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SITTING DAYS—2012

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FORTY-THIRD PARLIAMENT
FIRST SESSION—SEVENTH PERIOD

Governor-General
Her Excellency Ms Quentin Bryce, Companion of the Order of Australia

Senate Office holders
President—Senator Hon. John Joseph Hogg
Deputy President and Chair of Committees—Senator Stephen Shane Parry
Temporary Chairs of Committees—Thomas Mark Bishop, Suzanne Kay Boyce, Douglas Niven Cameron, Patricia Margaret Crossin, Sean Edwards, David Julian Fawcett, Mark Lionel Furner, Scott Ludlam, Gavin Mark Marshall, Bridget McKenzie, Claire Mary Moore, Louise Clare Pratt, Arthur Sinodinos and Ursula Mary Stephens

Leader of the Government in the Senate—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Government in the Senate—Senator Hon. Stephen Michael Conroy
Leader of the Opposition in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Opposition in the Senate—Senator Hon. George Henry Brandis SC
Manager of Government Business in the Senate—Senator Hon. Joseph William Ludwig
Manager of Opposition Business in the Senate—Senator Mitchell Peter Fifield

Senate Party Leaders and Whips
Leader of the Australian Labor Party—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Hon. Stephen Michael Conroy
Leader of the Liberal Party of Australia—Senator Hon. Eric Abetz
Deputy Leader of the Liberal Party of Australia—Senator Hon. George Henry Brandis SC
Leader of The Nationals—Senator Barnaby Thomas Gerard Joyce
Deputy Leader of The Nationals—Senator Fiona Nash
Leader of the Australian Greens—Senator Christine Anne Milne
Chief Government Whip—Senator Anne McEwen
Deputy Government Whips—Senators Carol Louise Brown and Helen Beatrice Polley
Chief Opposition Whip—Senator Helen Kroger
Deputy Opposition Whips—Senators David Christopher Bushby and Christopher John Back
The Nationals Whip—Senator John Reginald Williams
Australian Greens Whip—Senator Rachel Mary Siewert

Printed by authority of the Senate
## Members of the Senate

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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

(2) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice H. Coonan, resigned 22.8.11), pursuant to section 15 of the Constitution.

(3) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice Hon. M. Arbib, resigned 5.3.12), pursuant to section 15 of the Constitution.

(4) Chosen by the Parliament of Western Australia to fill a casual vacancy (vice J. Adams, died in office 31.3.12), pursuant to section 15 of the Constitution.

(5) Chosen by the Parliament of Tasmania to fill a casual vacancy (vice Hon. B. Brown, resigned 15.6.12), pursuant to section 15 of the Constitution.

(6) Chosen by the Parliament of Tasmania to fill a casual vacancy (vice Hon. N. Sherry, resigned 1.6.12), pursuant to section 15 of the Constitution.

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing
Clerk of the House of Representatives—B Wright
Secretary, Department of Parliamentary Services—C Mills
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<tr>
<td><strong>Prime Minister</strong></td>
<td>The Hon Julia Gillard MP</td>
</tr>
<tr>
<td><em>Minister Assisting the Prime Minister on Digital Productivity</em></td>
<td>Senator the Hon Stephen Conroy</td>
</tr>
<tr>
<td>Minister for Social Inclusion</td>
<td>The Hon Mark Butler MP</td>
</tr>
<tr>
<td><em>Minister Assisting the Prime Minister on Mental Health Reform</em></td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td>Minister for the Public Service and Integrity</td>
<td>The Hon Gary Gray AO MP</td>
</tr>
<tr>
<td><em>Minister Assisting the Prime Minister on the Centenary of ANZAC</em></td>
<td>The Hon Warren Snowdon MP</td>
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<tr>
<td>Cabinet Secretary</td>
<td>The Hon Mark Dreyfus QC MP</td>
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<tr>
<td><em>Parliamentary Secretary to the Prime Minister</em></td>
<td>Senator the Hon Jan McLucas</td>
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<tr>
<td><strong>Treasurer</strong> (Deputy Prime Minister)</td>
<td>The Hon Wayne Swan MP</td>
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<tr>
<td><strong>Minister for Financial Services and Superannuation</strong></td>
<td>The Hon Bill Shorten MP</td>
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<tr>
<td>Assistant Treasurer</td>
<td>The Hon David Bradbury MP</td>
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<td><em>Parliamentary Secretary to the Treasurer</em></td>
<td>The Hon Bernie Ripoll MP</td>
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<td><strong>Minister for Tertiary Education, Skills, Science and Research</strong></td>
<td>Senator the Hon Chris Evans</td>
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<td>(Leader of the Government in the Senate)</td>
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<td><strong>Minister for Industry and Innovation</strong></td>
<td>The Hon Greg Combet AM MP</td>
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<tr>
<td><strong>Minister for Small Business</strong></td>
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<tr>
<td><em>Minister Assisting for Industry and Innovation</em></td>
<td>Senator the Hon Kate Lundy</td>
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<tr>
<td><em>Parliamentary Secretary for Industry and Innovation</em></td>
<td>The Hon Mark Dreyfus QC MP</td>
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<tr>
<td><em>Parliamentary Secretary for Higher Education and Skills</em></td>
<td>The Hon Sharon Bird MP</td>
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<tr>
<td>(Deputy Leader of the Government in the Senate)</td>
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<td><strong>Minister for the Arts</strong></td>
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<td>The Hon Jason Clare MP</td>
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<td><strong>Minister Assisting on Queensland Floods Recovery</strong></td>
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<td>Senator the Hon Bob Carr</td>
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<td>The Hon Dr Craig Emerson MP</td>
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<tr>
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<td>The Hon Tony Burke MP</td>
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<td>Communities (Vice-President of the Executive Council)</td>
<td>The Hon Tony Burke MP</td>
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<td>Parliamentary Secretary for Sustainability and Urban Water</td>
<td>Senator the Hon Don Farrell</td>
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<td>Minister for Finance and Deregulation</td>
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The PRESIDENT (Senator the Hon. John Hogg) took the chair at 09:30, read prayers and made an acknowledgement of country.

BUSINESS

Rearrangement

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (09:31): I move:

That government business order of the day No. 2 (Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012) and No. 5 Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2011 and related bills be postponed to the next day of sitting.

Question agreed to.

BILLS

Health Insurance Amendment (Extended Medicare Safety Net) Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator FIERRAVANTI-WELLS (New South Wales) (09:31): I rise to speak on Health Insurance Amendment (Extended Medicare Safety Net) Bill 2012. The Extended Medicare Safety Net, established by the previous coalition government, assists thousands of Australians with high out-of-pocket medical expenses. For those who have eligible expenses above the relevant thresholds—and I can remind the Senate that that is $598 for concession card holders or $1,198 for all non-concession card holders—the safety net provides 80 per cent of any additional out-of-pocket costs for the remainder of the calendar year.

In the lead-up to the 2007 election those opposite, the Australian Labor Party, claimed that it would honour the safety net and the support it provided to families. The then opposition leader, Kevin Rudd, and the shadow health spokesperson, Nicola Roxon, stated on 22 September 2007:

With about one million people each year receiving some cost relief from the safety net federal Labor will not put more pressure on family budgets by taking that assistance away.

I think we all know what is coming. In the 2009 budget Labor proposed cuts of $610 million from the Extended Medicare Safety Net by capping item numbers for a range of services, including obstetrics, assisted reproductive technology, treatment of varicose veins, the injection of a therapeutic substance into the eye and cataract surgery. The changes, of course, as is typical with the Labor government both under Mr Rudd and Ms Gillard, were proposed without consultation. When have we seen that happen: the social workers, the occupational therapists, the mental health nurses recently—the incentive program? We have seen it with a whole range of things. It is so typical of those opposite. We have seen it in quite a number of programs in mental health. We have recently seen it with aged care. They go out, they do not consult, they make the decisions.

Then there is a kerfuffle and we work out that patients are at risk and then all of a sudden we see quarter backflips, some other backflips and no backflips and an absolute debacle with patients most especially left in the lurch.

Taking you back to 2009 and the proposed cuts of $610 million, the changes were proposed, as I said, without consultation and were a clear breach of the promise given at the previous election—surprise, surprise! Why should this not surprise Australians? Because this is a government whose
hallmark of its time in government has been broken promise after broken promise, whether it is the carbon tax and 'there shall be no carbon tax under a government I lead' or something like this in the health or mental health or ageing or any other portfolio.

At that time the coalition secured some important concessions. The government was forced into negotiations with key patient groups and the profession. The coalition’s actions resulted in increases in Medicare rebates, increases in the proposed caps and the addition of new items, particularly in relation to IVF. The coalition was also successful in preventing the capping of the item numbers for injections into an eye, which would have been detrimental for patients requiring treatments for macular degeneration.

Given Labor had already broken its promise on the Extended Medicare Safety Net, the coalition also successfully moved an amendment to provide greater scrutiny of any future changes to the caps. It requires that any ministerial determination to change the caps must be approved by a resolution of both houses of parliament. Ultimately, the review of the capping arrangements did show that out-of-pocket expenses had increased for patients for those items that had been capped.

This bill makes further amendments as a result of the caps that the government has put in place. It seems clear that this is an issue which should have been addressed when the caps were enacted. This bill will allow caps on benefits under the Extended Medicare Safety Net to apply where more than one Medicare service is performed on the same patient on the same occasion and it is deemed to constitute one professional service. The bill limits the Medicare benefit payable under the Extended Medicare Safety Net for a deemed professional service to what would apply to the constituent items of service; that is, the Extended Medicare Safety Net cap that will apply in such circumstances will not exceed some of the Extended Medicare Safety Net caps that would apply to the individual Medicare items. The bill appears to address an anomaly rather than making policy changes. It also removes the requirements that families confirm in writing the composition of their family for the purposes of the Extended Medicare Safety Net.

I will now take the Senate to some comments that were made by the health minister on 16 August during the debate of this bill the other place. They are so typical of those opposite, most especially Minister Roxon, the previous health minister. And now Tanya Plibersek, the current health minister, has taken up the usual rhetoric that they normally throw into every health debate, which is this absolute fabrication—the assertion that when the Leader of the Opposition was health minister apparently a sum of money was taken out.

Senator Ludwig: He cut $1 billion.

Senator Fierravanti-Wells: That is wrong. That is an absolute lie and you know it, Minister Ludwig.

The DEPUTY PRESIDENT: Order! Through the chair, Senator Fierravanti-Wells!

Senator Fierravanti-Wells: Minister, you know that it is wrong. Let me tell you this.

Senator Ludwig interjecting—

Senator Fierravanti-Wells: I withdraw 'lie' and replace it with fabrication. Let me tell you why it is a fabrication. It is misleading, it is wrong and it is something that those opposite continue to parrot. The assertion that funding for public hospitals
decreased by $1 billion under the coalition government is false.

Australian government funding for health, including public hospitals, increased significantly under the coalition government. According to the Australian Institute of Health and Welfare, Australian government expenditure on public hospitals increased every year from approximately $5.2 billion in 1995-96 to over $12 billion in 2007-08. Annual spending on health and aged care by the Australian government more than doubled from $19.5 billion in 1995-96 to $51.8 billion in 2007-08. Australian government funding to the states under the Australian healthcare agreements was $42 billion between 2003 to 2008, compared to $31.7 billion between 1998 to 2003 and $23.4 billion between 1993 to 1998. The 2003 to 2008 Australian healthcare agreements provided a 17 per cent increase in funding compared to the previous agreement.

The government's claims are untrue. They are wrong, they are misleading. Minister Ludwig, they are a fabrication because in 2003 the coalition government provided an extra $10 billion for public hospitals in the Australian healthcare agreements. Funding for public hospitals from 2003 was 83 per cent higher than under the previous Keating Labor government. A change in the growth rate of the Australian healthcare agreements due to higher private health insurance coverage and other demographic changes was reflected in the forward estimates of 2003. Some public hospital expenditure continued to increase by 17 per cent in real terms in the 2003 to 2008 Australian healthcare agreements, contrary to the false accusations that those opposite continue to peddle. Let me repeat that: from 1993 to 1998, it was $23.4 billion; from 1998 to 2003, it was $31.7 billion, and from 2003 to 2008 it was $42 billion. It is important that those opposite stop peddling this fabrication for some political gain. It is absolutely, totally untrue.

There are some important examples of where the government has broken its promises in health. We have just seen one example through the Extended Medicare Safety Net. But I would like to focus on a couple of areas in my own portfolio which have recently demonstrated yet again this government's incompetence and its mismanagement. It was with great fanfare that we saw mental health in last year's budget. Mental health has been done. We had Get Up! out there with the candles; we had the Prime Minister out there with various people, including Professor McGorry, making comments about mental health and spending. I say to the Australian people that it was an absolute illusion. Where has the money been spent? Do not just take my word for it. Why are we starting to see eminent people like Professor McGorry and Professor Hickie in the press making these comments? I want to raise in particular in article that appeared in March 2012 in Hospital and Aged Care. Here we have Professor Hickie being very critical of the government.

I want to quote from this article. In one part of it Professor Hickie is very critical of the progress that this government has not made in terms of meeting its mental health promises, and he makes this comment:

As a result of the mess left at the end of the Rudd era, key structural issues in mental health services remain unresolved. There is no commonly agreed service model, particularly for out of hospital and ongoing community care. Due to the unholy horse-trading between the Commonwealth and the states, the first good idea that was discarded was a Commonwealth takeover of the funding of state-based community health.
In this article, in which he makes a series of very critical comments against the government, he also makes this comment:
A whole range of other essential services also awaits clarification as to who has the responsibility to fund or deliver. Much has simply been left for later dialogue or worse, potentially, to be delivered via Medicare Locals at some future (unspecified) date.

I could go on, Mr Deputy President, but what is this telling you? This is telling you that this government, in whatever area it is in, is all about spin and no substance. We are dealing with one in five Australians with mental health issues, and here we have leading people like Professor Hickie, Professor McGorry and Professor Mendoza, who resigned so spectacularly from the government's own national health advisory council, criticising the government for its lack of action in even the most basic of ways in relation to mental health. It is a very, very sad indictment of those opposite.

Indeed, we even have the chair of the National Mental Health Commission, Professor Allan Fels, for whom I have great respect, writing an article in the Australian on 1 October under the headline: 'This commission will help mentally ill or I’ll quit'. It is very clear that the framework that Professor Fels has had imposed on him in relation to the Mental Health Commission will, in my view, in no way allow him to do what really needs to be done in mental health in this country. Here we have Professor Fels hoping, I think, that the Mental Health Commission will make a difference; but, as he said in his article:

… if it doesn't, I'll be the first to call for it to be closed.

I want turn to some recent events in my Ageing portfolio which demonstrate this government's total lack of transparency and bad faith in its dealings with providers in this country.

Again, we had the fanfare—and Minister Butler is very good at lots of fanfare—with the release on 20 April of the so-called aged care 'reform' package. Certainly, when that package came out, the coalition was, I think, justified in being cautious in its response. We said the devil would be in the detail; and, indeed, the devil has been in the detail. Of course, we did have the peak bodies immediately endorsing the package, but I think they are somewhat regretting that now because they have seen that the devil has been in the detail and they have been short-changed to the tune of $1.6 billion. It is very clear that these changes were done administratively and, therefore, not done with the opportunity of their having public scrutiny. At this stage, we do not know how much of that so-called reform package will require legislation—and, when it does, we will certainly give it proper scrutiny.

I want to take the Senate to the issue of the changes that were announced on 1 July. Again with little or no consultation with the sector, suddenly the sector finds $1.6 billion has been taken out of the aged care funding instrument that was released. I take the Senate to some comments that were made and a report that was commissioned by Leading Age Services Australia. It is revealed that there will be a $750 million shortfall over the next 2½ years in this analysis, which the Centre for International Economics undertook for Leading Age Services Australia. It predicts that 89 per cent of aged care facilities will face unrecoverable losses of revenue under the revised funding model, which came into effect on 1 July. The head of Leading Age Services Australia, in a media release on 10 August 2012, states:

This ultimately means an average reduction of between $20,000 and $23,000 in care funding for each affected resident every year …
The average loss per aged care facility is more than $125,000 each year, with some facing revenue shortfalls of up to $560,000.

I agree with Mr Mansour, who says:

Smaller and rural facilities are potentially the most affected.

He states:

As running costs continue to rise, aged care providers—unlike most businesses—cannot increase care fees—because they are pre-set.

Recently we have seen comments made by Grant Thornton that $3.5 billion worth of development has been taken and will be affected in the aged care sector. I conclude by saying that the coalition does not oppose the changes in this bill. (Time expired)

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (09:52): I thank senators for their contributions to the debate on this bill. I also thank Senator Fierravanti-Wells for her contribution. Although I am not sure it stayed relevantly close to the bill, we do have wide-ranging second reading debate speeches on this topic.

More than ever before, we are making the most of every precious health dollar. We are guided by the evidence and have invested wisely. We are finding efficiencies and returning the benefits to patients. Where the evidence said things were not working, the Gillard government have done things differently. The bill before this Senate is part of this. We have looked at the evidence on how the extended Medicare safety net works, and it says we need to close the loophole to protect the integrity of the system.

The EMSN provides individuals and families with an additional rebate for their out-of-hospital Medicare services once an annual threshold of out-of-pocket costs is reached. Once the relevant annual threshold has been met, Medicare will pay for 80 per cent of any future out-of-pocket costs for out-of-hospital services for the remainder of the calendar year, except for a number of services where an upper limit of the EMSN benefit cap applies. The government introduced benefit caps for certain services following an independent review that found some providers have used the EMSN to increase their fees to excessive levels. The EMSN was designed to help patients with out-of-pocket costs, not to subsidise excessive charging by some doctors.

Under the current legislation, in certain circumstances where more than one Medicare item is claimed by the same patient on the same occasion and the items are deemed to constitute one professional service, EMSN benefit caps are unable to apply as originally intended. An example of this is where patients have more than one operation performed at the same time. Some doctors are performing multiple operations to avoid the EMSN benefit caps. The bill amends the Health Insurance Act 1973 and allows the EMSN benefit cap to apply even when multiple services are performed. This means that the Medicare benefit goes towards helping patients with out-of-pocket costs, not on subsidising excessive charging by doctors. Importantly, it helps to protect the integrity and sustainability of the EMSN, and for those reasons this bill is supported.

I note the opposition are also supporting the bill. In reply to some of the issues raised in the second reading debate speeches raised by the coalition, one of the areas where there is really a stark contrast between the views taken by those opposite and this government is if you look at one area in GP bulk-billing rates.

We think bulk-billing rates do provide an indication of the difference between this government and those opposite. In 2003,
under the coalition, bulk-billing plunged to a low of around 67 per cent. This government has spent a record $17.64 billion in Medicare benefits, excluding dental benefits. That is an average of about $784 in Medicare benefits for every Australian. So GP bulk-billing rates are now at a record 81.2 per cent. The coalition could never claim to have improved bulk-billing rates. This government has set out to improve the bulk-billing rate and has improved it significantly. Why? Because we have an unprecedented investment in health and hospitals across Australia, unlike those opposite, who took a billion dollars out of the health system.

If you look at bulk-billing rates since 2008, you will see that we have invested a record $2 billion to drive them up, with incentives for general practice, pathology, diagnostic imaging and telehealth services. If you look at the record of the coalition, you can see that it has only ever stood for cuts to bulk-billing and higher fees for Australians when they go to the doctor. The opposition have characterised this debate as a health debate. Our record stands for itself, while the coalition failed to deliver during their 10 years in government. But we are not talking about that; we are talking about a health legislation insurance amendment to ensure that it continues to deliver for Australians.

So, with those short words, I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The DEPUTY PRESIDENT (09:57): As there have been no amendments circulated, it is my intention to call the minister to move the third reading, unless any senator wishes to move into the Committee of the Whole. There being no such request, I call the minister.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (09:57): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Cybercrime Legislation Amendment Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

to which the following amendment was moved:

At the end of the motion, add "but that the Government initiate an independent review to consider whether the Telecommunications Act 1997 and the Telecommunications (Interception and Access) Act 1979 continue to be effective in light of technological developments (including technological convergence), changes in the structure of communication industries and changing community perceptions and expectations about communication technologies, in particular, the review should consider:

(a) whether the Acts continue to regulate effectively communication technologies and the individuals and organisations that supply communication technologies and communication services;

(b) how these two Acts interact with each other and with other legislation;

(c) the extent to which the activities regulated under the Acts should be regulated under general communications legislation or other legislation;

(d) the roles and functions of the various bodies currently involved in the regulation of the telecommunications industry, including the Australian Communications and Media Authority, the Attorney-General's Department, the Office of the Privacy Commissioner, the Telecommunications Industry Ombudsman, and Communications Alliance; and
whether the Telecommunications (Interception and Access) Act 1979 should be amended to provide for the role of a public interest monitor".

Senator XENOPHON (South Australia) (09:58): Last night I admit that I was taken unawares because Senator Mason, uncharacteristically and shockingly, did not use his full 20 minutes. That is why I was caught on the hop. I broadly support this bill and I am glad that it goes some way to addressing a very serious issue in our society, a problem in which our children are particularly vulnerable—that is, cybercrime. For me and many fellow South Australians nothing brings home the seriousness of cybercrime more so than Carly Ryan's story. Devastatingly for Carly's family and friends, she is not with us today to tell it.

Carly Ryan lived with her mother, Sonya Ryan, in Stirling in the Adelaide Hills. In 2006, when Carly was just 14 years old, she started chatting online with someone she thought was a 20-year-old called Brandon Kane. Brandon was the boy of her dreams and the two formed a close online friendship. Her mother later said about her daughter, 'She was like a giddy teenager in love—really happy, really light and really excited.' What Carly did not and could not have realised is that behind the online conversation with Brandon was not a 20-year-old musician at all. Brandon Kane did not exist. Instead she had unknowingly developed a relationship with Garry Francis Newman, a 47-year-old man who lived with his mother. The divorced father of three had 200 fake identities, but it was that of Brandon Kane that he used to lure young Carly. Police would later to discover child pornography on Newman's hard drive, and it was also revealed that he had pursued two other 14-year-olds—one in the United States and one in Singapore.

Carly invited her new beau, Brandon, to her 15th birthday party. The so-called Brandon told Carly that he would be overseas and could not make it but that his adopted father, Shane, would go in his place. Shane and Carly began chatting online and the teenager convinced her mum that it would be okay for Shane to come along to her birthday party. Newman turned up to the party as Shane. When Ms Ryan learned he and Carly had become close, she warned him to stay away from her daughter. Newman became enraged and on 19 February 2007 he convinced Carly to go with him to Victor Harbor to meet her beloved Brandon. The next morning passers-by discovered Carly's body bashed and drowned at Horseshoe Bay, Port Elliot. She was just 15. A jury found Newman guilty of murder on 31 March 2010. He was sentenced to life imprisonment with a non-parole period of 29 years.

Having this predator behind bars is one thing, but we need to look at other ways we can protect young people like Carly so no child ever suffers the same fate. Carly's mother, Sonya, has set up the Carly Ryan Foundation to promote internet safety and support victims of cybercrime. Ms Ryan's bravery through her grief and her willingness to help others is incredible. We the people in this chamber also have the power to make a difference. We need to consider making it illegal for adults to misrepresent their age to minors online for the purpose of grooming and we need to support Ms Ryan in her push for more education in schools about cybersafety.

The bottom line is that we cannot underestimate the seriousness of cybercrime, and that is why, with some amendments, I broadly support this bill. We need to ensure that this bill is consistent with the Council of Europe Convention on Cybercrime so that we can become a signatory to the international treaty. That is the basis of this
I note the recommendations made by the Joint Select Committee on Cyber Safety, which was chaired by Senator Catryna Bilyk. The committee made a number of sound recommendations which balance the importance of being compliant with the Council of Europe Convention on Cybercrime with the need to maintain our own safeguards on privacy here in Australia.

I am also broadly supportive of the Greens amendments which seek to tighten the legislation in terms of Australia's privacy interests. Online is a new frontier not just in terms of the way we communicate and the way we go about our day-to-day business but also, sadly, in terms of crime. We need to make sure that it is appropriately policed and I think a legitimate concern that needs to be raised in the committee stage is: how will this bill be enforced and how difficult will it be to launch a successful prosecution in matters such as this?

Amending legislation to ensure we comply with the Council of Europe Convention on Cybercrime is just one important step in ensuring we are doing all we can to fight cybercrime. As always, the devil is in the detail, and that is why I think the committee stage of this bill is very important to ensure that this bill will do what it is intended to do and do it in a way that is effective. That is why I was disappointed when the parliament took the view not to support the bill I introduced some time ago, inspired by Sonya Ryan's work in relation to her late daughter Carly Ryan, that it should be made an offence to misrepresent your age to a minor. On the face of it that should be prima facie an offence. It does not have to carry a severe penalty in itself, but it needs to be an offence that will make a difference, because at the moment you need to show an intent or a prurient purpose if you misrepresent your age to a minor. But you need to ask the question: why would an adult misrepresent their age to a 14-year-old? Unless there is a good excuse, that in itself ought to be an offence. That is something that I am concerned about that this bill does not deal with. But I note that there does not appear to be the political will to deal with this particular aspect of it. Notwithstanding that, this bill at least is making some genuine attempt to deal with this very serious issue and I hope that, with amendments, this bill will be strengthened and ultimately be effective in dealing with cybercrime.

Senator THISTLETHWAITE (New South Wales) (10:04): Australians and human beings are exchanging more and more information online and that, of course, leads to a greater prevalence of cybercrime. It is a threat to all internet users from businesses to home users, meaning anyone can fall victim to invasion of privacy, theft and deception via the World Wide Web. As a father of two young children, I am one who wishes my kids to grow up having the opportunity to learn from and utilise the internet but I also want to know that when they are doing that they are safe and protected from criminal elements who may seek to prey on vulnerable people. So it is critical that the international community work together to combat this threat.

The facts about cybercrime speak for themselves. In the last six months alone, Australia's computer emergency response team has alerted Australian businesses to more than a quarter of a million pieces of stolen information such as passwords and login details. Cybercrime has already overtaken the drug trade worldwide as the most profitable form of all crimes, and this is simply because of the opportunities that cybercriminals have to steal money, identities and information from unsuspecting victims because there are so many people nowadays using the internet. I quote Nigel Phair, a specialist in cybercrime who worked
for more than four years at the Australian High Tech Crime Centre:

With the phenomenal growth of the Internet, cyber crimes have become a matter of national interest ... The rapid development of the Internet, with global computer-based commerce and communications that cut across traditional territorial and state boundaries, continue to create a new realm of criminal activities among the cyberspace social, economic and political groupings.

Mr Phair is right about this point. We all have a cause for concern. In 2011 a three-year investigation, known as Operation Rescue, exposed the frightening scale of the challenge before us in the fight against paedophilia and organised crime online. Seven international jurisdictions joined together to act, including Holland, Chile, France, the United States, New Zealand and Australia. That investigation led to the arrest of nearly 200 suspected paedophiles and, thankfully, 230 children were rescued in the process. With figures like that, this parliament and we as a nation must act on cybercrime. The first step is the ascension into the Council of Europe Convention on Cybercrime. To do this amendments must be made, through the Cybercrime Legislation Amendment Bill 2011, to the Telecommunications (Interception and Access) Act, the Mutual Assistance in Criminal Matters Act, the Criminal Code Act and the Telecommunications Act.

The convention serves us as a guide for nations developing a comprehensive national legislation on cybercrime and the convention is the first international treaty on crimes committed via the internet and other computing networks dealing particularly with computer related fraud, child pornography and violations of network security. It criminalises certain types of conduct committed via computer networks and contains a series of powers and procedures such as the search of computer networks and interception. The convention provides systems to facilitate international cooperation between signatory countries, as well as establishing procedures to make investigations more efficient by empowering authorities to request the preservation of specific communications with access subject to a warrant in Australia, helping authorities from one country to collect data in another country, establishing a 24-hour network to provide immediate help to investigators, and facilitating the exchange of information between countries. To date over 40 nations have either signed or become a party to the convention, including the United States, the United Kingdom, Canada, Japan and South Africa. Over 100 nations are also using the convention as the basis in their jurisdictions to strengthen their legislation and combat cybercrime.

On 1 March this year the tabling of the national interest analysis by the Minister for Foreign Affairs saw the referral of the question of ratification to the Parliamentary Joint Standing Committee on Treaties. As I explained earlier, the best example of why international cooperation can work and has worked was Operation Rescue, with the result, as the Guardian reported in the UK on Wednesday, 16 March 2011, that 60 children had been removed from immediate danger and that police around the world had worked together to shut down what was believed to be the biggest online paedophile ring in the world.

All of the world's online viruses come from overseas. This makes international cooperation all the more important. Recently Kaspersky Lab, an internet security and anti-virus maker, released a report into viruses and malicious software for the first quarter of 2011. It stated that almost 90 per cent of web sources spreading malicious programs were in 10 countries with United States, Russia,
The Australian government has already taken significant steps to redress cybercrime and related risk. These include establishing a new national computer emergency response team to improve cooperation with the private sector on cybersecurity issues; establishing a cyberpolicy coordinator within the Department of the Prime Minister and Cabinet; working with state and territory governments to ensure a nationally coordinated response to cybercrime including consideration of a national online reporting portal; partnering with industry, community and consumer groups to undertake a year round cybersecurity awareness raising initiative; and working with the Internet Industry Association to develop a voluntary internet service provider code. This ISP code provides a consistent approach for ISPs to help inform, educate and protect their customers in relation to cybersecurity issues.

The government welcomed the findings of the Joint Standing Committee on Treaties supporting Australia's ascension to the Europe Convention on Cybercrime. The Cybercrime Legislation Amendment Bill 2011 will strengthen cybersecurity laws and enhance Australia's ability to combat international cybercrime. These amendments will ensure that Australian legislation is consistent with international best practice and that Australia is in the best position to address the range of cyberthreats that confront us, both domestically and internationally. I wholeheartedly support the changes contained in this bill. They are a necessary improvement to our defence against the global threat of cybercrime. The changes increase our capacity to fight against this threat on the international stage and augment the armoury of our security and law enforcement agencies to combat these threats at home.

The changes in the bill come about as a result of an extensive inquiry that was conducted by Senate Environment and Communications Committee. I congratulate Senator Bilyk, who chaired that committee, and members of the committee for the thorough investigation that they undertook into the adequacy of laws to deal with cybercrime in our nation. They played a big role in this legislation coming before the parliament.

This approach that the government has taken in respect of the ever-increasing threat of cybercrime gives me, with two young daughters—and all other parents throughout the country—greater protection from the worst elements of cybercrime and provides greater comfort for parents regarding the use of the internet by their children. The approach gives me added confidence that, when we turn on the computer at home, my kids, like so many other children across the country, can be safe from the sorts of attacks that we all hope will never happen to loved ones and that were pointed out by Senator Xenophon. I am pleased to support this bill.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (10:13): I would like to thank those senators that contributed to the debate on the Cybercrime Legislation Amendment Bill 2011. Senator Brandis asked about the government's response to the report of the Joint Select Committee on Cybersafety and the committee's recommendation 13 about industry costs. The government intends to respond to the committee's report before the Senate today. Regarding recommendation 13, the Attorney-General's Department has been in ongoing discussions with industry...
who will, as I understand it, support the amendments.

Senator Ludlam did ask a few questions in his contribution that I am happy to address through the second reading debate. This will not diminish the opportunity for the senator to raise questions during the committee stage. The senator spoke at some length about why this bill is being debated in the parliament before the Parliamentary Joint Committee on Intelligence Security concludes its report into potential reforms of Australia's national security legislation. As the senator understands, Australia's intention is to accede to the cybercrime convention. It was announced long before the inquiry even commenced. Three inquiries have now been held relating to Australia's accession to the cybercrime convention and all have supported that accession. The focus of this bill is on international cooperation between our law enforcement agencies, whereas the focus of the inquiry by the PJCIS is on domestic capabilities, including data retention, telecommunications sector security reform and ASIO's capabilities. On the topic of data retention, the senator continues to refer to the data retention proposal, which is not included in this bill. This bill allows for preservation of targeted communication to ensure that information relevant to a specific investigation is not lost as a consequence of normal deletion purposes. Those communications can only ever be accessed under a warrant.

Senator Ludlam questioned whether the bill changed the bar for interception warrants from an offence punishable by seven years to an offence punishable by three years, and it does not. The bill does not relate to interception; it is about stored communication and telecommunications data. Finally to the issue of costs, which Senator Ludlam referred to as 'a great big new tax on telecommunications': the fact is that the cost is borne by law enforcement agencies under cost recovery arrangements with telecommunications providers. It is not borne by the user.

As I understand it, Senator Mason commented on the potential privacy impacts of this bill. Importantly, the cybercrime convention includes explicit protections of human rights which will bind Australia after accession. Further, the bill adopts the privacy protections that exist in current legislation.

The government does share Senator Xenophon's concerns about the safety of children online. The Carly Ryan case is truly tragic. While this bill is not the right vehicle for the senator's proposals, it will assist police in Australia and internationally to investigate these heinous crimes. I note that additional matters have been raised in relation to this bill in committee hearings. Many of the obligations in the Council of Europe Convention on Cybercrime are already provided for in Australian law. The bill amends several acts to ensure that Australia fully complies with the convention. Cybercrime has already overtaken the drug trade as the most profitable form of crime in the world. With Australian families, businesses and government conducting more and more activities online, it is necessary that Australia take further action against cybercrime to protect Australians. The cybercrime convention is the only binding international treaty on cybercrime, setting out the procedures that support cooperation amongst its signatories. By acceding to the convention, Australian law enforcement agencies will be able to access and share information necessary to support local and international cybercrime investigations. This will mark a significant step forward in our efforts to address the growing threat to the Australian community posed by cybercrime and the need to protect the community from internet abuses.
For cybercriminals, our accession to the convention will mean that there are fewer places to hide. The bill has been considered by the Joint Select Committee on Cyber-Safety, which reported to parliament on 18 August 2011. I would like to take this opportunity of thanking committee members for their detailed work on this bill. The government, in its response to the committee’s report, has closely considered the committee’s recommendations. As the bill builds upon existing laws about telecommunications, privacy and cooperation with foreign countries, many of the issues raised in the committee’s report have already been addressed. Other areas where the bill can be strengthened will be addressed through the government’s amendments that will be moved during the committee stage of the bill.

The government agrees with the committee’s first recommendation—that the threshold for the issue of a stored communications warrant for both foreign and domestic offences should be the same. As the bill already requires that the threshold for both foreign and domestic offences be three years imprisonment or 900 penalty units, no amendment is needed.

Recommendation 2 requires the Attorney-General to investigate whether the proposed new Part IIIA of the Mutual Assistance in Criminal Matters Act 1987 prevents stored communications warrants being available to foreign countries for investigations into child sexual exploitation. The Attorney-General’s Department has not identified any child exploitation offences with a penalty of less than three years imprisonment, meaning no amendments are needed to address this recommendation.

Recommendation 3 is that the Mutual Assistance in Criminal Matters Act be changed to allow Australia to reject a foreign country’s request for information if that country’s laws about protecting personal information are not substantially similar to Australia’s laws. As the bill retains all of the existing privacy protections in relation to accessing information at the request of a foreign country, no amendment is needed. Where new access procedures are provided, they include their own additional protections.

The government agrees with recommendation 4—that requirements to assess privacy impacts should be clearer and more accessible. The government will move amendments to provide detailed guidance to authorised officers about the particulars of weighing and balancing privacy impacts to ensure that privacy considerations are taken into account for every disclosure of telecommunications data.

Recommendation 5 requires that the bill be amended to ensure that, in determining whether a disclosure of telecommunications data to a foreign country is appropriate in all the circumstances, the authorising officer must give consideration to the grounds for refusal under the Mutual Assistance in Criminal Matters Act. The government accepts this recommendation in principle, but notes that the bill in fact only allows disclosure of historical telecommunications data on a police-to-police basis. Disclosure of stored communications or prospective telecommunications data can only occur in response to a mutual assistance request. This means the provision of historical telecommunications data will be subject to the protections in the bill as well as the AFP’s national guidelines on the disclosure of information. The government believes that this strikes the right balance in providing adequate protection while ensuring that procedures are flexible and responsive.

The government agrees with the committee’s concerns in recommendation 6
that sufficient protection must apply in cases where providing documents or information could relate to a case that may attract the death penalty. The AFP’s existing guidelines address this issue, detailing an accountable process that must be followed when the AFP is considering authorising the provision of police-to-police assistance to foreign countries. In circumstances where a person has been arrested, detained or charged with or convicted of an offence for which the death penalty may be imposed in a foreign country, only the Attorney-General or the Minister for Home Affairs and Minister for Justice may approve the exchange of information on a police-to-police basis. The guidelines also expressly require senior AFP management to consider prescribed factors before providing assistance in any matters which raise death penalty implications.

The committee’s seventh recommendation is that the bill be amended to elaborate the conditions of disclosure of historical and existing telecommunications data to foreign countries, including in relation to retention and destruction of the information and an express prohibition on any secondary use by the foreign country. The government accepts the committee’s recommendation. The bill currently requires that telecommunications data be provided to foreign countries on the condition that the information is only used for the purpose for which it was requested and that documents are destroyed when no longer required for those purposes. The AFP has memoranda of understanding with various foreign law enforcement agencies regarding compliance with caveats placed on disclosed information. However, due to the nature of international relations, Australia cannot criminalise or audit how foreign countries deal with information.

Recommendation 8 is that the Attorney-General investigate the desirability and practicality of a legislative requirement for data subjects to be advised that their communications have been subject to an intercept, stored communications warrant, or telecommunications data disclosure under the Telecommunications (Interception) Act once that advice can be given without prejudice to an investigation. The government notes this recommendation. In May the government referred a package of possible national security reforms to the Parliamentary Joint Committee on Intelligence and Security. The inquiry, which is open to the public, is considering many aspects of the interception regime, including the relevance of the regime’s privacy parameters in the contemporary communications environment.

The committee’s ninth recommendation is that the bill be amended to provide that the Australian Federal Police report to the minister on: (1) the number of authorisations for disclosure of telecommunications data to a foreign country; (2) the specific foreign countries that have received data; (3) the number of disclosures made to each of the identified countries; and (4) any evidence that disclosed data has been passed on to a third party or parties.

The government has closely considered this recommendation and agrees that there is merit in strengthening the reporting requirements. Accordingly, the proposed government amendments will require the head of the AFP to give the minister an annual report that includes the number of disclosures made to each country. Recommendation 10 is that the Attorney-General consult initially with the telecommunications industry and, then, with relevant ministers, statutory bodies, and public interest groups to clarify and agree on the data handling and protection obligations of carriers and carriage service providers.
The government accepts this recommendation in part. Secure management and storage of information is a key component of ensuring that information collected under the interception act is of an evidential standard. The Attorney-General, her department and agencies are in constant dialogue with carriers about maintaining these standards. It should be noted that the carriers who will be served requests to preserve information are all bound by the provisions of the Privacy Act 1998. The public and interest groups will have an opportunity to contribute to the PJCIS inquiry. The terms of reference referred to the PJCIS include the role of the communications industry in relation to both the interception regime and national security more generally.

Recommendation 11 is that the bill be amended to require carriers and carriage service providers to destroy preserved and stored communications and telecommunications data or a record of that information when that information or record is no longer required for a purpose under the interception act, unless it is required for another legitimate business purpose. The government agrees with this recommendation but notes that the Privacy Act already requires private sector organisations to delete information they have collected in the course of their business once that purpose no longer applies.

Recommendation 12 is that the exemption of small internet service providers from the Privacy Act as small businesses be reviewed by the Attorney-General with a view to removing the exemption. The government notes the committee’s concerns about this issue, and notes that it is relevant to the Australian Law Reform Commission’s recommendation in its 2008 report on privacy that the general small business exemption in the Privacy Act be removed.

The government will, therefore, consider the committee’s recommendation as part of the response to the ALRC’s recommendation. That will occur in due course after the current reforms in the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 have been progressed.

The committee’s final recommendation is that the Attorney-General’s Department consult widely with carriers and carriage service providers to ensure that the bill, when enacted, can be implemented in a timely and efficient manner. The government consults with industry on a regular basis and recognises the importance of ongoing consultation with carriers regarding legislative obligations under the interception act. Carriers currently assist agencies by preserving stored communications pursuant to general obligations in the Telecommunications Act. This bill makes the current arrangements explicit in order to facilitate accession to the cybercrime convention. The government recognises that, from time to time, new technologies will emerge that may impact on compliance. Where that occurs, agencies will work with industry, as they have in the past, to transition in an orderly, cost-effective and constructive way. To further facilitate implementation, the government will move government amendments to the bill to delay the commencement of the provisions requiring compliance with ongoing preservation notices from 28 days after royal assent to 90 days after royal assent.

