say, Senator, because these powers already exist. These powers already exist under the status quo. We have shed three-quarters of the agencies by whom these powers are exercisable, but we have included ASIC and the ACCC on the list for that reason.

Senator JACINTA COLLINS (Victoria) (17:02): Labor will be opposing these amendments for much the same reasons as Senator Brandis outlined. But I should also highlight, in relation to this discussion about trivial offences, that, in the amendments introduced by the government in the House, the new threshold that Labor argued for through the joint committee process with respect to access ensures that gravity is one of the factors taken into consideration. This is a very important point to be made here.

We sought to clarify with the Greens in relation to the Greens amendments essentially the point that Senator Leyonhjelms made earlier, which is that they are indeed identical. Like Senator Brandis, I was somewhat surprised at the Greens' approach in relation to ASIC and the ACCC and we could not get back from the Greens confirmation that they understood that the effect of their amendments was that they would be removing from the list ASIC and the ACCC. If I recall correctly—and sorry if I am verballing you, Senator Ludlam—this issue was not addressed in your comments introducing these amendments. It is quite a serious issue, as highlighted by Senator Brandis. I too read the article in today's Financial Review, but there is another aspect to that article, by Greg Tanzer, that I would like to go to. He reports:

Telecoms data is crucial in combating corporate crime. This sort of information is commonly the first source of important information for further investigations and is frequently used to identify suspected offenders or verify preliminary suspicions. Without this data many offences and offenders would never be detected …
This is a very serious issue. As I said, the amendments to which the government has already agreed through the process of the joint committee and that were dealt with in the House ensure that we are not talking about the trivial matters that Senator Leyonhjelm is referring to. Indeed, in the evaluation process of a request for access, gravity is one of the important factors taken into account.

The TEMPORARY CHAIRMAN (Senator O’Neill): The question will be put in two parts. The first is that items 3, 4 and 8 of schedule 2 stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN: The second part is that amendments (37) and (38) on sheet 7669 be agreed to. All those in favour say 'aye'; to the contrary 'no'. The ayes have it.

Honourable senators: The noes have it.

The TEMPORARY CHAIRMAN: Sorry, the noes have it.

Question negatived.

Senator LUDLAM (Western Australia) (17:05): I thought we might have been right on the verge of finally winning one. My hopes were dashed!

The TEMPORARY CHAIRMAN: I am sorry to mislead you there, Senator Ludlam. I am glad that we corrected the record—thank you, Senator Collins.

Senator LUDLAM: That is all right. It has been a complex process. I move Australian Greens amendment (40) on sheet 7669:

(40) Schedule 2, Part 2, page 68 (after line 12), at the end of the Part, add:

47A At the end of Division 6 of Part 4-1

Add:

Division 7—Destruction of information or documents

182C Destruction of information or documents obtained under authorisation

Authorisations under Division 3 by the Organisation

(1) If:

(a) information, or a document, that was obtained by the Organisation in accordance with an authorisation under Division 3 is in the Organisation's possession; and

(b) the Director-General of Security is satisfied that the information or document is no longer required, and is not likely to be required, in connection with the purpose for which the authorisation was given;

the Director-General of Security must cause the information or document, including any copies of the information or document, to be destroyed as soon as practicable.

Authorisations under Division 4 by an enforcement agency

(2) If:

(a) information, or a document, that was obtained by an enforcement agency in accordance with an authorisation under Division 4 is in an enforcement agency's possession; and

(b) the head (however described) of the agency is satisfied that the information or document is no longer required, and is not likely to be required, in connection with the purpose for which the authorisation was given;
the head (however described) of the enforcement agency must cause the information or document, including any copies of the information or document, to be destroyed as soon as practicable.

Authorisations under Division 4A by the Australian Federal Police

(3) If:

(a) information, or a document, that was obtained by the Australian Federal Police in accordance with an authorisation under Division 4A is in the Australian Federal Police's possession; and

(b) the Commissioner of Police is satisfied that the information or document is no longer required, and is not likely to be required, in connection with the purpose for which the authorisation was given;

the Commissioner of Police must cause the information or document, including any copies of the information or document, to be destroyed as soon as practicable.

This is reasonably simple and we already traversed the reasoning behind it earlier in the debate, but to refresh our memory: this amendment requires that metadata obtained under the data retention legislation should be destroyed when it is no longer relevant to the matter under investigation. Earlier in the debate, we addressed the idea that, after the two-you mandatory retention period, stuff that had been collected for no other purpose than that people were being forced to collect it under the terms of the bill would be destroyed. However, this goes to the material being retrieved—and we have already discussed at length the fact that there are in excess of three-quarters of a million of these warrantless authorisations reported to the ACMA every year. Once that material is no longer relevant to any kind of investigation, it should be destroyed. We know that it is not. Not just the intelligence agencies are amassing it but the law enforcement agencies and other agencies are collecting it. There is no obligation as far as I am aware—please correct me if I am wrong, Senator Brandis—on the part of any of these agencies to destroy anything that they collect on a warrantless basis.

The software tools for aggregating and mapping this information are way more sophisticated than most people realise. I think the numbers increment by 10 or 15 per cent every year. So 750,000 this year, maybe 720,000 or 730,000 the year before. All of the records that are being grabbed are also being compiled. They are being stored; they are being compiled. And there is no question at all that it effectively means that the private records of phone and internet use, location, data and whatever else are being authorised, collected, archived and kept. This material—we do not know absolute numbers, because that material is not recorded—on tens or potentially hundreds of thousands of people is being stored.

So I struggle to imagine a justification whereby material is accessed on a warrantless basis for a range of matters—everything from quite serious matters to quite trivial matters. Many people who support these schemes have been at pains to tell us that this is about preliminary discovery so that people can be excluded as persons of interest and not pursued by more intrusive means. Why would you require the retention of their material? Why not instruct agencies to dispose of it when it is no longer needed? That would be in accord with the Australian privacy principles that were legislated and, to my mind, improved by this government about this time last year.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:08): Senator Ludlam, I think you make a very good point, but the way you expressed yourself at the end there was wrong. We are not requiring the retention of metadata—we are not requiring it at
all. The bill does not include a requirement that it be destroyed at a particular time, which is the effect of your amendment.

Senator Ludlam, I understand the point you are making and, as I say, I think it has a lot to be said for it. It is for that reason that the government adopted recommendation 28 of the PJCIS that the Attorney-General's Department oversee a review of the adequacy of the existing destruction requirements that apply to documents or information disclosed pursuant to an authorisation made under chapter 4 of the TIA Act and held by enforcement agencies and ASIO. The committee further recommended that the Attorney-General report to parliament on the findings of the review by 1 July 2017. As I say, the government has accepted that recommendation and that review will be conducted. As well as that, you will be pleased to know, Senator Ludlam, in respect of ASIO there is an agreement between ASIO and the National Archives, which was reviewed in 2012, in relation to retained material. The retention and destruction of data by ASIO is going to be examined by the Inspector-General of Intelligence and Security later this year. So there are in fact two reviews. There is the IGIS review this year and the Attorney-General's Department review, which will report within a little over two years. The government will consider what those reviews have to say. I tend to agree with you, Senator Ludlam, that it is desirable that there should be a destruction date in relation to data in certain defined circumstances. But we will await and be informed by the review in making decisions concerning that issue.

Senator JACINTA COLLINS (Victoria) (17:11): Labor will be opposing this amendment for much the same reasons as Senator Brandis outlined. As he has indicated, the matter was canvassed by the Joint Parliamentary Committee on Intelligence and Security, which noted that there were existing protocols in place around the retention and destruction of documents—one example that Senator Brandis just gave. It is important that we review those and come with a satisfactory outcome from those processes.

Question negatived.