The bill as introduced, amends the Telecommunications Act, the Mutual Assistance in Criminal Matters Act and the Criminal Code to provide for Australia’s accession to the cybercrime convention. An important feature of the bill is the preservation of stored communications. Carriers’ business practices often mean that communications are deleted before agencies

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have the opportunity to exercise a warrant to access stored communications. Whilst carriers have voluntarily provided assistance in the past, the bill amends the interception act so that an agency can formally require a carrier to preserve stored communications by reference to an individual or telecommunications service.

This approach will mean that computer data, SMS messages, emails and other communications stored by the carrier will be available while ensuring the interception act remains technologically neutral. Importantly, access to these communications will continue to be by way of a warrant.

The bill will rely on Australia’s existing mutual assistance frameworks to enable the improved exchange of stored communications and non-content data to assist in the investigation of certain foreign offences. The grounds for refusal in the mutual assistance act, including dual criminality and a ground to refuse assistance where the request relates to a political offence, will apply to requests for access to stored communications and requests for access to prospective telecommunications data.

While not including new offences in the Criminal Code, the bill expands the scope of the Criminal Code so that it can deal with criminal conduct outside of its existing limitations. The Criminal Code already contains savings provisions that have effectively ensured the continuing operation of state laws in a number of areas.

As recent police investigations have taught us, the need for international cooperation is essential in the investigation of cybercrime, particularly child exploitation offences and online fraud. The amendments contained in this bill will ensure Australia’s full compliance with the cybercrime convention and support our effort to counter cybercrime. I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Crossin): The question is that the second reading amendment moved by Senator Ludlam be agreed to.

The Senate divided. [10:36]

(The Acting Deputy President—Senator Crossin)

Ayes ...................... 10
Noes ...................... 25
Majority .................. 15

AYES
Di Natale, R
Ludlam, S
Rhiannon, L
Waters, LJ
Wright, PL

NOES
Back, CJ
Brandis, GH
Crossin, P
Feeney, D
Gallacher, AM
Ludwig, JW
Marshall, GM
McKenzie, B
Moore, CM
Singh, LM
Stephens, U
Thorp, LE
Williams, JR (teller)
Hanson-Young, SC
Milne, C
Siewert, R (teller)
Whish-Wilson, PS
Xenophon, N
Boswell, RLD
Cameron, DN
Farrell, D
Furner, ML
Humphries, G
Madigan, JJ
McEwen, A
McLucas, J
Pratt, LC
Smith, D
Thistlethwaite, M
Urquhart, AE

Question negatived

Senator XENOPHON (South Australia) (10:38): I move:

but the Senate calls on the Government to initiate a review of the Criminal Code Act 1995 to examine the strengthening of the offences in that Act to ensure that they adequately deal with the issue of misrepresentation of age to minors without reasonable excuse and to investigate the establishment of a type of register to record the names and details of those persons who do
misrepresent their age to minors without reasonable excuse.

**The ACTING DEPUTY PRESIDENT (Senator Crossin):** The question is that the second reading amendment moved by Senator Xenophon be agreed to.

The Senate divided. [10:43]

(Senator Crossin)

Ayes....................11
Noes.....................23
Majority................12

**AYES**

Di Natale, R 
Hanson-Young, SC 
Ludlam, S 
Milne, C 
Siewert, R (teller) 
Whish-Wilson, PS 
Xenophon, N

**NOES**

Back, CJ 
Cameron, DN 
Cormann, M 
Farrell, D 
Furner, ML 
Ludwig, JW 
McEwen, A 
McLucas, J 
Singh, LM 
Stephens, U 
Thorpe, LE 
Williams, JR (teller)

Question negatived.

Original question agreed to.

Bill read a second time.

**In Committee**

Bill—by leave—taken as a whole.

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (10:44): I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 13 September 2011. I seek leave to move the amendments together.

Leave granted.

**Senator LUDWIG:** I move amendments (1) to (6) on sheet BL210 together:

1. Schedule 1, item 2, page 4 (lines 14 and 15), omit "or interception agency", substitute "(including an interception agency)".
2. Schedule 1, items 6 and 7, page 5 (lines 1 to 11), to be opposed.
3. Schedule 1, item 18, page 10 (line 2), before "interception agency", insert "enforcement agency that is an".
4. Schedule 1, item 18, page 11 (lines 29 and 30), omit "or interception agency", substitute "(including an interception agency)".
5. Schedule 1, item 18, page 12 (line 27), before "interception agency", insert "enforcement agency that is an".
6. Schedule 1, item 18, page 12 (line 33), before "interception agency", insert "enforcement agency that is an".

Amendments (1) to (6) make technical corrections which reflect that the interceptions agencies are defined as subsets of enforcement agencies. These amendments do not affect the meaning of the bill but ensure a consistency with current drafting in the interception act.

**Senator BRANDIS** (Queensland—Deputy Leader of the Opposition in the Senate) (10:47): Can I indicate that these amendments are of a technical character, which the opposition supports.

**Senator LUDLAM** (Western Australia) (10:47): Likewise the Australian Greens believe these amendments are being provided by way of consistency, so we will not be opposing them. I did have some general questions on the bill, but the minister got the jump on me, as is his right, so I
wonder whether it might be possible to put a couple of questions of a general nature before we start chipping our way through the amendments. I have indicated that the Greens will be supporting this batch of amendments that the government has moved, before we move to the Greens amendments.

The TEMPORARY CHAIRMAN (Senator Crossin): Senator Ludlam, if these are technical amendments and everyone is in agreement, we will put them and then I will allow you to ask your general questions. So I put that amendments (1) and (3) to (6) on sheet BL210 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN: In respect of amendment (2) on sheet BL210, I put that items 6 and 7 of schedule 1 stand as printed.

Question agreed to.

Senator LUDLAM (Western Australia) (10:49): I have two questions, and the first is essentially about definition. The European convention quite exhaustively defines 'traffic data', whereas my understanding is that this bill relies on the parent act and does not use convention terminology. I would be interested in the minister's view on the way that the T(IA) Act will be interpreted once this bill passes the chamber and whether or not it will be entirely consistent with convention terminology because the term 'traffic data' is to be found nowhere in this bill or in the parent act.

This is important because, as the minister indicated in his responses to some of the questions that I posed during my second reading debate contribution, this is not about the content of the call, this is not about reading the emails; this is about the telecommunication data or the metadata or the traffic data that surrounds the communications. I have a problem with the basic premise that says that this is necessarily less important or less intimate, I guess, given that it would include, for example, detailed location data, but we will get to that a little further down in the debate because I have an amendment with regard to that. But initially I am seeking the minister's advice on terminology. For the purposes of interpretation of this bill once it has been incorporated into the act, how should we interpret what is actually caught by 'traffic data' or 'telecommunications data'?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (10:51): It does seem to go to the difference in the phrases between the T(IA) Act, which sets out information or documents that relate to communication, and the phrase in the convention, which, if you will bear with me, seems to relate more to technology. It says: … any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service.

I do not see a substantive difference, other than one tries to relate more broadly to a type of technologies, whereas if you note the definition of 'traffic data' in the convention, it is inclusive rather than exhaustive. Ultimately, I think the technologically neutral way that we have phrased it captures all of the essence of what they describe. In Australia, as you well know, legislation is typically drafted to ensure it is technologically neutral so that law can apply to new and emerging technologies without the need for amendment.

So I accept that we do use slightly different phrases to refer to the concept of communications data. I do note that rather than ours being exhaustive, theirs is inclusive. But, ultimately, I do not see a
substantive difference between the phrases in the legislation.

Senator LUDLAM (Western Australia) (10:52): Minister, I trust that you or your advisers have a copy of the parent act with you. Could you point out to me, in the definition section of the T(IA) Act, where I can find the standard definition that most closely matches what we are referring or relating this legislation to in the convention?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (10:53): It is 276 of the Telecommunications Act.

Senator LUDLAM (Western Australia) (10:53): Minister, I will look that up and that might give rise to a supplementary question, but while I am doing that my question effectively is: are we defining this term in the negative in that it refers to everything except the communication itself? Are we referring to everything except the actual transcript or the actual recording of the phone call of the Skype channel, or Skype stream? Are we essentially referring to everything except that data?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (10:54): I think the simple way to put it is that it is everything about the communication, not the communication itself. You can imagine a circumstance where locational data is not part of the communication. You can imagine where it is, so it would depend on the circumstances. But the way it is framed is information or documents that relate to the communication. I think 'metadata' is one phrase, but if can you imagine the metadata includes that then it would have it in it.

Senator LUDLAM (Western Australia) (10:55): That is helpful, and with a minimum of back and forth you have answered my question. In essence this will refer to anything at all apart from the communication itself. I suppose it would make more sense to come to this when I put some specific amendments dealing with it, but I think there is now a misapprehension that this cloud of data that surrounds our communications is somehow of less importance for the protection of privacy, that as long as we protect the communication itself there should be open season by a whole range of agencies on the telecommunications data or the traffic data that surrounds it. I think we need to fix that. I think that is one area where the law needs to be updated. As much as I acknowledge the desire of our policing and intelligence agencies to make sure that the law keeps track with technology, this is a profound area with privacy protection has not kept track with technology. There is an assumption that things as intimate as your latitude and longitude every minute of the day when you are carrying your phone around should have a much lower standard of protection from intrusion by not just law enforcement agencies but also welfare agencies and private companies. I think that is a serious misapprehension if we feel that, as long as we protect the phone call, everything else, all
the traffic data around it, should be up for grabs. I strongly disagree with that presumption.

I turn now to another question, and I recognise that this matter is before the joint committee at the moment, which was one of my arguments for not debating this bill now. People who do have something to hide will simply use encryption and place their communications beyond the reach of an act like this. So is it not the case that, effectively, the people that the bill is after are presumably either already encrypting their communications or will be doing so in greater numbers? How does this bill address that and is this a further encroachment on privacy for what may be minimal gain?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Flooding Recovery) (10:57): As I understand it, the part of the work that the PJCIS national security inquiry is dealing with is encryption. So the bill as it stands has left the broader issue around encryption, and the issue I think you raise around the privacy implications of that, for the PJCIS. This bill addresses cybercrime and meeting the convention obligations. I understand your point that you wanted to wait for the PJCIS, but I think it is better that we deal with the cybercrime legislation so that we do meet our convention obligations and can accede to the convention as soon as possible.

Senator LUDLAM (Western Australia) (10:58): I have a question before I move the first of the set of Greens amendments: why did it take a year? I am not satisfied with the minister's explanation for why this is happening now; it is cutting diagonally across the work of the joint committee. I mentioned in my second reading contribution that the cybersafety committee produced its report on this matter almost exactly a year ago this week, and I wonder why it has taken a year for the bill to come before the chamber.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Flooding Recovery) (10:59): Competing for legislative space is always a challenge, particularly in the Senate, but more importantly it does require industry consultation. It has required significant consultation backwards and forwards to ensure that industry understands the role that this legislation will play and the onus it will place on them. All of that does take time. Can I say, though, that we are here now, and that is the important part.

Senator LUDLAM (Western Australia) (10:59): 'We are here now.' All right, then, I guess I will have to be satisfied with that as an explanation as to why this is occurring when of course it should be folded into the process the joint committee is undergoing. I have been appreciative—and I am happy to put it on the record again just to be completely clear—of the Attorney-General and her office for, rather than just blasting a bill through this chamber, putting a set of propositions to the public. I think that committee, apart from the fact that the Greens do not have representation on it, is the appropriate place for that to occur. I wish them well in their deliberations, noting that the national security inquiry has touched off a storm of protest online. The minister will no doubt be aware of that. But I suppose that is the purpose of referring these matters to open public debate and inquiry in the first place. I think it is an enormous shame that this debate, which gives effect to a certain part of that agenda, is occurring, but the minister will be well aware of that.

I now move Greens amendment (3) on sheet 7143:
(3) Schedule 1, page 20 (after line 6), after item 30, insert:

30A After paragraph 152(a) Insert:

(ab) to inspect an enforcement agency's records in order to ascertain, so far as is practicable, the extent of compliance with this Chapter;

These provisions relate to the role of the Ombudsman. The committee's report noted that the former Ombudsman, Mr Asher, expressed several concerns about the practical operation of the preservation notice scheme.

Senators will note a certain consistency or a thread running through the amendments that we will be moving today with regard to the fact that we believe that law enforcement and intelligence agencies should have powers proportionate to the kinds of offences and matters that they are investigating. So the theme of the amendments that I am moving is providing that balancing context for the protection of privacy, for oversight of the agencies doing work and for an appropriate degree of transparency.

So the first of these which the committee picked up on was that:

... the Ombudsman expressed several concerns about the practical operation of the preservation notice scheme.

People will recall that the then Commonwealth Ombudsman was very concerned about the bill and—due to his expertise in the telecommunications area, having worked for the peak consumer advocacy organisation for a couple years prior—I found his insights particularly useful. Those in the committee are aware that he provided public evidence, in camera evidence and also a submission—and for good reason in both cases. The government chose to ignore advice from the Ombudsman that the bill should be amended to improve the Ombudsman's power to monitor compliance both with the reporting requirements of officials and with the obligation of ISPs and telcos to destroy data once orders have expired. He asked that his powers to inspect and audit compliance with the preservation and data retention regime be clarified to ensure that he can check compliance with the act and not mere record keeping.

This is a very important point. Try to imagine the grey areas that we stumble into when a foreign law enforcement agency comes after a warrant or a data retention order for something that is not even a crime in Australia or something of which there is no easy equivalent. I think the possibilities for ambiguity are huge. I recognise that that is the terrain that our law enforcement agencies operate in and that that is something that they would be completely familiar with.

But what we are doing here potentially is making things much more difficult for ourselves because the language in the bill regarding these ambiguities will be very difficult to interpret. So our amendment provides for the Commonwealth Ombudsman to have the power to—and I will quote from the part—'inspect an enforcement agency's records in order to ascertain, so far as is practicable, the extent of compliance

So we are not just taking the word of busy people and we do in fact have some oversight power, and of course the Ombudsman's office is the appropriate place for that.

As the committee's report noted, the Ombudsman was concerned that, as the bill is written, his role would be restricted to determining whether an agency had kept records, which is different to allowing him or her to verify the veracity of those records. This amendment cleans that up and it
removes any doubt about the Ombudsman's oversight function. I look forward to the support of my colleagues and commend this amendment to the chamber.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:04): The government does not agree to further expanding the role of the Ombudsman through this amendment. The bill gives the Ombudsman power to inspect each of the preservation notices, each instrument of revocation, and each evidentiary certificate relating to a preservation notice. Additionally, preserved information is only ever released pursuant to a warrant issued by an independent issuing authority. Therefore, the issuing authority is in a position to consider whether communications have been appropriately preserved. This is, in the government's view, an appropriate accountability framework, given the general prohibition on the use and disclosure of preserved material. The government believes that the information is already effectively protected by the bill and existing laws. Therefore, amendments to expand the role of the Ombudsman are unnecessary.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (11:05): With the government having substantially adopted the recommendations of the Joint Standing Committee on Cyber-Safety in the amendments which it proposes to move later in this debate, the opposition is satisfied that the safeguards are sufficient and for that reason will not be supporting the Greens amendment.

The TEMPORARY CHAIRMAN (Senator Boyce): The question is that Australian Greens amendment (3) on sheet 7143 be agreed to.

Question negatived.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:05): I move government amendment (7) on sheet BL210:

(7) Schedule 1, page 21 (after line 14), at the end of the Schedule, add:

34 Transitional provision for item 18—ongoing domestic preservation notices

Despite the insertion of section 107H into the Telecommunications (Interception and Access) Act 1979 made by item 18 of this Schedule, an issuing agency may not give a carrier an ongoing domestic preservation notice under that section before the end of the period that:

(a) starts on the day this Act receives the Royal Assent; and

(b) ends 90 days after that day.

Amendment (7) delays the commencement of the ongoing preservation notices until 90 days after the bill receives royal assent. This amendment does seek to ensure carriers and carriage service providers have sufficient time to comply with this bill's requirements. Industry currently provides historic preservation to agencies pursuant to general obligations in the Telecommunications Act. Telecommunications industry participants that are currently compliant with the Telecommunications Act will remain compliant with the historic preservation provisions in this bill. The proposed amendment will provide industry with sufficient time to ensure compliance with requests for ongoing preservation. The bill does not prescribe any particular capability or methodology for enabling preservation, meaning that the industry does have flexibility regarding compliance. This proposal responds to recommendation 13 of the committee report.
Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (11:07): I want to reiterate what I said in my second reading speech. The opposition is concerned at the insufficiency of consultation with carriers and carriage service providers and the relatively brief period which they will have to alter their arrangements so as to accommodate the changes that the bill introduces. The amendment extends the period for the commencement of the bill after royal assent from 28 days to 90 days. That is a significant improvement in the government's original position. We do not think that it is long enough in order to enable the industry to adapt to the requirements of the bill, but nevertheless because it is a significantly better situation than in the original bill we support the amendment.

Senator LUDLAM (Western Australia) (11:08): The Australian Greens will support this government amendment. I think Senator Brandis indicated this is an improvement over the original drafting of the bill. What we learned from telcos and ISPs during the original inquiry last year was just how difficult these obligations will be. The minister has also just acknowledged that part of the reason for the 12-month delay in bringing this bill to the chamber was finding chamber time, and I can understand that as it has been a crowded session, but he also indicated that further industry consultations were needed in order, presumably, to come up with this amendment among others. So the concession that the industry might need 90 days to get the implementation regime right is an important one, and of course an additional 12 months has elapsed since those positions were put, including to us, by representatives of industry. So we will support this amendment. Also, I will foreshadow that Green amendments (4), (1) and (2), which we will shortly be debating, go further and I will speak to them in some detail. I do not think the government has given this adequate consideration but I might make some additional comments when we are debating the Greens amendments that are to come.

Question agreed to.

Senator LUDLAM (Western Australia) (11:09): by leave—I move Greens amendments (1), (2) and (4) on sheet 7143 together:

(1) Clause 2, page 2 (after table item 1), insert:

1A. Schedule 1, items 1 to 33
The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.

1B. Schedule 1, item 34
The day this Act receives the Royal Assent.

(2) Clause 2, page 2 (table item 2, 1st column), omit "Schedules 1 and 2", substitute "Schedule 2".

(4) Schedule 1, page 21 (after line 14), at the end of the Schedule, add:

34 Transitional provision—temporary exemption from compliance with preservation notices

(1) The Communications Access Co-ordinator may exempt a carrier from the obligation to comply with sections 107H and 107N of the Telecommunications (Interception and Access) Act 1979 (as inserted by this Schedule) if the carrier makes an application to the Communications Access Co-ordinator for an exemption under subitem (2).

(2) An application must:

(a) be in writing; and

(b) be received by the Communications Access Co-ordinator before the day item 1 of this Schedule commences;

(c) specify the period (not exceeding 15 months from the day item 1 of this Schedule commences) for which the exemption is requested; and

(d) include an implementation plan setting out:

(i) the changes or developments the carrier considers that it needs to implement in its
telecommunications systems and networks in order to comply with domestic preservation notices and foreign preservation notices; and

(ii) the processes and procedures that the carrier proposes to implement to make the changes or to undertake the developments necessary to comply (including, but not limited to, information on build, installation, configuration, integration, delivery and testing); and

(iii) the timeline for implementation of the changes and developments; and

(iv) any other matters that the carrier considers relevant.

(3) In deciding whether to grant a carrier an exemption under subitem (1), the Communications Access Co-ordinator must have regard to the following matters:

(a) any information contained in the exemption application, including the implementation plan;

(b) the technical feasibility of the carrier being able to comply with domestic preservation notices and foreign preservation notices without making the changes or undertaking the developments set out in the carrier's implementation plan.

(4) Subitem (3) does not limit the matters to which the Communications Access Co-ordinator may have regard in determining whether to grant an exemption under subitem (1).

(5) Before making a decision whether to grant an exemption under subitem (1), the Communications Access Co-ordinator must consult with the carrier and the ACMA.

(6) If a carrier makes an application under subitem (2) and the Communications Access Co-ordinator has not made a decision on the application, and communicated that decision to the carrier, within 90 days after receiving the application, the Communications Access Co-ordinator is taken to have granted an exemption to the carrier under subitem (1) for the period specified in the application.

(7) If a carrier makes an application under subitem (2), the carrier is exempt from complying with sections 107H and 107N of the Telecommunications (Interception and Access) Act 1979 (as inserted by this Schedule) for each day falling on or between:

(a) the day item 1 of this Schedule commences; and

(b) the day the Communications Access Co-ordinator makes (or is taken to have made) a decision on the application.

(8) A carrier may make an application to the ACMA for a review of a decision by the Communications Access Co-ordinator to refuse to grant an exemption under subitem (1).

(9) An application for review must be made within 21 days after the Communications Access Co-ordinator notifies the carrier of the refusal to grant an exemption.

(10) The ACMA may affirm, vary or set aside the decision to refuse to grant an exemption.

This amendment allows for exemptions—effectively it allows telcos to apply for extra time to fulfil requests. It acknowledges that the basic regime will be 90 days, as amended by the government and supported by the Greens. But it also says that in some cases telcos should be able to apply for an extension of time. I do not think this is at all unreasonable. Preservation of data is a new mechanism. It will require carriers to retain communications and traffic data at least until a stored communications warrant is obtained. There is no direction in the bill on how carriers could handle such data or on the interface standards between industry and law enforcement agencies.

I did not accuse the government of introducing a great big new tax in my debate last night. I was wondering, rhetorically, to Senator Mason, who was also making a contribution, why the coalition were not running that line. It seems to be the sort of thing they enjoy doing. However, let us take the minister up on that. Minister, you said that this will be on a cost recovery basis and will not be passed on to consumers. Can you tell us how that is going to work?
Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:11): As I understand it, within the legislative system that service providers operate under, they can already charge a law enforcement fee, so it comes back to whatever the costs are. They are then returned to the particular law enforcement agency which uses the service on a cost recovery basis.

Senator LUDLAM (Western Australia) (11:11): I thank the minister for his answer. So effectively this will just add whatever additional costs there are relating to data retention to the existing costs that telcos can levy on, or request be recovered from, the law enforcement agency making the request. That is my understanding. Would we need to trawl the annual reports for the various agencies to find out what those costs are? Let’s pick one as an example. For the Australian Federal Police, who do publish a detailed annual report, what are the current costs and what are the anticipated additional costs once this regime has been implemented?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:12): I think Senator Ludlam has mixed two issues again. It is in relation to what would, in part, be within the warrant. So it is not retention. I indicated during the summing up speech that the retention issue has been referred to what I call the PJ inquiry. The issue is that what is subject to the cost recovery is that which is contained in the warrant—in other words, what is being sought. So it is not a general retention cost that is being faced by the industry service provider.

Senator LUDLAM (Western Australia) (11:13): Minister, correct me if I am wrong or if I am using language that is too broad. My understanding is that one of the things this bill is bringing about is effectively targeted data retention. So the matter that has been returned to the PJC is data retention for everybody for years across all platforms for all data. That is one of the matters that has caused the most controversy. I understand very well that this bill does not do that. This bill effectively applies a data retention regime in a narrowcast kind of way. It allows a law enforcement or intelligence agency to order a telco to trap data for a very narrow range of people who are suspected of certain things. Minister, is my understanding of the bill incorrect?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:14): You invite me to say ‘yes’, but the targeted protection of the content of the communication is what we are aiming for. It is not the general retention of data. So I do think we are talking about different things. What we are talking about is the targeted protection of the content of the communication which will be subject to a warrant—which is then subject to the cost recovery arrangements—not a general retention of data per se. As I have said, we have referred that off to the PJ inquiry. It is complex, I know. It is an interesting point you raise but it is not the subject of this legislation.

Senator LUDLAM (Western Australia) (11:14): Minister, in order to be completely clear about the operation of the bill, let us say that we are talking about someone who is a target of a particular investigation who meets the thresholds for a stored communications warrant or an interception warrant. I make a phone call. In addition to the fact that there is a phone call which involves an exchange between me and
somebody else, there is also then a cloud of metadata or traffic data that is created at the same time. This includes simple things like the billing information, the IP address if it was a VoIP call, latitude and longitude location data and various other forms of data, including basic things like the date and time that the call was made and who it was to. Is the minister seriously saying that all that the agencies would be interested in is the voice call itself and that the telcos will still be free to discard the rest of that metadata or traffic data according to current practice? Surely, the intelligence agencies or the police would be hoping that all of that metadata would be retained, because that is very important, I would have thought.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:16): This is where technical issues really come to the fore. But, as you understand, of course metadata can take different forms depending on the nature of the communication—whether it be an email, whether it be an SMS or whether it be a phone call from a hard line or a phone call from a mobile phone. All of it has different types of metadata attached to it. Some conform to some of the issues that you raise. Geospatial data can include issues around an email and the IP address where it came from. The authorities may be able to access it if it has been preserved as part of that communication. If it has not been preserved then they are not requiring it. So it only concerns the stored communication. I will traverse this more broadly: if the data is preserved then it is able to be accessed through a warrant; but if it has not been preserved then it is unable to be accessed.

Senator LUDLAM (Western Australia) (11:17): Thank you, Minister; that is helpful. So with something like an email, the recipient of the email and the time that I wrote it by necessity would be preserved. You are not asking telcos to do anything that they are not already doing in terms of preserving forms of data that might otherwise just be thrown over the side, at this stage? Is that correct?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:18): You are not opening up a chink there when you say 'at this stage' to suggest that we may be contemplating it. In relation to this legislation the short answer is no.

Senator LUMLAM (Western Australia) (11:18): I know that you were contemplating it because you have referred precisely that for the entire Australian population over to the PJC; however, that is a debate for another day. That may explain why there is no direction in the bill on how carriers should handle such data or the interface standards between industry and law enforcement agencies. That is an extremely important point. If you have left that ambiguous, it means that it is not then incumbent on the telcos to hold onto this material in the first place. That is a very important point. I suspect it will ease their minds.

I would like to quote briefly from one of the people—this fellow works for an ISP—who has been in touch with us about what it means practically from an engineering point of view. This is somebody who has experience. He is obviously working in jurisdictions that have already signed up to the European convention. He writes:

Just because of Article 17 of the European Convention, requires providers to be able to identify the *path* that data travelled doesn't mean that is feasible, cost effective, nor proportionate.

A simple example. There's a technology called a "load balancer" which service providers use to distribute incoming requests for data/information...
across a wide range of actual computers. Rather than use a single computer to serve a web page, or deliver email, a provider will use hundreds or thousands, and then put a specialised device, called the load balancer, in front of the thousands of individual machines.

From the consumer/public point of view, there's "one computer"—but for the provider, there are a multitude.

The problem here is that MOST load balancers, out of necessity of the technology, must manipulate the data packet as it arrives from the Internet and is distributed to the thousands of computers inside the provider's domain.

What this means is that the *path* the data took at the point where both traffic and content data may be logged and capable for preservation orders to be executed does not *contain* that vital piece of data.

He says:

I ran into difficult issue countless times: The national intelligence service would demand that we provide "thing X" as per the legislation. I would point out that "thing X" did not exist in the Internet context in general, and, for their specific case, the target wasn't using any sort of technology that made that remotely possible. They demanded "thing X" regardless. I said I couldn't deliver as it was impossible. They said (jokingly, I hope) "Fine, we'll just take you out to a field and shoot you then."

I wonder whether that phrase is to be found in the explanatory memorandum. I could not find it. He says:

I am pretty sure they were kidding, but it's the mentality here that I'm trying to capture. As service providers we respond to the whims of our customers as to the technologies we may or may not choose to implement, but at the end of the day, we may change on a time, as technologies are created well outside of our scope of influence and control. Facebook. Twitter. Google+. None of these were invented here, none of these are controllable by service providers.

He goes on further about ongoing collection and retention of data under the European Convention on Cybercrime. He says:

In the case of the Cybercrime legislation, the requirement was for providers to, in essence, take what they currently had about a given target and make a one-time snapshot of all data. Anything on the hard drives of the provider, anything in the customer database, anything in the billing systems, and securely store it for the mandated time period.

The amount of work to generate this snapshot of data was phenomenal. Lawmakers (no offence) often have the perception that providers have a single unified "system" and it's as simple as drag-and-drop to put everything you have about a person/target onto a CD.

In reality, there are dozens to hundreds of systems, none of which may be connected to each other, and none of which may have the same way of indexing the data. For example, the mail servers may use "username" or "username@blah.com" or some other key to find/locate stored data—but the billing system may be a unique number such as ... And the customer relationship system may be based on some other parameter.

Point is, it was a phenomenal amount of work to FIND the data, taking hours to days depending on what specifically was requested, and even though the data was securely preserved.

It is not reasonable to request nor expect service providers to perform a preservation AS an interception, and the interception legislation does not typically cover the data that preservation orders do.

I am sharing this in some detail with the Senate in order to explain why we believe it is appropriate to provide telcos with a process that would allow them to say, 'We need more time'. The amendment outlines a clear process that safeguards an oversight to ensure that the telcos are not simply refusing to cooperate.

I ask the minister to again take a look at why we are doing this. This is not a vexatious amendment. This is something that we have drafted after extensive discussion with those in the telco sector who are obviously very keen to uphold their legal
obligations to people investigating serious crimes. They are not seeking to avoid those obligations; they are saying, 'What you're asking to do is technically very, very complex.' I would ask the minister to contemplate whether a simple cut-out as we have proposed here, with some checks and balances. It might actually save quite a bit of money. I ask again: does the minister have any idea how much, in addition, it is likely to cost by way of these cost recovery orders, given that you are potentially handballing some very complex and difficult matters to people who may not necessarily be in a position to do what law enforcement agencies are asking?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:23): I want to deal with the amendment in total. The government does not agreed to the creation of an exemption regime regarding compliance with preservation notices. Proposed amendment (4) goes to the same issues as the proposed stored communication amendments. The Attorney-General's Department has been, as I think I said in the summing up speech, working with telecommunications industries on implementation issues for an extended period.

Because industry currently offers historic preservation on an informal basis, industry typically has systems in place that are sufficient to comply with the requirements of this bill. To further accommodate industry, government amendments will be proposed to give industry more time to comply with ongoing preservation notices. The Attorney-General's Department will, however, continue to work with industry regarding any outstanding issues.

Additionally, the Council of Europe Convention on Cybercrime does not include an allowance for a domestic extension regime. A longstanding exemption regime would, in the government's view, substantially delay Australia's ability to accede to the convention. All of that tells us that it is time to look at how we can put in place this legislation to accede to the convention, but that does not prohibit how we continue to work with industry to ensure that the costs to the system—that is, what has been going on before—are typically on an informal basis where they have been able to comply with the systems under this legislation.

Senator LUDLAM (Western Australia) (11:25): By way of closing out this section of the debate, I think the minister is making a grave mistake. What penalties would apply to an ISP that failed to hand material over within the statutory time frame?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:26): There is no penalty.

Senator LUDLAM (Western Australia) (11:26): So what happens to a service provider that fails to hand material over on time if there is no penalty? Do you ask them again, do you seek a statement of reasons, would you give them an extension of time? Why not mandate that in the bill. If there is some sanction, can you describe what it is?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:26): I suspect you are not proposing an amendment for sanctions. There is no sanction. What we do is work cooperatively with the ISP to obtain the information that we can.
The TEMPORARY CHAIRMAN (Senator Boyce): The question is that Australian Greens amendments (4), (1) and (2) on sheet 7143 be agreed to.

Question negatived.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:27): by leave—I move together government amendments (8) to (11) on sheet BL210:

(8) Schedule 2, item 27, page 29 (lines 9 and 10), omit paragraph 15D(3)(b), substitute:

(b) the offence:

(i) is punishable by imprisonment for 3 years or more, imprisonment for life or the death penalty; or

(ii) involves an act or omission that, if it had occurred in Australia, would have constituted a serious offence within the meaning of section 5D of the Telecommunications (Interception and Access) Act 1979;

(9) Schedule 2, item 41, page 32 (line 32) to page 33 (line 5), omit paragraph 180B(3)(b), substitute:

(b) the authorised officer is satisfied that the disclosure is reasonably necessary for the investigation of an offence against the law of a foreign country that:

(i) is punishable by imprisonment for 3 years or more, imprisonment for life or the death penalty; or

(ii) involves an act or omission that, if it had occurred in Australia, would have constituted a serious offence within the meaning of section 5D of the Telecommunications (Interception and Access) Act 1979; and

(c) the authorised officer is satisfied that the disclosure is appropriate in all the circumstances.

(10) Schedule 2, item 41, page 33 (lines 24 to 27), omit paragraph 180B(6)(a), substitute:

(a) reasonably necessary for the investigation of an offence against the law of a foreign country that:

(i) is punishable by imprisonment for 3 years or more, imprisonment for life or the death penalty; or

(ii) involves an act or omission that, if it had occurred in Australia, would have constituted a serious offence within the meaning of section 5D of the Telecommunications (Interception and Access) Act 1979; and

(11) Schedule 2, item 41, page 34 (lines 3 to 6), omit paragraph 180B(8)(a), substitute:

(a) reasonably necessary for the investigation of an offence against the law of a foreign country that:

(i) is punishable by imprisonment for 3 years or more, imprisonment for life or the death penalty; or

(ii) involves an act or omission that, if it had occurred in Australia, would have constituted a serious offence within the meaning of section 5D of the Telecommunications (Interception and Access) Act 1979;

Amendments (8) to (11) make minor changes to the threshold for the serious offences that Australia is able to provide prospective telecommunications data to a foreign country. The change will ensure that Australia complies with article 33(2) of the cybercrime convention. As the system is currently drafted, prospective telecommunications data is available domestically for the investigation of serious offences as defined in the interception act and for offences punishable by at least three years imprisonment. For foreign purposes, prospective telecommunications data is currently only available for the investigation of a foreign offence that is punishable by at least three years imprisonment. In most cases, offences that meet the definition of serious offence in the interception act also meet the requirements of being punishable by at least three years imprisonment. However, as the definition of serious offence includes some offences punishable by less than three years imprisonment, there are
some offences that meet the domestic threshold but do not meet the foreign threshold. This difference would technically breach article 33(2) of the cybercrime convention and the government, therefore, seeks to remove this difference and ensure compliance with the convention.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (11:28): These amendments reflect recommendations made by the Joint Select Committee on Cyber-Safety. They are appropriate amendments and the opposition supports them.

Senator LUDLAM (Western Australia) (11:29): The Greens will of course support these amendments because, without them, the legislation would be completely redundant. The minister was being a little coy. This is a drafting error that would have invalidated the entire purpose of the bill—just to spell it out. We should all take some responsibility for that, including me. I was part of the inquiry held by the Joint Select Committee on Cyber-Safety so I guess I will shoulder a share of the responsibility for not noticing that the European cybercrime convention and the bill that would enact it into Australian law are in contradiction as it stands.

The European cybercrime convention requires that the signatories apply to serious offences, and that means that the bill as originally drafted would not have complied. It would not have allowed us to accede. So these amendments expand the reach of the bill from offences punishable by imprisonment of three years or more to offences that are a serious offence within the meaning of section 5D of the TIA Act 1979. That was something that was raised by neither the bill's critics nor the committee that considered it. So these amendments correct an error that would have made this entire exercise redundant—much as I must admit I feel like the entire inquiry of the Joint Select Committee on Cyber-Safety has been rendered redundant because the government has barely paid any regard to the amendments that it proposed.

So we will support this amendment. I suspect it was simply an innocent drafting error. Then we will move on to the next substantive Greens amendment.

Question agreed to.

Senator LUDLAM (Western Australia) (11:30): by leave—I move Greens amendments (1) to (10) on sheet 7232:

(1) Schedule 2, item 41, page 32 (line 3), at the end of subsection 180A(3), add "in relation to an offence that is punishable by imprisonment for at least 3 years".

(2) Schedule 2, item 41, page 32 (line 13), after "country", insert "in relation to an offence that is punishable by imprisonment for at least 3 years".

(3) Schedule 2, item 41, page 34 (line 22), after "country", insert "in relation to an offence that is punishable by imprisonment for at least 3 years".

(4) Schedule 2, item 41, page 35 (lines 1 to 19), omit subsection 180D(2), substitute:

(2) The authorised officer must not authorise the disclosure of the information or documents to the Organisation unless he or she is satisfied that the disclosure is appropriate in all the circumstances and is reasonably necessary for the performance by the Organisation of its functions.

(3) The authorised officer must not authorise the disclosure of the information or documents to an enforcement agency unless he or she is satisfied that the disclosure is appropriate in all the circumstances and is reasonably necessary:

(a) for the enforcement of the criminal law in relation to an offence that is punishable by imprisonment for at least 3 years; or

(b) for the enforcement of a law imposing a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:
(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units; or

(c) for the protection of the public revenue in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units.

(5) Schedule 2, items 54, 55 and 56, page 39 (lines 5 to 19), omit the items, substitute:

**54 Paragraph 313(3)(c)**

Repeal the paragraph, substitute:

(c) enforcing the criminal law in relation to an offence that is punishable by imprisonment for at least 3 years;

(ca) enforcing a law imposing a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units;

(cb) assisting the enforcement of the criminal laws in force in a foreign country in relation to an offence that is punishable by imprisonment for at least 3 years;

**54A At the end of paragraph 313(3)(d)**

Add "in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units;".

**54B At the end of paragraph 313(3)(e)**
Add "in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units."

55 Paragraph 313(4)(c)
Repeal the paragraph, substitute:

(c) enforcing the criminal law in relation to an offence that is punishable by imprisonment for at least 3 years;

(ca) enforcing a law imposing a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units;

(cb) assisting the enforcement of the criminal laws in force in a foreign country in relation to an offence that is punishable by imprisonment for at least 3 years;

55A At the end of paragraph 313(4)(d)
Add "in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units;".

55B At the end of paragraph 313(4)(e)
Add "in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units."

56 Application of amendments made by this Part
(1) The amendments made by items 54, 54A and 54B of this Schedule apply to help given by a carrier or carriage service provider on or after the commencement of this item.

(2) The amendments made by items 55, 55A and 55B of this Schedule apply to help given by a carriage service intermediary on or after the commencement of this item.

(6) Schedule 4, page 42 (after line 8), after item 1, insert:

1A At the end of subsection 177(1)
Add "in relation to an offence that is punishable by imprisonment for at least 3 years".

1B Subsection 177(2)
Repeal the subsection, substitute:

Enforcement of a law imposing a pecuniary penalty

(2) Sections 276 and 277 of the Telecommunications Act 1997 do not prevent a disclosure by a person (the holder) of information or a document to an enforcement agency if the disclosure is reasonably necessary for the enforcement of a law imposing a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:

(a) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if
the contravention is committed by an individual; or

(b) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units.

Enforcement of a law for the protection of the public revenue

(2A) Sections 276 and 277 of the Telecommunications Act 1997 do not prevent a disclosure by a person (the holder) of information or a document to an enforcement agency if the disclosure is reasonably necessary for the enforcement of a law for the protection of the public revenue in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(a) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(b) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units.

1C At the end of subsection 178(3)

Add “in relation to an offence that is punishable by imprisonment for at least 3 years”.

1D Subsection 179(3)

Repeal the subsection, substitute:

(3) The authorised officer must not make the authorisation unless he or she is satisfied that the disclosure is reasonably necessary for:

(a) the enforcement of a law imposing a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units; or

(b) for the protection of the public revenue in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units.

(7) Schedule 4, item 3, page 43 (lines 7 to 17), omit subsection 181A(3), substitute:

(3) Paragraphs (1)(a) and (2)(a) do not apply to a disclosure of information or a document if the disclosure is for the purposes of the authorisation, revocation or notification concerned.

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

(3A) Paragraphs (1)(a) and (2)(a) do not apply to a disclosure of information or a document if the disclosure is reasonably necessary:

(a) to enable the Organisation to perform its functions; or

(b) to enforce the criminal law in relation to an offence that is punishable by imprisonment for at least 3 years; or

(c) to enforce a law imposing a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units; or

(d) to protect the public revenue in relation to an offence that is punishable by imprisonment
for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units.

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

(8) Schedule 4, item 3, page 44 (lines 3 to 13), omit subsection 181A(6), substitute:

(6) Paragraphs (4)(a) and (5)(a) do not apply to a use of information or a document if the use is for the purposes of the authorisation, revocation or notification concerned.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the Criminal Code).

(7) Paragraphs (4)(a) and (5)(a) do not apply to a use of information or a document if the use is reasonably necessary:

(a) to enable the Organisation to perform its functions; or

(b) to enforce the criminal law in relation to an offence that is punishable by imprisonment for at least 3 years; or

(c) to enforce a law imposing a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units; or

(d) to protect the public revenue in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the Criminal Code).