Senator LUDLAM (Western Australia) (17:11): I withdraw Australian Greens amendments (41) and (42) on sheet 7669. They were consequential to earlier amendments that, regrettably, I did not have the numbers to pass. So I will not be proceeding with moving those. I move amendment (43) on sheet 7669:

(43) Schedule 3, item 7, page 77 (after line 29), after subsection 186B(1), insert:

(1A) For the purposes of paragraph (1)(a), the Ombudsman must inspect the records of each enforcement agency at least once every 6 months in relation to authorisations under Division 3, 4 or 4A of Part 4-1.

This is the last Australian Greens amendment that we will bring forward. Its purpose is fairly simple. It is to explicitly require the Commonwealth Ombudsman to examine every six months the records of agencies which have access to metadata. The Ombudsman has been brought more closely into the orbit of oversight of the regime. I do not think at the moment that this regime, particularly access to metadata, has anything like the amount of oversight that it is going to need, given the volume of requests that go through and the evident problems and issues that have been well canvassed during this debate. Nonetheless, the Ombudsman does have a closer role. I would like to know the degree to which the Ombudsman's office will be given a greater amount of resourcing to conduct those additional activities.
We would like to see the Ombudsman have that regular and very cyclical inspection and reporting obligation—the inspection, therefore, being every six months. The reason for this is simple. Unlike the warranted access to material which has that judicial oversight—it is sought through the AAT or it is sought through judges—there is no such oversight role. I am not sure that many people realise that there are probably thousands of people in agencies around this country who are authorised to be in receipt of a two-page form, a double-sided piece of A4 paper, with the target individuals or networks or devices that are handed directly to the phone companies or the internet service providers, and then the material is forthcoming. There is no intermediary. There is no judicial oversight. So, at the very minimum, we would like that to be the Commonwealth Ombudsman, given that the proposal to bring bulk or intrusive metadata within the warranted regime was rejected. This is really a last ditch attempt to providing a greater measure of transparency and oversight to a system that I believe is fundamentally broken.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:14): Senator Ludlam, the government does not support your amendment. I should acquaint you with the fact that the Commonwealth Ombudsman was in fact closely involved in drafting these powers. These were the powers that the Ombudsman's office, as one of the integrity agencies, thought were appropriate to it to best discharge its oversight obligations—that is, the powers that are already in the bill, which your amendment would change.

Can I draw your attention, please, to paragraph 685 of the explanatory memorandum, which reads:

Under subsection 186B(2), the Ombudsman is not restricted in the frequency with which the Ombudsman may inspect the records of an agency. For example, the Ombudsman could choose inspection cycles of twelve months, six months, three months or some other period to inspect the records of any particular agency. This flexibility is intended to cater for the significant differences in the size, structure, functions, and internal systems and procedures of the various criminal law-enforcement agencies, the variable nature and flow of investigations and to ensure the new inspection regime is sufficiently responsive to differing contingencies encountered during an inspection. Depending on the circumstances, this may necessitate other adaptive approaches, including, for example, staged or rolling inspection programs, a quarter-sized inspection four times a year, or inspecting different field offices at different times if that was more convenient for the agency from an operational perspective or logistically more feasible.

So the mischief that your amendment seeks to address is already provided for by clause 186B(2) of the bill in a way which—with the advice of the Ombudsman, as the relevant integrity agency—will actually enhance rather than diminish his capacity to oversee the compliance by agencies with the provisions of this bill. I should also remind you that the intelligence agencies are subject to the Inspector-General of Intelligence and Security as well.

Senator JACINTA COLLINS (Victoria) (17:16): Labor will be opposing this amendment because we feel, given what has occurred in recent times, that it is now redundant. Proposed section 186B(1) already provides that the Ombudsman must inspect the records of relevant agencies, and the Ombudsman's office is indeed a highly experienced oversight body. We have, however, demanded and received an assurance from the government that the Ombudsman will be effectively resourced to exercise his new responsibilities. As such—given, as Senator Brandis highlighted, the consultation that
occurred with the Ombudsman himself—we have no doubt that he will be an effective and
diligent watchdog over the data retention scheme.

Question negatived.

Senator XENOPHON (South Australia) (17:18): I move amendment (13) on sheet 7672:

(13) Page 84 (after line 31), at the end of the Bill, add:

Schedule 4—Disclosure by journalists

_Australian Security Intelligence Organisation Act 1979_

1 Subsections 35P(1), (2) and (3)

Repeal the subsections, substitute:

Unauthorised disclosure of information

(1) A person commits an offence if:

(a) the person discloses information; and

(b) the information relates to a special intelligence operation; and

(c) the person knows that the information relates to a special intelligence operation.

Penalty: Imprisonment for 5 years.

Unauthorised disclosure of information—endangering safety, etc.

(2) A person commits an offence if:

(a) the person discloses information; and

(b) the information relates to a special intelligence operation; and

(c) the person knows that the information relates to a special intelligence operation; and

(d) the person intends the disclosure of information to endanger the health or safety of any person

or prejudice the effective conduct of a special intelligence operation.

Penalty: Imprisonment for 10 years.

Exceptions

(3) Subsections (1) and (2) do not apply if:

(a) the disclosure was in connection with the administration or execution of this Division; or

(b) the disclosure was for the purposes of any legal proceedings arising out of or otherwise related
to this Division or of any report of any such proceedings; or

(c) the disclosure was in accordance with any requirement imposed by law; or

(d) the disclosure was in connection with the performance of functions or duties, or the exercise of
powers, of the Organisation; or

(e) the disclosure was for the purpose of obtaining legal advice in relation to the special
intelligence operation; or

(f) the disclosure was to an IGIS official for the purpose of the Inspector-General of Intelligence
and Security exercising powers, or performing functions or duties, under the _Inspector-General of
Intelligence and Security Act 1986_; or

(g) the disclosure was by an IGIS official in connection with the IGIS official exercising powers,
or performing functions or duties, under that Act; or

(h) the disclosure was:

(i) by a person who was working in a professional capacity as a journalist, or an employer of
such a person; and
(ii) published in good faith in a report or commentary about a matter of public interest; and
(iii) the report was not likely to enable an ASIO employee, ASIO affiliate, a staff member of
ASOS or an IGIS official to be identified.

Note: A defendant bears an evidential burden in relation to the matters in this subsection—see
subsection 13.3(3) of the Criminal Code.

(3A) Without limiting paragraph (3)(h), a disclosure is about a matter of public interest if it relates
to one or more of the following:
(a) a matter that increases the ability of the public to scrutinise and debate issues of national
security;
(b) a matter that would promote the integrity and accountability of the Organisation, ASIS or the
Inspector-General of Intelligence and Security in relation to national security and other related issues;
(c) conduct that:
(i) contravenes a law of the Commonwealth, a State or a Territory; or
(ii) contravenes a law of a foreign country; or
(iii) is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or
(iv) is engaged in for the purpose of corruption; or
(v) constitutes maladministration; or
(vi) constitutes an abuse of public trust; or
(vii) involves an official of a public agency abusing his or her position as an official of that
agency; or
(viii) could, if proved, give reasonable grounds for disciplinary action against an official of a
public agency.

Crimes Act 1914
2 At the end of subsection 3ZZHA(2)
Add:
; (g) the disclosure is:
(i) made by a person who is working in a professional capacity as a journalist, or an employer of
such a person; and
(ii) published in good faith in a report or commentary about a matter of public interest; and
(iii) the report or commentary is not likely to enable an officer of the Australian Security
Intelligence Organisation, a staff member of the Australian Secret Intelligence Service, or a staff
member of the Inspector-General of Intelligence Services to be identified.

3 At the end of section 3ZZHA
Add:
(3) Without limiting paragraph (3)(h), a disclosure is about a matter of public interest if it relates to
one or more of the following:
(a) a matter that increases the ability of the public to scrutinise and debate issues of national
security;
(b) a matter that would promote the integrity and accountability of the Australian Security
Intelligence Organisation, the Australian Secret Intelligence Service or the Inspector-General of
Intelligence Services in relation to national security and other related issues;
(c) conduct that:
   (i) contravenes a law of the Commonwealth, a State or a Territory; or
   (ii) contravenes a law of a foreign country; or
   (iii) is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or
   (iv) is engaged in for the purpose of corruption; or
   (v) constitutes maladministration; or
   (vi) constitutes an abuse of public trust; or
   (vii) involves an official of a public agency abusing his or her position as an official of that agency; or
   (viii) could, if proved, give reasonable grounds for disciplinary action against an official of a public agency.

*Criminal Code Act 1995*

4 Paragraph 119.7(2)(b) of the Criminal Code

Repeal the paragraph, substitute:

(b) the person publishes the advertisement or item of news intending to encourage the recruitment of persons to serve in any capacity in or with an armed force in a foreign country.

5 After paragraph 119.7(3)(b) of the Criminal Code

Insert:

; (c) the publication of the advertisement or item of news was not in the public interest.

This amendment addresses issues relating to disclosures of information by journalists, through amendments to the Australian Security Intelligence Organisation Act 1979, the Crimes Act 1914 and the Criminal Code Act 1995. These amendments address changes to these acts made by the previous bills in this tranche of legislation, primarily the National Security Legislation Amendment Act (No. 1) 2014.

Make no mistake about it, these issues go to the heart of press freedom in this country in relation to the ability of investigative journalists to do their work. These bills insert into these acts new offences relating to the disclosure of information relating to a special intelligence operation, as well as for publishing advertisements or items of news that contain information about recruitment of people to armed forces in a foreign country. I want to make it clear that, in relation to any publication of information in respect of a special intelligence operation that could endanger the lives of those involved in the operation or other lives directly as a result of that disclosure of information, I do not oppose the imposition of a penalty. If we are talking about endangering lives—if, for instance, there is an ASIS or ASIO officer whose life is put in real danger by the disclosure of their identity—then that is a serious matter. But we are talking about a whole range of other circumstances where there can be no such consideration; where there is no question of any lives being endangered; and where, in fact, what is being endangered by not publishing that information is very much the public interest and some key democratic principles.

At the time that the bills were being considered in respect of section 35P, I expressed my concerns about the provisions relating to disclosure of information and how this would impact on journalists reporting on matters in good faith and in the public interest. At the time, I also moved an amendment to include the consideration of the public interest as a defence to these offences. This amendment expands on these original concerns to address the matter more
fully. I am grateful to the mainstream media organisations that I have spoken to—major media organisations which have been very helpful with useful suggestions as to how this clause could have real protections for journalists who are doing their job in the public interest.

Firstly, in relation to disclosure of information, these amendments introduce a concept of 'knowingly disclosing information relating to a special intelligence operation, disclosing information with the intent of endangering the health or safety of any person, or prejudicing the effective conduct of a special intelligence operation'. Further, the amendments provide exceptions to this offence which are consistent with existing whistleblower protections. They also include an exception where the person was working in a professional capacity as a journalist and published in good faith as a matter of public interest, and where the report was not likely to enable staff of security organisations to be identified.

The amendments also provide an extensive definition of what matters can be considered to be in the public interest. These include matters that increase public debate and promote the integrity and accountability of security organisations or officials, and matters relating to conduct that contravenes certain laws or standards. These amendments provide the same defences in relation to disclosing information about delayed notification search warrants under the Crimes Act.

The amendments also address issues relating to the publication of certain matters under the Criminal Code. The new offences in the act relate to the publication of recruitment material, and, in essence, I believe these offences are suitable. However, there is capacity for these offences to capture media organisations in the following ways. Firstly, it is possible that a journalist could publish a story that contains information about recruitment—for example, an investigative piece that looks at recruitment strategies of terrorist groups or how an individual has been personally affected by this. Secondly, it is possible that a major news organisation with many publications could unwittingly publish an advertisement that, while it does not overtly seem so, relates to recruiting activities—for example, for a town meeting that turns out to have recruiting elements, unbeknownst to the news organisation.

To address these concerns, the amendments in this item change the existing offence from a person being reckless to the fact to a person publishing with the intention of encouraging recruitment. Further, in relation to the offence of publishing more detailed information about recruiting, these amendments provide that the offence can only apply where the publication is not in the public interest. This would, for example, come into effect when a story is published about recruitment taking place at a certain location and time for the purpose of raising public awareness.

I want to briefly raise a matter that relates to ASIS, not ASIO, but the principles are the same. There is, of course, the issue in respect of the allegations that ASIS planted electronic surveillance, electronic bugs, in 2004 in the East Timorese cabinet room, allegedly to gather information regarding negotiations of the Timor Sea treaty, the sharing of energy resources between Australia and Timor. That cannot be seen, on any reasonable basis, as a national security issue. In March 2014 the International Court of Justice ordered Australia to stop any such behaviour. Bernard Collaery, a former Attorney-General of the Australian Capital Territory, representing East Timor, alleged in 2013 that his offices had been raided by ASIO. A key witness, known as Witness K, was detained and had his passport cancelled, which of
course has all sorts of consequences for Witness K. I am not sure whether he has been charged.

My concern is with cases such as that, cases of botched operations, and it does happen from time to time. As good as our intelligence agencies are, as good as the AFP is, there are occasions when they get it wrong, where they have exceeded their powers, and it is in the public interest to expose that. There is no protection for journalists, as I see it, under the current legislation or 35P. We know what the Media, Entertainment and Arts Alliance, representing journalists in this country, have said about this. And leading academics are concerned that section 35P in its current form is simply too restrictive and draconian and needs to be amended.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:24): This is an attempt to litigate the issue of section 35P of the ASIO Act, which was debated and canvassed extensively in this chamber last year during the debate on the National Security Legislation Amendment Bill (No. 1) 2014. Because this has been debated very extensively in this chamber and this is an attempt merely to relitigate it—it is not immediately germane to this bill; it has, as it were, been tacked on—I do not want to take too long in responding to Senator Xenophon. But let me make a couple of points to you, Senator.

First of all, section 35P of the ASIO Act is confined to the disclosure of special intelligence operations. Special intelligence operations are themselves a defined term, a defined form of operation that was introduced into the ASIO Act last year. They can only be conducted in exceptional circumstances and only if the Attorney-General is satisfied as to a variety of matters that are specified in the relevant provisions of the ASIO Act. But, to give you the flavour of what special intelligence operations are, they are about things like officers of ASIO, under cover, becoming associated with terrorist cells, for example, in order to gather intelligence. That is what ASIO does, Senator Xenophon: it is an intelligence-gathering operation.

In order to gather human intelligence, or HUMINT, to use the jargon term that is used in the intelligence community, officers subject themselves to very, very serious risk of physical harm. And they are entitled to be protected; they are entitled to be protected from disclosure. You can readily imagine, Senator Xenophon, that if the fact of a special intelligence operation that involved, for example, an undercover ASIO officer or officers penetrating a terrorist cell were disclosed, that could well put the lives of those officers or their families at risk. I know you would not wish to do that, Senator Xenophon—of course you would not. But that is the mischief—

Senator Xenophon: Mr Chairman, on a point of order, my amendment does not say that or do that. I respectfully suggest to the Attorney that he read my amendment. It does not do that.

The CHAIRMAN: Senator Xenophon, there is no point of order.

Senator BRANDIS: That is the purpose of section 35P of the ASIO Act, which was inserted, over the objection of crossbench senators, last year. It is no answer to say that perhaps prohibition should only apply to a current operation but not to a past operation, because often people need protection for years, or even decades, after an intelligence
operation. You know, Senator Xenophon, the Australian government protected the identity of Vladimir and Evdokia Petrov until the day they died, 30 or 40 years after the Petrov affair.

It strikes me as a crowning irony in this debate that those who are extremely concerned to protect the confidentiality of journalists’ sources would, in the next breath, expose the confidentiality of intelligence operations. I know that is not your motive, Senator Xenophon, but it is the effect of the argument against section 35P.