(9) Schedule 4, item 3, page 45 (lines 3 to 13), omit subsection 181B(3), substitute:

(3) Paragraphs (1)(a) and (2)(a) do not apply to a disclosure of information or a document if the disclosure is for the purposes of the authorisation, revocation or notification concerned.

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

(3A) Paragraphs (1)(a) and (2)(a) do not apply to a disclosure of information or a document if the disclosure is reasonably necessary:

(a) to enable the Organisation to perform its functions; or

(b) to enforce the criminal law in relation to an offence that is punishable by imprisonment for at least 3 years; or

(c) to enforce a law imposing a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units; or

(d) to protect the public revenue in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a
contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units.

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

(10) Schedule 4, item 3, page 46 (lines 1 to 10), omit subsection 181B(6), substitute:

(6) Paragraphs (4)(a) and (5)(a) do not apply to a use of information or a document if the use is for the purposes of the authorisation, revocation or notification concerned.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the Criminal Code).

(7) Paragraphs (4)(a) and (5)(a) do not apply to a use of information or a document if the use is reasonably necessary:

(a) to enforce the criminal law in relation to an offence that is punishable by imprisonment for at least 3 years; or

(b) to enforce a law imposing a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units; or

(c) to protect the public revenue in relation to an offence that is punishable by imprisonment for at least 3 years or in relation to a contravention that would, if proved, render the person committing the contravention liable to:

(i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 180 penalty units if the contravention is committed by an individual; or

(ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 900 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the Criminal Code).

These amendments are about setting a standard or threshold for the privacy of Australians to be invaded. It is really an enough-is-enough amendment. This is the one I indicate in advance I will divide on, because I think this one is extremely important. If agencies want to authorise the disclosure of information or documents containing the access and disclosing the data of all Australians, there needs to be some limit, there needs to be a reason and a purpose for doing it. I suspect that, when the minister jumps up, he will say this has nothing to do with the European cybercrime convention, and I disagree.

Senators will know—because I have raised it in here before—the TIA annual report 2010-11 notes on page 63 that there are just under a quarter of a million requests for access to telecommunications data, or ‘traffic data’ as it is referred to in the convention, and that in fact there is no criminal threshold applied at all. So I put a question to the minister in my second reading contribution around whether the threshold was changing from seven to three. But the fact is there is no threshold at all for agencies in Australia currently to be hoovering up vast quantities of private data, not the contents of the communication—so not reading the email, not listening to the phone call but everything else in the cloud of metadata that surrounds our
communications. Open season has been declared, and the law has not kept up.

This batch of amendments will limit that access, limit that disclosure and provide the same threshold for access to that material that should apply—and justifiably does apply—to agencies snooping on our phone calls. I do not think a case has been made or is supportable that it is appropriate that, on no accusation of any crime whatsoever and no penalty threshold, agencies should be able to know where you are at every moment of every day if you are carrying a phone around. That is the status quo. There are a quarter million of these requests. In the ACMA 2010 annual report there were 549,859 authorisations for access to existing information under the TIA, which is mentioned on page 78 of that document. Vast quantities of material are being requested.

I will confine my remarks specifically to the TIA Act, although I am interested to note the half-million requests for information that ACMA is reporting on. I do not know that it would be possible, but maybe the minister can help us clarify the degree of overlap between the requests under the TIA Act and those reported in the ACMA annual report. But I recognise we may not have the officers we need at the table. Minister, maybe at the outset you could indicate whether the government will or will not be supporting the need for some threshold to apply. If the government will not be supporting these amendments—I fear that my hopes are about to be crushed yet again—how can the minister justify that?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:33): Can I rephrase it? I do not think I am crushing your expectations in relation to the legislation. I think it is legislation that goes to a very worthwhile purpose that you ultimately do support. To deal with the threshold issue, though: it is only accessible for the lawful purposes of enforcing criminal law, protecting public revenue and enforcing pecuniary penalties. It is not as you describe. That is the threshold. It is an obvious threshold and it works. For the record, we will not be supporting your amendments to change that threshold.

Senator LUDLAM (Western Australia) (11:34): Minister, can you describe for us why the government believes it is appropriate for these enormous volumes of data to be disclosed not just to ASIO and not just to the AFP but also to welfare agencies, the tax office and all the other agencies that are listed on the TIA's annual report? Why should there be no penalty threshold or no reason or cause given? I asked the Federal Police in the estimates round before last, and they did me the courtesy of tabling the application documents that their officers need to go through in order to access this data. There are four different forms. There are several hundred officers within the AFP who are authorised. It is not going to a magistrate. There is no independent judicial oversight. A quarter of a million of these requests were made with no criminal activity needing to be accused or alleged. Can you explain why you think it is fine that this gigantic loophole is allowing such a broad range of agencies to snoop on the Australian population and why you would oppose an amendment that would at least require some criminal activity to be alleged? We think it is good enough for our phone calls to be listened to that a seven-year-penalty threshold should apply. Why for detailed locational tracking data do we think no penalty needs to apply at all and no crime needs to be alleged? How on earth is that justified by this government?
Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:36): I think we are mixing two issues. I will say it again for the record. Under this legislation it is only accessible for lawful purposes of enforcing criminal law, protecting public revenue and enforcing pecuniary penalties. But this is about a criminal investigation under this legislation. The broader issue of appropriateness that you talk about in terms of the agencies themselves is something the PJCIS is looking into. It is looking into whether it is appropriate for those agencies—and I have no doubt that you will be making submissions, if not through you then on behalf of the people that you represent.

Of course, the difficulty, I think, with the amendment that you have proposed really comes down to this: if we were to adopt the three years then, if you look at the state and territory offences punishable by fewer than three years imprisonment, you find certain drug possession and importation offences under division 308.1 of the Criminal Code; you find a number of offences relating to dealing with the proceeds of crime at 400.7; you find threatening to harm Commonwealth public officials at 147.2; you find making false statements in warrant applications; you find certain breaches of the Spam Act; and you find victimisation of disabled people in breach of human rights legislation under the Disability Discrimination Act. I would have thought you would not want to exclude some of those by dint of, I think, many of the constituents that you represent. So the problem with the type of amendment you have proposed is that it provides a line that then means that it will exclude some offences that, in fact, should be looked at, whereas this threshold that we use means that big law enforcement agencies have the opportunity to investigate criminal law. Of course, on the broader issue—to reiterate—about whether or not that is appropriate for what you describe as the quarter of a million requests, it is far better for the PJCIS to have a look at that.

Senator LUDLAM (Western Australia) (11:39): I will acknowledge the minister's point that this is a bigger issue. I think you said it is a completely separate issue; I do not take that on. But it is bigger than the nature of the bill that we are debating, and that is why I have brought it here, because it is the first opportunity that we have had to correct what I think is a really nasty loophole. I wonder whether the minister would then entertain—this will probably seem a little bit like haggling on the fly—a one-year penalty threshold to bring those offences within the ambit of the amendment, because I acknowledge that there are at least some of the things that the minister mentioned in his list that it would be a shame to knock out. But nonetheless there needs to be some allegation of a criminal act occurring. At the moment there is not.

Why does the minister think it is appropriate to have that criminal penalty applied for a phone to be tapped but for your detailed location every hour of the day and night to fall outside the net? That is the point that I continue to come back to: we treat metadata or traffic data as though it is of some lesser nature. You can build an utterly complete and intimate picture of somebody's life just using the traffic data—every transaction, everything you take out of the library, every phone call you make, every interaction on social media and everywhere you go. All of that is being, I think, quite casually disregarded as traffic data, and we are allowing a huge range of agencies open season on it. That is a big deal. Again, it is a little bit like the cluster munitions debate that went until late yesterday. Calling this a
loophole really undercooks it a bit. This is not a loophole; this is just a gigantic void. It is a gap, and it is something that I think requires a legislative fix.

By all means, Minister, I will prosecute these arguments, although I do not have a formal membership on the PJC. I have made a detailed submission, and I look forward to hearing your direct response to it. This is a huge void in our present legislative protections of people's privacy. It is not enough to just dismiss it and say it is traffic data and it is of less consequence. It really matters. It matters as much as people having their phone calls snooped on or their emails read. It matters a great deal. If the minister wants to jump up and say, 'We'll meet you halfway: we'll make it a 12-month criminal penalty,' I will move the amendment myself. Otherwise I commend this amendment as it is to the Senate.

I would be delighted to hear Senator Brandis's view on this as well. As the senior legal representative of the party that stands for the individual against the power of the state, Senator Brandis, you have been silent so far. Do you think it is appropriate that this wide range of agencies can make a quarter of a million requests every year—it is probably higher now; the figures I have are 18 months old—for these detailed locational and intimate personal details of people's lives? We apply protections to their phone calls and we apply protections to reading emails, but no such protections apply to these vast new categories of data that did not exist in 1979, when this act was first drafted.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (11:42): I think I am going to disappoint you again. The difficulty with what you are proposing is, first, that I would never countenance something on the fly where we have not had an opportunity of looking at the implications of it. Reducing it to one year makes you think about what offences might be under that. I know one of them would be the victimisation of a disability, which is around six months. I do not think that that should fall outside of it particularly, but I do not choose that individual one. One of the challenges is that the way a threshold is set is that it operates where there are checks and balances within the independent agency, the Australian Federal Police, when they manage the system through. You have the opportunity at estimates to see how they ensure that they undertake due diligence.

The second, or perhaps the third, issue is that you may start by investigating what might be a low-threshold criminal offence, if I may use that expression, but as you progress through it it may widen. What you would not want to do is to stop it at the early point where, because there was a threshold of one year, information at hand related only to, perhaps, an offence that carried a penalty of less than one year. So the officer then may have considered that there were broader implications but, because the evidence or information to date may stop that, it is finished at that point, which means that there are implications. The reason there is the threshold the way it is written is to ensure that there is not a net—it is not a net in that sense—where things can fall through.

You would want to ensure that for effective law enforcement purposes in meeting our obligations under the cybercrime legislation so that we can accede to the convention and do everything in a way that meets our convention obligations.

I think, though, that the broader issue about whether it be a year, or two years or three years is a relevant consideration for the PJCIS to consider more broadly, bearing in
mind that they will also grapple with some of the issues that I have raised about why one year may not work. But I do expect that they will bring more guns to bear on that issue and come up with a recommendation that is workable.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (11:45): Senator Ludlam, as you rightly and generously point out, I represent the one party in this chamber that cares about the rights of the individual.

I am a little constrained in being able to respond directly to you, because I am a member of the Parliamentary Joint Committee on Intelligence and Security. That committee, as you know, is currently seized of a reference into this and related matters. The consideration of that reference is about to begin, and I do not want to anticipate what that inquiry will disclose. But may I point out that, as the minister has also observed, this scheme does operate on a threshold. The government's amendments do take into account the principal recommendations of the inquiry of the Joint Select Committee on Cyber-Safety, on which I know you served. The opposition is not persuaded that the legislation in its ultimate form—that is, with the government's amendments—is defective in the way that you identify.

But you do raise a fair point, Senator Ludlam, and it is, no doubt, a point that will be considered in the forum of the Parliamentary Joint Committee on Intelligence and Security inquiry.

Senator LUDLAM (Western Australia) (11:46): I thank both the minister and the shadow minister for their contributions. I respect that Senator Brandis does not want to prejudice the outcome of a live inquiry, on which I would have preferred to have been the crossbench senator. But, nonetheless, we leave it in the hands of the committee. I have, as I have indicated, made a submission.

I would just like both the minister and the shadow spokesperson to bear in mind then that we think it is appropriate that—from recollection, I believe it is—a seven-year threshold would apply for somebody listening in on your live phone call and we believe that a three-year criminal penalty threshold should apply for somebody reading your email. But for these other vast categories of data we think that no threshold at all is appropriate—or, that is the question that I suppose I am putting to the chamber: why do we privilege those two classes of information to be protected from intrusion by agencies investigating serious matters, and yet for these other categories of data that paint a thorough, complete and intimate picture of your life we do not think there should be any protections at all?

I get the sense that this amendment is going to fail, so I will not detain the chamber any longer; but this matter is going to need to be revisited either through the work of the PJCIS or otherwise. This cannot stand as it is. I commend the amendment to the chamber.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (11:48): Senator Ludlam, as I said a moment ago, I think you do make a good point, and can I assure you that the point you make—and which I assume you have made in your submission to the Parliamentary Joint Committee on Intelligence and Security inquiry—will be examined carefully. I will undertake to you to ensure that the committee does specifically address itself to the issue that you have raised.

The TEMPORARY CHAIRMAN (Senator Boyce): The question is that
Australian Greens amendments (1) to (10) on sheet 7232 be agreed to.

The Committee divided. [11:53]

(The Chairman—Senator Boyce)

Ayes....................9
Noes....................28
Majority................19

AYES

Di Natale, R
Ludlam, S
Rhiannon, L
Waters, LJ
Wright, PL

NOES

Back, CJ (teller)
Boyce, SK
Bushby, DC
Colbeck, R
Edwards, S
Feeney, D
Furner, ML
Ludwig, JW
Marshall, GM
McLucas, J
Pratt, LC
Smith, D
Sterle, G
Thorp, LE

Question negatived.

Senator LUDLAM (Western Australia) (11:55): by leave—I move Greens amendments (5) to (8) on sheet 7143 together:

(6) Schedule 2, item 41, page 32 (after line 14), at the end of section 180A, add:

(6) In considering whether the disclosure is appropriate in all the circumstances for the purposes of paragraph (5)(b), the authorised officer must have regard to the grounds for refusing a request for assistance covered by section 8 of the Mutual Assistance in Criminal Matters Act 1987.

(7) Schedule 2, item 41, page 34 (after line 22), after paragraph 180C(2)(a), insert:

(ab) if the disclosure is in relation to a prosecution or punishment of a person charged with, or convicted of, an offence in respect of which the death penalty may be imposed in a foreign country—the foreign country has given an assurance that the death penalty will not be imposed in relation to that person for that offence; and

(8) Schedule 2, item 41, page 34 (after line 23), at the end of section 180C, add:

(3) In considering whether the disclosure is appropriate in all the circumstances for the purposes of paragraph (2)(b), the authorised officer must have regard to the grounds for refusing a request for assistance covered by section 8 of the Mutual Assistance in Criminal Matters Act 1987.

This set of amendments goes to the authorisation for access to telecommunications in relation to crimes or accusations that would attract the death penalty. As I indicated last night in the second reading speech, there is cross-party consensus in Australia that reflects a broad community view that a state does not execute its own citizens. It does not kill its own citizens no matter how terrible the crime.

But of course this bill is about data sharing with regimes that do still allow themselves to murder their own citizens so we need to look very, very carefully, in my view, at how we would potentially transfer data—and this is not abstract, because this does occur—to a regime where capital punishment may in fact exist for the crime
under discussion. A reasonable number of submitters and non-government, civil society organisations submitted to the cybersafety committee that this bill actually does explicitly authorise Australia to potentially contribute to data collection activities that would send someone to death, and we need to be very, very careful.

The committee generated a recommendation on this, recommendation 6, which said the following:

That the disclosure of telecommunications data to a foreign country in the context of police to police assistance at the investigative stage and in relation to criminal conduct that, if prosecuted, may attract the death penalty, must:

(a) only take place in exceptional circumstances and with the consent of the Attorney-General and the Minister for Home Affairs and Justice; and

(b) each Minister must ensure that such consent is recorded in a register for that purpose.

I do not believe, and the Greens do not believe, that that recommendation went far enough to uphold Australia's opposition to the death penalty. The disclosure of telecommunications data to a foreign country in relation to an offence that carries the death penalty should be refused in the absence of a written assurance by the foreign country that the death penalty will not be imposed or carried out in this instance.

The range of offences, some of them very serious crimes—crimes of terrorism, organised crime, mass murder—varies from country to country obviously. Some of our neighbours in the Asia-Pacific region routinely murder people for drug offences that would be met in Australia with penalties of detention for various lengths of time. However we need to respect and pay very close attention to the fact that this bill will take telecommunications data to be used as evidence well beyond Australian criminal jurisdiction into places where capital punishment is levied.

As it stands, recommendation 6 leaves the door open for Australian law enforcement agencies directly or inadvertently to support an overseas prosecution which would lead to an execution, and I believe this is totally unacceptable. So what these amendments do in effect is require that, yes, our door is open to assist other jurisdictions in prosecuting crimes that would attract the most severe penalty that a state can levy against one of its own, but not if capital punishment is to be applied. We are seeking written confirmation that Australian assistance will of course be levied but only if the death penalty will not be called for in that instance.

We are not seeking to stand in the way of legitimate prosecutions, but it would give me grave concern to know that Australian law enforcement or intelligence agencies were contributing to a prosecution that saw someone put to death. So I strongly commend the amendments to the chamber.

The TEMPORARY CHAIRMAN (Senator Sinodinos): Senator Brandis.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (11:59): I think this is the first occasion I have had the honour to address you as Acting Deputy President and Temporary Chairman, Senator Sinodinos.

The TEMPORARY CHAIRMAN: And I hope you will behave accordingly!

Senator BRANDIS: Indeed I will, having been long accustomed to do so in an earlier age. Once again, Senator Ludlam makes a worthwhile and, if I may say so, considered point. The difficulty, though, Senator Ludlam, is this. What we are dealing with here is a scheme of interjurisdictional cooperation to promote the enforcement of a particular species of law which innately has an international character—that is,
cybercrime—and it is inevitable that for such a scheme of interjurisdictional cooperation to be effective it is going to have to involve at the very least the United States and, as well, other countries which have the death penalty including, for example, Japan.

Nothing in this legislation exposes Australian citizens to capital punishment, which seems to be implicit in your objection. If we are going to say we will not participate in interjurisdictional cooperation with any jurisdiction which has the death penalty, then the efficacy of this scheme is going to be defeated. This is an issue—as you know and which you adverted to in your contribution—that the Joint Select Committee on Cyber-Safety addressed. It was addressed in recommendation 6 and that recommendation has been adopted by the government in a proposed amendment which the opposition supports. It means that additional safeguards, including the fiat of the Attorney-General, are necessary in the event that there is to be cooperation with a country in circumstances where potentially the access to this material could—not would, but could—figure in the prosecution of a capital crime.

That seems to me to be a sensible recommendation that does not strike at the efficacy of the scheme. But to go further and to say that we should not cooperate at all with death penalty countries, including countries like the United States or Japan or others which impose the death penalty, really would, I think, thwart or significantly prejudice the capacity of this scheme to operate as an effective transnational scheme. For that reason the opposition will not be supporting your amendments.

Senator LUDLAM (Western Australia) (12:03): In case this exchange between Senator Brandis and me is having the impact of moving the government towards the position of supporting our amendments, I will put a few brief remarks before I seek the views of the minister.

I would like to call Senator Brandis on two inaccuracies in the comments that he just made; they are subtle but I believe they are important. Firstly, Senator Brandis, you referred to the prosecution or the investigation, if you will, of cybercrime. That is one of the things I referred to last night in my speech in the second reading debate. This bill has nothing to do with cybercrime. This bill is about any kind of crime that happens to involve some telecommunications aspect. For this bill to be invoked there needs to be some element of telecommunications, but it is not at all just about the prosecution of cybercrime. This is not about data theft or hacking or identity theft or using the internet to do terrible things. This is about prosecution of anything at all in which any kind of telecommunications device might be involved. So it is significantly broader, I believe, than the bill title would lead a casual observer to suggest.

The second matter, which I think is probably much more substantive, is that I am not at all proposing—and these amendments would not give effect to this—that a country that invokes the death penalty on its own citizens will not have any cooperation from Australia. We are not saying that at all. We are saying that, investigation by investigation, if a matter for which capital penalties apply is being prosecuted and our assistance is being sought, we would seek a written undertaking from that foreign jurisdiction that capital punishment will not be sought in that individual instance. So this is not a blanket approach; this is a very, very targeted approach. We would cooperate with all jurisdictions that are signatories to the convention, as is the intention of the act, whether they murder their own citizens or not. But in the instance that a capital penalty
may be applied and Australian assistance is being sought, we want a written undertaking for that one instance, case by case.

I want to lay those two potential misconceptions to rest in your mind, Senator Brandis, in the hope that it might perhaps persuade you to bring your coalition over the line to vote with the Australian Greens when we put these amendments to the vote.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (12:05): Senator Ludlam, it remains my view that the special provision which the government's amendment makes in relation to the use of data in the prosecution of capital crimes—that is, the requirement of the Attorney-General's fiat and the requirement that that discretion be exercised favourably to the supply of data only in exceptional circumstances—addresses the concerns you raise.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (12:06): I will not canvass the issues that Senator Brandis argued; I think they are correct and they are the reason the government also does not support the amendments moved by Senator Ludlam. In addition, I would add for the record that the AFP does have guidelines in place to govern the assistance provided to international law enforcement agencies where possible death penalty implications arise. The AFP's practical guidelines on international police-to-police assistance in potential death penalty situations ensure there is an accountable process for the AFP to use when considering authorising the provision of police-to-police assistance to foreign countries. They are publicly available; I am sure you have them at your disposal.

The guidelines expressly require senior AFP management to consider prescribed factors before providing assistance in matters which raise a death penalty implication and each request is assessed on a case-by-case basis.

In addition to this I could also add, in unison with Senator Brandis, that restricting or refusing to provide information has the potential to undermine the existing cooperative environment that relies on reciprocity in assistance. It may result in some countries electing to discontinue their bilateral arrangements with the AFP. This would severely restrict Australia's ability to continue to deliver effective transnational law enforcement; it would undermine what this legislation seeks to put in place.

Question negatived.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (12:08): by leave—I move government amendments (12), (13) and (14) on sheet BL210 together:

(12) Schedule 2, item 41, page 36 (lines 7 and 8), omit all the words after "regard", substitute "to whether any interference with the privacy of any person or persons that may result from the disclosure or use is justifiable, having regard to the following matters:

(a) the likely relevance and usefulness of the information or documents;

(b) the reason why the disclosure or use concerned is proposed to be authorised.

(13) Schedule 2, item 50, page 37 (after line 21), after paragraph 186(1)(ca), insert:

(cb) if the enforcement agency is the Australian Federal Police, and information or documents were disclosed, under an authorisation referred to in paragraph (ca), by an authorised officer of the Australian Federal Police during that year to one or more foreign countries:

(i) the name of each such country; and

(ii) the number of disclosures under such authorisations; and
(14) Schedule 2, page 37 (before line 22), before item 51, insert:

50A Subsection 186(2)

After "subsection (1)", insert ", other than the information referred to in paragraph (1)(cb)".

The government proposes to amend the bill to address recommendations 4 and 9 of the committee. Amendment (12) makes explicit the particular elements of privacy that authorised officers must consider before deciding that an authorisation for disclosure of information or documents under the interception act is justified. The purpose of the change is to provide detailed guidance to officers about the factors and privacy considerations which must be weighed before making an authorisation. The requirement will ensure that detailed privacy considerations are made for every disclosure of telecommunications data and this responds to recommendation 4 of the committee.

Amendments (13) and (14) strengthen reporting requirements in the interception act for instances where the AFP have disclosed telecommunications data to a foreign country. The proposed amendments would require that the AFP to give the minister an annual report that includes a list of the countries to which disclosures of telecommunications data were made and the number of disclosures that were made to each country. Consistent with international practice, sensitive information that could compromise investigations or harm cooperative relationships with foreign law enforcement agencies is not proposed to be made public. This amendment responds to recommendation 9 of the committee report.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (12:10): As the minister says, these amendments reflect measures which improve safeguards and accountability mechanisms within the scheme of the legislation in response to recommendations of the Joint Select Committee on Cyber-Safety and for that reason they have the opposition's support.

Senator LUDLAM (Western Australia) (12:10): The Greens will also be supporting these amendments although we do not believe that go far enough. I will briefly put some comments on the record as to why.

The final amendment on the running sheet from the Australian Greens, which we will deal with next, gives these provisions and the recommendations of the Joint Select Committee on Cyber-Safety some teeth. I will discuss those briefly we get to that amendment. The Australian Privacy Foundation, which pays pretty close attention to these matters, has said:

…the bill goes well beyond what is necessary in order to accede to the Convention, and the extensions are highly privacy-abusive.

I acknowledge that the government has at least sought to give some regard to those considerations. In the face of highly privacy-abusive provisions this amendment is therefore an attempt, I believe, by the government to strengthen privacy within the act. It does so by requiring regard to be had:

… as to whether any interference with privacy is justifiable, relevant and useful and the reason why the disclosure or use concerned is proposed to be authorised.

I must confess to strong disappointment that this is as far as the government is prepared to go. I would hope that that would be the case already—that that is already in effect. I do not understand why we would not only intercept—and therefore interfere with privacy—when it is justifiable, relevant and useful; so it is good that this language is in here. This goes back to the amendment that we debated before about who will watch the watchers. The ombudsman had some
sensible proposals; the chamber chose to dice those an hour or so ago, so we will not have any oversight as to who is paying regard. The amendment does implement, in part, a recommendation of the committee. I will briefly quote from the relevant section of the committee's report:

In relation to AFP authorised disclosures, it is reasonable that something more than statistics is provided. The reporting could easily identify the countries that have received historic or existing telecommunications data without jeopardising any investigation or the privacy of any individual. Without such reporting, neither the Attorney-General nor the public will know with which countries the police are cooperating.

In as far as they go, these amendments are worthy and worth supporting. I will discuss again in detail, when we come to the final set of Greens amendments to this bill, why it is simply not good enough that people have regard. How do we know what regard is paid? There is no oversight there; there is no way of safeguarding behaviour. We know that cultures develop within organisations that are not at all respectful of privacy. We will be supporting these amendments; we will not detain the chamber any longer on this set of government amendments. It is at least a nod in the direction of the valuable work that the Joint Select Committee on Cyber-Safety conducted on this bill—and those nods were pretty scarce.

Question agreed to.

Senator LUDLAM (Western Australia) (12:13): I move Australian Greens amendment (9) on sheet 7143:

(9) Schedule 2, page 39 (after line 19), at the end of the Schedule, add:

Part 4—Refusal of assistance
Mutual Assistance in Criminal Matters Act 1987

57 After paragraph 8(2)(f)

Insert:

(fa) the foreign country's arrangements for handling personal information (within the meaning of the Privacy Act 1988) do not offer a level of privacy protection similar to that afforded in Australia; or

As foreshadowed, this amendment effectively says that if a foreign country's standards for handling personal information do not offer a level of privacy similar to that offered in Australia, the personal information should not be shared. I would have hoped that that would be an utterly uncontroversial proposition. Perhaps we might seek to wordsmith it some, but I suspect that this amendment is not going to survive the next 20 minutes. Many submissions to the inquiry made to this point: the Australian Privacy Foundation, the New South Wales Council for Civil Liberties, the Electronic Frontiers Australia organisation, which does great advocacy in this space; and the New South Wales Office of the Privacy Commissioner. These are not people to be lightly disregarded, I would have thought.

They argued that personal information about Australian citizens should not be made available to foreign countries for the purpose of prosecuting individuals or for conduct which would not constitute an offence in Australia. Amendment (9) provides some grounds for refusal of assistance.

Perhaps Minister Ludwig will tell us, as he did in response to my comments previously, that, if we start refusing applications for help left, right and centre, the whole system will seize up. That is not the point I am making. The point I am making is that, given the medium that we now operate in, privacy protections can be absolutely rock-solid in Australia, but, if we are sharing data—intimate, personal details of people's lives—with law enforcement and intelligence agencies in foreign jurisdictions with lower standards of privacy protection than we have in Australia and that material
leaks, then the privacy protections that they are afforded here in Australia are worthless, because that information can be back in Australia at the speed of light. That material can travel around the world uninhibited, at the speed of light, and there is nothing you can do to put this sort of stuff back in the box once it is out.

So I would have thought it is entirely sensible to say that the provisions that Australians have come to expect in Australia for the privacy of personal data have been insufficient to prevent the leaking of people's personal data in recent times, within the last 10 days or so—let alone larger breaches such as those by Sony and so on in recent months. Why would we allow this material to be shared with jurisdictions where privacy protections are even lower than the inadequate protections afforded to people here?

This is our final amendment. I will speak briefly on the final government amendment, but this is my last word on this bill. This is a missed opportunity. It should have been folded into the work that Senator Brandis and his colleagues were undertaking on the joint committee and it was not. There does not appear to be a huge rush. The government sat on its hands for 12 months. Why not take another two months to make sure that the proper context for this debate is considered by people who are going to spend three or four months evaluating submissions from the public, as is appropriate, forming a view and making recommendations? But this will have already gone through. We will have missed the opportunity to consider this bill in its proper context. I think the Australian Greens have proposed worthwhile amendments. None of them have been accepted by either the government or the coalition. I look forward to the day when there are more than half of us in this chamber so that some of these matters can be incorporated into the bill. I thank the chamber.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (12:17): The government does not support the amendment. In part, the committee's recommendations expressed concern about the handling of personal information by foreign countries. The government does share that concern. It is clear that the bill retains all the existing protections relating to accessing information at the request of a foreign country. Where new access procedures are provided, they include their own additional protections. Under the bill, any impacts on an individual's privacy as a result of a mutual assistance request must be considered at multiple stages of the process. Those privacy considerations include how the information may be used by a foreign country. Disclosures of content and noncontent information for both domestic and foreign purposes can only occur following an assessment of how much the privacy of a person would be likely to be interfered with by the use or disclosure.

In examining the amendment proposed, it would be impractical to assess each country's privacy policies and practice before responding to every request. It is more appropriate for the safeguards under the mutual assistance act to apply to formal requests and for the AFP to assess the privacy implications for particular types of disclosures and consider the nature of the alleged offence. Following on from that, any information provided to foreign agencies under the amendments would only be done subject to the following conditions: that the information will only be used for the purpose for which the foreign country requested the information, that any document or other thing containing the information will be
destroyed when it is no longer required for those purposes, and any other conditions which can be determined in writing by the Attorney-General. When considering a request, the Attorney-General has a broad discretion to refuse mutual assistance under 8(2)(g) of the mutual assistance act. If there were any undue impact on an individual's privacy, then the request could be refused on that ground.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (12:20): I cannot let the opportunity pass without calling attention to the bizarre paradox that these concerns about the effect on privacy of the leaking of information come from the senator who is the principal apologist in Australia for the egregious Julian Assange, who has been responsible for a greater invasion of the privacy of individuals, extending to putting their lives at risk, than any other individual of our age.

Nevertheless, addressing Senator Ludlam's specific point, there is no reason why this amendment should be utterly uncontroversial, because it is utterly unnecessary and, indeed, inappropriate. It is unnecessary for the reasons explained by the minister, because there is already embedded within the legislation a range of safeguards which address the merits of the point that Senator Ludlam makes. But it is also inappropriate for this reason: if the legislation were to be amended as the Greens would have it, then it would require that Australia refuses cooperation in this interjurisdictional cooperative scheme to any country that does not have the same privacy protections as Australia. It may very well be that there are countries that are participants in this interjurisdictional scheme that do not have identical privacy protections to those that exist in Australia but, nevertheless, whose participation in the scheme is necessary to make it effective. Equally, there may be instances of countries where, in particular application of the operation of the scheme, the privacy protections are so inadequate by our standards that the discretion will be used, as the minister has outlined, a discretion already embedded within the legislation, to decline to cooperate. But for Australia to say, arrogantly, to the rest of the world, 'We will not participate at all in an international, interjurisdictional scheme dealing with crime and the commission of crime in cyberspace with any country that does not have identical privacy protections to Australia,' is, I think, an extremely foolish and, if I may say so, arrogant proposition. Perhaps, Senator Ludlam, you should speak to your friend Mr Assange and give him a pious lecture about protecting people's privacy from leaks.

Senator LUDLAM (Western Australia) (12:23): I cannot help but take the bait—

The TEMPORARY CHAIRMAN (Senator Sinodinos): I thought you might.

Senator LUDLAM: as I presume Senator Brandis was hoping that I would, and draw the distinction which appears to have escaped Senator Brandis: that the threshold of transparency that we apply to states for obvious reasons is qualitatively and quantitatively different to the threshold of privacy that we should apply to private citizens and individuals. As a citizen in a democratic country, we should be afforded privacy online and offline. States, on the other hand, particularly democratic states—if we have pretensions to be one and to be in military alliances with similar democratic states—should also afford transparency and accountability to their citizens. That is part of our role as a chamber, but there are many other ways of doing that.

I presume Senator Brandis and his colleagues would have been interested to know what our government was up to and
what the United States government was up to: seeking DNA samples and seeking to surveil diplomats to the United Nations. War crimes were disclosed—indiscriminate killings by our great and powerful ally, the United States—in theatres to which Australian troops were deployed. I do not think you can argue, Senator Brandis, that those disclosures, which were run in the mainstream press on front page after front page for months, were not strongly in the public interest.

We can perhaps take this debate elsewhere, because I recognise that it is somewhat a departure from the clauses we are debating, but to me this bill is a powerful instance of governments getting that balance wrong. We are seeing in the United States at the moment with this assault on whistleblowers under the Espionage Act, which was drafted during the First World War, while in Australia there is no sign of formal legislative protections at a federal level for whistleblowers, that states are seeking zero disclosure of their internal matters while seeking total transparency of the private affairs of their citizens, including us. That is where I think the balance is wrong and where we need as legislators and as citizens of Australia, and as global citizens, in effect, to push back and retain some measure of privacy for ourselves. I think this bill gets the balance precisely wrong. I commend our final amendments to the Senate.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (12:25): I am not going to rise to the bait, Senator Ludlam, but let me make a correction. I do not think anybody could rationally maintain that the disclosure by WikiLeaks of information held by governments which referred to individuals, including in many instances service personnel, was other than against the interests of many of those individuals, including those service personnel, and was, albeit the disclosure of documents held by governments, an appalling breach of privacy and safety of those individuals. That is what Senator Ludlam condones and, indeed, champions.

I do not think, though, that my colleagues will thank me for diverting this slightly arcane debate about the terms of this legislation into a broader discussion about the puerilities and narcissism of Mr Julian Assange, so I merely indicate, for reasons I have explained, that the opposition does not see the point of this amendment and will oppose it.

Question negatived.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (12:27): by leave—I move government amendments (15) and (16) on sheet BL210 together:

(15) Schedule 5, item 2, page 47 (lines 9 to 11), to be opposed.

(16) Schedule 5, page 47 (after line 18), at the end of the Schedule, add:

4 Application of amendments made by items 1 and 3

(1) The amendment made by item 1 of this Schedule applies to acts or things done on or after the day this Schedule commences.

(2) The amendment made by item 3 of this Schedule applies in relation to an authorisation made on or after the day this Schedule commences.

I appreciate the opportunity to move these amendments. Amendments (15) and (16) make technical amendments. I will not go into what they do; I am sure everyone is familiar with them. They ensure the completeness of the existing application provisions in schedule 5 of the bill. I commend the amendments to the Senate.
Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (12:28): As the minister says, these amendments are of a technical and operational character. We support them.

The TEMPORARY CHAIRMAN (Senator Sinodinos): The question is that item 2 of schedule 5 stand as printed.

Question negatived.

Bill, as amended, agreed to.

Bill reported; report adopted.

Third Reading

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (12:29):

I move:

That this bill be now read a third time.

The Senate divided [12:34]

(The Acting Deputy President—Senator Sinodinos)

AYES

Back, CJ
Brandis, GH
Bushby, DC
Colbeck, R
Crossin, P
Farrell, D
Furner, ML
Ludwig, JW
Madigan, JJ
McEwen, A
McLucas, J
Parry, S
Pratt, LC
Sinodinos, A
Stephens, U
Thistlethwaite, M
Urquhart, AE

Bishop, TM
Brown, CL (teller)
Cash, MC
Collins, JMA
Edwards, S
Feehery, D
Gallacher, AM
Lundy, KA
Marshall, GM
McKenzie, B
Moore, CM
Polley, H
Singh, LM
Smith, D
Sterle, G
Thorp, LE

NOES

Ludlam, S
Rhiannon, L
Waters, LJ
Wright, PL

Milne, C
Stiethert, R (teller)
Whish-Wilson, PS

Question agreed to.

Bill read a third time.

Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator BIRMINGHAM (South Australia) (12:37): I am not sure if I have yet had the pleasure, Mr Acting Deputy President Sinodinos, of noticing you in the chair. Congratulations on your elevation to such lofty heights.

The ACTING DEPUTY PRESIDENT (Senator Sinodinos): Thank you.

Government senators interjecting—

Senator BIRMINGHAM: I trust that is due respect being shown to the chair from the other side of the chamber. It is a pleasure to speak on the Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012. I assure the chamber that that will be the last time I read the full title of the bill. This bill establishes the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development. Hereafter I will refer to it as 'the committee', given that I do not think the acronym IESCCSGLCMD is terribly likely to catch on. I do note, though, that the Senate
committee in its inquiry elected to go with the slightly less cumbersome 'IESC' but the committee will suffice here.

The committee will have a number of functions relating to the consideration and better understanding of the impact on our water resources of both coal seam gas developments and large coalmining developments. All of us in this place are aware that there is a very significant level of community concern, which has seen us arrive at the point of the establishment of this committee. I acknowledge that the processes involved in the committee's establishment have been undertaken in a relatively cooperative way across different parts of the political divide. The committee will provide scientific advice to government ministers—whether Commonwealth, state or territory—at their request in relation to proposed coal seam gas developments or large coalmining developments that are likely to have a significant impact on water resources.

The committee will also provide advice to government ministers at their request about how bioregional assessments should be conducted in areas where such developments are either proposed or being carried out. It will provide advice about priorities for research projects to improve scientific understanding of the impacts of such developments on water resources; it will publish information about improving the consistency and comparability of such research and about the standards for protecting water resources from the impacts of such developments; and it will collect, analyse, interpret and disseminate scientific information in relation to the impacts of these developments on our water resources.

The bill requires the Commonwealth environment minister to obtain advice from the committee in relation to coal seam gas development or large coalmining development in certain circumstances where the minister believes that the development is likely to have a significant impact on water resources and where the development may have an adverse impact on a matter protected by a provision of part 3 of the EPBC Act—essentially any matter of national environmental significance.

Finally, the committee is part of a framework which also involves, through COAG, the establishment of the National Partnership Agreement on Coal Seam Gas and Large Scale Coal Mining Development. This agreement came into effect on 14 February 2012 and was signed by the Commonwealth government as well as the governments of Queensland, New South Wales, South Australia and the Northern Territory.

The technology to extract coal seam gas, or gas from coal seams, has been in existence for some period of time—decades, even—but it is only in relatively recent years that coal seam gas development has occurred in Australia. The coal seam gas industry is in the process of growing substantially and has seen very rapid growth, particularly in Queensland and New South Wales. Already around 90 per cent of Queensland's gas is supplied from coal seam gas operations, and there is an expectation that in Queensland alone the industry will deliver around 18,000 jobs and around $850 million annually in royalties. We are dealing with a very significant industry and an industry with the potential to make a significant contribution. Nationally, coal seam gas represents approximately 10 per cent of Australia's gas production.

As coal seam gas and the coal seam gas industry have grown, and proposals for it have grown even further, the public debate has also grown quite considerably, as I noted in my remarks at the outset. The debate...
around coal seam gas operations and environmental impacts has especially focused on the impact that coal seam gas operations have on groundwater resources. I have been involved in some aspects of this debate and am aware of many of these issues. Back in 2009 I chaired one of the earliest parliamentary inquiries that looked into these concerns—the Senate Environment, Communications and the Arts References Committee inquiry into the impacts of mining in the Murray-Darling Basin. It included hearings in Gunnedah in New South Wales and in Oakey in Queensland, and it reported in December 2009.

The committee made a number of proper and fitting recommendations to state governments, given that it is state governments who have the responsibility for the land management issues associated with mining and mining exploration. I do hope that participants in this debate will continue to remember and reflect upon the point that it is indeed the power and the domain of the states in this Commonwealth of ours to legislate and regulate the primary areas of mining and minerals exploration and development. During the inquiry there were some recommendations directed to the Commonwealth government. I place on the record, and I certainly hope that the minister responds when concluding this debate, that it concerns me that nearly three years after the conclusion of that inquiry a response from the government remains outstanding. It is little wonder that community concern about the operation of the coal seam gas industry is heightened, when they see processes of this Senate and of the parliament undertaken but then ignored by the government in terms of any responses being forthcoming from the government. It is commonplace and the expectation of this Senate that the government will respond to recommendations of Senate inquiries.

Debate interrupted.

**MATTERS OF PUBLIC INTEREST**

**The ACTING DEPUTY PRESIDENT (Senator Sinodinos)** (12:45): Order! It being 12.45 pm, I call on matters of public interest.

**Tasmanian Economy**

**Senator URQUHART** (Tasmania) (12:45): There has been a constant in the political debates over the past few years, a constant first pushed by the Liberal Premier from Western Australia and then followed by Liberal Premiers in Victoria, New South Wales and Queensland—a constant push not to search for ways and means to grow the wealth of our great land but to ruin 80 years of fiscal union and throw out the principle of horizontal fiscal equalisation; a push to throw out this equitable method of distributing finances across the Commonwealth and replace it with a simple per capita split. Unfortunately for our great country, this push has now consumed the Leader of the Opposition, Mr Abbott, and the Leader of the Opposition in the Senate, Senator Abetz.

Vital Tasmanian services that our community needs are at risk from Senator Abetz's meddling on this issue. On ABC radio in Tasmania on 26 July this year, Senator Abetz said that he wants Tasmania to get its fair share of the GST revenue. Senator Abetz could not give a guarantee that the principle of horizontal fiscal equalisation would remain. Instead, Tasmanian Senator Abetz stated that he understands Western Australia's concerns.

This is a classic case of trying to hedge your bet both ways. The concerns of Western Australia's Liberal Premier are unfounded. The state is rolling in cash from the mining
boom and the Liberals have no regard for the extreme negative effects of trashing our fiscal union.

I urge all in this place to support the principle that has been the bedrock of our fiscal union for the past 80 years, the principle of horizontal fiscal equalisation—a bedrock principle that has contributed to Australia weathering all storms, particularly, this current two-speed economy that is sapping manufacturing and low margin exports from the eastern states. Our system of horizontal fiscal equalisation seeks to ensure that all states and territories have the financial capacity to provide to their residents services of the same standard in areas such as education, health, transport and public safety. It does not mean that there will be equal services in each state; it is up to each state government to decide how best to spend its budget. But for each state government to even get to the starting line in providing decent services to its people, we need a fair system.

We have a fair system. We use HFE to distribute the goods and services tax—the state's tax, as it is known. The GST distribution relativities are calculated by the Commonwealth Grants Commission, an independent body. The method used by the Commonwealth Grants Commission is to take a per capita split of GST then adjust for two broad measures. It is these measures that the Leader of the Opposition, Mr Abbott, and the Leader of the Opposition in the Senate, Senator Abetz, would cast aside. The first is the expenditure need of the state. This takes into account a variety of factors that determine the costs of providing services in the state—for example, wages, population density and levels of disability. The second is the revenue need of the state. This takes into account a state's own sources of revenue—for example, land tax and mining royalties. In effect, the formula seeks to provide a relatively higher share of grants to states that have below average capacity to raise their own revenues and/or have to spend more to provide the same standard of public services as other states due to disadvantage or isolation.

Ironically, the parlous state of the Western Australian economy in the late 1920s stimulated the federal discussions for interstate financial transfers. The fact is that the Commonwealth Grants Commission was created for Western Australia's benefit. Mr Abbott and Senator Abetz need to understand that the principle of HFE has benefitted the state of Western Australia for most of the past 80 years. I quote the Western Australian Department of Treasury and Finance:

… in the early days of Federation, the Western Australian economy bore little resemblance to its present prosperous form. Isolated by geography and unable to exploit the free trade between States that resulted from the newly formed Constitution, it became necessary in 1925 for the Commonwealth to establish a Royal Commission into Western Australia's financial disabilities.

As a result, in 1933 the Commonwealth Grants Commission was formed to oversee a more equitable distribution of Commonwealth finances, which resulted in Western Australia being given the status of 'claimant State', and being in receipt of special grants from the Commonwealth for the next 30 years or so.

The fact is that Western Australia has spent most of Federation living off transfers from the more populous states.

A further history lesson: iron ore was not discovered in Western Australia until the fifties. The mining industry was then not established for another 20 years. Then a long-term decline in commodities prices meant that Western Australia still received a slight subsidy. In fact, in 2006, with gold pouring out of Kalgoorlie and iron ore being extracted from the Pilbara and the Kimberly,
Western Australia was still a claimant state. What Mr Abbott and Senator Abetz need to understand is that Western Australia has in effect used all of the other states for these years, biding its time and receiving its handouts, only for it to turn around now and foolishly seek to cut off its mates over in the east.

It has been estimated that a move to distribute GST on a per capita basis could lead to a loss of $630 million from Tasmania's annual budget—$630 million—each and every year. I could do a man, woman and child analysis but I will leave that to those opposite. Instead, I will focus on the impact on Tasmanian services. Cutting $630 million is equivalent to sacking 800 doctors, 3,000 nurses, 500 allied health professionals and 100 child protection staff combined.

These are job cuts and resultant losses to vital services that Tasmanians cannot afford. These are facts that Senator Abetz and Mr Abbott cannot ignore.

A review of the distribution of GST revenue was announced by the Australian government on 30 March 2011. This review was tasked with considering whether the current methodology of sharing GST revenue among the states will ensure that Australia is best placed to respond to structural and other challenges. Importantly, the review endorsed the principle of HFE. The focus of the review is on how the future challenges facing Australia will impact on equalisation. The challenges identified include continued globalisation, climate change, population growth and demographic change, the impact of technology, and the need to address Indigenous disadvantage.

The review definitely did not set out to undermine the principle of our fiscal union, HFE. Nor did it set out to take from those doing it tough and to give to the states that have solid revenues purely because of the location of mineral deposits. The idea set forth by the Western Australian Liberals and taken up by their eastern states' adopted son, Mr Abbott, that there should be a special deal for Western Australia surely is implying that Western Australians, though, are entitled to higher levels of finance for their schools and hospitals than someone in Rosebery, Zeehan or Queenstown—Tasmania's mining region. It implies that children who face extreme disadvantage due to isolation in this region of Tasmania should receive less support for their education than a child who is born in Western Australia. All this will achieve is to further entrench regional inequalities for future generations.

I applaud the tenacity of Tasmanian Premier and Treasurer, Lara Giddings, in her swift and comprehensive action to present Tasmania's case to the review. Tasmania's share of GST revenue equates to approximately 40 per cent of the state's total revenue. Tasmania receives slightly more than 1½ times its population share of GST revenue due to its inherent disadvantages. Examples of this disadvantage include: Tasmania's lower capacity to raise many types of revenue; the lower per capita gross state product and smaller tax base; Tasmania has an older population than the rest of the country, lower socioeconomic status and an above average proportion of Indigenous people; and Tasmania's isolation and population dispersion. It is logical that where population is as decentralised as it is in Tasmania, the costs of delivering services per person increases.

Senators may not be aware, but only about 45 per cent of Tasmania's population lives in the capital city, Hobart. Around 80 per cent of Western Australia's population lives in their capital city, Perth. Tasmanians are spread across our island: from the dairy farming in Circular Head to the mining and
fish farming on the West Coast, the grazing lands of the Midlands and the industrial hub of Bell Bay. Tasmania's geographic disadvantages cannot be understated. With the support of other states, Tasmania can continue to produce the high quality food and beverage products that we are famed across the world for.

But workers cannot produce these wares without adequate government services behind them: without a local school for their children to learn the basics of maths, science and language; without a doctor in case they are taken ill; without decent police and emergency services for times of crisis; and without decent roads and rail to connect each person to these services and to get their wares to market. The Tasmanian federal Labor team, led by Minister Julie Collins, has been very strong on this matter. At our recent Tasmanian state conference, Minister Collins moved a motion pushing for the maintenance of the HFE system. Importantly, this motion was supported by Australia's Treasurer, Wayne Swan, in his presentation to the conference.

The Labor Party, through the core of their leadership team, support the principle of HFE. It is in our DNA; we support a fair go for all Australians. That is why Labor are rolling out the pilots of the National Disability Insurance Scheme. It is why Labor instigated the Gonski review of school funding and why I and many other Labor members and senators are campaigning for its implementation. It is why we stimulated the economy during the greatest financial crisis since the establishment of the Commonwealth Grants Commission to save over 500,000 jobs and keep Australians working.

It is vital that the Tasmanian Liberal senators stand up to Mr Abbott on behalf of all Tasmanians. We have four Liberal senators from Tasmania, and each and every one of them needs to be knocking on Mr Abbott's door and telling him that it is not okay to sell out Tasmania. The Tasmanian Liberal senators need to unequivocally state whether or not they support the HFE method and whether they are willing to sell out Tasmanians and let Tony Abbott move the Liberals to a per capita method. Minister Collins has written to Senator Eric Abetz on behalf of the Tasmanian Labor team, asking him to make a commitment that he and his Tasmanian Liberal Senate team will support Tasmania and fight for the retention of the HFE method. We are yet to hear a response. The 800 doctors, 3,000 nurses, 500 allied health professionals and over 100 child protection staff whose jobs are on the line from the Abbott-led Liberals are yet to hear a response.

It is not enough to simply say that Tasmania will get a 'fair deal'. Mr Abbott's idea of a 'fair deal' would rip the heart out of the Tasmanian budget. It would rip the heart out of vital public services that Tasmanians depend on. Just this week, Mr Abbott continued his trash talking of Tasmania. Mr Abbott said in South Australia to his party's faithful that the state can become more like Western Australia or it can become more like Tasmania. This is petty politicking at its worst. My state of Tasmania produces many fine products and in many areas punches well above its weight. We have been hit hard by the global slowdown, the high Australian dollar caused by Western Australia's full speed ahead approach to mining and by the downturn in the forestry industry.

People often say that there is no hope left in Tasmania, that all the jobs are drying up and that they have to try and move interstate and find work. To that I point to the record $4½ billion worth of private sector investment, growing at a faster rate than any other non-mining state, and I highlight that
local businesses have invested more than $1½ billion in machinery and equipment over the past year, at a growth rate more than double the rest of the nation. Tasmanians have the desire, the skill and the courage to move our state forward. Senators, we must look beyond this current paradigm. HFE has served all states in Australia well. Just look to Europe to see the devastation of a monetary union without an efficient and equitable fiscal union. We must all commit to maintaining the principles of HFE.

Member for Dobell

Senator FIERRAVANTI-WELLS (New South Wales) (12:59): Mr Acting Deputy President Sinodinos, I too add my congratulations as a fellow New South Wales senator on your new position as an acting deputy president.

I rise today to relay to the Senate another chapter in the sad and sorry saga to do with the Central Coast Group Training skills centre that was to be established in the seat of Dobell. As the Senate would recall, on 21 March this year I asked Senator Kim Carr, representing Minister Garrett, a question in relation to documents that I was seeking pursuant to an order to production. Most specifically, I asked Minister Carr questions in relation to documents that I was seeking pursuant to an order to production. Most specifically, I asked Minister Carr questions in relation to correspondence that Mr Thomson had written to Minister Garrett on 20 July 2011 making unsubstantiated allegations about the interaction between Central Coast Group Training and the Department of Education, Employment and Workplace Relations. 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Specifically I asked Minister Carr questions in response to correspondence that Mr Craig Thomson wrote to Minister Garrett raising concerns about interaction between and DEEWR'. Given the stench that has surrounded this matter, clearly the balance of public interest demanded that these documents be released immediately and be released in an unredacted form. If this government had
nothing to hide, why did it refuse to release the documents under FOI and stonewall my attempts in the Senate to obtain them.

Given that the government was suppressing these documents, I then approached Wyong Shire Council and sought formal access to a range of documents under the New South Wales Government Information (Public Access) Act 2009. Lo and behold, the documents which the Australian Labor Party sought very much to hide from this chamber and from public scrutiny were produced for me by Wyong Shire Council. I have now received a comprehensive array of documents—which you can see from the folder in front of me—which make it blatantly clear that Mr Thomson has been playing a double game on the youth skills centre for a long time.

As I have long suspected, Mr Thomson has been outrageously duplicitous. On the one hand he was supposedly— and I stress 'supposedly'—supporting the youth job skills centre, while behind the scenes he was sabotaging the operation. Let me remind the Senate that this is the very jobs centre that Mr Thomson threatened on 15 July 2011 to stop when Greg Best, CEO of CCGT and a local councillor, made certain comments on local radio on the unrelated matter of the debacle of the GP superclinic on the Central Coast. Shortly thereafter Councillor Best received a text message from Mr Thomson which said, 'Bye-bye jobs incubator'.

Let me also remind the Senate that Mr Thomson had in March of that year also lobbied unsuccessfully for a job for his ex-wife at CCGT. It is clear that since then Mr Thomson has been assiduously working behind the scenes in what has emerged as a tale of revenge with the youth of the Central Coast as the pawns in this sad and sorry saga. Having now received these documents from Wyong council, it is clear Mr Thomson was trying to sabotage the skills centre to undermine CCGT's CEO and chairman and make sure that it would not go ahead as a joint venture between Wyong council and CCGT as was promised by Minister Albanese at the 2010 election. Despite the departmental correspondence affirming that it could not go ahead other than as a joint project as per the announcement, still Mr Thomson was working behind the scenes. His comrades in the council were putting up alternative proposals all designed to undermine the process behind the scenes.

Letters from Mr Thomson to Minister Garrett and to Wyong council’s general manager, Michael Whittaker, on 20 July 2011, five days after his threatening text message to Councillor Best, show the extent to which Mr Thomson was prepared to go to ditch this project. On 20 July 2011, Mr Thomson wrote to Mr Whittaker, the general manager, and said:

I am writing to request an investigation into the activities of Mayor Doug Eaton and Councillor Greg Best about potential conflicts of interest between their roles as councillors and their positions as Chairman and CEO of Central Coast Group Training respectively.

His base, unfounded and false assertion was that somehow Messrs Eaton and Best had, in a meeting with officers of DEEWR, given the wrong impression that they were representing both CCGT and the council and were seeking alternative funding proposals for the skills centre. Indeed, on that day Mr Thomson wrote to Minister Garrett in the same terms and copied this letter to the general manager at Wyong Shire Council.

Mr Thomson's letter to Minister Garrett is a litany of unsubstantiated allegations against then Mayor Eaton and Councillor Best for the sole objective of undermining their credibility with the objective, as I have said, of making sure that this project did not go ahead. The letter alleges that the council and
CCGT were in disagreement about the model for the skills centre and that Mayor Eaton did not represent his council's preferred position. Yet council did not resolve to terminate its involvement in the project until 10 August, some 20 days later—no doubt after strenuous lobbying by the member for Dobell, details of which I have already put on the record.

Mr Thomson's 'poison pen' letter to Minister Garrett also referred to other organisations in his area which could benefit from federal funds. So who could Mr Thomson have had in mind? I refer to a webpage for the member for Sydney, Tanya Plibersek, updated 12 July 2011, entitled 'Federal member for Sydney visits youthconnections.com.au', which contains photographs of Craig Thomson at Youth Connections' Tuggerah office. And guess who is the work placement officer at Youth Connections and who in 2010-11 was an employee of Youth Connections? None other than Mr Thomson's former associate Ms Criselee Stevens—yes, the very same one who was one of the stars of the infamous Fair Work Australia report into the HSU. Yes, the same Criselee Stevens who was paid with HSU funds to work on Mr Thomson's Dobell campaign and who was with Mr Thomson in Coastal Voice—that other scandalous episode in the sordid HSU saga—and who then joined his staff. Thanks to the institutional fast-forward by the Australian Electoral Commission, no action was taken against Mr Thomson and Coastal Voice. Given that the three-year limitation period is over, nothing will happen—all very interesting, and too coincidental given the incestuous connections of the whole sordid HSU/Thomson scandal!

What is very clear from Mr Thomson's letter to Minister Garrett is that he is angling for an out—namely, 'The funding promise that was made in the 2010 election should not go ahead with CCGT and let's proceed to alternative organisations and an alternative skills centre model.' So what hypocrisy by Mr Thomson when on 9 March this year he put out a press release entitled 'Thomson keen for youth skills project to go ahead' and saying:

I look forward to Wyong Council and Central Coast Group Training agreeing on the best option for a site and the exact model for the youth skills and employment centre in the very near future …

But, of course, 7.30 was onto his duplicity and machinations behind the scenes with Wyong Council to scuttle the project. This media release can only be described as duplicitous and treacherous given that the documents now show that, whilst Mr Thomson on the one hand was professing his undying support for the project, behind the scenes he was engineering its destruction.

So, Mr Thomson having approached Minister Garrett and the council for both entities to undertake an inquiry into alleged conflict of interest, let us see what both did. Having referred both these documents to Councillor Eaton and Councillor Best, I have been advised by both gentlemen that, as I suspected, they have never been formally or informally approached over these allegations by either DEEWR or the council. Clearly DEEWR ignored Mr Thomson's assertions, although they have been referred to in ministerial correspondence which I have previously raised. Clearly that did not deter DEEWR from continuing to press for the jobs incubator project to proceed in the form promised. Wyong Council's general manager responded to Mr Thomson on 5 August 2011. Incredibly, his letter refers to a meeting that Mr Thomson had with the council's internal ombudsman and various other council staff on 29 July 2011 in relation to Mr Thomson's complaint against Councillors Best and Eaton. Despite this, Mr Thomson was told that council was not the appropriate authority to consider any
complaint alleging breach of pecuniary interest and he was referred to the Director-General of Local Government should he wish to pursue the matter further. Alternatively, in relation to any potential breach of council's code, Mr Whittaker writes:

... there is presently insufficient grounds for me to trigger the commencement of the referral process under the Council's code.

So I come back to Minister Carr's response on 21 March:

We do know that the usual communications have occurred between local members of parliament and ministers in regard to progress on projects in their electorates. However—

and the minister goes on to give me certain assurances. Minister Carr, let me be very clear: Mr Thomson's letter of 20 July to Minister Garrett can in no way be described as 'usual communications'. It is a series of unsubstantiated allegations born of spite, designed to impugn the integrity of Messrs Eaton and Best and derail the jobs incubator.

The documents reaffirm Mr Thomson's unworthiness to be a member of parliament. They show the depths that he is prepared to stoop to in what has been a vicious and malicious vendetta against these two gentlemen, the project and CCGT.

They say, 'Birds of a feather stick together,' and so it is here. Not only did the Greens and Labor vote down a motion to suppress these documents; only recently they voted not to condemn Craig Thomson's misuse of HSU members' funds, as found by Fair Work Australia. What else can you expect from Labor senators, three-quarters of whom are ex-union bosses? But, most sadly of all, the Central Coast still does not have its youth skills centre. In an area where youth unemployment is so high, it is absolutely scandalous that this government has failed to deliver on this promise, two years after the promise was made. The government should be condemned for its failure to act on this project and Mr Thomson should be condemned for his treachery and double-dealing in the matter. The sooner an election is called the sooner the people of Dobell can be rid of Mr Thomson and the sooner they can put a close to what has been one of the most disgraceful chapters in Australia's political history and in the history of the seat of Dobell.

Murray-Darling Basin Plan

Senator RHIANNON (New South Wales) (13:14): The revised Murray-Darling Basin Plan released earlier this month cannot deliver a healthy future for the Murray-Darling Basin's rivers in New South Wales. The plan still falls short of ensuring the long-term survival of the rivers for the communities, industries and ecosystems that depend on it. At least $9 billion of public money is earmarked for the Murray-Darling. We must get this right.

For years now the demise of the Murray-Darling as a healthy river basin has caused a great sense of loss and sadness for many people in New South Wales, especially in times of prolonged drought. But there are signs of hope too. People see opportunities for renewal: economic diversification, increased research into river health, more resilient farming communities, enhanced food security and tourism opportunities. These hopes all rest on restoring a healthy working river system.

The Greens are working hard with community and environmental groups to achieve a sustainable outcome. The Greens water spokesperson, Senator Sarah Hanson-Young, has been a leading voice in her home state of South Australia for the campaign to restore the mouth of the Murray River and to increase environmental flows to sustainable levels in the upland states. At its heart, the Basin Plan needs to overcome the past
problems of overallocation or overuse in New South Wales. The Greens position has been consistently based on the best available science, to return a minimum of 4,000 gigalitres of environmental flows to the river system. Our priority must be to meet the overarching environmental objectives of restoring to full health the ecosystem functions of the rivers so that they can continue to thrive and support economic activity in the future. The challenge is made greater by the need to adapt to climate change, extreme weather events and the increasing likelihood of drought.

New South Wales is the largest upstream user in the Murray-Darling Basin. As such, it has a big responsibility to the entire river system and to the downstream water users. But things are not going well in New South Wales, where successive governments have been putting the brakes on water reform. Their recent actions can only be described as being in bad faith.

The New South Wales government currently backs a 2,100 gigalitre target, half of what the science has identified is needed. Inappropriate and inefficient water use by irrigators, industry and miners has placed unsustainable demands on rivers and groundwater in western New South Wales. The effects of drought and climate change, coupled with outdated and unsustainable water management practices, have pushed rivers to the limit, threatening the viability of agriculture and rural communities.

New South Wales needs to reform water allocations urgently. We must bring them in line with the best available science if we are to have any hope of securing the long-term health of rivers and their ecosystems to secure water supplies for smaller farms, towns and communities and to strengthen local economies.

Far from advancing these reforms, the New South Wales government is going backwards. Since coming to office in 2011 the New South Wales coalition government has done everything in its power to delay any significant change and to minimise the water volumes returned to the environment. The government’s latest claim to recover just three per cent of water over 10 years is a woefully inadequate response to the task at hand.

This year the New South Wales government slashed the budget of the New South Wales Office of Water, cutting $16 million from the Murray-Darling Basin Authority and with a further $8.9 million cut foreshadowed for the following two years. New South Wales coalition primary industries minister, Katrina Hodgkinson, wrote to the water minister, Mr Tony Burke, justifying the cuts as necessary to reduce the costs of water management, conceding that it would reduce water management services. The move rightly angered people in South Australia, who depend on New South Wales to do its share.

New South Wales irrigators have been vocal opponents of extra environmental flows being returned, claiming that it will devastate upstream towns along the Murray and Darling rivers which depend on irrigation for their livelihoods. The Greens are not without some sympathy for the uncertainty of their future. We all want the best outcome for future generations who will depend on the river. But the primary challenge is to find an environmentally sustainable outcome for the entire Basin. We need to balance the environmental and consumptive interests. The Greens remain convinced by the best available science that at least 4,000 gigalitres of water must be returned to the river system if there is to be a viable future for everyone who relies on it.
The Basin Plan would put the needs of the rivers first, and then let governments work with rural communities to adjust to the changes and to develop resilience, rather than try to preserve the status quo. Small agricultural irrigators will need financial assistance, and there will need to be industry reform to make the transition to a viable future with less water.

The real story is that with the correct strategy in place enormous benefits—environmental, economic and social—will be gained from restoring rivers to full health. The CSIRO recently estimated that returning 2,800 gigalitres to the Basin, which will not deliver the outcomes we need, would bring in between $3 billion and $8 billion. Further, it is estimated that the basin's 16 internationally significant wetlands contribute $2.1 billion to the nation each year.

Irrigator groups have claimed that 15,000 jobs will be lost across the Basin under the plan. But economic modelling released by the Murray-Darling Basin Authority last year showed that between 900 and 1,600 jobs across the Basin would be under threat by 2019. The Wentworth Group of Concerned Scientists have estimated that, at worst, job losses could be 200 per year, and draws on data which shows that 13,000 new jobs are currently being created each year across the Basin.

In June this year Minister Burke came under heavy criticism from the Auditor-General over $650 million awarded to private New South Wales irrigators from the federal government's $5.8 billion private infrastructure operators program—a war chest to increase water efficiency in rural Australia. The Auditor-General found that none of the project proposals had demonstrated how they met the program's economic, social or environmental criteria for improving the health of the Murray-Darling Basin. Baseline water levels were not established, and the projects did not identify the amount of water savings returned for the investment. These New South Wales irrigators received $650 million for water savings infrastructure where there is no way of showing what benefit it will have.

It is up to five times more costly to fund infrastructure projects than it is to buy back water.

It is also inequitable to give federal funding to New South Wales irrigators when irrigators in South Australia cannot access that money as they have already implemented water efficiency measures. New South Wales has been a major part of the problem, but instead of being part of the solution the big irrigators have turned an ecological crisis of their own making into a funding opportunity.

A more effective way to return environmental water to the Murray-Darling system in New South Wales is to buy it back. The Productivity Commission thought so too in 2010 when it reported on market mechanisms that the Australian government could use to diversify its water purchasing program. It found:

Rather than having a $5.8 billion program focused predominantly on infrastructure upgrades, it would have been more effective and efficient to use the sustainable diversion limits from the Basin Plan to determine the targets for reallocation in each catchment, use a buyback program as the sole means of easing the transition to those targets, (and) consider establishing a much smaller program to assist irrigators and related communities adjust to a future with less water, through the most effective means available, not just subsidies for irrigation infrastructure.

So did the economic consultants that prepared a report released in June by the
Department of Water Sustainability, Environment, Water, Population and Communities, who came to a similar conclusion. This was a survey of water entitlement sellers under the Restoring the Balance in the Murray-Darling Basin program. The report concluded:

Many irrigators, irrigation communities and other stakeholders are apprehensive about the Restoring the Balance program and the impact it may have on the livelihoods of communities … These perceptions contrast with the findings of this study and several other recent studies showing that water entitlement trading has delivered benefits to the Basin irrigators and irrigation communities, and that irrigation communities are better off with water trading than they would be without it.

This report also concluded that 'almost 80% of irrigators surveyed said that selling water to the Commonwealth was a positive decision'.

The state governments are due to respond very shortly to the revised Basin Plan. If the New South Wales government runs true to form, they will fail to support any increased environmental returns to the Murray-Darling, with dire consequences for the New South Wales river systems.

This week the Wentworth Group of Concerned Scientists criticised the revised Basin Plan. They maintain it should be withdrawn because it does not provide enough information to make an informed decision on the future of the river system. They are critical of the plan's ongoing failure to identify the volume of water needed for a healthy working river to cope with long dry periods and account for climate change. It still massively increases groundwater allocations by 1,700 gigalitres above current levels and allows further subsidy of the irrigation industry.

Under the revised Basin Plan, water buybacks have been deprioritised in favour of funding irrigation infrastructure works even though infrastructure is at least four times more expensive than purchasing water. The plan's new adjustment mechanism will lock in a bad environmental outcome. It will divert money from recovering water for the environment to consumptive uses by irrigators. The basic computer modelling creates a benchmark or target for flows for major sites located across the entire Basin to predict the outcome of the plan based on the current scenario of 2,750 gigalitres. These benchmarks are environmental outcomes based on ecological targets set by the Murray-Darling Basin Authority such as fish and bird breeding and the health of wetlands.

The model starts at an inadequate baseline. Then the new adjustment mechanism allows trade-offs to take place within the Basin system. This could result in some sites getting worse outcomes, balanced by other sites gaining better outcomes. There is no incentive to improve the overall outcome for the entire Basin, only the requirement that it does not get worse.

It is estimated that one quarter of these environmental outcomes or targets will not be met under the 2,750-gigalitre model. The northern Basin in the New South Wales fares particularly poorly. There are some small improvements, but sites such as the Ramsar listed Narran Lakes, the Lower Macintyre River and the Barwon-Darling River look set to fail to meet most or all of their ecological targets. There will not be sufficient environmental improvements for targets such as native fishes, riparian forests, river-floodplain connectivity, nutrient cycling, in-stream habitat, billabongs, wetlands, woodlands and nesting waterbirds. The current Basin Plan fails the people and environment of Northern New South Wales.

Another big factor in New South Wales is that groundwater extraction is still too high
at 1,700 gigalitres. The initial groundwater figures were modest but had reached 2,600 gigalitres in the draft report released last year. Much of that groundwater is in New South Wales and is hydraulically connected to river systems. The Wentworth Group argued that no scientific reason was given for increased groundwater extractions. The mining industry is a big thirsty groundwater user. I confirmed at estimates that the New South Wales Office of Water had written to the Murray-Darling Basin Authority trying to secure water requirements for the mining industry. Mining operations in New South Wales have already caused extensive and irreversible damage to aquifers and rivers. Just as we are asking agricultural industries to adapt to less water, so too should we restrict the mining industry's access to water, not make exceptions without any scientific basis.

Another problem with the revised plan is that we will need to find more money, above the existing $9 billion, in order to recover more water beyond 2,750 gigalitres. As far as I know, water minister Mr Burke has not run the computer modelling at 4,000 gigalitres to see the outcomes of restoring fuller flows to the Basin. This is despite repeated requests from independent scientists, the CSIRO and environment groups. Without this, we cannot know what ecological targets could be achieved with a scientifically based 4,000-gigalitre per year reduction. Nor do we know the seasonal impacts. It has been a major oversight in the process given that what we do know is that 2,750 gigalitres grossly underestimates the environment water requirements needed to protect and restore water-dependent ecosystems.

Soon Minister Burke will ask the federal government to support this draft plan. If it passes, it will be in place until 2030 with a price tag upward of $9 billion. The Greens will continue to argue that a 4,000-gigalitre reduction is the very least required if we are to save the Murray-Darling. The onus rests with the federal government to follow the best available science and give leadership to the states on the environmental and economic reforms required to pull this off.

(Time expired)

GST Revenue

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (13:29): I rise in today's matters of public interest debate to speak about an issue of vital importance to my home state of Tasmania, and that is the GST. Before I begin my contribution I would like to acknowledge the excellent contribution made earlier in the MPI debate by my Tasmanian colleague Senator Anne Urquhart. It was extremely well thought out and highlighted perfectly why an Abbott Liberal government would be disastrous for Tasmania.

The GST is vitally important to the states and territories. Since its inception in 2000, the revenue raised from the GST has been distributed to states and territories based on recommendations from the Commonwealth Grants Commission. In the 2011-12 financial year, around $50 billion in GST revenue was provided to the states. This revenue forms a huge part of state government budgets, particularly in my home state of Tasmania.

The distribution of the GST to the states and territories is based upon the principle of horizontal fiscal equalisation, HFE. That is the distribution method which underpins the concept of federalism in this country and spreads Australia's wealth fairly across all states and territories. The objective of the scheme is to improve equity for all Australian residents. It represents a fair go for all. It ensures that every state and territory has the physical capacity to provide their residents with the same standard level
of service in areas such as education, health and public safety.

The federal Labor government has asked the Hon. Nick Greiner, the Hon. John Brumby and Mr Bruce Carter to undertake a review into the GST distribution arrangements. The panel has already provided interim reports in March and June this year, with the final report expected in October. Can I say from the outset that I am pleased that the federal Labor government, through Treasurer Swan, has already made a number of commitments to horizontal fiscal equalisation. This is in stark contrast to Mr Abbott and the Liberals, who have continually ducked the question and refused to guarantee the GST distribution using the HFE method, but I will touch on this a little later.

As I mentioned, the GST revenue is vitally important to Tasmania. The Tasmanian budget is heavily reliant on the GST revenue, with our share of that revenue and other Commonwealth government grants equating to 61.8 per cent of total revenue for the 2011-12 financial year, making service delivery in Tasmania more reliant on this revenue than in any other state. Tasmania has 2.1 per cent of Australia's national population and in the 2011-12 financial year received 3.6 per cent of the total GST revenue. This is because the HFE takes into account demographic and geographic factors which influence state costs. The ageing population of our state and the high proportion of people living in the lower socioeconomic bracket, coupled with our location, contribute to the higher costs for service delivery in Tasmania.

Whilst the Tasmanian government is currently facing a challenging budget period, this can largely be attributed to the huge write-down in GST proceeds because of the global financial crisis. In fact, since the GFC, Tasmania has lost more than $1.9 billion in GST and state owned revenue across the forward estimates. The loss of this revenue has had an enormous impact on the Tasmanian economy and presented us with a number of challenges. Indeed, like Tasmania, many other Australian economies are facing challenges beyond their control from things such as the high Australian dollar and skills shortages caused by the mining boom. But the Tasmanian government is meeting these challenges head on. We are seeing new opportunities for the Tasmanian economy in areas such as tourism, fine food and wine, and through renewable energy. We have much to be confident about with regard to the future of the Tasmanian economy.

In this period of the nation's two-speed economy it is not unreasonable for Tasmania to expect its fair share of the benefits. Spreading a modest share of the benefits of the economy amongst the states is something the Western Australian Premier, Mr Colin Barnett, has taken a particular dislike to, it seems. In recent months Mr Barnett has taken to the media to wage a war of words against Tasmania based on misinformation and political point-scoring. Mr Barnett has gone as far as to call Tasmania 'the begging bowl state' and to say that we have 'the nicest retirement village, inside Australia's biggest national park'. I and, I am sure, all Tasmanians take offence at Mr Barnett's cheap pot shots from a state that has been fortunate to be blessed with a greater share of the nation's natural resources and a larger population.

The first interim report of the GST distribution review debunked a number of the myths and self-interested arguments being peddled by Mr Barnett, including the main myth that Western Australian has been impoverished by its obligation to share its mineral riches with the rest of the
Federation. Whilst many of Mr Barnett's fanciful comments have been debunked by the review panel's interim report, he continues to advocate for GST distribution to be based on a per capita basis—something that would have a debilitating impact on Tasmania. But Mr Barnett is not the only Liberal politician making comments about the GST distribution review. The comments made by the Leader of the Opposition, Mr Abbott, the shadow Treasurer, Mr Hockey, and the Leader of the Opposition in the Senate and fellow Tasmanian, Senator Abetz, should be of great concern to all Tasmanians.

Let us examine the devastating impacts a per capita distribution method for GST revenue would have on the Tasmanian budget. Moving to per capita distribution would see a loss of over $600 million from the Tasmanian budget. That is right: under the per capita distribution method, Tasmania would see over $600 million ripped out of the state. This would be equivalent to the loss of 800 doctors, 3,000 nurses, 500 allied health professionals and over 100 child protection staff. Under an Abbott-led government, this is where we would be heading. Let me be clear: Mr Abbott and the Liberal Party are no friends of Tasmania. They want to do away with the HFE and absolutely gut the Tasmanian budget. The continuation of the HFE scheme is vital for Tasmania. Mr Abbott does not support this commitment to fairness. Instead, he has thrown his weight behind Liberal state governments calling for the HFE to be abandoned in favour of per capita distribution.

An Abbott-led government would be financially disastrous for Tasmania. As I mentioned earlier, the state government is predicting that the state's revenue could be reduced by 14.4 per cent, or $663 million. It is clear that a significant adjustment of the HFE would be devastating to Tasmania.

In a letter sent to the Premier of Tasmania, Lara Giddings, Mr Abbott failed to support and commit to HFE. This is in line with other comments he has previously made refusing to back HFE and the natural fairness which underpins the Federation. But it is not just Mr Abbott who is throwing his weight behind the push for per capita GST distribution. Shadow minister Mr Joe Hockey has lent his support to Mr Barnett's per capita campaign. On ABC radio last month, Mr Hockey supported Mr Barnett's push to change the GST carve-up, saying it was 'very reasonable'. Mr Hockey said that Western Australia's financial performance was strong and that the state's leader and phenomenal advocate, Mr Colin Barnett, faced massive pressure to roll out much needed infrastructure. These comments by Mr Hockey are extremely concerning for all Tasmanians and back up the position taken by Mr Abbott.

One may ask what Tasmania's senators are saying about Mr Abbott's and Mr Barnett's push to challenge the way the GST is distributed. One might expect that, as senators for Tasmania, they would stick up for Tasmania and advocate for its best interests in committing to a HFE. But we are hearing deafening silence from the Tasmanian Liberal senators in this place. In particular the most senior Tasmanian senator and Leader of the Opposition in the Senate, Senator Eric Abetz, has failed to stand up to Mr Abbott and advocate in Tasmania's best interest. The comments made by Senator Abetz are highly worrying, as is the silence of the Tasmanian Liberal opposition leader, Mr Will Hodgman.

The Federal Labor member for Franklin, Minister Julie Collins, wrote to Senator Abetz on 9 July seeking assurances that a
Liberal government will commit to a HFE but is still waiting for a response. When asked on ABC radio recently about the issue of GST distribution, Senator Abetz again failed to endorse HFE. I want to quote some of the interview because it is particularly telling. The host says:

I'm interested in what you said then. At no point did you say that Tasmania's GST share would stay the same. You suggested that there might be a change in that but that there might be other ways of handed out subsidy that helps Tasmania along.

Senator Abetz replied:

Tasmania, overall, will always, and has always got an exceptionally good funding deal from Federal Liberal Governments … the Tasmanian Liberal Senate team will fight to ensure that Tasmania gets the best possible deal— and the grants commission in the past has ensured that Tasmania gets a fair deal and I believe that that will continue to be the case, but what may well occur is that there be more of a rejig between some of the bigger states.

The host continued:
So that Tasmania would get fewer dollars from the GST pool.

Senator Abetz then said:
No, no. Not saying that at all.

The host replied:
That's exactly what you just said isn't it? That Tasmania would get fewer dollars from the GST pool.

This interview with Senator Abetz, and the comments made by Mr Abbott and Mr Hockey, should give all Tasmanians a feeling of unease. They are supporting Mr Barnett's position: now that Western Australia is reaping the benefits of the resources boom, they have decided they do not want other Australians to share in this prosperity. Might I remind Premier Barnett that it was not long ago that Western Australia was a beneficiary of the scheme. That is right: it was only back in 2006-07 that Western Australia was a net beneficiary of horizontal fiscal equalisation. As Premier Giddings so eloquently put it, 'Short-sighted adjustments to the formula now could come back to bite it in the future.'

It has also been disappointing to hear the Independent member from Tasmania, Mr Andrew Wilkie, backing Western Australia's claims for more GST revenue. On a visit to Western Australia earlier in the year Mr Wilkie threw his support behind WA's push for a bigger share of the GST. Mr Wilkie said he was convinced that WA was being treated unfairly when discussing GST distribution. He went on to say:

I do intend, when the opportunity arises, to champion the need for WA to be treated more fairly in that regard.

These comments can only be viewed as very disappointing, particularly from a Tasmanian member of parliament. He should be well aware of the high stakes at play regarding the carve-up of GST revenue. It is clear that the current HFE system has never inhibited economic development in resource-rich states nor has it acted as a barrier to the mobility of labour and capital.

The HFE must continue because it is good for all Australians. Mr Abbott does not support the interest of Tasmanians or the Australian principle of a fair go for each and every one of us. Mr Abbott and the Liberal Party would write off Tasmania in the hope of a few more seats in Western Australia. He would gut our economy for a few more mates on the mainland. He is no friend of Tasmania. The continuation of the HFE scheme is vital for Tasmania. Earlier this year, all of my Tasmanian federal Labor colleagues represented this view to federal Treasurer Wayne Swan and I am pleased that the federal Labor government has made a commitment to HFE.
The Tasmanian state government has also made a number of submissions to the GST distribution review which demonstrate not only the value of the HFE scheme to Tasmania but to Australia. I offer my strongest support for these submissions. These submissions argue that the current HFE scheme is appropriately responsive to changing state circumstances, including the impact of global economic changes, and demonstrate that the continuation of the current HFE scheme is essential—particularly in the current economic environment.

This issue could define the future of our state, so I strongly add my voice to the decision the federal government has made to reaffirm its commitment to the HFE scheme. It is clear that economic equity across Australia is essential for a prosperous Australia. Economic equality is considered to have a major influence on the health, education and life outcome of any population and it is at the heart of what we value as Australians: fairness for all.

Productivity

Senator RONALDSON (Victoria) (13:44): As a matter of public interest, I wish to talk about Australia's productivity—or lack of it. This is the most pressing issue facing this country. Why? Because the prosperity and wellbeing of every Australian rests on Australia's productivity. Unfortunately our productivity withers as Labor focuses on small issues, builds up debt, introduces job and economy-destroying new taxes such as the carbon and mining taxes and responds to the hot issues of the day while relying on the resources boom for economic growth.

All Australians will one day rue Labor's neglect of productivity reform when our vast mineral resources, our trade with China and our ability to service huge debt can no longer be relied on.

I address three topics today. The first is Australia's current productivity. The second is the Labor government's record in productivity reform. The third is the action required for growth. Australia is experiencing a growing productivity decline outside of resources, with many industries, such as retail, experiencing tough times. Productivity is averaged at 0.9 per cent in annual decline under Labor, whereas productivity averaged 0.9 per cent annual growth under the coalition. Australia's recent productivity and competitiveness has also declined compared with other nations. For example, Australia is falling behind in the World Bank's Doing Business 2012 rankings, dropping four places in the past 12 months. Australian productivity against the US is also now at the same level as in the mid-1970s.

This productivity decline would normally mean declining living standards. However, the resources boom has masked Australia's fall, with Australia's terms of trade rising dramatically over the last decade, due mainly to China's rise and the demand for our resources. Between 1991 and 2003, labour productivity constituted over three quarters of gross national income growth. Labour productivity is now less than one-quarter of this growth, cloaked by the terms of trade.