This was looked at by the first PJCIS report, recommendation 28, and adopted in a bipartisan manner. I should say that the section 35P protections of ASIO are modelled on the longstanding protections of the Australian Federal Police for protected operations by AFP officers; they are modelled on like protection provisions that exist under state and territory law for state and territory police officers. It should never be controversial, frankly, that the identity of officers involved in covert operations should be protected.

Lastly, this is not a provision about journalists, as I have said many times. This is no more a provision about journalists than the law relating to drink-driving is a law about journalists. This is a law that makes it an offence for anyone in the community to disclose or prejudice a covert operation. That is what section 35P does. We had that debate in this chamber last year. Section 35P was passed in the teeth of a reasonably furious media campaign. But, mindful of the sensitivity of the press freedom issue that some journalists and news organisations have raised, additional protections were added. In particular, the Director of Public Prosecutions himself issued a directive which is available on his website setting out certain public interest criteria that would be applied in enforcing section 35P.

As well, I made a directive to the Director of Public Prosecutions requiring the consent of the Attorney-General for any prosecution under section 35P. So if it were thought that a prosecution was in some way inappropriate or inimical to the freedom of the press, by requiring the Attorney's consent—that happens in a number of cases, but they are unusual—it would mean that the Attorney-General of the day, whoever he or she may be, as the responsible political officer would accept personal and public responsibility. So it would not merely be a matter of prosecutorial discretion exercised by the Commonwealth DPP; it would be a matter of the Attorney-General of the day accepting public and political responsibility as well. So there are safeguards. I will defend to the utmost, Senator Xenophon, the proposition that the confidentiality of covert operations ought to be protected, as it is in section 35P, by criminal sanction.

Senator XENOPHON (South Australia) (17:31): The Attorney has grossly misrepresented my position. If he remembers, during the debate in respect of section 35P there was an amendment moved, from memory, by Senator Lambie, then a member of the Palmer United Party, to increase the penalty from five years to 10 years in circumstances where lives were endangered by someone disclosing a special intelligence operation. I supported that. I supported that because there must be no ambiguity when it comes to information that could lead to a person involved in a special intelligence operation having their life endangered or, indeed, having the lives of their family members endangered by virtue of the disclosure of their identity. I just want to make that absolutely clear. I would be grateful if the Attorney would acknowledge this: I have never argued that endangering the life of a person by disclosing information should not be a most serious offence.
But I do draw the Attorney's attention to comments made by Tim Wilson, the Human Rights Commissioner—an appointment that the Attorney made. He has raised concerns about section 35P. He made the point in an opinion piece that:

As former independent national security legislation monitor Bret Walker has argued, in its most extreme form 35P could stop the reporting of a citizen being killed during a botched special intelligence operation. I have no doubt that is not the intention of the government, or any in the near future. But that shouldn't mollify critics.

He expresses real concerns in respect of that.

My concern is that section 35P in its current form does not give protection to journalists where there is no question of revealing the identity of someone involved in a special intelligence operation. We are aware of raids in the past that have been botched by our police and intelligence operatives. Things have gone wrong. It seems to me that in those circumstances there will be no protection for journalists reporting that. We have very fine journalists in this country such as Cameron Stewart who report on these matters. He is highly regarded. I think that he would be constrained in reporting on those sorts of issues.

The government seems to be coming from the position that intelligence agencies can do no wrong. Well, they are not infallible. They do make mistakes. We have seen throughout history that this is a very dangerous position to take. The media plays a vital role in exposing those intelligence operations which have gone wrong, where it is in the public interest to disclose them and where there is no question of any lives being endangered by that disclosure.

I just want to make it clear on the record that I supported an increase in the penalty from five years to 10 years in order that if disclosure endangered the life of someone involved in a special intelligence operation that should be treated seriously by the courts. But this is about ensuring that the media can do their job in cases where there is a clear public interest to disclose an intelligence operation that effectively goes wrong.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:35): Senator Xenophon, I do not for a moment suggest—and I said this before—that you would wish to oppose a provision that protects the lives and health of ASIO officers. But you are directing yourself to subsection 35P(2), which is on the aggravated offence. It carries a penalty of imprisonment of 10 years. The problem with your argument, Senator Xenophon, is that, under subsubsection 35P(2)(c), there is an element that:

(i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation; or

(ii) the disclosure of the information will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation.

That carries the higher range penalty of 10 years imprisonment.

Senator Xenophon, you detained the Senate for some time this morning arguing very persuasively, if I may say so, the case for having a purpose test and an effects test so that unintended consequences could be caught as well as deliberate conduct in relation to another provision of the bill before the chamber. The same logic that you advanced earlier on in the debate applies here. Disclosure may not be intended to or for the purpose of endangering lives or health. It is very unlikely to be. But that may be the incidental effect of it. That is why, if it
is the inadvertent or incidental effect of it, we need section 35(1), which does not contain those limitations.

As well, although I spoke about life and health as the extreme case here, there are more consideration at play than merely that. For example, there are operational techniques. To disclose operational techniques is not necessarily to endanger the life or health of agents or officers engaged in an operation, although it could, either currently or in the future, but it certainly prejudices the capacity of ASIO to effectively carry out those operations if its tradecraft, if its techniques, if its wherewithal, are the subject of public disclosure.

Let us be realistic here, Senator Xenophon. ASIO is a covert intelligence gathering body. It was established in 1949 by the Chifley government to be a covert intelligence gathering body. That is what it does and because we are a liberal democracy that cares about values like personal freedom and the freedom of the press, when we establish a covert intelligence gathering body in the middle of a liberal democracy what do we do? We subject it to the most stringent limitations and oversight mechanisms and accountability mechanisms, and the architecture of those mechanisms, including the Parliamentary Joint Committee on Intelligence and Security, including the Inspector-General of Intelligence and Security, including various requirements of accountability to the Attorney-General, including reporting requirements to the parliament, has been integral to the confidence that the Australian people have had in ASIO since 1949. That confidence, I believe, has never been significantly prejudiced because although over the years ASIO has made mistakes, frankly it has not made many, in the scheme of things, since 1949. So, Senator Xenophon, the essence of your proposition is that it should not be against the law to disclose the special intelligence operation of an agency which was designed and built to operate covertly. That is what you are saying.

**Senator Xenophon:** No I'm not.

**Senator BRANDIS:** That is the effect of what you are saying, whether you are prepared to acknowledge it or not, and I fundamentally disagree with you

**Senator XENOPHON** (South Australia) (17:39): Not only am I prepared not to acknowledge what the Attorney has said, but I repudiate what he says, because the amendment is clear—it must be in the public interest. There is a whole framework there in respect of the public interest. Let me give one example. On 4 August 2009 there was a front-page story by The Australian's Cameron Stewart, one of the most respected journalists in this country. It was headed 'Army base terror plot foiled', and it related to a plot by Islamic extremists in Melbourne to launch a suicide attack on an Australian Army base being uncovered by national security agencies. The Australian's story caused a massive fuss at the time. So I am not accused of plagiarism, I am reading from a piece from a Media Watch story on this on 6 October 2014. I am going to confine my remarks to Mr Stewart's story. There was a huge fuss at the time, with the AFP and the Victorian police accusing Cameron Stewart of putting their operation at risk by reporting the police raids on the day they were going to take place. Cameron Stewart, in response to Media Watch questions on 3 October 2014, was asked whether he believed his scoop would have been blocked by the new law. It was unclear, because ASIO was also part of Operation Neath, said Mr Stewart—he said he suspected it could have been declared a special intelligence operation under those new provisions, and he did not see how it could have been possible to publish his stories without breaking the law.
and being liable for jail. Does the Attorney consider that Mr Stewart should be charged under section 35P for that front-page story in *The Australian* newspaper on 4 August 2009?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:41): No, I do not, and he could not be. Let me explain very simply why he could not be. The activity about which Mr Stewart reported was the execution of a search warrant, it was not a special intelligence operation. ASIO does not need and has never needed a special intelligence operation authorisation to execute a search warrant. In fact, the search warrant powers of ASIO I think have been powers of ASIO since the original ASIO Act of 1955. ASIO was created in 1949 but it was put on a statutory footing I think in 1955. If Mr Stewart was apprehensive that that was so, Mr Stewart is wrong, and the example Senator Xenophon gives is wrong. If that is what concerns you, I can relieve your concerns entirely. Section 35P does not apply to search warrants.