However, experts point to a peak in the terms of trade. Indeed, former BHP Billiton Chairman Don Argus states that Australia's terms of trade appears to have peaked, with the nation needing to 'prepare for a long period of slow global economic growth'. The Governor of the Reserve Bank, Glenn Stevens, agreed, saying: Australia's terms of trade peaked nearly a year ago, though they remain historically high.
This peak is related to weakening commodity prices as global supply increases, Australia's ageing population, the slowdown in China's growth and the demand for our resources. Treasury's head of macroeconomics, Dr David Gruen, indicates that the terms of trade could eventually work against Australia, meaning productivity gains would need to become the main economic driver.

I turn now to the Labor government's record in productivity reform, and poor it is. Labor's focus should be on improving Australia's productivity, but they have used the high terms of trade to become complacent about reform. Labor are even reducing productivity by raising taxes such as the carbon tax and the mining tax. Labor have, regrettably, ignored the experts. The Business Council of Australia head, Jennifer Westacott, states:

... we want to be ... a high wage, high productivity economy, but what we are at the moment is a high cost, low productivity economy and that will kill our competitiveness.

There is a business lesson about an elephant owner which parallels Labor's approach. Business for the elephant owner was tough; not enough clients were riding his elephants to cover expenses, so he thought, 'I'll increase the price of rides and then I'll have enough money.' He did so, but business suddenly dropped off. As he was wondering why, the market owner approached him and said, 'Perhaps if you had reduced your prices you would've increased your income to cover expenses.' The elephant owner thought this was illogical, but gave it a go. All of a sudden, business was booming and he now had enough not only to cover his expenses but also to purchase another elephant. Labor's approach to productivity is equivalent. It is raising prices and reducing productivity rather than reducing prices and encouraging growth. Productivity is the elephant in the room that has not been addressed by Labor.

The consequences of Labor's failures are that the lack of productivity reforms, a foreign capital dependency and a deficit have all exacerbated the risk as trade growth slows. Australians should be extremely concerned if this productivity decline shows its true face.

What has happened under the Labor government? Labor has increased government debt, tripling Commonwealth, state and local government debt and moving Australia from an approximate $19 billion surplus to an approximate $44 billion deficit, with about $7 billion in interest this year alone. Labor has promised to present a surplus but, as Don Argus has pointed out, even a five per cent fall in the terms of trade would eliminate Labor's $1.5 billion budget surplus twice over. Labor has taken insufficient action to reduce household debt, which is already at 110 per cent of GDP. The Bank for International Settlements states that gross economic household debt above 85 per cent of GDP becomes a drag on economic growth. Labor's actions are hurting the economy, as households have no ability to drive economic growth.

Labor has also made a mess of public finances, with growth and expenses under Labor outpacing income. For example, welfare is fast-growing and there is a huge pressure on state finances, resulting in larger state debts and a lower ability for state infrastructure investment. Labor has invented new taxes, such as the carbon tax and the mining tax, which do not work, cost businesses and ordinary Australians, and reduce Australia's global competitiveness. For example, the carbon tax is fixed at $23 per tonne regardless of business conditions, and at least three times the cost of those in
Europe. China, of course, is already moving to other markets.

Labor is wasting funds through its top down, government run NBN, which never received a productivity assessment and has already seen delays, inefficiencies and increasing costs. Surely a productivity assessment should have been the first priority in a project costing more than $40 billion. That is why the Liberals say that government should never do those things that the private sector can do better. In five years Labor has added or amended over 18,000 regulations while repealing only 86. Labor renamed the department as the Department of Finance and Deregulation, but as Sir Humphrey Appleby said in Yes Minister, it's always best to 'dispose of the difficult bit in the title; it does less harm there than in the text.'

Clearly, Labor has broken its promise of one-in one-out with this regulatory proliferation and, as my colleague Bruce Billson has pointed out, it is immensely harming for small business, who are already spending about $28,000 and nearly 500 hours a year on red tape.

Challenging business conditions are also associated with a 95 per cent reduction in new business start-ups in the last 12 months. The Productivity Commission estimates that reducing red tape could increase the economy by $12 billion. However, Labor remains committed to regulations and new taxes while ignoring the resulting productivity decline.

What needs to occur to increase productivity growth in Australia? Strong leadership is required now to take action to make significant productivity gains that will ensure Australia's productivity. Government action must focus on the key elements of economic growth: population, participation in the workforce and productivity. I will now turn to population. This is essential to productivity growth. However, with our rapidly ageing population, workforce participation is falling. This means lower government revenue and increases to expenditure such as health and pension costs. Australia's population policies must, therefore, increase the working age population percentage. This can be achieved through policies to increase birthrates, such as through the coalition's parental leave policy, and to increase immigration, particularly of skilled immigrants who can immediately contribute economically.

The second element is participation in the workforce. Government policies must increase the workforce participation of the working age population. This means getting people into the workforce and out of welfare, taxation reforms and cutting red tape.

In relation to productivity, we need a relentless focus on productivity-enhancing policies. This means government spending must be reduced while productivity increases so that borrowing reduces, interest rate pressure subsides and taxes can responsibly come down. We need lower taxes, competitive interest rates, a user-friendly government and affordable First World infrastructure to enable business to flourish. We also need regulatory certainty through limited, uniform and efficient regulation, not ad hoc, productivity-hindering regulations.

The coalition's plan to achieve economic growth and to boost productivity has been outlined by my colleagues Joe Hockey and the Leader of the Opposition, Tony Abbott. It involves, firstly, improving public finance. We need to ensure sustainable public finances by reducing our operating leverage. The coalition will eliminate Labor's debt and achieve a surplus in our first year and a surplus in every year of our first term. The coalition will be more accountable than
Labor by releasing all of our costs and verified policies and savings prior to the election. Action on finance will include, for example, reviewing the real commercial value of the NBN and meeting with the states and territories to resolve expenditure such as infrastructure funding. On this topic, revenue must be sufficient for the states to reduce debts and to enable infrastructure investment, particularly in regional areas forgotten by the Labor Party such as, in my home state, Ballarat, Bendigo and Geelong.

The second element of the plan is lower and simpler taxation. World Bank data already shows that Australian companies are making an average of 11 tax payments per year, taking an average of 109 hours. The coalition will thus get rid of unnecessary and burdensome taxes such as the carbon and minerals taxes. We will offer cuts of today's personal tax rates and offer a modest cut in company taxes achieved through prudent savings.

In relation to productivity gains, the coalition will initiate the following: welfare reform to lift participation in work, including Work for the Dole and our Green Army plan; public sector reform to deliver better and more cost-effective services—this includes repairing the Commonwealth-state reform process and financial incentives for states to reduce costs; red and green tape reform to cut $1 billion worth of red tape out of the economy in our first term and a new one-stop shop for environmental approvals for major construction projects; competition reform to ensure that large and small businesses are competing on a level playing field; and, finally, infrastructure reform to ensure best value from spending, including mandatory cost-benefit analysis for projects over $100 million.

Fourthly, we plan labour market reform to encourage higher pay for better work, including a reinstatement of the Australian Building and Construction Commission. Policies must ensure business flexibility while also protecting workers' rights. Getting this balance right is essential. Finally, we intend closer engagement with Asia. The coalition will initiate broader trade links with Asia in services such as tourism, education, health and financial services to reduce risk.

In conclusion, our nation's wellbeing rests on productivity growth being a key government priority, which economists have recognised as the only sustainable source of improved living standards. Ensuring productivity and prosperity is a key plank of the coalition's platform, not just a sideshow, as with Labor. We must act now and not accept the status quo and must ensure that productivity growth is the No. 1 priority to ensure hope, opportunity and reward for all Australians.

In the very brief time left to me, I refer to the disgraceful behaviour in the other place of the Labor members, two of the Independents and the Greens in relation to fair indexation. As honourable senators will know, 57,000 Australians and their families do not receive fair indexation. Indeed, the Minister for Finance and Deregulation has been proved absolutely wrong by the Government Actuary and others in relation to this matter. You sit back and you allow that group of Australians, who have served this country, to have a different method of indexation than those on service and age pensions. You do not care about them. You had the opportunity today to do something about it; you did nothing about it. You have not, on any occasion offered to you, taken the opportunity to provide fair indexation. You stand utterly condemned in relation to this matter. The coalition will continue to pursue this from now until the next election. Every day we will remind those service families what you have not done for them,
what you have refused to do and what the opportunities are for you to address it. You could have done it today. You could have done it in this place last year. You have chosen not to do so. We will pursue you in relation to this matter every single day between now and the next election. If you will not do it, I can assure you we will.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Carbon Pricing

Senator MASON (Queensland) (14:00): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. Is the minister aware of reports that the Anglican Church Grammar School in East Brisbane faces an increase in its electricity bill of $70,000 per year, an increase of some 30 per cent, as a direct result of the government's carbon tax? Isn't it the case that every school in Australia will, like the Anglican Church Grammar School, face significant increases in running costs as a result of the carbon tax resulting in either cutbacks in student services, higher fees or other costs to parents, or both?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:00): The answer is no because, as the senator would well know—and it is embarrassing that the only way he can get a question on education is to ask a question on carbon. That is how much priority those opposite place on education. The only way you can get a question in the portfolio area is to ask a question about carbon pricing.

As you would well know, Senator, the Commonwealth funds schools on an indexed basis. The funding is based on the AGSRC, average government school recurrent costs, amount that takes into account increases in operating costs, and utility costs are included in that index. That is the truth, but of course what we really want to know is what the coalition would do when it came to education because apparently, according to Mr Robb, they are going to give all of education to Campbell Newman. That is the new policy from the coalition: We are going to outsource education and health to the states because we—Her Majesty is on his feet.

Senator Brandis: Mr President, on a point of order on the question of direct relevance to the question: the question was about the effect of the carbon tax on the costs to schools; it has nothing whatsoever to do with Campbell Newman.

Senator Jacinta Collins: Mr President, on the point of order: Senator Wong is being directly relevant. She is outlining what the opposition's alternative would be to school funding and operating costs, which may include any costs associated with running schools, and Senator Brandis understands as well. Senator Mason regrets the fact that he was asked to present this question, because he full knows the answer about the AGSRC.

The PRESIDENT: There is no point of order. The minister has 59 seconds remaining to address the question.

Senator WONG: In fact I answered the—

Senator Bernardi: Mr President, on a point of order: Senator Wong continually refers to senators on this side, particularly Senator Brandis, by the incorrect title. As someone who has been the most precious, outspoken and glass-jawed minister that has ever been taken into this Senate, we should not have to put up with the petty abuse from the most failed and pathetic minister that we have ever seen in this place.

Government senators interjecting—

The PRESIDENT: Order!
Senator Chris Evans: Mr President, on a point of order: Senator Wong merely seeks to recognise Senator Brandis's position as a member of royalty and the demeanour which he brings associated with that, and I am sure it is meant as a compliment.

The President: Order! That is not a point of order. I remind honourable senators on both sides that, when referring to members of this place or the other, the correct title of the appropriate person must be used on both sides and in both chambers. The minister now has 55 seconds remaining to answer the question.

Senator Wong: Given Senator Brandis demands that we call the British government Her Majesty's government, I did not think he would be offended by the term 'Her Majesty'. But if he is, I will not call him 'Her Majesty' whilst I am on my feet. If I can just return to the question: I in fact answered it in the first 10 seconds, which shows what sort of question it was. I am unsurprised that Senator Brandis jumps to his feet to suggest that it is not relevant what the shadow minister for finance says the opposition will do for education. We have made very clear—

Senator Brandis: Mr President, on a point of order: with respect, you cannot allow this minister to defy your authority as she continually does. Having ruled the last point of order out of order, you are now entertaining a minister answering a question about the effect of a carbon tax on schools by making a comment on the motives of one senator in taking a point of order on relevance. How can that be relevant to the question she was asking?

The President: There is no point of order. I am listening to the minister's answer. The minister has 19 seconds remaining to address the question.

Senator Wong: As I pointed out to the senator in the first 15 seconds, the AGSRC does take into account increases in operating costs, and utility costs are included in that index—and this is from the government that doubled funding to schools.

Honourable senators interjecting—

The President: Order! A question was asked by Senator Mason. Senator Mason is entitled to hear the answer to the question. Senator Mason is also entitled to supplementary questions if he so chooses. Other additional comments from those other than Senator Mason should not interrupt the procedure of this question time.

Senator Mason (Queensland) (14:07): Mr President, I ask a supplementary question. The minister has indicated that schools will be compensated for the carbon tax through the indexation of federal funding, which I understand is currently calculated at around six per cent a year. How much does the government intend to increase school indexation to cover the cost of the carbon tax?

Senator Wong (South Australia—Minister for Finance and Deregulation) (14:07): That is properly a question for the Minister representing the Minister for School Education, Early Childhood and Youth but, given that the opposition seem to want to ask questions of only me, I am happy to provide what information I can.

Honourable senators interjecting—

Senator Evans interjecting—

Senator Wong: No, 'knuckle draggers' is Senator Carr's trademark. He has a patent on that. I understand that the AGSRC is calculated using the expenditure by state and territory government schools and is updated by the ministerial council. Whilst the main inclusions offer salaries and allowances for teachers and related on-costs, the index also
includes other recurrent costs such as the cost of utilities. If you want further information, Senator, I suggest you ask the relevant minister.

In relation to the broader issue of funding, this is the government that has doubled school funding—something that cannot be matched by the opposition, given that their plan is to slash services such as health and education. *(Time expired)*

**Senator MASON** (Queensland) *(14:08)*: Mr President, I ask a further supplementary question. Given the many sacrifices Australian parents already make to send their children to school, and the tireless effort to which school communities go to raise funds for their schools, why is the government making it harder for schools, harder for students and harder for parents by taking money out of the education system to pay for this toxic tax based on a lie?

**Senator WONG** (South Australia—Minister for Finance and Deregulation) *(14:09)*: This government has been second to none when it comes to supporting education. Unlike those opposite, where we have the Leader of the Opposition declaring war on the public school system, we have sought not to divide and not to play the politics of division when it comes to education. If we want to talk about making it harder for parents and schools, those opposite voted against the schoolkids bonus. I am asked about making things harder for schools and school communities. Those opposite have continued to criticise the Building the Education Revolution—a massive investment into infrastructure for our children and for future generations. Those opposite, I assume, are criticising this government for doubling school funding. If you want to ask a question about education, I suggest you get your own house in order. Your only policy, Senator, is to outsource it to Campbell Newman—and everyone knows what that means. *(Time expired)*

**DISTINGUISHED VISITORS**

*The President* *(14:10)*: I draw to the attention of honourable senators the presence in the chamber of a parliamentary delegation from the National Assembly of the Seychelles, led by the Speaker, the Hon. Dr Patrick Herminie, MP. On behalf of all senators, I wish you a warm welcome to Australia and in particular to the Senate. With the concurrence of honourable senators, I would ask the Speaker to take a seat on the floor of the Senate.

*Honourable senators: Hear, hear!*

The Hon. Dr Patrick Herminie was then seated accordingly.

**QUESTIONS WITHOUT NOTICE**

**Broadband**

**Senator CAROL BROWN** (Tasmania—Deputy Government Whip in the Senate) *(14:10)*: My question is to Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Can the minister provide the Senate with advice on how other countries are addressing the need for broadband? How do they vary from the approach being pursued to build the National Broadband Network?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) *(14:11)*: Merci, Monsieur President. Vive la France! I thank the senator for her question and for her interest in broadband policy. Countries all around the world recognise the economic importance of broadband infrastructure, but progress on delivering high-speed broadband is slow. It is slow in countries that are relying upon
their incumbent telcos to deliver on these ambitions.

When Telstra had the monopoly on fixed-line infrastructure, they were slow to embrace broadband as well. Incumbent telcos favour fibre to the node—not because it is efficient or effective but because it is cheap and preserves their market power. Five years ago, Alcatel-Lucent published a technology white paper that compared the cost of building fibre to the node versus going all the way to the home. The member for Wentworth misuses this report and his discussions with BT to claim that his FTTN costs one-third of fibre to the home. That claim can be made only when an incumbent is building the node network. But that is not Mr Turnbull's plan.

Last night on Lateline, Mr Turnbull confirmed that he proposes that the government-owned NBN Co. will acquire the ageing, corroding copper network from Telstra with its $1 billion a year maintenance cost. They are going to buy back the copper! Mr Turnbull should stop misleading. (Time expired)

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (14:13): Mr President, I ask a supplementary question. Is the minister aware of any alternative proposals for the Australian government to build, own and operate a broadband network?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:15): The member for Wentworth reportedly told the Financial Review this week that he has a fully costed policy ready to go. You might ask why on earth wouldn't Mr Turnbull release it now. Why is he saying that it is going to be released closer to the election? Is it because it is taking him that long to explain it to Mr Abbott? Is it because he is having to explain to Mr Abbott—the self-confessed 'I'm not Bill Gates'—what an upload speed, a download speed and a node are? Mr Turnbull has zero credibility—except in investment advice. Last night on Lateline Mr Turnbull advised us that France Telecom shares were good value. So get on board, Mr President—
France Telecom shares are good value, according to Mr Turnbull! *(Time expired)*

**Carbon Pricing**

Senator CORMANN (Western Australia) (14:16): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. I refer the minister to her answer to my question on Monday where she said that free permits would reduce the cost impact of the carbon tax for the most emissions-intensive trade-exposed industries. Can the minister advise the Senate how many of Australia's 42,500-plus exporting businesses, who are facing additional electricity price rises and other increases in their cost of doing business as a direct result of Labor's carbon tax, will receive such free permits?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:17): Well certainly not as many as would have received a tax cut if those opposite had not indicated that they would vote with the Greens to oppose a tax cut. Let us remember that those opposite, if they are interested in talking about tax policy when it comes to businesses—

Senator Brandis: How many? Come to the question.

Senator WONG: I will come to the question, Senator.

Senator Brandis: Come to the question now.

Senator WONG: If they are interested in talking about—

Senator Cormann: You are required to be directly relevant.

Senator WONG: You don't like the fact that I am on my feet, do you?

The PRESIDENT: Order! Senator Wong, your comments should be addressed to myself as the chair and not across the chamber. Senator Wong, continue.

Senator WONG: Thank you, Mr President. I am simply making the point that there are a range of prices and taxes in the economy and that those opposite profess to care about business but in fact were to combine with Bob Brown to vote down a tax cut for their constituency.

In terms of what was the emissions-intensive trade-exposed, and now I think is the Jobs and Competitiveness Program, those permits are allocated on the basis of emissions intensity. All of that is in the public arena.

Senator Cormann: Mr President, I rise on a point of order. Earlier this week the minister asserted that free carbon permits would reduce the cost of the carbon tax impact on exporting businesses. I asked a very specific question: how many of the 42,500-plus exporting businesses will actually receive such free permits? There is only one answer that can be directly relevant to that question, and that is a number. Either the minister knows what the number is or she does not. There is nothing else that can be directly relevant to that question.

The PRESIDENT: I cannot instruct the minister how to answer the question.

Senator Ian Macdonald: But you can sit her down.

The PRESIDENT: Order! As I have said on numerous occasions, I cannot instruct the minister how to answer the question. You may well have an answer to the question fixed in your mind, but I—

Senator Abetz interjecting—

The PRESIDENT: Wait a minute. Previous Presidents have ruled consistently that they cannot instruct the minister how to answer the question. I have been listening to the minister's response. I believe the minister is answering the question. The minister has one minute and two seconds remaining to
address the question, and I call upon the minister to address the question.

Senator Abetz: Mr President, from time to time you have recourse to quoting rulings of former Presidents. Former Presidents never had the sessional order which required compliance to direct relevance. Therefore, with great respect, yet again, Mr President, the coalition makes this plea to you that if the changed sessional order, which we just confirmed again the other day, is to be implemented then recourse to previous rulings clearly cannot apply to sessional orders that were not in existence at that time.

The PRESIDENT: That was not relevant to what I just said, but—

Senator Abetz: Yes, it was.

The PRESIDENT: Order!

Senator Abetz: So the answer is relevant but I am not?

The PRESIDENT: I had ruled that I cannot instruct the minister how to answer the question. That is consistent with the way this chamber has been ruled over a long period of time. I am aware of the sessional order that you refer to and I have drawn the minister's attention to the question and the fact that the minister does have one minute and two seconds remaining to answer the question.

Senator WONG: Thank you, Mr President, Perhaps I could be of assistance by explaining how the program works. The program works by—

Opposition senators interjecting—

The PRESIDENT: Order!

Senator WONG: If I could perhaps answer the question, rather than just have—

Opposition senators interjecting—

The PRESIDENT: Order! Interjections do not help.

Senator WONG: The program works by establishing eligibility and baselines and those are worked through by the department with industry, including with the independent expert advisory panel. Firms would then need to apply for eligibility under the program in accordance with those established baselines and eligibility criteria. So I do not have a particular number within each sector as to how many firms there are. I can give you an indication. For example—

Opposition senators interjecting—

The PRESIDENT: Order! Go on, Minister, continue to answer the question.

Senator WONG: Mr President, I do not think they are interested in the answer because they are continuing to interject.

The PRESIDENT: Minister, you have got four seconds.

Senator WONG: What I can indicate is that—

Senator Jacinta Collins: On one second! Seriously?

Senator Brandis: I raise a point of order. The opposition has given this minister all the latitude in the world. As Senator Collins just pointed out in her interjection, there is only one second left in the answer. The only thing that the minister has not said, but still has time to say in the remaining second of her answer, is to answer the only thing she was asked: the number of businesses to which these permits will issue. That is what she was asked, even if, consistently with your ruling, everything else that she has said so far can be regarded as preamble or context, she can now only answer the question or admit she is ignorant of her own portfolio.

Senator Chris Evans: On the point of order: it is of no consequence whether Senator Brandis thinks he has given Senator Wong enough latitude. While his personal views are, of course, of interest, they have no
relevance to how the Senate is conducted. I would point out in response to the—

Senator Ian Macdonald: Tony Sheldon was right!

Senator Chris Evans: I am glad to hear that is where you are getting your advice from, Senator. Senator Wong actually answered the question and perhaps the senators opposite did not hear it because Senator Cormann, who asked the question, continually shouts across the chamber at Senator Wong as she tries to answer it. Therefore, he is probably not able to hear the answer. If the opposition is serious about wanting answers they ought to listen to the answer and not constantly interject on the minister.

Honourable senators interjecting—

The PRESIDENT: Order! I still have one second remaining on the clock.

Senator CORMANN (Western Australia) (14:24): Mr President, I ask a supplementary question. Given the finding by the TD Securities-Melbourne Institute monthly inflation gauge that due to the introduction of the carbon tax from 1 July the price of electricity rose by 14.9 per cent and gas and other fuel prices increased by 10.3 per cent, how many of Australia's two million small businesses, facing those sorts of electricity price rises and other cost increases directly as a result of Labor's biggest carbon tax in the world here in Australia, will receive free permits?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:25): As I said in my earlier answer, which it appears they did not hear because they were so busy shouting, I am not able to give the precise numbers of each firm within each industry. I am not able to give precise answers about how many businesses within each sector, within each industry, are eligible in terms of the criteria. Those criteria are public and they have been worked through by an independent advisory committee. I can give the opposition and the Senate an indication of the sorts of industries and activities which have been determined to be emissions-intensive trade-exposed and they, of course, include aluminium, steel, glass, paper and a range of others. I do not have figures with me about the number of firms conducting activities within each of those industries, which I made clear in my first answer.

Senator CORMANN (Western Australia) (14:26): The minister's answer raises a further supplementary question. Why is the Gillard government so intent to press ahead with the world's biggest carbon tax when it imposes an increased cost burden on 23 million Australians, which is five times higher than the overall cost burden imposed on more than 500 million people in Europe. Is the government really so out of touch to think that no amount of additional taxation in Australia will have an impact on our economic fortunes and on our cost of living?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:26): With respect, Mr President, I do not think there was a question in that. That was the same rant, to be frank, we have heard for two years, so I am not sure how I can be directly relevant to a rant. I am not sure how I can be directly relevant to a statement that includes a number of untruths and a number of incorrect factual assertions, so if the opposition want to have a directly relevant debate I am very happy to have one, but why don't you start telling the truth? Why don't you start telling the truth and talking about the facts? But, no, you will keep going on about industries being shut down, Whyalla being wiped off the map, and the sky falling in. Australians know you are not telling the truth.
Honourable senators interjecting—

The PRESIDENT: Order! When we have silence on both sides we will proceed.

Senator WONG: As I said, I went through yesterday for about the 50th time in this chamber about how the assertion by the opposition about the imposition of this tax is incorrect. Yesterday, the Climate Commission went through the number of nations who will be— (Time expired).

Minerals Resource Rent Tax

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:28): My question is to the Minister representing the Treasurer, Senator Wong. Does the minister recall in March this year the Treasurer, Mr Swan, said that refunding mining companies for increases in state royalties would not change any of the mining tax revenue forecast in the first two years. Given the Treasurer has now written to state governments threatening that the Commonwealth will implement measures to protect the revenue from recently announced or future royalty increases, can the minister confirm that the $13.4 billion expected revenue over the forward estimates from the mining resource rent tax to the Commonwealth is under threat?

Senator Wong: First, it is the case—

Opposition senators interjecting—

The PRESIDENT: Order! Senator Wong.

Senator WONG: It is the case, as has been reported, that the Treasurer has written to the state treasurers on the issue of royalties to remind them of the government's position in relation to increases in royalties. As the Senate may or may not be aware, the New South Wales government has announced it will increase rates and the Queensland government is also indicating a royalty increase is in the spotlight in its September budget.

I make this point: it would be interesting to see if the Queensland Liberal senators advocate as strongly against that tax as they have against the minerals tax—

Senator Brandis: We have a $65 billion debt to pay off.

Senator WONG: Oh, so a state Liberal mining tax is fine, is it, Her Majesty, but a Commonwealth profits based tax that delivers to Australians? That's bad! This is an extraordinary proposition.

Anyway, I return to the question from Senator Milne. I have previously indicated to Senator Milne in relation to the minerals tax a number of points. The first is that it is a volatile tax. Obviously, as a profits based tax, movements in volumes and prices obviously affect the tax take. The government is of the view that we do need to seek to resolve these issues with the states, which is why the government has written, through the Treasurer—

Senator Joyce: Mr President, I rise on a point of order on proper titles. It is about Senator Brandis. Minister Wong continues to throw what is an acerbic comment and one that we know full well she is not capable of taking herself. If she cannot take it, she should not throw it at Senator Brandis.
Senator WONG: I get called much worse than that by you!

Honourable senators interjecting—

The PRESIDENT: Order! When there is silence we will proceed. Senator Collins.

Senator Ronaldson: Give your pay back. You're a thousand bucks a word.

Senator Jacinta Collins: That just makes my point. Maybe Senator Joyce cannot hear the nature of some of the interjections up this end, but for him to be making that point absent what we all hear coming across the chamber from the other side is, I think, ridiculous.

The PRESIDENT: There is no point of order, but I do remind, as I did earlier, that honourable senators need to refer to people in both this place and the other place by their correct titles. The minister has nine seconds remaining to answer the question asked by Senator Milne.

Senator WONG: Thank you. As I previously indicated, the budget estimates were $13.4 billion, as the senator has indicated. That was a revision down in the first three years, and we will update—(Time expired)

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:35): Mr President, I ask a further supplementary question. I thank the minister; but, given the obvious need for increased government revenue to fund reforms such as Gonski education, the National Disability Insurance Scheme and Denticare, will the government now agree that Australia needs the original Henry recommended resource superprofits tax to bring in the increased revenue of $100 billion in the next 10 years? Will the government now revisit the superprofits tax?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:34): With respect to Senator Milne, I do not propose to traverse again what occurred in the context of the passage of the MRRT. I think the arguments for and against that amendment were traversed in that debate and I am sure the senator is aware of them. The government's position is as the Treasurer has articulated in this letter to the states, and I would point out that the independent GST review, which is looking at a range of issues, including this issue, noted in its interim report that it was:

… unrealistic for the states to think they can … capture the revenue stream generated by the Commonwealth's undertaking of a significant and challenging reform.

That remains the government's position.

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Carbon Pricing

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (14:35): My question is to Senator Wong, the Minister representing the Minister for Climate Change and Energy Efficiency. Does the minister agree with the Prime Minister's advice to Victorian fruit-packing business Geoffrey Thompson Holdings, which has been hit with a one-month carbon tax bill of over $10,000—a 15 per cent increase—that the business should simply pass on these additional costs to its customers in full? If the minister does not agree with the Prime Minister's proposition, will she at least concede it shows how dreadfully out of touch the government is with Australian agricultural businesses?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:36): First of all, I do not take as read the suggestion from the senator that the cost over a month is as a result of carbon, as she indicated. It may be the case, but—

Opposition senators: She is precious!

The PRESIDENT: Order! I remind senators that interjections across the chamber are disorderly.

Senator WONG: As we have previously discussed in this place on a number of occasions, there have been substantial increases in electricity prices for some years. The vast majority of those have occurred as a result of investment in poles and wires, and the Prime Minister has indicated her intention to work through the COAG process to try to ensure that we see a more efficient way of dealing with these network issues so that consumers are protected from the sorts of price increases we have seen over recent years. On that front, I would certainly disagree with the contention in the senator's question. The Prime Minister is very well aware of the pressures that high electricity prices are causing, which is why she has indicated her intention to work through the COAG process to seek to deal with the driver of the largest component of electricity cost increases, which is infrastructure costs. In relation to agriculture, I would remind the senator that, of course, agriculture is excluded from the carbon price mechanism. In relation to—

Senator Nash: Mr President, I rise on a point of order on relevance. The minister was specifically asked whether or not she agreed with the Prime Minister that the fruit-packing business should pass on its additional costs caused by the carbon tax in full.

The PRESIDENT: The question was broader than that. The minister is answering the question, and the minister does have 23 seconds still remaining to answer the question.

Senator WONG: Thank you, Mr President. In relation to the last bit, I was responding to a number of aspects of the question. If the senator only wants to ask one aspect, I am quite happy not to take multibarrelled questions which give me the opportunity to talk about many things. But, when it comes to the impact in terms of price increase, I think the point the Prime Minister was making is that our Household Assistance Package—

Senator Nash: It's not a household.

Senator WONG: does assume cost pass-through.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (14:39): Mr President, I ask a supplementary question. Given that many agricultural businesses like Geoffrey Thompson Holdings supply major supermarkets, what will the government be
doing to ensure that the major supermarkets accept the passing on of the additional costs that the Prime Minister is advising?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:39): I think the senator misunderstood my answer to the last question when she interjected that this is not a household. The point I was making is that, in the assessment of what the price impact would be on households, the government did assume cost pass-through, including in the food production sector. So the point is that we assumed that in terms of the amounts that we provided through increased pension, family tax benefits and the tax cuts. In relation to the supermarket issue, I suspect that that is actually the same question which was asked of me a number of days ago—I cannot recall if it was this week or not—in relation to the ACCC. I think it might have been Senator Xenophon, from memory. I would refer the senator to my answer on that issue, because that really deals with the same matter.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (14:40): Mr President, I ask a further supplementary question. Given that businesses like Geoffrey Thompson Holdings have conceded that they 'may have to reduce their workforce to save costs', will the minister be apologising to those workers who will lose their jobs because of Labor's carbon tax?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:40): That is yet another example of the sort of scare campaign that we have seen from those opposite. What I would remind those opposite of is this fact: that, since we came to government, some 810,000 jobs have been created. I would also remind those opposite that this government, whether through Senator Conroy and the National Broadband Network or through the health portfolio or the education portfolio, is investing more in regional Australia than any government ever in Australia's history. I know it is enormously embarrassing for Senator Nash that she could never deliver this sort of regional investment when Peter Costello was Treasurer, but the fact is that you never did. It is extremely embarrassing, but this Labor government has delivered more than you could ever get out of the Liberals.

Forestry

Senator STERLE (Western Australia) (14:42): My question is to the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig. Can the minister please advise the Senate about Australia's efforts to combat the trade in illegally harvested timber and timber products?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:42): I thank Senator Sterle for his question. It is a trade that benefits criminals and has very serious environmental and economic impacts. A World Bank report estimates that every two seconds an area the size of a football field is harvested by illegal loggers. If you use that estimate, by the time I finish answering this question 600,000 square metres of timber will be illegally logged. The World Bank report also makes it clear that large-scale illegal logging operations are carried out by sophisticated criminal networks, so to act to stop illegal logging is to act to stop organised crime. The illegal logging trade is a global problem, costing around $60 billion each year. It directly threatens timber jobs here at home and in other countries by undercutting the price of legally logged timber.
Knowing the facts about the evils of illegal logging, both sides of politics in the 2010 election campaign committed to combating it. There was bipartisan support to combat illegal logging. In fact, the coalition were on the record during the 2010 election campaign saying that illegal logging corrupts trade and leads to the destruction of the environment. The Gillard government has followed through on its commitment to take action against illegally logged timber, supporting the environment and supporting legal and sustainable forest jobs at home. The Gillard government has consulted with importers, processors, retailers, employees, unions and environmental groups, and we have continued to consult with our trading partners such as New Zealand, Malaysia, Indonesia and Canada to ensure that there is a system in place to combat illegally logged timber. Australia takes its international obligations seriously. At the Honolulu APEC leaders summit all leaders undertook to work to implement appropriate measures—

**Senator STERLE** (Western Australia) (14:44): Mr President, I thank the minister for the answer and I ask a supplementary question. Can the minister also advise of any recent progress that demonstrates that the Gillard government’s efforts are delivering real partnerships with trading partners on the serious issue of illegal logging?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:44): I thank Senator Sterle for his first supplementary question. Yesterday I had the opportunity of meeting with the New Zealand Associate Minister for Primary Industries, the Hon. Nathan Guy, to sign an arrangement to combat illegal logging and to promote sustainable forest management. Australia and New Zealand share significant trade in timber products. In 2010-11 New Zealand was the largest export supplier of forest products to Australia, with trade of around $715 million. The memorandum of understanding will strengthen Australia’s longstanding cooperation with New Zealand on forest product issues. Arrangements provide a framework for ongoing bilateral cooperation against the illegal logging trade and its impact on jobs, the economy and the environment.

It will build the capacity of government and industry to manage forests sustainably and to promote systems to verify the legality of timber and wood products in Australia, New Zealand and the wider Asia-Pacific region. Together, through the cooperation between Australia and New Zealand—

**Senator STERLE** (Western Australia) (14:46): Mr President, I ask a further supplementary question. Can the minister inform the Senate of any obstacles to improving international cooperation in pursuit of commitments made by all APEC leaders to cooperate to prohibit the trade in illegally harvested timber and timber products?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:46): I thank Senator Sterle for his second supplementary question. Just like a house of cards in the breeze, the coalition’s fear campaign is falling over on carbon price, on the economy, and now on illegal logging. The fear campaign is in a shambles because those opposite are, in fact, reduced to the husk of a party, with no policies, no promises for the nation and no plan. Taking action to crack down on illegal
logging is good for the environment and good for Australian jobs as is, of course relying on legitimately harvested timber from our trading partners.

But right now, the Liberal-National party stands for illegal logging. That means it stands for criminal networks gaining wealth from the proceeds of crime. While this government is taking action, those opposite are opposed to combating illegal logging—

Opposition senators interjecting—

Senator LUDWIG: You might cry out in shame, because you should be ashamed: you will not support combating illegal logging—

(Time expired)

Economy

Senator SINODINOS (New South Wales) (14:47): My question is to the Minister for Finance and Deregulation, Senator Wong. I refer the minister to the Prime Minister's speech on Monday night at the AiG annual national dinner. Is it not a fact that of the 6.6 per cent decline in multifactor productivity since 2004 that 4.2 per cent of that has occurred since 2007? Why has this decline occurred under Labor?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:48): Yes, I am aware of the speech and, Senator Sinodinos, I think we were both at that function. I thought there was a very good discussion in the context of that speech about the importance of getting the facts right on productivity. It was a very good speech, if I might say so.

It is the case that we understand—I would hope on both sides of politics, certainly on this side—the importance of productivity. It is regrettable that we saw under the Howard government a decline in productivity growth over quite a number of years. Of course, while you cannot—as the Prime Minister said in her speech—read too much into some of the shorter term figures, the quarterly or annual figures, it is encouraging to see Australia's productivity growth having picked up over the past year. As the Prime Minister referred to, labour productivity growth in the market sector has increased by about 2.3 per cent in the March quarter and 5.3 per cent over the past year.

I do not want to overstate that. Senator Sinodinos would know that with productivity, by definition, one has to take a long-run perspective. But those are pleasing results for last year; certainly far more pleasing than we have seen in terms of the long-term decline in productivity which started about a decade ago.

The government's investments in productivity include our record investments in skills. As the Senate might recall, we delivered some $3 billion in the skills package in the last budget. We have seen training places and mentoring services delivered. A key part of that was the vocational education and training reforms—about a $1.75 billion package. In addition, the government is also making investments in critical infrastructure, and I am happy to return to this in a supplementary question. (Time expired)

Senator SINODINOS (New South Wales) (14:50): Mr President, I ask a supplementary question. Given the government's commitment in 2007 to a one-in, one-out regulatory policy, why has it imposed over 18,000 new regulations associated with such measures as the carbon tax, the mining tax, the future of financial advice and the Fair Work Act on both business and the not-for-profit sector?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:50): I am very pleased to be asked that question, because it gives me the opportunity to remind the senator that, in fact, this
government is removing about one-third of our regulatory stock, where provisions are either spent or otherwise redundant. There is legislation that is currently before this place, which would remove up to—

Senator Abetz interjecting—

Senator Conroy interjecting—

The PRESIDENT: Order! Senators Conroy and Abetz, I am trying to listen to Senator Wong. If you want to have a discussion, wait until after question time.

Senator Conroy interjecting—

The PRESIDENT: Order! Senator Conroy, I am endeavouring to listen to Senator Wong.

Senator WONG: There is legislation before the chamber—well, certainly before the House of Representatives—to remove up to 12,000 pieces of redundant Commonwealth legislative instruments.

I would also make the point that it is this government that finally is acting on the recommendations of which the senator would be aware—that is, in the Bell review and also subsequently in the Banks review—which is the harmonisation of occupational health and safety, payroll tax harmonisation and, of course, also trade licensing. The senator would be one of those opposite who would understand the importance of taking a national economic focus, and I would encourage him to speak to some of the state Liberal governments who are standing in the way of these reforms.

Senator SINODINOS (New South Wales) (14:52): Mr President, I ask a further supplementary question. Isn’t it a fact that the overwhelming majority of the claimed over 12,000 legislative instruments that have been repealed, or are scheduled to be repealed, are being repealed because they are redundant, and that that will have no beneficial economic impact?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:52): I would not have thought that the senator would say that it is a good thing to retain on the legislative books pieces of legislative instruments which are either redundant or unnecessary. Yes, I do think that it is a good thing for the government to remove those and we are doing that, unlike what occurred in those years under the Howard government.

I would also make the point in terms of productivity impact that, as the senator would be aware, the Productivity Commission has analysed the first tranche of the government's reform agenda when it comes to deregulation—that is, the seamless national economy reforms. Seventeen of those reforms would lower business costs by about $4 billion each year when fully implemented, and improvements to productivity could increase GDP by around $6 billion per year. I am sure that the senator would be aware of those, and I again encourage him to engage with the Liberal governments, which are standing in the way of some of those reforms.

Wind Farms

Senator MADIGAN (Victoria) (14:53): Mr President, my question is to the Minister representing the Minister for the Environment, Senator Conroy. In light of the fact that there is Commonwealth approval for the construction of the Bald Hills wind farm in the midst of a high conservation value bird sanctuary and wetlands area, home to 296 species of birds, 45 of which are listed in the Japan-Australia Migratory Bird Agreement, 40 of which are listed in the China-Australia Migratory Bird Agreement and three listed in the Bonn convention, this means that Australia is now in breach of our—

Honourable senators interjecting—
The PRESIDENT: Order! There are a number of people on both my left and on my right—order! Senator Madigan is entitled to be heard in silence.

Senator MADIGAN: Australia is now in breach of our international obligations to protect those birds, their environment and habitats as per the relevant articles in those agreements. Will the minister advise what actions are being taken to call in this project, remove Commonwealth approval and bring Australia into compliance with our international obligations?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:55): I thank Senator Madigan for his question. I do well remember, as we have already heard from some of the interjections during the question, the passionate debate that this chamber had about the orange-bellied parrot. We had that newborn greenie, Senator Iain Campbell, on behalf of those opposite, deciding that this had to be saved at any cost. And all of those opposite joined with him in his passion to save the orange-bellied parrot.

Opposition senators interjecting—

Senator CONROY: So let's have no interjections over there, mocking Senator Campbell today! No interjections!

Senator Chris Evans: Even though it was terrible a political fix before the election!

Senator CONROY: No, I could not possibly suggest that Senator Campbell—

The PRESIDENT: Order! Senator Conroy, I want you to address your comments to the chair and ignore the interjections. Senator Madigan has asked a question, which you should be answering.

Senator CONROY: I did want to remind the chamber of everybody's contribution on all sides on the orange-bellied parrot. Minister Burke's environment department is closely monitoring this project to ensure that it is undertaken in a manner consistent with its conditions of approval under the Environment Protection and Biodiversity Conservation Act 1999. Responsibility, as everyone in this chamber knows who was involved in that debate—including Senator Brandis, who voted to protect orange-bellied parrots—for wind farm approval rests primarily with state and local governments. The Commonwealth is involved only where wind farm proposals impact on matters of national environmental significance. The matters of national environmental significance projected for this project are listed threatened species and communities and listed migratory species. Minister Burke is advised that the importance—(Time expired)

Senator MADIGAN (Victoria) (14:57): Mr President, I ask a supplementary question. As the conditions of approval agreed to by the Commonwealth in 2006 focus on locating and counting birds killed by the turbines and require the stopping of the turbines and taking mitigation measures to prevent future kills if just three of the listed bird species are killed, what mitigation measures does the minister believe could realistically be taken to stop bird mortality by turbines located in the midst of a bird sanctuary, flyway and migration route other than not building the wind farm?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:58): Could I also indicate that I did not get a chance at the end of the answer to your previous question to say that
any other matters in that earlier part of the question I would happily take notice and see if Minister Burke has anything further he would like to add.

Minister Burke is advised that in accordance with the conditions of approval for this project, a bat and AD fauna management plan was approved for this project on 17 July 2012. Under this plan monitoring of AD fauna is to be carried out and a report provided to the environment departments in July 2013. I am happy to get a copy of that management plan and make sure that it is available to you, Senator Madigan. But Minister Burke is advised that the approval also contains strict conditions relating to bird mortality. The person taking the action must notify Minister Burke in writing of any mortality of a member of a listed—(Time expired)

Senator MADIGAN (Victoria) (14:59): Mr President, I ask a further supplementary question. Considering that the research underpinning the Commonwealth's approval was so bad that the 2004 Victorian assessment panel found:

... at this stage insufficient information to allow proper assessment against the criteria of no impact on species listed under the Environment Protection and Biodiversity Conservation Act or the Flora and Fauna Guarantee Act.

on what basis does the Commonwealth continue to uphold its 2006 approval?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:59): Again, I will take on notice any remaining parts of your question that I did not have a chance to address there, Senator Madigan, and see if Minister Burke would like to add to that. As I was saying, Minister Burke has advised that the approval also contains strict conditions. The person taking the action must notify Minister Burke in writing of any mortality of a member of a listed, threatened or migratory species on the site of the action within 48 hours of becoming aware of the mortality. In the event of a second or subsequent mortality for certain species such as the orange-bellied parrot, the swift parrot or the white-bellied sea eagle, all operations within one kilometre of the mortality site must cease immediately. Senator Madigan, you raise very valid questions and I am happy to take on notice any further parts of the questions I have not addressed. But we should not forget that Senator Ian Campbell gave us this legislation. (Time expired)

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

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Carbon Pricing

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (15:01): I move:

That the Senate take note of answers given by the Minister for Finance and Deregulation (Senator Wong) to questions without notice asked by Opposition senators today.

It is interesting that this is the minister who is supposed to represent the Labor Left; who is supposed to be a person who can stand her ground; who is supposed to be part of the reason, you would imagine, that the Labor Party did not take on what was obviously the eminently wise immigration policy of John Howard. But since Minister Wong decided that John Howard's policy was the one that she wanted to support, and obviously all the Labor Left colleagues agreed, obviously led by Senator Evans, we now have to rely on that same strength of character, that same commitment, that same stoic nature to be...
able to guide us through part and parcel of
the introduction of the carbon tax.

It is going to be quite perplexing as we see
the bills that are coming through at the
moment. I was talking today to a substantial
farmer from South Australia, the minister's
state, who is going to have to pay
approximately $35,800 this year for the
carbon tax. I was trying to work out what I
would tell this farmer that they are going to
get for that. What exactly do farmers get for
that expenditure? If they turn on the
television set they might presume that they
get Craig Thomson back. Maybe you get him
for that, I do not know. You would be
surprised what you can buy with that sort of
money. He knows the value of what you can
buy on a credit card. Maybe you could get
that. Maybe you could get whatever we are
seeing on the front page of the *Australian* at
the moment with the AWU and the issues
pertaining to that. Maybe that is what you get
for the sort of money that is on offer from
the carbon tax.

We have to realise that what this is
actually going to do is go to a very
vulnerable section of the economy, a section,
especially in agriculture, that cannot pass on
their costs. They will either have to absorb
the costs by a lower standard of living or by
putting people off. If they are putting people
off, I do not quite know how this is assisting
regional Australia. They tell us today that
they have been the champions of regional
Australia. One suspects that they are the
champions for regional Australia in the same
manner that Minister Wong is the champion
of the Labor Left. How she has failed so
miserably in trying to look after the issues of
the left wing of the Labor Party is how miserably they are looking after regional
Australia. They are great at the rhetoric, but
they are not so good at the delivery.

Since the Labor Left is really a defunct
organisation now, has no real meaning, no
purpose, no strength of conviction, no ability
to stand on its own two pegs; seeing they are
now pointless—

*Senator Sterle interjecting—*

*Senator Joyce:* I congratulate Senator
Sterle because he is part of the Right and the
Right run the show. You are to be
congratulated, Senator Sterle, for the way
that you have rolled the Labor Left,
backwards and forth, backwards and forth,
backwards and forth, and shown what an
absolutely pathetic organisation they have
become.

*Senator Thorp interjecting—*

*Senator Joyce:* It is good to see a new
senator in here who gave her maiden speech
merely a couple of weeks ago—and it was
great to listen to it—as part of the Labor
Left. But within merely days they have been
rolled on one of their key policies. This is the
sort of conviction, the stoic nature—

*Senator McLucas interjecting—*

*Senator Joyce:* Senator McLucas: there is another person from the Labor Left
who was absolutely rolled, backwards and
forth, complete and utter doormat to the
Right. But we must congratulate Senator
Sterle and congratulate Minister Conroy for
rolling over Minister Wong, for rolling over
Senator Douglas Cameron, for rolling over
all the Labor Left and making them look like
complete and utter imbeciles without even a
philosophical soul. But they will, apparently,
be able to look after regional Australia; they
will, apparently, be able to look after people
with the carbon tax. They cannot even look
after themselves. They cannot even stand up
for themselves. How on earth can they stand
up for anybody else? How on earth could
they look after anybody else? In complete
hypocritical format we have seen people
such as Senator Evans tell us that the greatest
thing he ever did—not one of the greatest things he ever did, not amongst the greatest things he ever did, but the greatest thing he ever did—was to wind back the Pacific solution. He is of the Labor Left, you see, but he got rolled. So what we have now is a complete capitulation.

There is another person who is in the Labor Left who is a reflection of the stoic nature, the absolute will of iron, the undoubted character. That person's name is Prime Minister Julia Gillard, another person who has that will of iron, that insurmountable character that can be totally relied on. But we do not quite know anymore whether she has been rolled or not because we do not know what she believes in—(Time expired)

Senator GALLACHER (South Australia) (15:06): I rise to participate in this debate on the motion to take note of answers. The first point I would like to make is that the well-known and dominant principle called the 'vomit principle' is apparent in this debate. During every single question time and at every single opportunity the Leader of the Opposition, the Hon. Tony Abbott, and his disciples repeat, ad infinitum, erroneous and non-factual positions on the carbon price. They believe if these positions are repeated often enough they will become part of the Australian public's understanding.

It is a fairly sobering position that Australia is the 15th largest polluter in the world and the largest polluter per person. There is a general community understanding that something needs to be done about this position. I have participated in a number of climate change forums where people have been invited to come along and make a contribution to this debate. I can specifically recall one at the Norwood town hall which, I must admit, I went to with a degree of trepidation having listened to the position from the other side and being a recently elected senator. It was a reasonably well-attended forum and the people there were concerned that Australia was 15th in the world in pollution and the largest polluter per person. There was no regurgitating of the position put by the opposition. One of the important contributions in that debate was a simple and clear presentation from a university lecturer from the University of Adelaide. He had a very dry economic position. Simply put, his position was: 'If it is free to pollute there is no incentive not to pollute; if there is a price on pollution then you will change behaviour.' That is an economic principle which I think stands across a number of areas, not only the carbon emission debate.

I was a bit of a spender, if you like, with my electricity. I would not turn off lights when I moved from different parts of the house. I quickly got re-educated by the person in charge of the household. I can go back to a debate we had during an enterprise bargaining negotiation in Alice Springs, where the airport manager actually insisted that everybody start being frugal with electricity in order to reduce their bills. We laughed at him but I might add that after a month of him taking solitary action he came back to show us the difference in the electricity bill.

I do not think there is anything wrong with a price on carbon which has the effect of changing our behaviour in using a scarce and expensive resource. What is really apparent in this debate is the absurdity of the coalition. They fail to disclose that cost impacts are only a percentage of business turnover—that electricity is a percentage of business turnover. It is estimated that total electricity costs represent only two per cent of turnover. To come in here with all these examples of educational institutions and
hotels that are going to close their doors, lay people off, stop selling or stop educating because a fraction of their business cost has gone up is quite erroneous.

The other side of the equation is simply that there is a compensation package which allows people, particularly small business, to justify the impact of any electricity increase and pass it on. There are proper tests and checks and balances in respect of that but that is a clear and unequivocal position. The compensation package is widely understood to be in place in that event.

In summary, a price on emissions will change behaviour. It will change the behaviour of the big polluters. It has changed my behaviour. I may not be under the same pressure as an ordinary householder in paying my electricity bill but I have changed my behaviour in this matter.

Senator SMITH (Western Australia) (15:11): I also wish to take note of answers given by Senator Wong to questions asked by coalition senators. We have heard more denial from the government this afternoon about the impact of their carbon tax. It stands to reason that schools use a fair amount of electricity: classrooms have to be lit, heated or cooled, and there are computers and AV equipment in many of them. Those school halls the Prime Minister has built, whether or not the schools actually wanted them, all have electric equipment in them too. School canteens prepare hot food for students. All of this requires electricity.

The July power bill of one large high school showed a carbon charge of almost $500 separately listed on an account totalling just $6,000. Schools just cannot cop that. The cost of a canteen lunch is going to have to go up. Shame on Labor. Shame on the government. Once again this government and this Prime Minister are asking us to trust them. They claim any increases will be offset by the indexation of federal funding. They want parents to trust them on that and now they want parents to trust them on the Gonski review of school funding.

This government is playing Australians for fools. It thinks it can get away with anything. The problem that is now coming home to roost, though, is that no-one trusts this Prime Minister or this shambolic, deceptive, incompetent government that she leads. Over the weekend we saw a leaked list of 3,200 schools—Julia Gillard's hit list of schools that will have their funding cut. Hit lists are not new to the Labor Party. Back in 2004, when Mark Latham was the new sensation and Julia Gillard his chief cheerleader, Labor had a hit list of schools targeted for funding cuts. They were proud of it. You will not often hear me praise Mark Latham but at least he was honest about the fact that he was committed to cutting school funding. Julia Gillard says she has no plans to cut funding—just like she had no plans to challenge Kevin Rudd; just like she had no plans to alter the private health insurance rebate; just like she had no plans to introduce the world's biggest carbon tax. Yet on Monday during an interview on Sky News, the Minister for School Education, Early Childhood and Youth, Minister Garrett, was asked to guarantee that no school would be worse off. He could not.

We have the Prime Minister running around telling us that everything is wonderful—that there will be chicken in every pot, or perhaps I should say a sausage roll in every lunchbox; everyone will be better off. On the same day we have her own minister refusing to support her claims. If we take everything that has been said in the last day, Labor's position is that every school will be better off—but they cannot guarantee that no school will be worse off. No wonder parents are confused.
I would like to turn for a moment to focus on schools across the Great Southern region of Western Australia—an area in which I take a great interest. I had a look at the hit list and was horrified to discover that some of the schools targeted for significant cuts are some of those most in need. There are many communities across the Great Southern that have been identified as being areas of high socioeconomic need. They are proud and hardworking communities, but they are not necessarily wealthy communities. For instance, one of the schools on the hit list for a funding reduction is the Western Australian College of Agriculture at Narrogin. This is a school that is training the next generation of farmers. We all know that it is becoming harder to keep young people working on the land. Families that have farmed for generations are selling up because their kids do not want to carry on farming. For those who do choose to remain, we need to ensure that their kids have the best education possible and the very best practical farming education there is so that they can run successful farms in the years to come. We are talking about people who will grow our food in the years ahead. This government seems incapable of understanding that simple fact. The Western Australian College of Agriculture at Narrogin is slated to have its funding slashed by over $2.7 million. To take another example, the Gonski hit list proposes a funding cut of over $1.7 million for the Mount Barker Community College, a school that services a catchment area with a significant Indigenous population and high levels of socioeconomic disadvantage. There are many other schools on Labor’s hit list, including Kojonup District High School, Katanning Senior High School, Southern Cross District High, Brookton District High and Newdigate Primary School. By my count, 41 schools across the Great Southern region are on the hit list. None of them are wealthy schools. Many of them are government schools. This is more bad news for the Great Southern community from a government that either does not understand rural and regional communities or simply does not care.

Senator THORP (Tasmania) (15:16): I sometimes think that on the issue of carbon pricing and how to deal with global warming we have the most clear and striking contrast between the attitudes of the people opposite and the people on my side in this place. There is a very stark contrast.

Senator Ian Macdonald interjecting—

Senator THORP: I am glad to see that even some of the flat-earthers have been dragged, kicking and screaming, into the 21st century to recognise that global warming is a significant issue in our country—in fact, in the whole world. Where I live is a coastal region surrounded by areas like Clifton Beach, Sandford and Lauderdale. Work done by our local council, the Clarence City Council, has shown that the dangers of inundation on our coast are very real and significant, particularly dangers coming from storm surges. We are dealing with a very serious problem. It is quite disconcerting to have it trivialised so much by those people opposite. At least the government is taking very sensible action in trying to do something about this serious threat. We are not doing it by imposing a debt of $1,300 on every household in Australia and then handing that money over to the big polluters to spend as they will in some bizarre hope that, if given extra money, they will cut their pollution. No, that is not how Labor is addressing it. Labor is addressing it by making sure that the big polluters have an incentive to change their behaviour and reduce their carbon emissions by having a carbon price put on those
emissions. It is a sensible and practical way to do it.

It is often said by members opposite that this is the world's biggest tax. In fact, Australia is in the middle of the pack in terms of global action on carbon pricing. The report *The critical decade: international action on climate change* found that 90 countries, representing 90 per cent of the global economy, have committed to reduce their carbon pollution and have policies in place to achieve those reductions. The Climate Commission concluded that by next year 850 million people will be living in countries or states with emissions trading schemes, including the United Kingdom, Germany, France, Sweden, Norway, New Zealand and Switzerland. Those people opposite should be praising this government for taking sensible action on this issue rather than being so negative.

Senator Fifield: For lying?

Senator THORP: If you wish to use the word 'lie', this gives lie to the claim by the opposition leader, Tony Abbott, that we are only going to achieve a significant reduction in emissions if there is global action, and at the moment there is no sign whatsoever that the rest of the world is going to do things like introduce carbon taxes or emissions trading schemes. If there is a lie, there is the lie. What will the coalition's Direct Action policy take us to? It will destroy our international competitiveness, it will leave Australian businesses behind the rest of the world, it will make the essential task of reducing emissions even more difficult and costly for us and it will rip $1,000 out of the pockets of hardworking Australians, pensioners, students and families as you reduce—

Senator Ian Macdonald: You are as untruthful as your leader.

Senator THORP: Ha ha!

Senator Wong: Ignore him. He's completely irrelevant.

Senator THORP: I know. If the coalition get their way, it will be particularly painful for my state of Tasmania: 171,000 Tasmanian taxpayers may well lose their tax cut; 102,000 Tasmanians and 5,000 self-funded retirees will have money ripped out of their pockets if Tony Abbott rolls back carbon pricing; and a couple on the full age pension will have over $500 slashed from their pension under Mr Abbott's plan. What is most concerning to me is that this is a double whammy for Tasmania, because this is the same opposition that would, if in government, also rip $600 million per year from my state alone. I really wish the Leader of the Opposition in this place were present here because I am still waiting for a commitment from Mr Abetz that he will stand with his fellow Tasmanians, like yourself Mr Deputy President, to make sure that that cruel fate does not come to our state.

Senator RONALDSON (Victoria) (15:22): I also rise to take note of answers given by Senator Wong to questions asked by coalition senators about carbon pricing. It is not actually the question I was hoping to be speaking on, but, nonetheless, I am pleased to participate in this part of the debate. I note the comments of Senator Gallacher, who spoke earlier. I am sorry he is not here. If my memory serves me correctly, Senator Gallacher and, indeed, Senator Sterle made a big song and dance about the carbon tax and transport. It is not actually the question I was hoping to be speaking on, but, nonetheless, I am pleased to participate in this part of the debate. I note the comments of Senator Gallacher, who spoke earlier. I am sorry he is not here. If my memory serves me correctly, Senator Gallacher and, indeed, Senator Sterle made a big song and dance about the carbon tax and transport, but what needs to be remembered is that, if the Australian Labor Party is re-elected, in 2015 there will indeed be a carbon tax on transport. I did not hear Senator Gallacher talk about that today. I wonder why. He knows what effect the carbon tax will have on transport from 2015. I would have hoped that he would stand up today to defend and
look after his constituency by viciously attacking the imposition of a carbon tax on transport. He knows what financial impact it will have on the sector; he knows the potential employment impact.

I want to talk about the greatest lie ever told in a deliberate attempt to mislead the Australian people, and that, of course, was the statement by the Prime Minister prior to the last election that there would be no carbon tax under a government that she led. That indeed has proved to be a lie. The opposition have said quite clearly that we will untie this lie. If we are elected we will abolish the carbon tax. I suspect I know what will happen in relation to the carbon tax after the next election if we win it. Those opposite will be sitting on the side of the parliament which is voting for the abolition of that carbon tax. They will be voting with us in relation to the carbon tax after the next election if we win it. Those opposite will be sitting on the side of the parliament which is voting for the abolition of that carbon tax. They will be voting in about the time it takes to count the vote after the division, which will no doubt be called by the Greens, who no doubt will be Labor's bed partners at that stage.

In the time left to me, I want to go back to a question asked by Senator Nash of Minister Wong. I do not think anyone should underestimate the impact of the Prime Minister's comment in the past week on small business in this country. When the Prime Minister said that business should simply pass on additional costs to customers in full, she belled the cat on the impact of this tax on small business and on all Australians. It was an extraordinary statement from the Prime Minister of this country. It was a statement undoubtedly driven by the fact that she knows in her heart of hearts what impact this tax will have. She knows full well that she told the world's greatest lie in relation to the world's greatest carbon tax before the last election, to buy off the vote of the Australian Greens. We are now confronted with a tax that will do untold economic damage to this country, and the Australian Labor Party is going to vote to abolish it anyway after the next election if the coalition is elected.

I want to talk about the company that Senator Nash referred to, Geoffrey Thompson Holdings. They have been hit with a one-month carbon tax bill of over $10,000, or 15 per cent, and cannot pass that on. As Geoffrey Thompson Holdings said, they 'may have to reduce their workforce to save costs'. Another company, a food manufacturer from central Victoria, approached me in the last 24 hours. They said they had been told by the supermarket they supply that under no circumstances should they even contemplate passing on their increased costs, because they simply would not be paid and that order would go to another supplier who was prepared to try to absorb the costs themselves. This will have an extraordinarily damaging impact on our economy. (Time expired)

Question agreed to.

Minerals Resource Rent Tax

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:27): I move:

That the Senate take note of the answer given by the Minister for Finance and Deregulation (Senator Wong) to a question without notice asked by Senator Milne today relating to the minerals resource rent tax.

I rise to speak about that because I think it is a critical issue for Australia. Whenever you go around in the community, people say that they want the government to move to invest in our schools, for a start. Everybody recognises the inequality in school funding and that the bias for so many years has been away from public education towards private
education. Schools have been extremely grateful, I might say, for the injection of funds that occurred as a result of the stimulus package that the government and the Greens supported and the coalition did not. Schools are very grateful for those new buildings, but, nevertheless, schools are more than buildings. They require teachers and they require additional resources to be able to get better educational outcomes.

If in Australia we are going to move away from being a dig it up, cut it down and ship it away economy to one that invests in education, knowledge, training, commercialisation and more diversification, it is essential that we invest in education—but to do that we need money. If we want a national disability insurance scheme, we need money. If we are to make sure we move to a universal access dental scheme to match Medicare, we need the money for it. The reality here is that we are not raising enough revenue.

Compare it with what happened under the Howard government. Under the Howard government, the tax to GDP ratio was such that, if the same ratio applied now, we would have an extra $24 billion to spend on education, disabilities and dental care. Let us not listen to anything from the coalition about this. If it were the same as it was then, the tax to GDP ratio would be delivering $24 billion more now.

But the government instead has the MRRT, which was negotiated after the super-profits tax failed after a change of leadership in 2010. It was hurriedly designed by the then new Prime Minister Julia Gillard, and that tax was on Xstrata, BHP and Rio Tinto. The huge mistake, the gaping hole in that tax, was the fact that it enabled the states to increase their royalties and the Commonwealth would reimburse that increase in royalties to the states. If ever there was a green light to state governments to go ahead and increase their royalties, that was it.

When that legislation came through the parliament with the opposition not wanting to raise money to spend on things like universal access to Denticare, education, disabilities and the like, with the coalition refusing, the Greens put strongly to the government: 'We need to close that loophole. We do not want the mining trucks to be able to drive straight through that loophole and prevent the community from having the revenue it needs to deliver for the community.' We said clearly, 'Let's fix it,' but the government voted against our amendment, and Minister Wong did not acknowledge this in question time. The only reason given at the time was: 'We've done a deal with BHP, Rio Tinto and Xstrata. We're not going to change that deal. We've done the deal. It's the deal. You either vote for the tax or you don't.' And of course the Greens wanted to raise the revenue. We would have preferred the super-profits tax. We wanted to raise the revenue, so we voted for the bill but we said at the time: 'This will come back to bite the government.' And it has.

The minister has now acknowledged that the revenue that was projected will not be raised. There is going to be a big hole, and what is the government going to do about it? So we have heard Treasurer Swan saying he has written to the states proposing exactly what the Greens said in terms of stopping any further reimbursement from 1 July 2011 regarding the rate. What the Greens are now going to do is introduce a private member's bill to give effect to the amendment that we moved then to get rid of this loophole. It is the most straightforward way of doing it. Messing around with GST is going to end up right in the midst of that report, and goodness only knows where that will end up.
The cleanest, easiest way of fixing this so that the government has the revenue to deliver the programs that show we care about Australians—their ability to access education equally, their ability to have a national disability insurance scheme and their ability for universal access to Denticare—is to raise the money we need to fix this gaping hole that is out there in this tax that was hurriedly negotiated. We went straight to an election. After that we were busily negotiating something. There was a fundamental flaw in it. It has been recognised by everyone, including Ken Henry. The Greens want to fix it and we will.

Question agreed to.

BUSINESS

Withdrawal

Senator WONG (South Australia—Minister for Finance and Deregulation) (15:32): I move:

That Business of the Senate order of the day no. 20, relating to the Tax Laws Amendment (Management Investment Trust Withholding Tax) Bill 2012, be discharged from the Notice Paper.

Question agreed to.

Leave of Absence

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:33): by leave—I move:

That Senator Heffernan be granted leave of absence for today being Wednesday, 22 August 2012 for personal reasons.

Question agreed to.

NOTICES

Presentation

Senator Siewert to move:

That the time for the presentation of the report of the Community Affairs References Committee on palliative care in Australia be extended to 19 September 2012.

Senator Siewert to move:

That the Community Affairs References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Tuesday, 11 September 2012, from 12.30 pm.

Senator Eggleston to move:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the procurement procedures for defence capital projects be extended to 30 August 2012.

Senator Sterle to move:

That the Rural and Regional Affairs and Transport References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Thursday, 23 August 2012, from 4.30 pm, to take evidence for the committee’s inquiry into the management of the Murray-Darling Basin.

Senator Sterle to move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport References Committee on the procurement procedures for defence capital projects be extended to 30 August 2012.

Senators Crossin, Moore, Boyce, Nash, Siewert and Xenophon to move:

That the Senate—

(a) notes that September 2012 marks the 20th anniversary of the Fred Hollows Foundation;

(b) recognises the work of the late Professor Fred Hollows, AC, and the clinicians, administrators and volunteers who have followed in his footsteps over the past 2 decades;

(c) commends the Fred Hollows Foundation for its achievements, including:

(i) producing millions of intraocular lenses at factories in Eritrea and Nepal and exporting those lenses to more than 75 countries,

(ii) training tens of thousands of clinical and support staff, including ophthalmologists, nurses and community workers,

(iii) building or renovating more than 100 health facilities, and
(iv) reducing the cost of cataract operations to just $25 in many developing countries; and

(d) endorses the ongoing mission of the Fred Hollows Foundation to give local communities the skills and tools to eradicate avoidable blindness and improve lives in Australia and around the world.

**Senators Mason and Cormann:** To move:

That the Senate

(a) notes that 23 August is the European Day of Remembrance for Victims of Stalinism and Nazism (also known as International Black Ribbon Day), which:

(i) commemorates the tens of millions of those who were murdered by fascist and communist totalitarianism in the 20th century, as well as those imprisoned, deported and persecuted by fascist and communist regimes,

(ii) is the anniversary of the Ribbentrop-Molotov Pact, the non-aggression treaty signed on 23 August 1939 by Nazi Germany and the Soviet Union, which partitioned Eastern Europe between them and gave a green light to the commencement of World War II,

(iii) was first held in 1986 as a day of protest and remembrance around the world, including in Australia, before spreading to the Baltic states where, in 1989, two million Latvians, Lithuanians and Estonians formed a human chain to protest the continuing Soviet occupation of their countries, and

(iv) was adopted by the European Parliament in 2009 and is commemorated in many European Union countries, including Great Britain, as well as in Canada and Georgia; and

(b) joins in remembering all the victims of Nazism and Stalinism.

**Senator Siewert** to move:

That the Senate—

(a) notes the success of the Kimberley Girl Program in improving the lives of Aboriginal and Torres Strait Islander women, their families and communities;

(b) notes that:

(i) since Kimberley Girl commenced in 2004, the program has provided 219 young women with personal development training, including public speaking,

(ii) one-third of these participants have experienced five of the seven socio-economic disadvantage factors, 45 per cent have experienced four or more and 65 per cent have experienced three or more disadvantage factors,

(iii) 90 per cent of these women said that they benefitted from the skills acquired during the program and half said that their life is better now than it was before they did Kimberley Girl, and

(iv) due to the success of Kimberley Girl, there have been a number of requests to roll the program out to other regions of Australia;

(c) recognises the importance of long-term funding to support this and other programs for Aboriginal and Torres Strait Islander women, families and communities;

(d) welcomes the Government's support of $479 000 for the Kimberley Girl Program since 2008; and

(e) calls on the Government to commit to funding the program over the next 3 to 5 years.

**Senator Brown** to move:

That the Senate—

(a) recognises the significance of goods and services tax (GST) receipts to state governments;

(b) acknowledges the commitment given by the Federal Labor Government to Horizontal Fiscal Equalisation (HFE);

(c) notes that:

(i) HFE is the distribution method that underpins the concept of federalism in this country and spreads Australia's wealth fairly across all states and territories,

(ii) HFE is vitally important to the Federation and this long-standing principle of equalisation has served Australia well, and that this has long been a bipartisan position of successive Labor and Liberal Commonwealth Governments, and

(iii) a move to per capita distribution of the GST would have disastrous consequences for the budgets of smaller states and territories in the
Commonwealth, whose residents would consequently receive a significantly inferior level of key services such as health and education; and
(d) endorses HFE and calls on all sides of politics to support the principle that HFE be maintained into the future.

Senator Wright to move:
That the Senate—
(a) recognises that discrimination and inequality are alive and well in Australia, for example, in August 2010, women earned 16.9 per cent less than men on average per week, with the total earnings gap increasing to 34.8 per cent per week when taking into account part time and casual work; and
(b) calls on the Government to:
(i) seize the opportunity to introduce a stand-alone Federal Equality Act that adopts global best-practice standards and brings Australian law into line with our international human rights obligations, and
(ii) ensure that new equality legislation includes, among other things, a specific duty to promote equality and eliminate discrimination, prohibits discrimination in all areas of public life and removes arbitrary and blanket exemptions.

Senators Rhiannon and Moore to move:
That the Senate—
(a) notes that:
(i) the impact of the lack of affordable housing is felt disproportionately by women due to the high number of women in low-paid jobs, women heading single parent families and higher rates of poverty among older women living alone,
(ii) research indicates that, in coming years, there will be a significant increase in older women facing homelessness, and
(iii) a key priority of the Australian Social Inclusion Board for 2012-13 is to provide advice to government on the best responses to the growing issue of older women and homelessness; and
(b) calls on the Government to:
(i) support continued efforts to include a gendered perspective in the development of affordable housing measures, and
(ii) publish information on how women are impacted by the affordable housing shortage, such as gender disaggregated data on the outcomes of the National Affordable Housing Agreement, National Partnership Agreements, National Rental Affordability Scheme and Social Housing Initiative.

Senator Milne and Senator Xenophon to move:
That there be laid on the table, no later than 17 September 2012:
(a) any documents or information from Securency International Ltd and Note Printing Australia to the Reserve Bank of Australia (RBA) pertaining to allegations of corruption and bribery at these subsidiaries, prior to the exposure of the allegations in the media in May 2009;
(b) any internal RBA documents discussing the receipt of any documents or information pertaining to such allegations;
(c) any written advice or information provided to the Government by the RBA pertaining to these allegations;
(d) the Freehills report into Note Printing Australia's agency arrangements, including the terms of reference for this report and any information provided to Freehills; and
(e) the Note Printing Australia audit report into these allegations.

Senator Madigan to move:
That the Senate—
(a) notes that:
(i) development of the Bald Hills wind farm in South Gippsland has been approved and will include construction of 52 wind turbines of up to 135 metres in height in the middle of a significant wetlands and flora conservation area on the South Gippsland coast,
(ii) some 296 recorded bird species live around the area of the wind farm, of which:
(a) 21 are threatened species in the Cape Liptrap area,
(b) 31 are listed species under the Victorian Flora and Fauna Guarantee Act 1988,
(c) 97 are listed as migratory under the Environment Protection and Biodiversity
Conservation Act 1999 of which 2 are listed as endangered, including one critically endangered,

(d) 40 are listed under the Chinese-Australian Migratory Bird Agreement (CAMBA),

(e) 45 are listed under the Japanese-Australian Migratory Bird Agreement (JAMBA), and

(f) 3 are listed under the Bonn Convention on Migratory Species,

(iii) government approval of the Bald Hills wind farm is causing Australia to breach the international obligations to protect migratory species listed under JAMBA, CAMBA and the Bonn Convention on Migratory Species,

(iv) objectors to the development of the Bald Hills wind farm include hundreds of individuals, as well as over a dozen organisations, including the National Trust of Australia, Victorian National Parks Association, Parks Victoria West Gippsland District, South Gippsland Conservation Society and the South Gippsland Shire Council; and

(b) calls on the Minister for Sustainability, Environment, Water, Population and Communities to remove Commonwealth approval for the construction of the Bald Hills wind farm and bring Australia into compliance with our international obligations.

Senator Cormann to move:

That there be laid on the table by the Minister representing the Minister for Climate Change and Energy Efficiency, no later than noon on 10 September 2012, detail of how many Australian export businesses:

(a) have received free carbon permits since 1 July 2012; and

(b) are expected to receive free carbon permits in 2012-13, 2013-14, 2014-15 and 2015-16.

Senator Wong to move:

(1) That a Select Committee on Electricity Prices be appointed to inquire into and report by 1 November 2012 on:

(a) the key causes of electricity price increases over recent years and in future projections;

(b) legislative and regulatory arrangements and drivers in relation to network transmission and distribution investment decision-making and the consequent impacts on electricity bills, and on the long-term interests of consumers;

(c) options to reduce peak demand and improve the productivity of the national electricity system;

(d) independent energy market reviews currently underway to improve outcomes for consumers, mechanisms that could assist households and business to reduce (or substantially mitigate increases in) their energy costs, including:

(i) the identification of practical low cost energy efficiency opportunities to assist low income earners reduce their electricity costs,

(ii) the opportunities for improved customer advocacy and representation arrangements bringing together current diffuse consumer representation around the country,

(iii) investigation of the opportunities and possible mechanisms for the wider adoption of technologies to provide consumers with greater information to assist in managing their energy use,

(iv) the adequacy of current consumer information, choice and protection measures, including the benefits to consumers and industry of uniform adoption of the National Energy Customer Framework,

(v) arrangements to support and assist low income and vulnerable consumers with electricity pricing, in particular relating to the role and extent of dividend redistribution from electricity infrastructure,

(vi) arrangements for network businesses to assist their customers to save energy and reduce peak demand as a more cost effective alternative to network infrastructure spending, and

(vii) improved reporting by electricity businesses of their performance in assisting customers to save energy and reduce bills; and

(e) opportunities and barriers to the wider deployment of new and innovative technologies, including:
(i) direct load control and pricing incentives,
(ii) storage technology,
(iii) energy efficiency, and
(iv) distributed clean and renewable energy generation.

(2) That the committee consist of 8 senators, 4 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate, and 1 nominated by the Leader of the Australian Greens.

(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 senators;
(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; and
(c) a participating member shall be taken to be a member of the committee for the purpose of forming a quorum of the committee if a majority of members of the committee is not present.

(4) That every nomination of a member of the committee be notified in writing to the President of the Senate.

(5) That the committee elect a Government member as its chair.

(6) That, in the event of an equally divided vote, the chair has a casting vote.

(7) That 3 members of the committee constitute a quorum of the committee, provided that in a deliberative meeting the quorum shall include 1 Government member and 1 non-Government member.

(8) That the committee have power to call for witnesses to attend and for documents to be produced.

(9) That the committee may conduct proceedings at any place it sees fit.

(10) That the provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Senator Pratt to move:
That the Senate—
(a) notes that:
(i) 28 July was World Hepatitis Day,
(ii) the event is one of only 4 official world disease awareness days endorsed by the World Health Organization,
(iii) chronic hepatitis C is a large and growing health problem in Australia with more than 200 000 people living with the disease,
(iv) left untreated, hepatitis C can possibly lead to liver damage, cancer and death,
(v) hepatitis C has now eclipsed HIV/AIDS as the number one viral killer in Australia,
(vi) hepatitis C can be cured with the appropriate treatment,
(vii) needle and syringe programs have proven effective in relation to preventing transmission of hepatitis B and hepatitis C as well as HIV, and
(viii) hepatitis C disproportionately impacts on the Indigenous community with Indigenous people representing less than 3 per cent of the total Australian population but more than 8 per cent of the Australian population infected with hepatitis C; and
(b) welcomes scientific and treatment advances that greatly increase the chance of curing patients with the most common and hardest to treat strain of hepatitis C.

Postponement
The following items of business were postponed:

General business notice of motion no. 438 standing in the name of Senator Siewert for today, relating to the North West Slope Trawl Fishery, postponed till 19 September 2012.

General business notice of motion no. 442 standing in the name of Senator Siewert for today, proposing the introduction of the Fisheries Management Amendment (North West Slope

COMMITTEES
Economics References Committee
Reference
Senator MILNE (Tasmania—Leader of the Australian Greens) (15:34): I move:
That the following matter be referred to the Economics References Committee for inquiry and report by 29 October 2012:

The causes of electricity bill increases and options to moderate future increases, with particular reference to:
(a) identification of the key causes of electricity price increases over recent years and in future projections;
(b) whether the current electricity market objectives, and governance and regulation structures have been and will continue to be effective at moderating costs and serving their intended purposes;
(c) the accuracy of past electricity demand projections, the impact of declining wholesale electricity prices and the role of energy efficiency;
(d) barriers to reform created by the National Electricity Market institutions, including state-based regulators, the Australian Energy Market Operator, the Australian Energy Market Commission and the Australian Energy Regulator (AER), and whether the reach of the AER is unnecessarily restricted;
(e) the difference in cost drivers between private and government-owned transmission and distribution businesses and the significant decline in the productivity of these businesses;
(f) the impact of state and federal government measures to reduce greenhouse gas emissions and support renewable energy and energy efficiency in light of market externalities, broader social and economic benefits and whether market objectives should be reconsidered in light of these benefits;
(g) whether or not network reliability standards are unnecessarily high, and whether there are benefits of moving to a more sophisticated probabilistic approach to reliability standards, including more appropriate metrics of value of unserved energy and value of customer reliability;
(h) the effects of the imposition of obligations on electricity distributors for minimum targeted levels of 'demand management' and consumer energy efficiency schemes;
(i) the benefits of decoupling the profits of electricity distributors from the volume of energy supplied;
(j) the materiality of 'merit order' based price reductions in the wholesale energy market from increasing levels of distributed generation;
(k) regulatory and other barriers relating to the connection processes for embedded generators;
(l) the potential to shift from an energy-only market to markets in both energy and capacity, to restrain price volatility, ensure resource adequacy, and foster the development of a broad, competitive mix of generation and demand-side resources;
(m) the potential for increased funding of, and capacity for, consumer advocacy to reduce bills through countering the lobbying of market participants and networks;
(n) the need for a government agency to coordinate and promote energy savings, demand management and distributed generation;
(o) barriers to reform of the energy markets and systems in Western Australia and the Northern Territory; and
(p) any related matters.

Question agreed to.

Reference
Senator SIEWERT (Western Australia—Australian Greens Whip) (15:34): I move:
That the following matter be referred to the Community Affairs References Committee for inquiry and report by 27 March 2013:

Australia's domestic response to the World Health Organization's (WHO) Commission on Social Determinants of Health report, Closing the gap within a generation, including the:
(a) Government's response to other relevant WHO reports and declarations;
(b) impacts of the Government's response;
(c) extent to which the Commonwealth is adopting a social determinants of health approach through:

(i) relevant Commonwealth programs and services,
(ii) the structures and activities of national health agencies, and
(iii) appropriate Commonwealth data gathering and analysis; and

(d) scope for improving awareness of social determinants of health:

(i) in the community,
(ii) within government programs, and
(iii) amongst health and community service providers.

Question agreed to.

MOTIONS

James Price Point Gas Hub Precinct

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:35): I move:
That the Senate calls on the Government to:

(a) examine the new evidence presented by Dr Salisbury, that there are archaeologically and culturally significant but insufficiently documented dinosaur footprint trails right along the Dampier Peninsula coastline, including at the site of the proposed James Price Point gas hub precinct;

(b) commission further science that will identify the extent of the dinosaur footprint fossils in the proposed James Price Point gas hub precinct and the impact that construction of a gas hub would have on these fossils; and

(c) undertake a full environmental, social and heritage impact assessment of the James Price Point gas hub precinct proposal.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (15:36): Mr Deputy President, I seek leave to make a brief statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator JACINTA COLLINS: Mr Burke will not be in a position to make a decision on whether or not to endorse the precinct plan until the Western Australian government has finalised its strategic assessment documents to meet the terms of the strategic assessment agreement focusing on potential impacts to matters of national environmental significance.

The Western Australian Environmental Protection Authority has finalised its draft recommendation report with draft approval conditions and completed a two-week public appeals period. The Western Australian
Office of the Appeals Convenor is considering appeals received before providing a report to the Western Australian environment minister for final decision.