The other example you give, Senator Xenophon, is wrong too. You refer to allegations in relation to spying on East Timor. These are only allegations. But the allegations are in relation to ASIS, the Australian Secret Intelligence Service. Whether those allegations be true or false, this is about ASIO. So, with the two examples you give, one is about the wrong agency and the other is about the wrong procedure. Section 35P applies to neither.

**Senator LEYONHJELM** (New South Wales) (17:43): I indicate my support for Senator Xenophon's amendment. It is well known in free speech circles that 35P went too far, even to the extent that the member for Grayndler, Mr Albanese, wrote in a public forum to that effect. Free speech advocates including Bret Walker, Professor George Williams and Tim Wilson, amongst others, have expressed concerns about 35P. The distinction that Senator Xenophon's amendment makes is between recklessness and intention, and I think the amendment brings it back into the realm of intention in an appropriate fashion. There are safeguards in it to protect ASIO personnel, and the grave danger here is that, as we almost did with the torture issue, we would be giving cover for misbehaviour by ASIO agents that, if it was reported, if it was brought to the public's attention, would constitute a crime, so it would be a crime to report what ought to be a crime.

Senator Xenophon's amendment nominates what would be in the public interest and what it would not be a crime to report, which includes maladministration, an abuse of public trust, an officer of a public agency abusing his or her position and action which gives a reasonable ground for disciplinary action. I think the amendment is appropriate and ought to be adopted.

**Senator JACINTA COLLINS** (Victoria) (17:45): Labor noted its concerns about section 35P and its effect on freedom of the press when this was last agitated. We asked the government to refer the matter to the Independent National Security Legislation Monitor and, despite initial objection, the government agreed to do this. The monitor will be holding hearings and reporting back to the government on this matter in the coming months. It would be inappropriate to pre-empt that process with amendments tacked onto an unrelated bill. As a result, Labor will not be supporting this amendment. I note that Senator Xenophon has also sought to amend other disclosure provisions in Commonwealth law and, again, it is not appropriate for these matters to be agitated in this bill.

**Senator XENOPHON** (South Australia) (17:46): I am grateful to Senator Collins, not for not supporting the amendment but for pointing out that Roger Gyles is looking at these
matters. But I think there is an urgency in dealing with them now. I understand what the position is. I hope—hope against hope—that, depending on what Mr Gyles concludes, this will be re-litigated, revisited or whatever. I have a serious concern about this.

I will refer to what the Australian Financial Review’s international editor, Tony Walker, has said. In the Australian Financial Review on 27-28 September 2014, he said that it:

… will have a chilling effect on reporting of security matters in an environment in which parliamentary oversight provisions are extremely weak.

The legislation will sit on the statute books like a rotting carcass.

Cameron Stewart, who reports on security matters for the Australian, in responding to Media Watch questions on 3 October 2014, said this—and it is very telling:

… Australians will know less than they deserve to about what is happening inside security agencies at a time when they are larger and more powerful than ever before.

I would pose a question to the Attorney—and this is a question that could relate to any attorney. It could be that he could be Attorney for the next 20 years but there will be a successor to the Attorney one day. Under these provisions in respect of 35P, is it not the case that the Attorney has a wide discretion as to what can be declared a special intelligence operation? Could that not, for instance, declare that the execution of a warrant itself could be a special intelligence operation?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:48): No, Senator, because the warrant application procedure under the ASIO Act and the special intelligence operation procedure under the ASIO Act are quite separate. I hope my staff can remind me of the section that deals with special intelligence operations. The special intelligence operation is the most complex kind of covert operation that ASIO will undertake. It will be undertaken rarely. It requires a series of criteria specified in the ASIO Act to be satisfied before the Attorney authorises it. The application for a search warrant is a much more straightforward procedure. To compare a special intelligence operation to the execution of a search warrant is to compare two procedures, one of which is a very complex and unusual procedure and the other of which is not an especially complex and a much more common procedure.

Senator Xenophon interjecting—

Senator BRANDIS: But, Senator Xenophon, if ASIO wanted a search warrant they would apply for a search warrant, and it is a lot easier to get a search warrant than it is to get authorisation for a special intelligence operation.

Senator LUDLAM (Western Australia) (17:49): I thank Senator Xenophon for bringing this amendment forward tonight. I can guarantee that this is not the last time that this chamber will deal with the issue of the fact that the Australian government, with the support of the Labor Party, last year sought to effectively criminalise forms of national security reporting. I did not expect Senator Brandis, who was the sponsor of that bill, to have changed his mind, and nothing that he has said tonight has been particularly surprising. The reason that this amendment was brought forward and the reason that the Australian Greens are supporting it is that it gives the Australian Labor Party a chance to do something about the buyer’s regret that it suffered last year.
The data retention campaign and bill has been a little bit different, but last year, after the ASIO bill passed, there was a remarkable outpouring of anxiety, concern, alarm and, I would say, regret from some in the Press Gallery and from some in the Australian Labor Party. We are giving you the opportunity tonight to do something with that buyer's regret and fix the mistake that was made when the ASIO bill passed into law last year. I am very pleased to join with my crossbench colleagues in providing the kind of opposition that this country needs on matters such as this and to provide the Labor Party with the chance to do something with some of the concerns that it expressed after it supported Senator Brandis last year.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:51): I do not want to prolong the debate—and I expected Senator Ludlam to say what he had to say; he has his view and I have mine—but I just wanted to add to my remarks to Senator Xenophon. It has been pointed out to me that not only in a practical sense would ASIO never seek a special intelligence operation authorisation where all it needed was a search warrant, it actually cannot. The jurisdiction under section 35C and 35D are the relevant provisions of the ASIO Act. The jurisdiction to grant approval to a special intelligence operation is only exercisable in circumstances where there would otherwise but for the authorisation be a breach of the civil or criminal law. That is a not uncommon provision in relation to covert operations. For example, if an officer engages covertly, pretending to be a member of a terrorist cell, for argument's sake, he could find himself engaged in conduct which might constitute the offence of preparation for a terrorist act—playing along, as it were, with the cell that he was trying to penetrate. These are matters of fine operational judgement. But the point I am making to you, Senator Xenophon, is that because a special intelligence operation can be authorised under section 35C of the ASIO Act only in circumstances involving conduct that would otherwise breach the criminal or civil law, it could not—it actually is a matter of law, not just practicality—overlap with a search warrant application, because of course to execute a search warrant is not a breach of the criminal or the civil law.

Senator XENOPHON (South Australia) (17:53): I have two quick questions in relation to that. Can the Attorney confirm that under no circumstances can the execution of a warrant ever be declared a special intelligence operation?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:53): The answer to your question is yes. There are no circumstances.

Senator XENOPHON (South Australia) (17:53): Finally, given the review of Roger Gyles QC, the new, or relatively new, national security monitor, is the government open to amending section 35P, depending on the outcome of Mr Gyles's considerations?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (17:54): We would not have given Mr Gyles this reference if we did not have an open mind and were not prepared to consider his recommendations. So of course we will consider Mr Gyles's recommendations when we receive them. I mentioned two, but as Senator Collins has, rightly, reminded me, there are actually three oversight mechanisms that we have introduced post the debate: firstly, my direction under the Commonwealth DPP Act to the Director of Public
Prosecutions that a prosecution of a journalist under section 35P could be engaged only with the Attorney-General's consent; secondly, the Commonwealth DPP's own guidelines, which further limit and add additional elements to the exercise of his prosecutorial discretion in a case like that; and, thirdly, the review of this provision which the Prime Minister and I referred to Mr Roger Gyles so that he could bring an independent mind to bear on the issues—in good faith, obviously—that you and other colleagues have raised.