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:36): Mr Deputy President, I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator SIEWERT: I want to reiterate what I spoke about at length in the chamber last night, and that is: these footprints are probably going to prove to be some of the most important trackways and dinosaur footprints on this earth. We are talking about footprints that were left 130 million years ago. Some of these footprints have been left by what are now thought to be some of the biggest dinosaurs that ever walked this earth. The connection between these footprints and Aboriginal culture is also unique in the world. The government is continually saying, 'It's not our problem.' It is, because these are so important. This project should be rejected on the basis of these footprints alone, besides anything else—the marine environment, of course, and the rest of the terrestrial environment. It is not good enough for this government to wash its hands of this issue and to say that it is a state responsibility. (Time expired)

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

The Senate divided. [15:42]

(A The Deputy President—Senator Parry)

Ayes.................9
Noes..................33
Majority.............24

AYES

Waters, LJ
Wright, PL

NOES

Back, CJ
Birmingham, SJ
Brown, CL
Colbeck, R
Crossin, P
Farrell, D
Feeney, D
Furner, ML
Kroger, H (teller)
Marshall, GM
McKenzie, B
Moore, CM
Polley, H
Smith, D
Sterle, G
Thorp, LE
Williams, JR

Bernardi, C
Bishop, TM
Cameron, DN
Collins, JMA
Edwards, S
Faulkner, J
Fifield, MP
Gallacher, AM
Lundy, KA
McEwen, A
McLucas, J
Parry, S
Singh, LM
Stephens, U
Thistlethwaite, M
Urquhart, AE

Question negatived.

Job Creation

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:44): At the request of Senator Bernardi, I move:

That the Senate—

(a) notes the Treasurer's promise in the 2011-12 Budget to create half a million new jobs over the next 2 years; and

(b) calls on the Government to keep its promise to create half a million new jobs by 1 June 2013.

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:45): I seek leave to amend the motion.

Leave not granted.

The DEPUTY PRESIDENT (15:45): The question is that the motion moved by Senator Kroger, standing in the name of Senator Bernardi, be agreed to.

The Senate divided. [15:49]
Ayes....................27
Noes....................33
Majority..............6

AYES
Abetz, E
Birmingham, SJ
Bushby, DC
Cormann, M
Fawcett, DJ
Fifield, MP
Johnston, D
Kroger, H (teller)
Mason, B
Nash, F
Payne, MA
Ryan, SM
Sinodinos, A
Williams, JR
Bernardi, C
Boyce, SK
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Humphries, G
Joyce, B
Macdonald, ID
McKenzie, B
Parry, S
Ronaldson, M
Scullion, NG
Smith, D

NOES
Bishop, TM
Cameron, DN
Crossin, P
Farrell, D
Feeney, D
Gallacher, AM
Hogg, JJ
Landy, KA
McEwen, A (teller)
Milde, C
Polley, H
Rhiannon, L
Singh, LM
Sterle, G
Thorp, LE
Waters, LJ
Wright, PL
Brown, CL
Collins, JMA
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludlam, S
Marshall, GM
McLucas, J
Moore, CM
Pratt, LC
Siewert, R
Stephens, U
Thistlethwaite, M
Urguhart, AE
Whish-Wilson, PS

PAIRS
Back, CJ
Boswell, RLD
Brandis, GH
Cash, MC
Eggleston, A
Heffernan, W
Conroy, SM
Bilyk, CL
Ludwig, JW
Evans, C
Carr, KJ
Carr, RJ

Senator Wong did not vote, to compensate for the vacancy caused by the resignation of Senator Fisher.

Question negatived.

Media
Senator BIRMINGHAM (South Australia) (15:52): I move:
That the Senate—
(a) believes a free press is central to accountability and transparency in government; and
(b) rejects proposals for new government-appointed arbiters of news media content or government-imposed fines on news media content.

Senator LUDLAM (Western Australia) (15:52): Mr President, I ask that you put questions (a) and (b) separately as we may have different voting intentions for them.

The PRESIDENT: I shall do that.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (15:52): Mr President, I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for one minute.

Senator BIRMINGHAM: It seems that Senator Collins thinks that this motion is...
nothing short of a political stunt, and I can only assume that is the view of all of these Labor senators sitting around me at present. But I find it remarkable that a motion that makes a clearly stated commitment to the freedom of the media in this country should be regarded—

Honourable senators interjecting—

The PRESIDENT: Order! Senator Birmingham is entitled to be heard in silence.

Senator BIRMINGHAM: I find it remarkable that a motion that is clearly a principled motion making a principled statement in support of a free media and freedom of speech in Australia should not only be pilloried by those opposite, but also ridiculed by those on the crossbench and possibly the Labor Party in that they seem to propose voting 'yes' for one part stating a commitment to a free press and yet 'no' to a second part that would in fact enforce that commitment to a free press. Today it appears that the government is going to miss the opportunity to rule out the most heinous aspects of their proposed media reforms from being implemented.

Senator LUDDLAM (Western Australia) (15:55): Since splitting the motion was my proposal, I also seek leave to make a brief statement.

The PRESIDENT: Leave is granted for one minute.

Senator LUDDLAM: As a courtesy to Senator Birmingham, I will explain why the Australian Greens are taking the position that we are. I suspect that what is about to happen is a show of unanimous commitment by everybody in this chamber supporting Senator Birmingham's belief, as he has put here, that a free press is central to accountability and transparency to government. Part (b) is nitpicking particular coalition talking points about the outcome of the Finkelstein review and the Convergence Review. I must agree with Senator Collins: there is no purpose at all to trying to second guess the outcome of those reviews, so we will be voting for part (a) and against part (b).

The PRESIDENT: The question, therefore, is that part (a) of notice of motion No. 869 standing in the name of Senator Birmingham be agreed to.

Question agreed to.

Senator Abetz: Well done, Simon!

The PRESIDENT: That was completely disorderly, Senator Abetz! The question now is that part (b) of notice of motion No. 869 standing in the name of Senator Birmingham be agreed to.

The Senate divided. [15:57]

(The President—Senator Hogg)

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

AYES
Back, CJ
Birmingham, SJ
Bushby, DC
Cormann, M
Fawcett, DJ
Fifield, MP
Johnston, D
Kroger, H (teller)
Mason, B
Nash, F
Payne, MA
Ryan, SM
Sinodinos, A
Williams, JR
Bernardi, C
Boyce, SK
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Humphries, G
Joyce, B
Macdonald, ID
McKenzie, B
Parry, S
Ronaldson, M
Scullion, NG
Smith, D

NOES
Bishop, TM
Cameron, DN
Crossin, P
Farrell, D
Feeney, D
Gallacher, AM
Hogg, JJ
Brown, CL
Collins, JMA
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludwig, JW
Senator Wong did not vote, to compensate for the vacancy caused by the resignation of Senator Fisher.

Question negatived.

MATTERS OF PUBLIC IMPORTANCE

Indigenous Policy

The DEPUTY PRESIDENT: A letter has been received from Senator Siewert:

Pursuant to standing order 75, I propose that the following matter of public importance be submitted to the Senate for discussion:

Inadequacy of the Government’s policies, such as Stronger Futures in the Northern Territory and support for Homelands, to address disadvantage and improve outcomes for Aboriginal People.

Is the proposal supported?

More than the number of senators required by the standing orders having risen in their places—

Senator SIEWERT (Western Australia—Australian Greens Whip) (16:01): On the last sitting day in June, as this chamber knows, the Senate passed the stronger futures legislation, a policy for which there is no substantive evidence that it will be effective, just like its predecessor, the Northern Territory intervention, had no substantive evidence of its effectiveness. At around the same time that the Senate was considering the stronger futures legislation, results of the 2011 census were released. This stronger futures legislation and the government's policy approach is supposed to be closing the gap of Aboriginal disadvantage—the gap between Aboriginal and non-Aboriginal Australians in life expectancy and socioeconomic indicators. I would have expected to see that the gap in those socioeconomic differences was closing. In fact, the census showed us that in those key socioeconomic indicators between Aboriginal and non-Aboriginal Australia it is not closing. That gap is not vanishing. In fact, there was very little difference between the 2006 and 2011 censuses. The latest data on Closing the Gap, the figures from the end of last year, showed escalating reports of self-harm and suicide. I will come to employment in a minute.

What is particularly concerning about those reports is that the feedback I am getting from those on the ground in the Northern Territory is of shell-shocked communities, a feeling of disempowerment, continuing reports of people talking about a loss of dignity and with extreme despondency about the way that communities have been promised a lot that has not been delivered.

We have seen some changes, of course. We no longer have government business managers; we have government engagement coordinators. But, again, as with the government business managers, people do not know what they are supposed to be doing or what has changed. What has changed is that around the rest of Australia we have seen a defunding of some programs in order to fund the stronger futures legislation. One
of the things the government made communities understand is that in their 10-year commitment to ongoing funding—and 10-year and long-term funding is a good idea—there was little new money being delivered. There are some programs being continued. Money has been cut from other programs, such as the Indigenous law and justice programs, where we have seen $23.9 million over four years being redirected. We have seen money being redirected from the National Native Title Tribunal. We have seen money being redirected from the intensive literacy and numeracy programs for underachieving Indigenous students. We have seen community festivals and education engagement funding being cut. We have seen cuts to funding to the youth mobility and youth leadership programs, and to programs designed to address petrol sniffing—that critical element of youth diversionary programs.

Just last week at our inquiry into the Low Aromatic Fuel Bill, commonly known as the Opal fuel bill, the department confirmed that approximately $1 million a year has been cut from those very necessary youth diversionary programs. One of those programs does some work in the Northern Territory but the others are from around the rest of Australia. So what we have seen here is a cut in funding from other programs to prop up the government's commitment in the Northern Territory—a commitment to programs that are not working. They are not closing the gap. They are not significantly changing those socioeconomic programs. They are not delivering better outcomes for employment.

Some of the latest survey work from the Bureau of Statistics—Labour force characteristics of Aboriginal and Torres Strait Islander Australians—shows that the gap between Aboriginal and non-Aboriginal Australia in terms of the ratio of employment to population remains the same at 25 per cent. In fact, figures for the Northern Territory are worse.

In some states there has been stagnation but in the Northern Territory the figure is the lowest at 37.9. As Jon Altman points out in the article that he wrote recently about this issue, it is the lowest despite the intervention and the reputed creation of 2,000 public sector jobs in prescribed communities. The intervention—and I keep calling it 'the intervention' because, as everyone in the communities knows, 'stronger futures' is simply a rebadging of 'the intervention'—has disempowered people in communities and we all know that the first step to closing the gap is about empowering people, about making programs culturally appropriate.

Another recent report, from a team led by Professor Pat Dudgeon from the University of Western Australia, was released just the other day, Hear our voices. It also points out the extreme importance of making sure that you have strong community, that you are building a leadership capacity, that the programs are developed by the community and delivered in partnership with the community, that there is community ownership and that, importantly, we build cultural strength. One of the most overwhelming comments that people make about the intervention is the disempowerment of community, the top-down approach and the lack of consultation when the intervention was first imposed. Those are the key elements that we hear all the time from communities.

Just this week we had a delegation visiting this place from Utopia which reinforced the fact that people feel disempowered, that people were not consulted, that they feel an overwhelming sense of despondency because of strong futures and the approach the government is taking because the
government, with stronger futures, has repeated the same mistakes from the intervention. There was a farce of a consultation process and I can name a number of reports and go through ad infinitum the number of complaints that my office has received and that have also been written up about the poor consultation process. I think there are enough to knock that fallacy on the head. There is also the evidence that the Senate Community Affairs Committee received when inquiring into stronger futures, which overwhelmingly criticised the consultation approach. So, again, communities were not adequately consulted about the future.

But the key thing here is that we are not getting those community driven programs that are culturally based. Importantly, there are homelands, and one of the constant complaints that we have been receiving is the failure of the government to support homelands. Yes, they have continued the funding for homelands—but at a minimum amount. What I was told yesterday as to what you see at Utopia is that you get $2,000 for a home refurbishment in a non-hub town or a non-growth town and you get $70,000 in a growth town. People feel overwhelmingly disenfranchised and that the government does not value homelands and is not investing in homelands. But it is the homelands that deliver connection to country where people feel at home and where people feel their cultural strength, yet the government's policy drives people out of homelands into growth towns, where you get a lot more social dysfunction, where people feel isolated and do not have their cultural strengths. So what the government needs to be doing is rethinking its approach to policies to deliver, and also to address Aboriginal disadvantage. *(Time expired)*

**Senator CROSSIN** (Northern Territory) *(16:11)*: Mr Deputy President, I made it my business to come in this afternoon and listen to all of the contributions from the Greens in their opening speeches on this section of our business today. I think that if you had listened very carefully to the last 10 minutes you would not have heard one policy idea, you would not have heard of one initiative, you would not have heard of one solution, you would not have heard of one way of moving this debate forward. I understand, Senator Siewert, that you have an interest in this area but I think that your knowledge of what is going on through the length and breadth of the Northern Territory clouds your view about what a lot of people think about this.

So let us go to stronger futures. It is not a rebadging of the intervention. It suits you and it suits your political rhetoric to try to encourage Indigenous people in the Northern Territory to believe that but though there are many aspects of the Northern Territory Emergency Response, which was introduced under the Howard government, in it they have now gone and no longer exist in this legislation because we have spent four years talking to Indigenous people about a way forward. This is unlike when the intervention was first introduced by a former minister, Mal Brough, and occurred overnight. What we did, as I said in my speech in a contribution to the stronger futures legislation debate, was get Peter Yu and his group of three to conduct consultations. We changed the legislation so it complied with the Racial Discrimination Act.

We have been out there a number of times talking to people about what they want. People focus on the 12 weeks in which the consultations on that particular piece of legislation this year were focused, but the reality is that people like Minister Warren Snowdon and his staff, me and my staff and Minister Macklin, to her credit—and Senator Scullion, I have to say—actually get out on
the ground week after week and hear a much more balanced view about what is going on out there than you do.

Three weeks ago I had the privilege of going to Dhanaya, which is a homeland in north-east Arnhem Land, and I sat there with nearly 300 people for 11 hours that day. I was extremely privileged to be part of a young boy's initiation ceremony followed by, several hours later, a funeral, and in the course of that day I got to speak to many people at Dhanaya. What I know is this: people out there are very confused about the shire council reforms that have been undertaken by the Northern Territory government and they say that these have taken their voices away.

The Northern Territory government is working through that because it was an inefficient and inept system of managing local government. We and the Northern Territory government are working to ensure that those small communities have consultative groups that work within those shires. They talk about their voices being removed. Let us make sure that that is not wrapped up in the stronger futures package. Let us be really clear about this. It is about the local government reform, which is major and massive—73 communities are now down to nine super shires. Is it going to work overnight? Of course it is not, but it is going to take years to make sure that people know what has happened.

We talk about consulting with Indigenous people. I think we have done it better than many governments have done it in the past. Wherever we have built houses, we have a local housing reference group. I was at Wadeye three weeks ago where there are 75 new houses. You would seriously think that it was a suburb anywhere in this country. It is in a square grid. It has sealed roads. It has guttering. For the first time ever I have seen new houses put in Indigenous communities with guttering, lines marked on the road, power lights overhead, footpaths and fences. I was astonished when I saw it and the people there were eminently proud of this new lot of housing. It was done in consultation with Indigenous people, so 75 houses were not just built anywhere. I could say the same about Maningrida and the new houses on Groote Eyland.

All of the growth towns have a local implementation plan—an LIP. Those communities have been asked to identify 10 priorities in their community. Those priorities change and are different. Each of those communities has a local implementation plan committee working with local government, the NT government and the Commonwealth government and the community. There are four parties that sign up to that local implementation plan.

So things are very different out there. Sure, it is a struggle. I have been in the territory for 31 years and I still grapple with why children are not going to school everyday. I still grapple with why we have the health outcomes that we have, and there are plenty more challenges. But looking back 31 years, I do see a difference. What we are determined to do is to stop this small cycle of funding where plans for community groups and organisations get put in place and then, after one or three years, they have to reapply for their funding.

I think the greatest thing that has come into place with stronger futures is a 10-year bipartisan funding commitment between the government and the coalition. So no matter what happens at next year's federal election or the federal election after that—or the federal election after that, for that matter—$3.4 billion will be there so that we can have a generation of implementation of programs.
Senator Siewert, you have not heard Aboriginal people ask you month after month to, 'Please give us a decent block of funding, give us funding that goes beyond three years so that we can actually plan.' I have constantly heard that everywhere I have gone throughout the Northern Territory in my working life there. I really do have to pay tribute to Jenny Macklin and people like Senator Wong and Wayne Swan who decided that that they would get this money together and fund these programs for 10 years.

Everywhere I go Indigenous people say two things to me: they want to stop the alcohol abuse; and they want to stop people ruining their lives by getting easy access to alcohol and to have an alternative. Stronger futures tackles that challenge. They want assistance to get their kids to school and stronger futures tackles that challenge as well, working in partnership with Indigenous people. Women want to continue with the BasicsCard because they feel some security about that and they want us to continue to improve the safety in their community. Stronger futures does that.

We have worked very hard with the homelands policy. Even the coalition said to the Northern Territory government, 'We will find homelands for a certain number of years but after that you have to find the money yourselves.' Well, it was not going to be possible and it is not possible in the economic base of the Northern Territory. Under the stronger futures package we have given $200 million over 10 years to support municipal and essential services in the homelands. The coalition have partnered with us as part of the 10-year funding commitment. I hope that $200 million is now safe and secure. During this election campaign Paul Henderson, under his dynamic leadership and extensive consultation with people in the Northern Territory, travelled out to Gan Gan, a homeland in north-east Arnhem Land, two weeks ago and announced that they would match our $200 million with $300 million. So under the Labor Party, both federally and in the Northern Territory, you have a $500 million commitment for homelands for the next 10 years because we acknowledge the profound connection between Indigenous people and their homelands. We acknowledge their culture, we acknowledge that they want and deserve a right to live on their homelands. Through stronger futures and our homelands policy we support that right. (Time expired)

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals)

I take this opportunity to again place on the record the coalition's views on stronger futures. I also look to take to task Senator Siewert's remarks with regard to some of those matters. Senator Siewert says that the intervention completely failed and she brings forward what I would say is at best anecdotal evidence.

I am quite often lectured by Senator Siewert and others in the Greens about evidence based policy, and I would ask them to listen to their own admonishments and start to provide that themselves. Certainly we see evidence in some of those areas of the provision of police as well as the complete collapse of defence injuries, as provided in the statistics by the medical centres. There is also all the support evidence by independent surveys conducted in these communities. I know that you would love to have everybody say that we were just into rebadging the intervention with Stronger Futures. Stronger Futures only deals with, as you would be well aware, Senator Siewert, provisions around community stores; the rescheduling of the alcohol provisions where the community asked for that prior to Stronger; and the announcement that the
leasing arrangements will now be voluntary. I have to say that the circumstances and the funds behind the intervention cannot be compared with a rebadging under the Strong Futures legislation.

Senator Crossin touched on the consultation involved in the Stronger Futures. One of the things which I will support the Greens on is that anybody who has had anything to do with the Stronger Futures would know that if we needed a lesson on how not to consult—and I acknowledge that it is a difficult challenge—it would be that. As a committee, we arrived at a community to find that they had already had the government's department in there for 10 days. They really did not know what we were doing there. They had never heard of it at all. It means that quite clearly we do need to go back to the drawing board in that regard. As Senator Crossin indicates, the shire council reforms were not only confusing but very destructive in terms of how people felt about their communities and their capacity to be able to say, 'These are the priorities that our community needs in the shire context.' The Country Liberal coalition in the Northern Territory has a policy to return the full say that existed prior to those reforms to those individual shires.

Again, Senator Crossin, you talked very fondly about the consultation on SIHIP and how you had your house built. I agree; I think a lot of people were quite happy with that. There were two problems with it, though. The first is that it cost $53 million before a single brick was laid. The second is that the feedback the Aboriginal people gave the government about what sorts of houses were to be built was completely ignored. So I am not really sure that that would be something I would be boasting about.

Before I briefly go to the homelands, I have just heard, sadly, that Olympic Dam mark II will not be going ahead. I had heard from a lot of people, from a lot of different organisations and from government that an awful lot of Indigenous employment was to be levered against it. I have to say that it not going ahead certainly does not come into my context of a stronger future. I think we would all be extremely disappointed about that.

The homelands movement is one with a great deal of history. Senator Crossin reminded us that late in March the federal government announced $221 million to provide some basic amenities. This is a bit confusing. The $221 million is there simply because we have decided to multiply our normal budgetary remarks by 10—it looks bigger. Wouldn't we all love to just multiply everything by 10? So I think we should contextualise that. This is $22 million a year, as it always has been. It is the $22 million a year that was originally provided in 2007 by the coalition. As Senator Crossin said, the clear agreement was that the Commonwealth government would provide this money to the Northern Territory government, because at that stage they really needed some infrastructure improvement, and the Northern Territory government would take responsibility for it in four years. It is a bit rich to come in here and say, 'We were never going to do it,' because that is, as I understand it, not the agreement at the time. In any event, that $22 million is now going to be continued by this government, and the coalition would, of course, support that.

There is one real challenge with some of this money that I can recall from earlier this year. In fact, it was probably on the first day that you can cross the Mann River, whenever that was, and we still had water in the windows; so it was pretty early in the year. I visited 21 homelands that were the responsibility of one of the homeland resource centres. I spoke to the people in all of those communities. I said, 'What've you
had done in the last few years that you can remember where somebody came here and did anything with the power, the water, the septic system or anything else?" There was in fact only one thing, which was at Marwin. They very proudly walked me up to a very large, $3,006, I think, poly water tank. They were very proud of the tank. But the fact is that it had sat on its side, 20 metres from the stand, unplumbed, for 18 months. They were proud of it, and I was obviously proud with them. But it was a pretty poor indictment that over that much time the reality on the ground is that the money is going somewhere but it is not going there.

I think all future governments— I am trying to take the politics out of this— should remember that, instead of giving money to organisations so that we can stand in this place and say to the people of Australia, 'We gave this much money; we gave $22 million to the Northern Territory,' and then walk away—because how is money supposed to put water in a tank?—we need to, with the leverage of the Commonwealth, change the way we do business. What we need to do as a Commonwealth, with the great leverage that we have, is start buying outcomes. It does not matter if it is the Territory government or the Western Australian government or the Country Liberals or Labor, we simply need to guarantee to ourselves that we are buying an outcome rather than pushing up a government. But that is not happening at the moment, and it is something that I believe just simply cannot continue.

There is also a very small matter of the administration of these fees. We expect $10 to buy $10, but it does not. It invariably buys $9 or $8. When you start getting out in the bush a bit, it sometimes creeps up. We need to ensure that, when the Commonwealth is using its massive leverage, we take that into consideration and actually provide outcomes.

One of the things in relation to the homelands more generally is the provision of $619 million for an additional 60 police officers. They are not actually additional. They are the same police officers that were provided by the coalition on the basis that the Northern Territory government provided the number of police officers they were supposed to. Of course they have not done that.

I think all these arrangements need to be treated with the respect they deserve, whether they have arisen through COAG or through an independent agreement between the Northern Territory government and the Commonwealth. Stronger Futures is a piece of legislation which tidies up and continues some of those elements of the intervention, some of which have, very sadly, been allowed to drift aimlessly.

We have heard from Trish Crossin. I think she spoke quite passionately about the fact that the government are not actually pursuing most of those things that that nasty bloke John Howard—without verballing you, Trish—had instigated. She said they had got rid of those things. I think it is that sort of attitude which has allowed some of these very good programs to drift aimlessly. Sadly, the truth is that today we should have been in the position of being able to look back on good work having been done and, as a result of that work, being able to exit those communities.

I am loath to criticise and belt those on any side of politics, because this is a very difficult task. But we must learn from our mistakes—mistakes all of us have made. It is starkly clear that there are plenty of things which have been done wrongly and we cannot continue to repeat those wrongs of the past. But, after five years of this sort of federal investment, it is quite clear that we should by now have been in a position to be
able to get out of these Aboriginal communities. We should by now have been able to see them having and achieving the same aspirations that other Australians have—a roof over their heads, the potential to own that roof, kids going to school and a job. Sadly, that is still not the case.

Senator LUDLAM (Western Australia) (16:31): I suspect that if Senator Siewert had had a few more minutes to speak on this matter of public importance on the Stronger Futures legislation, she would probably have directly addressed some of the matters raised by Senator Crossin. I found some of the accusations that came flying back across the chamber quite bizarre—because a fair bit of the enormous amount of work that Senator Siewert has done on behalf of disadvantaged Aboriginal people and Aboriginal people across the spectrum has been done in conjunction with Senator Crossin. When our interests align and when the government does good things, we will of course support them.

Senator Crossin asked, rhetorically I suppose, what positive initiatives we had supported. She said that she had not heard any. I find it perplexing that we would need to underline them—but I will. On hearing, and oral health in particular, Senator Siewert has been directly involved in a comprehensive plan for otitis media—and Senator Crossin knows this. We were able to bring about comprehensive funding for a suicide prevention package. Again, this is cross-party work which everyone supports. We were able to bring about soundfields in classrooms. We have detailed proposals for community controlled education in Aboriginal communities. We have been a big part of the debate on a floor or minimum price for alcohol, as we have been on takeaway-free days in areas where the communities are calling for them.

On criminal justice, we have played a major part in popularising justice reinvestment. This is something both of us—and now Senator Wright as well—have had a lot to do with, inspired largely by the work of former Human Rights Commissioner Tom Calma. He brought the concept to Australia after he had seen how well it was working in the United States. Senator Siewert has a native title amendment on the books, which Senator Crossin is absolutely welcome to support. It actually gives people the right of veto—the absence of which has been a tragic flaw in the native title legislation right from the beginning. We were a big part of mandating Opal fuel—and of course there is Senator Siewert's proposal for unsniffable Opal petrol to be mandated across the region. These are not trivial matters. These are things with which we have been directly involved in support of the aspirations of our Aboriginal communities—not just in the Territory but across the country.

The issue I want to address directly is the idea that the best way to support economic development and Aboriginal advancement in the Northern Territory—and there seems to be a bizarre and nasty cross-party consensus about this between Labor and the CLP—is to dump radioactive waste on them. Senators will be well aware that this is a campaign I have had quite a long involvement with. I became involved in 2005, when I had the good fortune to be on Senator Rachel Siewert's staff and sat in the public gallery during the fateful week when the coalition, which had the numbers in the chamber at the time—they were fresh from bashing through the Work Choices legislation which would eventually bring the government down and they subsequently rammed through the welfare-to-work and terror laws and abolished student unions—decided, for a wrap-up, to have a go at radioactive waste and passed this shameful legislation through.
During that debate—and I remember this vividly—ALP senators spoke out strongly. They were great. They were actually inspiring. They were not as inspiring as Senator Siewert but they were clearly on board.

Since then, what has happened? Directly after the 2007 election, responsibility passed to Martin Ferguson and the Howard agenda continued. It was shameful. The Howard government radioactive waste legislation was described by ALP MPs, in the run-up to the 2007 election, as 'sordid'—and sordid it is. The idea that the best way to promote economic advancement in the Northern Territory is to post six of the loneliest security guards in the country to guard against people tampering with radioactive waste for the next three centuries absolutely beggar belief. They waved around a $12 million cheque in the community, north of Tennant Creek, which wanted a decent road and some community education support for their kids. That $12 million cheque was dangled in their faces in exchange for hosting what they thought was going to be a rubbish dump. Those were the words that were used—'rubbish dump'.

As I said, I have been involved with this campaign for quite some time. We have seen some very strong support from right across the board. I would like to acknowledge NT Chief Minister Henderson, who has defied his federal colleagues over this issue—and of course the NT Greens have been steadfast in the Barkly region, in Alice, in Darwin and right across the Northern Territory. But the Chief Minister is fighting an uphill battle, because he is fighting his own federal colleagues. This is a Labor Party radioactive waste dump, but it follows exactly the same template as the one which was announced by the coalition in 2005.

It was extraordinary, when listening in to the House debates and when the debate on the Radioactive Waste Management Act came through the Senate, to hear one coalition speaker after another taking credit for the idea and bagging the government for simply cutting and pasting. On that I agree with them. I agree with my colleague Senator Scullion, who claims some credit for the Mukaty waste dump, when he says that the ALP had just copied the coalition's policy—because they did. The only people who have been standing up and supporting the community on this one from day one have been the Australian Greens.

It is made all the more disappointing by the actions of the ALP when they were in opposition.

This is obviously a campaign that has a long way to run. Matters do not get to the Federal Court on a whim. While Minister Ferguson at the behest of the Northern Land Council continues to insist that one person effectively is able to speak for that country, we are in regular contact with a large number of traditional owners from the complex and quite tightknit family networks up there saying that of course traditional responsibility and custodianship over the area is shared and it is not a simple matter to simply draw a rectangle out of the area that five family groups signed on to as the Muckaty Land Trust and say it is just one person.

So the federal government is in enormous trouble and I suspect what is in the offing is probably a humiliating backdown. No matter what the outcome of the Federal Court, this is no way to treat the people of the Northern Territory. I am surprised at how quiet the NT CLP have been over this extraordinary attack on Territorians' rights. One thing I will note which has been a positive consequence, not just of the way the intervention was handled
but also of the way this waste dump proposal has been handled, is that it has re-sparked the debate over statehood for the Northern Territory. The debate is probably in better shape than it was when it was last had in the Northern Territory. I support the discussion being had so that this kind of exploitation—which is what it is; it is base exploitation of the constitutional weakness of the Northern Territory—can be taken advantage of by both major parties voting together as they did when that Muckaty waste legislation was finally put to the vote during the last session.

What is happening in the Federal Court is that the traditional owners are wishing to explain that the Muckaty Land Trust was granted to five groups in common due to interconnected responsibilities and songlines. The government of course has isolated a small number of people and declared them the exclusive owners of the designated land. We fought the bill for two years and it did pass this March, but we were pleased to be able to secure an amendment after negotiations with the government, which was also supported by the coalition, to ensure that no international waste is stored in Australia. But the impact on the traditional owners of Muckaty continues, as it has now for seven years since John Howard’s law was first passed—exploiting that same constitutional weakness that Territorians are no more than sick of hearing about—to dump radioactive waste on their land. The impact on them has been stress—they do not need this; they have enough on their hands without having to fight an industrial hazardous waste facility on their country as well. The issues that Senator Scullion listed, the issues that Senator Crossin listed and the issues that Senator Siewert relayed are all real issues that will only be solved if in a cross-party way we listen to the aspirations of the people who are directly affected in the Northern Territory.

The very last thing that people need is to hear about the nation’s most toxic radioactive waste not being safe enough to be parked where it is at the moment, under the active care and maintenance of the staff at the Lucas Heights facility in Sydney, but somehow magically being transformed into something completely safe if it is trucked 120 kilometres north of Tennant Creek and dumped in a shed surrounded by barbed wire. The people of the NT do not buy it. They have supporters all around the country, and I know this full well, who do not buy it either. The government has come down completely the wrong track, backed by the opposition, and the Greens will continue, if we have to, to be the only voices standing up in opposition to this flawed and completely misconceived facility.

Senator STERLE (Western Australia) (16:41): It is always good to listen to the contributions of other senators. Half the time I do not think we pay enough attention to each other—we are too busy running political arguments—but I have listened very carefully to the contributions by previous speakers. I acknowledge the fine contributions from Senator Crossin and Senator Scullion, from both sides of the political fence. I could not argue with anything they said, and it was comforting to hear truths come out. I spend an inordinate amount of time in Aboriginal communities in the Kimberley—no-one would spend as much time in Aboriginal communities in the Kimberley as me. I have seen the despair and the disadvantage firsthand, and it sickens me. But I do take heart when I hear Senator Scullion say that we need to take the politics out of it.

I do not think any senator since 1901—111 years—could put their hand on their heart and say that we have had a fantastic record, that we have done a fantastic job, in eliminating Aboriginal disadvantage. I will
acknowledge that each term of government brings new challenges and I acknowledge the fine work that is being done by the Gillard Labor government. I know, because I drive Minister Macklin mad, every time I come back from the Kimberley, with more and more problems, more and more requests, because I go out there and I consult. More importantly, I do not tell my blackfella mates what I think is good for them—I want them to tell me what they want me to hear and what they want me to bring back to Canberra.

Senator Siewert's matter of public importance refers to the inadequacy of government policies such as Stronger Futures in the Northern Territory and support for homelands. I am very familiar with the homelands. I think I have visited at least 40 of them; there are probably about 60. I do not doubt Senator Siewert's commitment to Aboriginal Australia; I do not doubt for one minute that she has a good heart when it comes to trying to deliver the best outcomes for Aboriginal people most times. But it is very important to get some facts out on the table. I find it very disingenuous when senators say one thing in their home state and then say another thing when they are here in Canberra. That goes for the mob in the other house, too.

I want to talk about Aboriginal disadvantage particularly in the Kimberley, and I want to talk about a couple of recent visits to the Kimberley not only by myself but also by Senator Siewert and Senator Milne—and the bastion of the green movement, Dr Brown, on the Sea Shepherd. There has been a very topical gas project proposed for the Kimberley region north of Broome. I, for one, do not care if there is a gas hub there or not. If there is going to be a gas hub, as long as all environmental approvals are ticked, as long as Aboriginal people are employed and as long as the traditional owners gain benefits, I am very happy. That is not inconsistent with what I have always said, whether it be on the public record or spoken to oil and gas companies or to my blackfella mates up in the peninsula and around Broome and the wider Kimberley.

But I get a little bit annoyed when Colin Barnett, the Premier of Western Australia, decided he was going to compulsorily acquire the land of the traditional owners, the Jabirr Jabirr and the Goolarabooloo—which I do not agree with. When they initiated the native title talks through the KLC—at the time, Mr Wayne Bergmann was the chair of the KLC—

Senator Siewert interjecting—

Senator STERLE: I hear Senator Siewert is going to chuck some barbs, and I do hope I hear them. But I get really annoyed when the Greens, including Senator Siewert and Senator Milne—if I am wrong, they will have the opportunity to correct me—go visit Broome, go up and meet with Waardi and then sit there with one of the most senior TOs, Rita Augustine, to tell her, in her words to me, that they were there to save the blackfellas from the mistake they may have made because it is wrong having a gas plant. That really annoys me. You see, as part of the negotiations with the Kimberley Land Council and the traditional owners—the Jabirr Jabirr do not agree but the Jabirr Jabirr do, whether we like it or not. The problem with democracy is that it is great if you can control it; as we know, that does not always happen. The vote has been taken, and they have decided that they were happy to go along with the agreement to have an Indigenous land use agreement.

Senator Siewert interjecting—
Senator STERLE: Senator Siewert, for your information, you should spend more time talking to the traditional owners. They decided that over the life of the gas plant—some 30 years—there would be a return in benefits of some $1½ billion to the Aboriginal traditional owners across the Kimberley, not just on the peninsula. That will deliver benefits in housing, in education and training, in roads, in all sorts of stuff. Under Wayne Bergmann's great leadership he has also started up KRED—Kimberley Regional Economic Development—where all Aboriginals will gain.

But I think it is really disingenuous when you go there, Senator Siewert, and lecture our traditional owners on how wrong they are and distance yourself from the environmental movements. They asked you to come out and visit the area or come out and talk to the Jabirr Jabirr, and you did not want to do it. The Leader of the Greens, Senator Milne, did not want to do it. You wanted to have a lovely photo taken of a flag welcoming the Sea Shepherd to Broome to make sure that whales were not being harpooned by gas plants—

Senator Siewert: Mr Acting Deputy President, I rise on a point of order. He is making comments about things he knows nothing about. He is, in fact, misleading the Senate.

The ACTING DEPUTY PRESIDENT (Senator Cameron): That is not a point of order. Resume your seat.

Senator STERLE: I am echoing the words of the senior traditional owners that I met with. If that is not the case, you will have the opportunity to defend that, but that is clearly what they told me. You cannot come in here and bag the government. You say one thing in Canberra when it suits you. Why don't you stick up for the blackfellas in Western Australia? Why don't you stick up for the people I talk to? Why don't you go up there and do something different that may hurt the Greens? Why don't you do what I do: why don't you sit with them and ask what they may want, not what you think is best for them?

Senator Siewert: How do you know I haven't?

Senator STERLE: Then that is what you do as the Greens.

But I will share some other words. I will quote from a speech by Mr Bergmann to the National Press Club on 27 June 2012. I know I do not have much time, but I need to get these words out. I thoroughly enjoyed listening to Wayne's speech. He talked about having a gas hub in the Kimberley and the tough times that the traditional owners went through. He also said:

These were some of the darkest and toughest days, trying to place traditional owners in the strongest position.

At the time I was proud to have stood with the environmental alliance. The Kimberley Land Council and TOs negotiated an Act of Parliament to stop any further LNG development on the Kimberley Coast and to limit industrial activity associated with gas processing. He then went on to say:

We—

the traditional owners and the Kimberley Land Council as well—negotiated a regional benefits package for the benefit of all Kimberley Aboriginal people, and compensation for traditional owners. We supported National Heritage Listing over a large part of the Kimberley. Yet most of the environmental groups turned against us. These groups could have assisted us in enforcing the highest environmental standards in order to minimize the impact of the development. But they turned their backs on us.
They have deliberately ignored the way in which Kimberley Traditional owners have worked to protect the Kimberley Coast.

He also said:

We have stood side-by-side with environmental groups to minimize the impact of gas development in the Kimberley. But what have they delivered in return? Nothing.

They have no interest in the need of Kimberley Aboriginal people to build a strong culture and a strong economic future.

In fact in some cases they have involved themselves in the politics between indigenous groups and families, and encouraged and promoted division, disempowering traditional owners.

I would love to read more of Mr Bergmann's speech.

I hear from Senator Siewert words about empowering people. I agree wholeheartedly. I also heard Senator Siewert use terms such as 'strong community'—agree. 'Leadership'—absolutely side-by-side with you on that one. 'Cultural strength'—who am I to argue? And guess what else I heard. 'Consultation'. So I say on that: unfortunately, the politics come into play here. But I would strongly suggest that, when we get lectured to by the Greens about the benefits of Closing the Gap, we could do a lot more but we do not need to be misled. We do not need this misinformation. This is politics in its purest form. Talking about purity: the Greens' purity sometimes just leaves me absolutely gobsmacked. (Time expired)

Senator PAYNE (New South Wales) (16:51): In participating in this debate on the matter of public importance moved by Senator Siewert this afternoon, I want to acknowledge, as Senator Scullion did, what the government has done thus far in this process in bringing forward the legislation that was recently debated in this chamber. I also want, as I did on that occasion, to continue to raise concerns—to use Senator Scullion's words again—in part about the government's drifting approach in this area of circumstances in the Northern Territory under stronger futures for Indigenous Australians, despite the passage of the legislation. I listened carefully, as Senator Sterle did, to all of those who have contributed to the debate this afternoon. I heard Senator Crossin speak on aspects of the SIHIP housing construction program, and I also noted Senator Scullion's response to that. But I see again in today's Australian another series of concerns being raised in relation to the state of some of that housing, and individuals who are not actually living in public housing having rent deducted from their welfare income, which would not seem to me to indicate the strongest possible approach to dealing with that at the moment. I also note the call of the Northern Territory Ombudsman for a review of every single rent collected by Centrelink since the start of the intervention in 2007 in that regard.

The coalition has indicated, both during a previous debate on the legislation and again today, that while this legislation is a step in the right direction we do not believe it solves the broader problem of what is a less than fully adequate approach to Indigenous affairs from this government. There was much that could have been taken from the work of the intervention—which was introduced under the previous coalition government—but has not been taken and consolidated by this government, and that remains of concern to us. For example, in terms of that drift—I think Senator Scullion used a very effective word in that regard—why would it take four years to realise that those emergency response measures, which were designed to basically enforce the rule of law, if you like, to get children to school and to create economies in remote communities, were indeed urgent and worthwhile measures?
There is no excuse for any drifting on those sorts of things as far as we are concerned, and it has the effect of hampering the progress of those individuals that it was meant to support.

After almost five years and a massive investment of funds, we should be at a point, as Senator Scullion said, where the community leaders are now those who are leading reforms and where passive welfare—for want of another turn of phrase—is not seen as life as it happens, as is still too often the case in remote communities. But, unfortunately, we still have school attendance rates which are far too low. We still have alcohol related crime and assaults which are far too high, and Senator Crossin also referred to those. We have persistent preventable health problems and a lack of economic opportunity which only ends up continuing to lead to frustration and despair in the communities.

I recall that on the evening of the passage of the legislation Senator Boswell came into the chamber and made a contribution in this debate as well. I am paraphrasing, not reading from the Hansard, but he said that after seeing report after report—and he is an individual of long standing in this chamber, so he would have seen many—showing that there has been limited and insufficient improvement in the welfare and care of children in remote communities, this remains, notwithstanding the legislation we dealt with then and the work that has been done previously, one of the most extraordinary challenges that we face as a nation. We have the challenge of dealing with languages—the challenge of many Indigenous children still speaking a language understood by a few in their own community—and the balance of engaging them in English instruction as well. So it is obvious that, notwithstanding that investment, we have seen insufficient improvement. This is only an early step, it would seem, in the progress to combating disadvantage. We supported the stronger futures legislation on that occasion because real reforms are and will continue to be needed, but we will continue also to vigorously and energetically hold this government to account if they do not provide the leadership, backed up by real commitment, to end this disadvantage and disconnection.