Senator XENOPHON (South Australia) (17:55): I am grateful that the government has an open mind to any recommendations that Mr Gyles may make, even if not to my amendments. So, that is something, and I am looking forward to Mr Gyles's recommendations in due course.

The CHAIRMAN: The question is that amendment (13) on sheet 7672 be agreed to.

The committee divided. [17:59]

(The Chairman—Senator Marshall)

Ayes ....................17
Noes .....................42
Majority ..................25

AYES

Di Natale, R
Lambie, J
Leyonhjelm, DE
Madigan, JJ
Muir, R
Rice, J
Wang, Z
Whish-Wilson, PS
Xenophon, N

Hanson-Young, SC
Lazarus, GP
Ludlam, S
Milne, C
Rhiannon, L
Siewert, R (teller)
Waters, LJ
Wright, PL

NOES

Back, CJ
Brandis, GH
Bullock, J.W.
Cameron, DN
Carr, KJ
Collins, JMA
Fawcett, DJ
Fifield, MP
Gallagher, KR
Ketter, CR
Ludwig, JW
Mason, B
McGrath, J
Moore, CM
O'Neill, DM
Polley, H
Ronaldson, M
Ryan, SM

Bernardi, C
Brown, CL
Bushby, DC
Canavan, M.J.
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Gallacher, AM
Johnston, D
Lines, S
Marshall, GM
McEwen, A (teller)
McKenzie, B
Nash, F
O'Sullivan, B
Reynolds, L
Ruston, A
Scullion, NG

CHAMBER
Question negatived.
Bill agreed to.
Bill reported without amendments; report adopted.

Third Reading

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (18:03): I move:

That this bill be now read a third time.

I want to thank the Senate for the debate that we have had through a long committee stage. Nobody could say that this has been a rushed process, it being the culmination of something that began in May 2013, when former Attorney-General Roxon referred this issue to the Parliamentary Joint Committee on Intelligence and Security. I think it is very important, particularly where national security legislation is involved, that the issues be fully ventilated, and I do not think it could be said that they have not been. I want to thank the three principal crossbench participants in this debate, Senator Leyonhjelm, Senator Xenophon and Senator Ludlam, for their contributions. Obviously the government has not agreed with those contributions, but nevertheless observations that have come from the crossbench in the course of this debate will inform the government's thinking about this legislation when it comes to be reviewed, and I think we have had, for what has been a difficult issue, a very civil and intelligent debate, if I may say so.

I want to thank a couple of people. I want to thank Anna Harmer, from the Attorney-General's Department, and Simon Lee and their team for their hard work. I want to thank the hardworking officers of ASIO, whom it would be a crime for me to name, for their contribution, but I can name the former Director-General of Security, David Irvine, who, more than anyone else, was the parent of these reforms, and the current director-general, Duncan Lewis.

I want to thank my colleagues, particularly my colleague Malcolm Turnbull, who introduced this legislation and handled it in the lower house; Mr Anthony Byrne, the former Chair of the Parliamentary Joint Committee on Intelligence and Security, who conducted the committee through the hearings during the last parliament with notable skill and nonpartisanship; and Mr Dan Tehan, the member for Wannon, who displayed a similar spirit during the inquiry into the bill in this parliament. May I thank the opposition, in particular the shadow Attorney-General, Mr Dreyfus, for its support of this important measure. Lastly, may I thank my staff, in particular Justin Bassi, my adviser, and Emma Swinbourne, from my office, for the very hard work that they have put into this legislation.

This legislation does contain protections that were not there before. It does preserve a capability for the police and national security and commercial regulatory agencies which was on the verge of being lost. It does contain safeguards that were not there before. It is, in the government's view—shared, I am pleased to say, by the opposition—a measured and
proportionate response. Its operation will be conducted over a long implementation period, as the bill provides. It will be the subject of the statutory review, and certain aspects of it will be the subject of sooner review.

In dealing with national security issues, we do have to bring the public with us. We do have to get the balance right between protection and liberty. The bipartisan spirit with which this bill has been dealt with in this parliament and the constructiveness of the engagement of those who did not feel able to support the bill but nevertheless engaged in the debate in the manner in which they have done I think are a credit to all who have participated in the debate and a credit to this parliament.

Senator LUDLAM (Western Australia) (18:07): I will be brief because this debate has been running for some time. We are here tonight because the Abbott government has chosen to ignore the very clear warnings sent by tens of thousands of people and pressed ahead with a bill that entrenches a form of passive surveillance over 23 million Australians.

Senator Jacinta Collins interjecting—

Senator LUDLAM: I will get to that—believe me, I will. It has been a long time coming. Mandatory data retention first came to light—at least to my knowledge—in 2010, when it became evident that the Attorney-General's Department had forced telecommunications companies into secret meetings to establish how a two-year mandatory data retention scheme could work. That was when the ALP's Robert McClelland was Attorney-General. With the support of the then chair of the environment and communications committee, Senator Mary Jo Fisher—who I think many people in here still remember quite fondly—we conducted an inquiry into what the Attorney-General's Department was up to, which generated a significant degree of opposition. And then the proposal went underground for a time.

In 2012, with the ALP's Ms Nicola Roxon as Attorney-General, mandatory data retention was referred as a single throwaway paragraph to the Parliamentary Joint Committee on Intelligence and Security. Under a hail of condemnation, that committee was unable to come to a consensus recommendation on mandatory data retention. The proposal dropped under the radar again until it was put firmly back there last August by Senator George Brandis. I have sketched this recent history because this bill contains the DNA of both of the major parties. I am getting a little tired of people reinventing history, as began to happen after the unwelcome passage of the ASIO reforms last year. In her opening contribution, the Labor Party's Senator Collins put it better than I could. She said:

The Australian people must be satisfied that in seeking to defend ourselves from crime and terrorism we do not trample upon the very rights and freedoms that characterise Australia as a free and open democracy. The Abbott government has failed this test.

I strongly agree with this statement by Senator Collins. The Abbott government has failed this test, and the majority of the Australian people are not satisfied with this government's lunge for power.

The only people who did end up satisfied were in the Australian Labor Party. The ALP has caved in to Tony Abbott's self-interested fear campaign and supported the bill. Together, with some of the more critically minded crossbench senators, we had the numbers to defeat this bill, but you failed to turn up. You will be judged for that, and we will ensure that people never forget who made this possible. In 2016, you will answer for it. Surveillance in a democracy should be targeted, proportionate and levelled at serious criminals, organised
crime and national security threats. This bill entrenches the opposite. The government will not disclose the costs of the scheme, is silent on the risks of unauthorised disclosure and has at no stage been able to point to evidence that collecting the private records of 23 million nonsuspects will keep people safe or reduce the crime rate.

We will be encouraging people to follow the advice of Mr Malcolm Turnbull, who introduced the bill and, in recent days, has been outlining techniques for avoiding the surveillance scheme that he has just forced on the rest of us. Mr Turnbull told Sky's David Speers yesterday:

… of course you now have the ability by using over-the-top applications. It might just be something straightforward like Whatsapp. It might be a more encrypted over-the-top application to avoid leaving a trail.

He goes on to say:

If you have a device, you know, a phone or a smartphone, and if I call you through the mobile phone network there will be a record. Say my phone's with Telstra, there'll be a record with Telstra that I've called your number. If on the other hand—our helpful communications minister informs us—

I communicate with you via Skype for a voice call or Viber, send you a message on WhatsApp or Wickr or Threema or Signal or Telegrammer—there's a gazillion of them—or, indeed, if you make a FaceTime call, then all that the telco can see, insofar as it can see anything, is that my device has had a connection with the Skype server or the WhatsApp server; it doesn't see anything happening with you.

Amazing! Tips on how to avoid mandatory data retention by the guy who introduced the bill.

There is a lot of bad information, however, circulating about the use of cryptography and anonymisation tools in protecting privacy and identity online. In particular, there is real confusion about whether merely circumventing the government's expensive new data retention regime guarantees any kind of absolute privacy or anonymity. I admit that I am guilty of some pretty loose language on this issue myself. So I want to be completely clear: if you do not want your email records captured by data retention, all you need to do is use a platform that that is hosted overseas like Gmail or Facebook. If you do not want metadata from your chat sessions hanging around forever, use one of the services that Mr Turnbull recommends. If configured properly, these services erase their tracks as fast as they are created. So as far as email records are concerned, defeating this $400 million data retention scheme really is that simple.

But there are two hugely important caveats. Firstly, it is well documented that signals intelligence agencies like the NSA and its Five Eyes partners, of which Australia is one, are engaged in massive full-take surveillance of nearly all data traffic globally and that these entities are alleged to have unprecedented visibility of the networks of these very same international providers—some of them mentioned by Mr Turnbull. The second caveat is that using Facebook chat or Twitter direct messages in no way actually guarantees anonymity of privacy. There are whole bodies of practice and technique out there on how to do this well. But the fact is: doing crypto well is actually pretty hard.

We have recently taken the lead of data journalist and transparency activist Asher Wolf, who founded the global CryptoParty movement, and we have held a few events of our own to up-skill on basic crypto skills. The fact is: if you are a whistleblower who fears what will happen if your identity is disclosed, assume that there is no politician in this building—and I
include myself—with the technical skills to help you properly protect your identity. You will need to look after yourself. I came across an article yesterday by a certain Dan Nolan who debunked some of the confusion surrounding the distinction between defeating data retention, which in some regards is fairly easy, and defeating some of the more elaborate systems deployed against journalists, whistleblowers, activists and campaigners. The article is titled 'Leaking Securely', and it reads in part:

How To Leak

1. This might seem obvious, but think about it, don't leak information only you have access to. If you're the only one that has the information then it's pretty bloody easy to figure out who leaked the info. Find or create a situation in which you can have plausible deniability that someone else accessed the data.

2. Don't leak data from your home computer, from your personal devices or anywhere at home or at work. You will get caught, and if there are legal ramifications of the leak they will rain down on you like fire.

3. Don't leak data from personal accounts or accounts linked to family or friends or that can in any way be traced back to you. Create a hushmail or a gmail account, don't put in your phone number and create this account on a computer you do not normally use, say an internet cafe.

4. Don't provide any personal information in the stuff you leak. Redact as you need to.

5. Don't store copies of leaked information on personal devices or home devices.

6. If you use a USB device or something similar to access or copy data, be aware of corporate policies or monitoring. If you're copying from your office computer, logged in under your account to a device, corporate IT systems can easily track you down and figure out who copied what and when.

7. Destroy any items or devices you use to transit the information to be leaked to a third party area. Dispose of them, again, somewhere you wouldn't normally dispose of items so someone going through your rubbish can't find them.

8. Only leak to places that have SecureDrop, like the Guardian.

9. DONT TELL ANYONE WHAT YOU DID. DO NOT TELL A SINGLE SOUL WHAT YOU DID.

He carries on, but I am not sure that I want to read the rest of it into Hansard. The point being, I guess, the old saying 'three may keep a secret as long as two are dead' applies very much to whistleblowing. Now some, like Mr Edward Snowden, whom the Attorney-General has said on any number of occasions he believes to be a traitor—who I believe to be one of the most important whistleblowers in modern history—or publishers like Julian Assange, who has just spent more than 1,000 days in the Ecuadorian Embassy in London, actually do go public and do lend their name to these acts of quite radical transparency. But, for others, if your welfare or your job depends on anonymity or privacy, do your research and make sure you are using these tools properly. And, by the way, we are looking to auspice such a session for the Canberra Press Gallery, because, with the installation of this regime, things just got even more serious.

Before we commit this thing to a vote, I want to thank all of those who built a spirited community campaign against this measure—publishers, journalists, the Law Council of Australia, the technology sector, digital rights organisations like EFA and advocates from right across the political spectrum joined tens of thousands of concerned Australians to voice their anger—and the major parties shut them out. Some of these people do this advocacy for a
living and I thank them for their expertise and their determination. But above all, I want to thank and acknowledge those who bothered to come to events, made calls, wrote emails, signed petitions and organised to try to bring about a different outcome tonight. I would also like to thank my staff, particularly Felicity Ruby who, with me, fought round 1 and round 2 data retention, and Renai LeMay for throwing his heart and soul into round 3. I also acknowledge the significant dissent within the Liberal-National-Labor parties, but the inflexible party discipline that prevails in Australia means that not a single member crossed the floor either to oppose the bill or to support the dozens of amendments proposed by the crossbench. I thank those members of the crossbench in the House and in the Senate, who, together with the Australian Greens, performed the job of opposition that the Labor Party abandoned. We will remember this come 2016, and we will not let others forget.

Our work now turns to documenting this regime and working for its repeal. But to all those listening to this debate, and I know that there are many of you out there, I apologise to you. To all of those who will face the consequences of what is done tonight, I am deeply sorry that we were not able to prevent this from passing into law.

Senator JACINTA COLLINS (Victoria) (18:18): I had not intended to make a third reading contribution, but I think there were a few points raised by Senator Ludlam that do need some response. Firstly, I thank him for his concession that he has used loose language and his reference to 'bad' information. I personally have found, through the many people I have communicated with about the facts and the details of this matter, many have come back to me and said, 'Thank you very much for a detailed and considered response. We now understand the circumstances,' rather than some of the 'bad' information—to use Senator Ludlam's words—that has been circulating in this debate.

Let me make a few critical points here, points that Senator Ludlam has indeed glossed over. Mandatory data retention is not mass surveillance. Let me repeat that:—

Senator Brandis: That is what Professor Gillian Triggs said.

Senator JACINTA COLLINS: Let me repeat that: mandatory data retention is not mass surveillance. And indeed I will pick up on Senator Brandis's interjection there and refer to his earlier comments. That is what Professor Gillian Triggs said in her contribution to this debate.

Information that is recorded is not necessarily accessed. We have built a strong system with checks and balances to ensure we have that balance right. I also will not be verballed. Senator Brandis likes to do that to me, but now it seems Senator Ludlam does as well. I do not appreciate being verballed by Senator Ludlam. I will make it very clear: the Labor Party has not caved in on this matter.

Honourable senators interjecting—

Senator JACINTA COLLINS: But, Senator Ludlam, I want to be very clear on the record because you were referring to my contribution when you moved very swiftly to that next point. So let us make it very clear: the Labor Party has not caved in on this matter. And, yes, indeed, we do accept that we will be judged as will you and as will all of us in the political arena. We accept that, and we take responsibility for that. We are the alternative government, and we need to be responsible about issues related to national security. We do not accept the bad information and the suggestions that 'there have only been three cases that
might relate to national security'. It does you no service to continue to peddle some of that bad information.

What also does you no service is to move amendments such as you did today in relation to the ACCC and to ASIC. It is quite contrary, as Senator Brandis pointed out in the debate, to the usual positions the Greens would take about such crime. I was astounded. I understood why Senator Leyonhjelm did that from his perspective, but for that to come from the Greens was quite astounding.

Let me go back to that point about how Labor purportedly caved in. I know that Senator Ludlam would like to participate in the Parliamentary Joint Committee on Intelligence and Security. I am not sure about the job application he just did in his third reading speech—I suspect Senator Xenophon's might have been closer to the mark. As Senator Brandis and others indicated, copious work went into this process. In terms of caving in, I would have to say the 74 amendments that were accepted by the government in the debate in the House of Representatives represent the critical concessions that have been made in this debate to build a system that does have integrity and does have balance. I am confident that we have reached that balance. That balance involves not only the protection of privacy but also the protection of our national security.

Senator XENOPHON (South Australia) (18:22): It would be ungracious of me not to acknowledge the fulsome nature of this debate, the generally civil nature of this debate. We even managed to throw in cultural references to The Mikado, Britney Spears, Taylor Swift, the Dead Kennedys and the Sex Pistols. We weaved it all in there. It was a debate that was not gagged and not truncated, and I think that that says something about the institution of this place and the manner in which we conduct debate on some very important issues. I also want to acknowledge the role of the opposition, in particular Senator Collins, in respect of this, and I want to thank my colleagues Senator Leyonhjelm and Senator Ludlam. In terms of our respective political beliefs, we are a pretty disparate and motley bunch, but we were bound together by a genuine concern about what impact this will have on our democracy and on free speech.

I just want to make this observation: we live in difficult and dangerous times. There is a need to combat terrorism. Of course there is a need to do all we can to combat paedophilia and to stamp that out to bring those predators to justice. But my concern is that, with our intelligence agencies having more and more power—as this bill does give another increase in the power of our intelligence agencies—we do not have the same level of scrutiny as some of our closest allies such as the United States. We do not have the level of parliamentary oversight that the German parliament has, in respect of our intelligence services. I think it is important that we do so, and that is something that we cannot ignore.

I also do not understand, and I hope that Roger Gyles, in his assessment as Independent National Security Legislation Monitor, will consider the issue of allowing the public interest advocate to consult with journalists and media organisations before their metadata is accessed, as is the general practice in the United States, following rulings by Eric Holder, their Attorney General. So, finally, my great fear, which is based on an emotion, but is based on the very text of this bill, is that this legislation will, like a python, further put the squeeze on investigative journalism and whistleblowers in this country. This, in turn, will have a suffocating effect on press freedom, and that is bad for our democracy.
Senator LEYONHJELM (New South Wales) (18:25): I am not in the habit of making third reading speeches. I agree with other speakers, including the Attorney-General, that this was not a rushed exercise, unlike the previous National Security Legislation Amendment Bill, and I am very pleased that was not the case. However, I do wish to draw attention to one amendment of mine that I know was taken seriously on all sides of the chamber and, in some form, was also considered in detail by the Parliamentary Joint Committee on Intelligence and Security. During the Senate Committee of the Whole consideration, Senator Brandis reassured everyone in this place that mandatory data retention would not be used to pursue trivial crimes. He pointed out that proposed section 180F will require authorised officers to:

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be satisfied on reasonable grounds that any interference with the privacy of any person or persons that may result from the disclosure or use is justifiable and proportionate.

Amendments to proposed section 180F(a) also required authorised officers to consider both the seriousness of the offence and the seriousness of the penalty involved before making any authorisation. In the view of both government and opposition, these safeguards are clearly considered adequate, and I thank the Attorney-General for setting out why he thinks they comport with the recent European Court of Justice ruling overturning the European Union data retention directive. For the reasons he gave, my amendment to ensure retained data was only used for the enforcement of serious contraventions was rejected. I mean not disrespect to the Attorney-General when I say that I do not believe him. I am not comforted by his reassurances, because I already have abundant evidence for the invasive use of retained data to pursue trivialities. In the existing law, section 180F already requires authorised officers to:

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have regard to whether any interference with the privacy of any person or persons that may result from the disclosure or use is justifiable...

In other words, despite the presence of a decently drafted, clear requirement not to invade people's privacy without justification, hundreds of thousands of authorisations have been made, often in connection with requests that are absurd. In the year to June 2013, for example, there were almost 320,000 authorisations to access telephone records. Yes, it is good that the number of agencies that can stick their fingers into this particular data honey pot has been reduced. However, the list can be added to with remarkably little parliamentary oversight, and ASIC and ACCC have also been included.

The Attorney-General seems content to accept undertakings from security and law enforcement agencies that retained data will not be misused. Indeed, it would appear that the police and security agencies are never self-interested. Lawyers, by contrast, as we heard at length yesterday, should be ignored because they are self-interested. I suspect the truth probably lies somewhere in the middle. Everyone is capable of acting in pure self-interest at least some of the time. Unfortunately, this bill gives the truth tick only to the police and brushes the Law Society's concerns to one side. As a classical liberal, I know which body of people is most likely to abuse our rights and undermine our freedom. Lawyers may have money, but police have guns. Individual policemen may be fine human beings, but there is no escaping the institutional reality that they are part of the executive and the executive ought to be restrained. I do not look forward to saying, 'I told you so,' when this law is used—just as the Regulation of Investigatory Powers Act in the United Kingdom was used—to pursue illegal dumping, dog fouling, unpaid rates, minor welfare fraud and petrol stations comparing fuel prices.
Mark my words, however, that is what will happen. It may take a while. It took some time for police forces and local authorities across England and Wales to realise just what they could do with the data at their disposal. But once they got started, misuse became pervasive. I condemn this bill.

The PRESIDENT: The question is that the bill be now read a third time.
The Senate divided. [18:34]

(The President—Senator Parry)

Ayes .................43
Noes .................16
Majority ............27

AYES

Back, CJ  
Brandis, GH  
Bullock, J W,  
Cameron, DN  
Carr, KJ  
Collins, JMA  
Dastyari, S  
Fawcett, DJ  
Fifield, MP  
Gallagher, KR  
Ketter, CR  
Ludwig, JW  
Mason, B  
McGrath, J  
Moore, CM  
O'Neill, DM  
Parry, S  
Reynolds, L  
Seselja, Z  
Sinodinos, A  
Wang, Z  
Wong, P

Birmingham, SJ  
Brown, CL  
Bushby, DC (teller)  
Canavan, M J.  
Colbeck, R  
Conroy, SM  
Edwards, S  
Fierravanti-Wells, C  
Gallacher, AM  
Johnston, D  
Lines, S  
Macdonald, ID  
McEwen, A  
McKenzie, B  
Nash, F  
O'Sullivan, B  
Polley, H  
Ruston, A  
Singh, LM  
Urquhart, AE  
Williams, JR

NOES

Di Natale, R  
Lambie, J  
Leyonhjelm, DE  
Madigan, JJ  
Muir, R  
Rice, J  
Waters, LJ  
Wright, PL

Hanson-Young, SC  
Lazarus, GP  
Ludlum, S  
Milne, C  
Rhiannon, L  
Siewert, R (teller)  
Whish-Wilson, PS  
Xenophon, N

Question agreed to.

Bill read a third time.
COMMITTEES

Membership

The PRESIDENT: I have received letters from the party leaders requesting changes in the membership of committees.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (18:37): by leave—I move:

That senators be discharged from and appointed to committees as follows:

Environment and Communications Legislation Committee—

Appointed—

Substitute member: Senator Ludlam to replace Senator Waters for the purposes of the committee’s inquiry into the provisions of Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015.

Participating member: Senator Waters.

Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru Select Committee—

Appointed—

Senators Bernardi and Reynolds


Question agreed to.

BUSINESS

Days and Hours of Meeting

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (18:38): I move:

That the Senate at its rising, adjourn till Monday, 11 May 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) (18:38): by leave—I move:

That leave of absence be granted to every member of the Senate from the end of the sitting today to the day on which the Senate next meets.

Question agreed to.

Senate adjourned at 18:39 until Monday, 11 May 2015 at 10 am.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk pursuant to statute:

Customs Act 1901—Letters of advice under section 219ZAB—

Australian Radiation Protection and Nuclear Safety Agency—2 March 2015.
Department of Health—13 March 2015.
*Public Governance, Performance and Accountability Act 2013—Commonwealth establishing and becoming a member of Global Infrastructure Hub Ltd—24 March 2015.*

**Indexed Lists of Files**

The following document was tabled by the Clerk pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2014—Statement of compliance—Industry and Science portfolio.