In speaking about some of those issues, we come again to the issue of alcohol abuse and its devastating impact on both families and local communities. We do not see the government outlining any real vision to work cooperatively with the Northern Territory government to tackle that alcohol abuse. In fact, over the period that preceded the introduction of this legislation, much of the heavy lifting in that area has been left to the Northern Territory government. So, if you are looking for fresh ideas on how that problem can be solved, one imagines that we might be better advised to watch the progress of the Northern Territory election campaign that is currently underway rather than looking to the government for inspiration.

The problem with the measures that were contained in the stronger futures package is that they were essentially only duplicating existing measures so that this government appeared to be taking stronger action against alcohol abuse rather than new and innovative approaches. As I mentioned in this chamber during that debate, the government at the time agreed to an opposition amendment which clarified the power of the federal minister in relation to those specific measures. It made it clear that, prior to modifying, suspending or cancelling a liquor licence or permit, the federal minister must first write to the Northern Territory government requesting that the Northern Territory liquor commission take action. If,
after those steps are taken, the Northern Territory authorities will not act then that Northern Territory minister must provide a written response detailing why they will not take the requested action. After the consideration of that response, the federal minister can then exercise the powers provided in that legislation to suspend or cancel liquor licences. We have over time also supported township and community living leasing arrangements in the Stronger Futures in the Northern Territory Act, but again the fact that those measures were only being implemented at the time of that legislation is another example of the slow pace of these reforms in this area.

The Northern Territory emergency response monitoring report from October 2011 indicated the following:

Following feedback from the land councils on these proposals, township leasing is now being pursued as a longer term priority, unless traditional owners initiate discussions.

I really do not believe that the government has shown the urgency that this issue demands. If those actions in relation to land and leasing are delayed, that delays the aspirations of prospective Indigenous homeowners and business operators, because without township leases you cannot achieve the level of private homeownership or commercial development that has been identified as necessary.

We have also spoken previously on the food security measures contained in the package, which continued aspects of the coalition government's previous program. The 10-year timetable for improvement that has been set down, though, is something which we identified on that occasion as very frustrating. It needed shorter interim targets, and can only slow down the reform process yet again. How can you know if they are actually working in any substantive way if you have to wait that long for results?

So we are concerned about interim targets on a number of those levels, not just in relation to the food issues but also programs in relation to school attendance and enrolment data—so, the SEAM measure in particular. I think that having those reviewed earlier is a particularly important aspect which was raised in the previous debate.

In conclusion, I refer briefly to the homelands issue. I stand to be corrected, but I understood Senator Crossin to say in her remarks that the Northern Territory government had contributed $300 million, bringing the total contribution for the homelands to $500 million. But my understanding from Chief Minister Paul Henderson's statement of last week is that the new homelands policy of the government and this government includes a commitment of $200 million from the Australian government and $100 million from the Territory government over the next 10 years, which in fact will total not $500 million but $300 million. Again, we are concerned—as I said at the beginning of my remarks—about the aspects of drift in the government's policy. We would like to see a stronger approach.

The ACTING DEPUTY PRESIDENT (Senator Cameron): Order! The time for discussion has expired. We now move to tabling and consideration of committee reports.

COMMITTEES

Community Affairs References Committee

Report

Senator SIEWERT (Western Australia—Australian Greens Whip) (17:01): I present the report of the Community Affairs References Committee on health services and medical professionals in rural areas, together with the Hansard record of
proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator SIEWERT: I move:

That the Senate take note of the report.

It is with great pleasure that I present this report. Upfront, I thank my colleagues on the committee. It was a very enjoyable experience—I think that I am allowed on this occasion to speak for all of us and say that—we enjoyed working together. I also thank the secretariat once again for the long hours and hard work that they have put into this report.

This report highlights, yet again, what I think many of us felt very strongly, and that is that there is inconsistent access to the medical workforce in rural and regional areas. In particular, access to medical specialists plummets outside major cities and falls to much lower levels outside large capitals. Also, we are aware of data that is showing higher disease burdens and poorer health outcomes for those living in rural and remote areas. While we acknowledge in our report that there has been work done, we believe, given that we have made 18 recommendations, that there is room for improvement and that more work needs to be done.

As I said, we made 18 recommendations; but in the rest of the short time I have available, other than recommending that people with an interest in this area get hold of the report and read it because there is some very useful information in there—read the recommendations—I point to a couple of key areas. One is that there has been a lot of talk about the classification system for incentives for medical professionals to work in regional areas. Again, the committee received a lot of criticism and input into that discussion and we made strong recommendations about the system needing to be improved—in fact, replaced and improved with some significant improvements.

One of the key areas that was also identified was the fact that the more specialised the medical profession has become—the more specialists we have—the more that has led to the detriment of rural health, because we do not have so many people going into rural generalist programs as in the past, or becoming rural generalists. We were presented with some excellent evidence around the success of programs—which I am sure my colleagues will talk about—and so we made some recommendations around those. We have also identified the need to look at the training places that are available regionally and we made some recommendations on those particular issues, to expand those, and we looked at how we can make improvements there.

We were also very clear that we talk not only about doctors. We are not just talking about doctors; we are talking about nurses and allied health professionals as well. One of the key recommendations that I think is very important—and I am aware that Senator Moore, in particular, will talk about it because it was her who was really focused on allied health and needing to get more focus there—is that a rural and regional allied health adviser be added to the adviser positions in the department.

We also talked about incentives for rural students to study medicine. The overwhelming evidence that we were presented with was very strong: if you want people to go and practice medicine and allied health in the bush then you should be supporting regional students and people from a rural background into studying medicine and as health professionals in particular. The evidence shows that if you come from the
bush you have an affinity for the bush and a 'rural-mindedness'—I think that is the right word. We made some recommendations about how we can incentivise that. But there were also some other things we found that were barriers to ensuring more health professionals in rural and regional areas, and so our committee made a number of recommendations.

As I said, there are 18 recommendations. Of course, the Community Affairs Committee could not table a report without talking about the need to improve access to data. We found it quite difficult to pull together the different data sources so we have made some recommendations about data.

I think that this report will contribute significantly to the ongoing work to ensure that we get better health provision in rural and regional Australia.

Senator MOORE (Queensland) (17:07): I want to use this short time to acknowledge the amazing support and commitment of so many people who chose to come before our committee. We had over 130 contributions and a number of supplementary contributions where people put in an original application and talked about their concerns and issues, then, as they individually followed what was going on in the Hansard and through phone calls coming to the committee, they then felt that there were more things they wished to share with us. Whilst it was a trial at times for the committee secretariat to ensure that we had all this information, it is a wonderful acknowledgement of the skills and commitment and dedication of so many people in rural communities to ensuring that their rural communities get the best possible access to medical services.

As Senator Siewert said, a core aspect of our committee was to make sure that we were looking at the range of medical support. Too often we get into a debate about the number of doctors in rural areas. That is a worthy debate and no-one is moving away from that and it will continue to be problematical, as our committee found in terms of making sure that we have appropriate training. My personal favourite, as Senator Siewert has mentioned—and I think that most of our committee members will mention—is the issue around ensuring that we have people who want to work in the bush, people who want to have the chance to have training to receive professional skills so that we can make an effective link for those who want to work in the bush to get their skills and then return to the bush, and that was the aspect of 'rural-mindedness'. I believe that everyone who was on this committee is rural-minded, and I think all the people who came to give us a evidence are rural-minded. We think that should be valued in the way students are selected and the way assessments are done and, most particularly, the way training is actually executed. People need to have the opportunity to work in a rural setting to see the wonderful range of opportunities there in order to find out whether that is the place where they are best able to use their skills.

We saw through the evidence the range of issues that have come in by a series of governments. This is not a problem peculiar to one government or another. This is not a new issue. In fact I did say during the committee hearings that I think sometimes we get a degree of 'rosy-glassedness' when we look back on the past—and I apologise to Hansard for how you are going to spell that one! Nonetheless, I think that sometimes we look back and think that things were much better than they really were. If you look at the number of professionals working in the medical sphere that were available in some of these rural centres in the past, they were not well serviced all the time. I think that
what we are doing now is balancing a situation where people have a greater expectation of their rights to have effective medical services, and that is appropriate. In the past they may have been prepared to put up with one doctor with extensive working responsibilities and no time off and with no Allied Health—and I do acknowledge the point made by Senator Siewert—I am unabashedly a proponent for Allied Health Services. When you are talking about medical services, you are talking about the range of wonderful professional help that we should be able to access no matter where we live.

We heard about the number of recommendations. I particularly want to acknowledge the work of the Rural Health Alliance. Their professional commitment to this area over many years was really the basis for much of the evidence that we received. Not only did we receive it from the alliance, we received it from a number of their component parts. So thank you very much to Gordon Gregory for his resilience, his commitment and his professional knowledge. He was so valuable in working with our committee, ensuring that we knew what the background knowledge was.

Before I sit down, I particularly want to acknowledge Senator Judith Adams. One of the things that was with us all the time was the fact that this was a committee that Judith was dedicated to, and I felt at times that she was there giving evidence. I think we need to see that the work of women like Judith, countrywomen, strong professional nurses who have knowledge of their community and a desire to ensure that their communities are well serviced, is valued. We need those people. We need to acknowledge them. We need to respect them and we need to fund them well, because no community can exist without people who have that knowledge and dedication.

I commend all our recommendations and I think that in the future we will have more things to say. This was a committee on which it was a joy to serve. We met people that had the same sense of commitment we had, and the recommendations of this committee can make a difference. Thank you for being part of it.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (17:12): Some time ago Dr Paul Mara from Rural Doctors Association had a conversation with me about the inequities that he saw with the incentives to try to get doctors out to regional areas. That was, I guess, the seed for this inquiry; it grew from there. It certainly created the drive for it.

I thank my Senate colleagues for agreeing to hold this inquiry. I think that it has been one of the most important pieces of work we have seen for regional health for quite some time and I really do thank them for their agreement to initiate this inquiry in the first place. I thank also my colleagues the shadow minister, Peter Dutton, and the shadow parliamentary secretary for regional health, Andrew Laming.

There is no doubt, as everybody knows, that there is an enormous inequity when it comes to health between regional communities and the cities. We have just reflected in this committee the solutions that people have brought to us. We have just reflected in this committee the thoughts that are out there, the extremely good commonsense thinking that is going to create a better future for health in regional communities.

But it is going to take commitment to change. There are so many good solutions out there that hit a wall and go nowhere because we have not seen enough commitment to change, and that, I think, is one of the key things that we need to take out
of this entire inquiry. We have made, I think, 18 excellent recommendations, but we need from both sides of parliament a real commitment to change.

Initially, the driver was the issue around the workforce incentive programs.

It was and is—this issue still exists—completely stupid to have the same incentive for a doctor to move from the city to a small town like Gundagai, which is under huge pressure when it comes to GPs, as the incentive for a doctor to move to a place like Wagga, which has around 60,000 people and has a specialist support network. To have the same incentive applying to doctors moving from Sydney to Gundagai or to Wagga is just completely stupid. It is bleedingly obvious—pardon the pun—that that needs to be changed, and that very much came through during the inquiry.

Also, for rural generalists, we need to have GPs who can do the general procedural things as well. All the evidence showed that that has really slipped away. We have got to get a focus back on those medics who obviously provide a great GP service but who also have the training so that they have the procedural skills to be generalists. It is vitally important that we do that.

We also noted very clearly that there is an inadequate supply of rural placements for medical interns. This needs to be addressed. There is no point getting all these students through the system if, once they get to that point, they cannot get an intern place. The quota that is currently required is 25 per cent of students from a rural background. The definition needs to be changed. Currently you have to have spent five years of your life in a rural area somewhere. We figure that is not good enough. We want it to be students who spend either four of the last six years of secondary school in a rural area or four of the last six years with their home address in a rural area, or city students who show rural-mindedness, that being an orientation to work in a rural area, which they would support by a willingness to be bonded.

We also need to look at the 25 per cent rural medical student intake and make sure that we have clarification of where that is not being met. It is vitally important that universities are not allowed to slip that under the radar. It is a requirement, it should be shown to be requirement, and we need to have clarity around those figures. We also need to support rural GPs who provide training. That is vitally important. It should be support both financially and by providing locums to help them. We need incentives to ensure that medical students are encouraged to study at regional universities.

We have done a lot of work around allied health, and it is big-picture stuff. We need to look at the interprofessionalism, if you like, of how health in the regions works. We were looking for things outside the square and we were particularly impressed with the Charles Sturt University proposal for a full-scale medical school. Obviously, students from a rural background studying in a rural area are far more likely to stay in a rural area to practise their profession.

I thank my colleagues. I commend the report. I certainly hope that the government pays attention to it. This is not a report to be thrown under the carpet. There are some very good recommendations in this and we absolutely hope that they are acted upon.

Senator BOYCE (Queensland) (17:17): I would like firstly to congratulate Senator Nash for being the person who initially suggested this inquiry and, in particular, looking at the Australian Standard Geographical Classification Remoteness Areas, which clearly has not been working properly. But it was the entire Community Affairs References Committee which
broadened this out into what has become a very meaningful assessment of the health services available in rural and remote Australia.

I was somewhat surprised to discover that the number of health professionals across Australia is spread evenly across the country on a per capita basis. Clearly, 'on a per capita basis' when you live in a town of 100 people is not quite as helpful as it might be when you live in a city of a million people. So we need to think about accessibility and many other issues at the same time as we are thinking about whether we have enough health professionals on a per capita basis. We have suggested not only that the Australian Standard Geographical Classification Remoteness Areas should be reassessed and changed to be far more flexible and to reflect much more the needs of people in remote areas and the incentives for doctors to actually go to those areas; we have suggested also that there should be a proper evaluation or assessment conducted at the same time as any new system is put in place. The problem for people who use the scheme is that whether you are in Gundagai or Newcastle, as Senator Nash said, or whether, in my state of Queensland, you are in Longreach or Townsville—all of which have the same classification—is clearly a significant factor in the ease with which you are going to get doctors to work in those areas.

One of the other things that came up, and I must congratulate Senator Moore on this, was the fact that there is a huge amount of data being collected, there is a huge amount of research going on and there are many good programs going on, but the communication of these, the sharing of information and the correct use of material are lacking in almost every area. You only have to look at the evidence from the Australia Bureau of Statistics about the geographical classification for remoteness areas, which said:

… it is well known that some policy makers use ABS definitions, both geographical and others, to directly target policy. For example, some organizations paid an additional allowance to staff stationed in ‘rural’ areas… The validity of using ASGC in this way depends entirely on the relevance of the geographical concept to the desired policy outcomes. It is vitally important that anyone developing policies, funding formulae or intervention strategies understands the alignment, or lack of alignment, between … classification and their business objective.

I think that unfortunately what we have discovered is that there really has been very poor alignment in the past on this topic.

As I said, the government, every government, is spending significant amounts of money to try and ensure adequate health services in regional Australia, but the evidence that we received as a committee during the inquiry has highlighted the deficiencies in both the development and evaluation of the programs. We have an urgent and fundamental need to better understand what works, where it works and where we have significant gaps in the system.

I would very much like to commend this report and, like Senator Moore, I would also like to acknowledge our former colleague the late Senator Judith Adams, who would have revelled in the opportunity to be involved in this inquiry and whose work in the Senate paved the way in many ways for the work that we have done in this inquiry.

Senator McKENZIE (Victoria) (17:22): For almost 12 months now the Community Affairs References Committee has been looking into the factors affecting the supply of health services and medical professionals in rural areas. This inquiry started with the knowledge that people from regional Australia experience poorer health outcomes
than their urban counterparts. It was the Nationals' very own Senator Fiona Nash who brought these terms of reference to the committee.

Research tells us that people who live outside major cities are 20 per cent more likely to have had asthma and 16 per cent more likely to report mental or behavioural problems. The Australian Institute of Health and Welfare reports that people living outside major cities are 1.2 times more likely to engage in behaviours associated with poorer health, such as smoking and binge drinking, than people living within major cities. Life expectancy in regional areas is one to two years lower and in remote areas it is much more—seven years lower. Part of that could be because of the difficulty country people have had in accessing health services. We know that to be the case—because there is not a doctor's surgery 10 minutes down the road; there are no specialist staff in the local small hospital there ready to assist.

We wanted to find out exactly what the issues are so that we can look at how the government and community can work together to solve the problem. As others have mentioned, there was no shortage of people assisting us with the task—from academics and the medical fraternity, both retired and current, to local community members. As part of that process we have heard from stakeholders right across Australia and built up a picture that shows that the problems being faced by those in country areas are quite consistent throughout the country.

For a start, the Australian Standard Geographical Classification Remoteness Areas model used by the government to determine what is classified as regional, rural or remote is flawed. It is the same model that is being used to determine a whole host of incentives and policy settings which I will not detail now for the sake of time. But it is the classic one-size-fits-all policy: it does not work, especially for the regions. It is particularly relevant in my patron seat of Bendigo, a large regional centre that serves the surrounding area with a soon-to-be-built, world-class $630 million hospital. We heard examples from Central Victoria General Practice Network and the Murray Plains Division of General Practice regarding the crude application of the RA classification, which gives communities with population bases ranging from 2,000 to 100,000 the same relocation and retention grants. There is a big scope of difference there in reality. Tiny towns in the region surrounding Bendigo, such as Elmore, do not receive any additional recognition for their particular situation.

The Centre of Research Excellence in Rural and Remote Primary Health Care, based in my patron seat, has done some excellent work in this area. It is referenced throughout the report and commended by the committee. I suggest that anyone with an interest in this area read the work of Professor Humphreys. Additionally, we found that a problem in country areas is that GPs are becoming increasingly rare as more medical students opt to specialise; yet rural GPs need a well rounded, complete set of skills. One day you have to set a leg, the next day deliver a baby, do the stitches and dispense some antibiotics for a cold—and that is just for the animals. Jokes aside—that is for the community members. We need really well rounded medical graduates in regional areas. These skills are just as important as a specialisation in other areas. Indeed, these days general practice can be a specialisation in its own right. We have mentioned Queensland Health's efforts in this area and I would particularly like to highlight those. It is quite an exciting approach to the problem.
Medical specialist numbers plummet outside the major cities to levels as low as one-sixth of those in large capitals, hence the need for better access to specialist services whether through transport assistance or even through specialists travelling to regional areas for one or two days a month to enable locals to access their services. The committee is encouraged by the steps already taken and wants to see the progress of the Rural Clinical School programs continue to ensure that students have access to support at all stages in the training and placement program. There is a great quote that I would like to be able to deliver here but for the sake of time I will not be able to. It was a key factor in supporting the training out there. The evidence suggests that we have seen the need; we are training more medical graduates but they do not have the funded places to go to, to complete their training. We would like that to happen in the regions so they can get on board with what a fantastic experience it is outside capital cities—and hopefully join us there for their long careers.

I would like to thank Senator Siewert, Senator Nash, Senator Moore, Senator Boyce and Senator Fawcett for great work done on a great report.

Senator FAWCETT (South Australia): 17:27: I rise to support the comments of my colleagues on this report, which is a very important report for people living in rural, regional and remote Australia. I am not going to repeat all of their comments in detail except to say I strongly support the comments around classification systems. Statistics do indeed lie. They do not necessarily reflect the reality on the ground and we need those improved systems such as the ones identified and recommended in the report. I support the comments on specialisation and the lack of incentives that are available for allied health professionals compared to GPs.

I would like to touch on a couple of things that have come up during the inquiry from a South Australian perspective specifically. Firstly, states are different, particularly if you look at demographics and the distribution of population. Policy that is developed at a national level that may well suit the larger east coast states, with larger populations and larger regional centres, may not suit South Australia. A number of pieces of evidence came to light during the inquiry that highlighted that sometimes things occur quite differently because of the different arrangements within states.

For example, in South Australia the largest regional town, Whyalla, is around 21,000, Port Augusta is around 13,000, and Port Lincoln is around 14,000; then we have a number of other smaller places. So in South Australia there is no regional university. Flinders University, for example, has taken a great initiative with the Parallel Rural Community Curriculum in Renmark and Mount Gambier. They are having terrific success and there is good longitudinal evidence showing that students who spend a long period of training as an undergraduate in country areas do in fact have a higher probability of returning and remaining in the country as a GP.

What is important, though, is that we look at it as a whole system. It is not just the universities; it is also the training placements for interns and people in their second year after graduation. What we see in South Australia is that there are only some six places available in the country and yet we need some 56. Allowing for international medical graduates, perhaps we only need 24; but that is still a fourfold increase in what is available at the moment.
So there needs to be alignment between the state government as well as the federal government and the providers, such as universities and colleges, to find a way to make this transition smooth and effective so that the communities who need the support get it, as opposed to the buck being passed or just reaching dead ends in trying to get people to flow between the various stovepipes.

The federal government also has a role to play in looking at how they work with the state government around things like incentive payments for GPs or the provision of locum services to support GPs in country areas who wish to provide training for medical students or, indeed, for interns. I note the trial that is occurring in South Australia—for example, in Kapunda—where people can come as an intern and GPs can provide a level of training for them post their graduation from medical school. In a state like South Australia, where we do not necessarily have large enough communities to have training hospitals in the community, that is a model that is viable. It is starting to work, but we need the federal government to look at ways to adequately compensate GPs for the time taken away from their business—because at the end of the day it is a business; it pays their bills—to provide that support.

I thank a range of people for their support in South Australia and for making me aware of the issues in South Australia. Steve Holmes, you can take your stockwhip and put it back on the wall. I think this inquiry has done a fair bit to round up of some of the issues. Dr James McLennan at the Clare Medical Centre showed the way in terms of sustainable rural practice. Dr Anthony Page in Gawler highlighted a number of the areas of difference between state and federal policy that can have an impact. I also thank Scott Lewis from the RDAA, as well as my federal colleagues Rowan Ramsey, Patrick Secker and Senator-elect Anne Ruston who helped out with the inquiry.

One of the recommendations that has come out of a lot of the work in South Australia is to look at having a function within DoHA that aggregates the information collected by Medicare locals so that on a regular basis we assess the gaps that are emerging between federal and state policies and very deliberately put those onto the COAG agenda so that they can be dealt with in the interests of sustainable health care for people living in rural and remote Australia.

I seek leave to continue my remarks.

Leave granted; debate adjourned.

Parliamentary Joint Committee on Human Rights
Report

Senator STEPHENS (New South Wales) (17:32): On behalf of the Parliamentary Joint Committee on Human Rights, I present report No. 1 of 2012, Bills introduced 18 to 29 June 2012, and note that the report was tabled in the House of Representatives on 22 August 2012. I move:

That the Senate take note of the report.

In tabling the Parliamentary Joint Committee on Human Rights' first report of 2012—and, in fact, its first report ever—I take this opportunity to draw the attention of the Senate to the approach that the committee has adopted in examining each of the bills referred to in this report. Senators will recall that the committee is established under the Human Rights (Parliamentary Scrutiny) Act 2011 to examine and report to parliament on the compatibility of bills and legislative instruments with Australia's human rights obligations under seven core human rights treaties specified in section 3 of the act. The committee is able to examine existing legislation and conduct broad inquiries into
matters relating to human rights as referred to it by the Attorney-General.

Before discussing the committee's consideration of bills in this report, I emphasise the significance that the committee attaches to the statement of compatibility. As the chair of the committee said in his statement to the House on 20 June this year, the committee views statements of compatibility as a key element in the parliament's consideration of human rights in the legislative process. The requirement for each new bill and each legislative instrument to be accompanied by a statement of compatibility has the potential to significantly increase transparency and accountability in the development of policy and legislation. It is obviously a significant starting point for the committee's consideration of bills and instruments. The committee considers that the preparation of a statement of compatibility should be the culmination of a process that commences early in the development of policy and not as a 'tick box' exercise at the end. In this way, a statement of compatibility can reasonably be expected to reflect, in appropriate detail, the assessment of human rights that took place during the development of the policy and the drafting of the legislation.

The statement of compatibility should: take the objective of the proposed legislation as its point of reference; identify the rights engaged; indicate the circumstances in which the legislation may promote or limit the rights engaged; and set out the justification for any limitations, in an appropriate level of detail, together with any safeguards provided in the legislation or elsewhere.

I now turn to the first report of the committee. The committee has considered 17 bills introduced during the period 18 June to 29 June 2012. Having examined these bills, the committee has approached them in the following way. Five of the bills do not engage human rights. However, one of the bills was introduced with a statement of compatibility that does not accord with the committee's expectations. The committee therefore proposes to write to the relevant minister and provide advice that it hopes will assist in the preparation of statements of compatibility of a similar nature in the future. The committee has identified a further four bills that were each introduced with a statement of compatibility claiming the bill does not engage human rights but for which the committee considers it requires further information before it is able to form its own view. In each case the committee proposes to write to the proponent of the bill and invite them to elaborate on the information provided in the statement of compatibility. This leaves eight bills that engage human rights. The committee has formed the view that five of these are compatible with human rights and that it requires further information to assist in its consideration of the remaining three bills.

I make it clear that it is not the committee's intention to name and shame anyone in this report. I want to emphasise that, at this very early stage in the implementation of this process, the committee is committed to working constructively with ministers, agencies and individual members and senators as they familiarise themselves with these requirements.

It is in this context that I draw your attention to a particular matter that the committee has considered in this report. Two of the bills examined in this report contain strict liability and reverse burden offences. In each case, the statement of compatibility claims that these offences have been drafted in light of guidelines provided by the Criminal Justice Division of the Attorney-General's Department and are consistent with
these guidelines. In considering this claim, the committee has not accepted at face value the implication that the guidelines themselves are fully consistent with human rights. The committee has therefore examined the relevant part of the guidelines and is generally satisfied that strict liability and reverse burden offences that are drafted in accordance with these guidelines are likely to be compatible with human rights. However, the committee will continue to consider such offences on a case-by-case basis. The committee intends to adopt this approach in its consideration of all provisions that are said to be drafted in accordance with specific guidelines or drafting conventions. I therefore draw the Senate’s attention to the committee’s consideration of the Commonwealth Government Securities Legislation Amendment (Retail Trading) Bill 2012 and the Maritime Legislation Amendment Bill 2012. I emphasise that the committee considers that both of these bills are compatible with human rights.

In conclusion, I thank the chair and members of the committee, who have worked very collegiately over the past few weeks to try to structure a process that works for us all. I particularly commend and acknowledge the work of Jeanette Radcliffe and the secretariat, who have been working so hard to help the committee establish its procedures. It is a privilege for us all to be involved in creating a new process like this, which is so significant to the environment in which we are all working. I commend the report to the Senate and seek leave to continue my remarks later.

Leave granted; debate adjourned.

Scrutiny of Bills Committee

Report


Ordered that the report be printed.

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

Rural and Regional Affairs and Transport References Committee

Membership

The ACTING DEPUTY PRESIDENT (Senator Moore): The President has received a letter from a party leader seeking variations to the membership of a committee.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (17:40): by leave—I move:

That Senator McKenzie replace Senator Nash on the Rural and Regional Affairs and Transport References Committee for the committee’s inquiry into the management of the Murray-Darling Basin on Thursday, 23 August 2012.

Question agreed to.
CRIMES LEGISLATION AMENDMENT
(SLAVERY, SLAVERY-LIKE CONDITIONS
AND PEOPLE TRAFFICKING) BILL 2012

The Crimes Legislation Amendment (Slavery,
Slavery-Like Conditions and People Trafficking)
Bill 2012 will protect some of the most
vulnerable people in Australian society.

With this bill, the Gillard Labor Government is
protecting vulnerable, women and children, and
in some cases, men from trafficking and slavery.

For many in our community, the notion of
"slavery" evokes nineteenth century images of
people sold as chattels, shackled and transported
between countries. Tragically, nineteenth century
slavery has not been abolished. It has simply
taken other forms.

People traffickers recruit, transport, transfer,
harbour or receive their victims through force,
coercion or other means in order to exploit them.
This is the modern day face of slavery.

A common factor of contemporary slavery and
trafficking – from forced labour and forced
marriage to organ trafficking – is the misuse and
abuse of power. And such an abuse has no place
here.

I want to send that message loud and clear – to
all Australians, to all young people. Duress,
violence and intimidation are not acceptable in
contemporary Australian society – in any context.
Slavery, trafficking and forced marriage are
unacceptable. They are very serious crimes.

That's why Labor is bringing forward this bill
to improve protections for victims of all forms of
slavery and trafficking, and to help law
enforcement agencies detect, investigate and
prosecute the perpetrators.

Fortunately, slavery and people trafficking are
not common in Australia, but the effect on
victims is traumatic and can have lifelong
consequences.

The bill will strengthen and expand the
capability of investigators and prosecutors to
combat these crimes by introducing new offences
of forced labour, forced marriage, harbouring a
person for the purposes of furthering the offence
of trafficking and organ trafficking into the
Commonwealth Criminal Code.
More specifically this bill will:

- create a standalone offence of forced labour where a reasonable person in the position of the victim would not consider him or herself to be free to cease providing, or leave the place where they provide, labour or services because of the use of coercion, threat or deception
- criminalise the conduct of a person who uses coercion, threats or deception to bring about a marriage or marriage-like relationship. The offence would also apply to a person who is a party to, but not a victim of, a forced marriage
- criminalise the conduct of a person who harbours, receives or conceals a victim and in doing so, assists or furthers the purpose of a third person who has committed, or is committing, a trafficking, slavery or slavery-like offence
- create standalone offences criminalising trafficking a victim, either to or from Australia or within Australia, for the removal of his or her organ.

The bill will also insert general relevant evidence provisions into both Divisions 270 and 271 of the Criminal Code. These provisions set out a list of matters a court or jury may have regard to in determining whether a victim has been coerced, threatened or deceived (for both Divisions 270 and 271), whether the victim or their guardian consented to the removal of the victim's organs, or whether another person has caused the victim to enter into debt bondage (Division 271).

It will also insert general consent provisions into Divisions 270 and 271 to make it clear that a victim's consent or acquiescence cannot be used as a defence in a proceeding for an offence against those Divisions.

Reducing a person to a state of slavery or servitude often involves suppressing the person's free will and their self-respect, as well as the ability to make decisions for themselves. To allow a defendant to escape liability because his or her offending achieved the desired effect in bringing about these changes in a victim so that they appear to consent would be inexcusable. This provision makes that clear.

These measures will establish a continuum of offences criminalising exploitative conduct ranging from slavery to debt bondage. The definition of 'exploitation' in the Criminal Code will be expanded to cover broader forms of exploitation including trafficking in person, forced labour, forced marriage, and all forms of servitude including non-sexual servitude.

Forced labour goes against everything Labor stands for. And that is why we must act to make sure that no one in this country is subject to such a misuse of power. And that no one is able to get away with forcing someone to work in that way.

Labor has a long history of protecting Australia's most vulnerable. We introduced Medicare, we introduced the Sex Discrimination Act and we are introducing a National Disability Insurance Scheme. And this bill continues this tradition.

It was Labor who repealed Tony Abbott's unfair workplace laws.

And it is Labor who is now introducing a new offence of forced labour.

While the majority of identified victims in Australia have been women trafficked for the purposes of exploitation in the sex industry, law enforcement agencies are increasingly identifying both men and women who have been subjected to exploitation in a range of other industry sectors and workplace environments. This bill will introduce a standalone offence of forced labour and expand the existing offences of sexual servitude and deceptive recruiting to ensure they apply regardless of industry.

Where a person who does not consider himself or herself to be free to cease providing or leave the place where they provide labour or services, because of the use of coercion, threat or deception – they will be protected.

Penalties for the existing debt bondage offences will also be increased, reflecting the seriousness of these crimes.

I would like to take this opportunity to say something about one particular aspect of this bill: forced marriage. I am proud to introduce legislation which makes forcing someone into a marriage illegal. It is a serious matter – and should be treated as such. Marriage should be a
happy event, entered into freely between consenting adults.

Forced marriage places young people at risk, and can result in harmful consequences including the loss of education, restriction of movement and autonomy, and emotional and physical abuse.

Some critics have asked: "won't this force it underground? "I say to them – it is already underground now – and it can't stay that way. It is the role of the Attorney-General to make it completely clear that in Australia, marriage must be entered into freely, without duress or constraint.

In order to strengthen the law's ability to deal with the perpetrators of slavery and trafficking offences, this bill makes it a crime for another person to assist or further the commission of these offences. The new offence of harbouring will extend criminal responsibility to those who facilitate a slavery or trafficking offence by harbouring, concealing or receiving a victim of a slavery or people trafficking offence. This is to ensure that there is no way for people to avoid prosecution because they did not transport, recruit or transfer the victim into the country themselves.

The bill also creates standalone offences of organ trafficking. Trafficking a person to remove his or her organ is currently criminalised through offences relating to exploitation. This amendment will clarify the circumstances in which an offence of organ trafficking will apply, including situations in which the victim's organ is not ultimately removed.

These organ-trafficking offences will ensure that Australia meets its international obligations and comprehensively criminalises this exploitative conduct.

The bill will increase the capacity of law enforcement agencies to investigate and prosecute perpetrators, and to better support and protect victims. It will assist in addressing the impact of crime by improving the availability of reparation orders to individual victims of Commonwealth offences, including slavery and people trafficking.

In conclusion, the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 was prepared following extensive public consultation.

The Government released two discussion papers on slavery, people trafficking and forced marriage, and also sought submissions on an exposure draft of the bill.

With this bill, the Government will clarify and strengthen the operation of existing slavery and people trafficking related offences to make sure that the perpetrators of these offences and those who facilitate them cannot escape prosecution.

The bill reflects the Government's commitment to doing all it can to prevent slavery and people trafficking. It is easy to say no. It is harder to stand up and do the right thing. And that is what this bill is about. For Labor, it is about protecting the most vulnerable in Australia. It is about getting things done to make this country a fairer, safer place for all of us.

This is the Gillard Labor Government carrying on the great Labor tradition of standing up for the less powerful against the strong and giving a voice to those who cannot always speak up for themselves.

ILLEGAL LOGGING PROHIBITION BILL 2011

Introduction

The Illegal Logging Prohibition Bill (the Bill) responds to a significant issue affecting forest communities around the world.

The environmental and social costs of illegal logging worldwide have been estimated at approximately US$60 billion per annum.

Illegal harvest of timber contributes to environmental degradation through bad practices by illegal loggers. It hampers social development by depriving local governments and communities from the benefits derived from the use of their resource.

Illegally harvested timber also undermines well regulated and sustainable industries, including the Australian industry, by undercutting legally harvested timber products.

This bill will make it a criminal offence to import regulated timber products or process raw logs without undertaking due diligence.
How this bill was developed

The bill is the product of extensive consultation.

A commitment to prohibit the importation of illegally harvested timber was first presented to the community during the 2007 and 2010 election campaigns. Following the 2007 election, the Labor Government commissioned substantial research to inform policy development including a regulation impact statement; a risk assessment framework; a framework for differentiating legality verification and chain of custody; a generic code of conduct for importers; an economic analysis of the impact of illegal logging; and reports on the small business impacts and social costs of illegal logging.

In December 2010, the Government announced the framework to implement the policy.

On 23 March 2011 the Minister for Agriculture, Fisheries and Forestry tabled an exposure draft, referring it to the Senate Rural Affairs and Transport Legislation Committee for public inquiry.

The Committee released a report on its findings on 23 June 2011, which included seven recommendations. In particular, the committee recommended the government reconsider the role of the timber industry certifiers and the inclusion of a requirement for a mandatory and explicit declaration at the border.

The Government has considered the report, and the dissenting report, and the views of stakeholders about the Committee recommendations in preparing the bill now before Parliament.

The Government has received representations from the domestic timber industry; state governments, timber and timber product importers, the Australian Conservation Foundation, Greenpeace, the Uniting Church of Australia, the Construction, Forestry, Mining and Energy Union, domestic retailers and exporters of timber products to Australia.

The Government welcomes the strong community interest in this issue.

How the bill works

The bill focuses exclusively on measures that will restrict the importation and sale of illegally logged timber in Australia. The Government recognises these measures are an essential first step towards a longer term goal of Australian’s sourcing timber products from sustainably managed forests, wherever they are in the world.

The bill will regulate timber products at two key points of entry onto the Australian timber market – at the border, for imported timber products, and at timber processing plants where domestically sourced raw logs are processed for the first time. It will restrict the importation and sale of illegally logged timber in Australia in three main ways.

First, the bill prohibits the importation of all timber products that contain illegally logged timber and the processing of domestically grown raw logs that have been illegally harvested. The prohibition enters into force on the day after Royal Assent of this Bill. A maximum penalty of five years imprisonment or 500 penalty units, equivalent to $55,000 for an individual and $275,000 for a corporation or body corporate, or both, applies under this offence. Importers and processors suspected of importing or processing illegally logged timber products would be investigated under the powers of monitoring, investigation and enforcement under Part 4 of the bill and will be prosecuted if they intentionally, knowingly or recklessly import or process illegally logged timber products.

Our own research and the work of the European Union indicate that the best way to minimise trade in illegally harvested product is to implement a due diligence framework. Importers and processors will be required to undertake a process of due diligence on those products to mitigate the risk that the timber has been illegally logged. The level of culpability for these products is negligence which differs from the standard subjective fault elements of intention, knowledge or recklessness. Negligence is an objective fault element which looks to the standard of care that a reasonable person would exercise in the circumstances. Importers of regulated timber products can only be negligent if the prosecution
can satisfy the requirements for negligence set out in the Criminal Code 1995.

Second, the bill will require importers of regulated timber products and processors of raw logs to undertake due diligence to mitigate the risk of products containing illegally logged timber.

Timber products, for which due diligence will be required, will be prescribed by regulations that will be developed in consultation with key stakeholders. The government will use a number of inputs when finalising timber products to be prescribed by regulations including an economic assessment of the range of product types, value and volume of timber annually imported into Australia.

Importers of regulated timber products and processors of domestically grown raw logs will be required undertake due diligence to mitigate the risk of importing or processing illegally logged timber. The details of the due diligence process will be prescribed by regulations and will be based on a risk management approach. Criminal offences will apply to importers and processors who do not comply with the due diligence requirements of the bill. There is a maximum penalty of 300 penalty units, equivalent to a fine of $33,000 for an individual and $165,000 for a corporation or body corporate. Administrative sanctions and civil penalties for minor breaches of the legislation will be included in subordinate legislative instruments, such as administrative sanctions for non-compliance with certain due diligence requirements.

Requirements for due diligence will be enacted after two years have elapsed following the commencement of the bill to give industry sufficient time to establish and implement their due diligence systems and processes.

Due diligence will involve a three step process - (i) identifying and gathering information to enable the risk of procuring illegally logged timber to be assessed; (ii) assessing and identifying the risk of timber being illegally logged based on this information, and (iii) mitigating this risk depending on the level identified, where it has not been identified as negligible. The specific measures and procedures underpinning the three steps will be prescribed by regulations to be developed in consultation with stakeholders.

To help meet their due diligence obligations and minimise compliance costs, importers and processors may utilise laws, rules or processes, including those in force in a state, a territory or another country. Individual country initiatives and national schemes, including national timber legality verification and forest certification schemes that can demonstrate that timber products have been harvested in compliance with the applicable laws of the country of harvest may be used, where applicable, as part of an importer’s due diligence process.

To enable the Government to enforce compliance with the due diligence requirements, importers are required to complete a statement of compliance with the due diligence requirements of the bill before they complete a customs import declaration at the border. The information to be provided on the statement of compliance and customs import declaration will be prescribed by regulations.

The customs import declaration will include a community protection question asking importers of regulated timber products whether they have undertaken due diligence in compliance with the bill. This will be linked to importers' statements of compliance to provide a legally binding basis for enforcement of compliance with the legislation. The government will monitor the importation of regulated timber products at the border for compliance with the customs declaration, whilst government compliance and investigation officers will carry out border and post-border checks, as required, using the monitoring, investigation and enforcement powers of the bill.

Processors are required to complete a statement of compliance with the due diligence requirements of the bill. As Commonwealth, state and territory laws relating to the legality of timber harvesting in Australia are comprehensive and robust, the Commonwealth Government will seek to align the due diligence requirements of the bill with the pre-harvesting approvals processes of relevant state and territory governments to reduce compliance and administrative costs. The content
and form of the statement will be prescribed by regulations.

Third, the bill establishes a comprehensive monitoring, investigation and enforcement regime to ensure compliance with all elements of the Bill including the prohibition and due diligence requirements. Imported timber products may be seized by the Commonwealth without a warrant, under provisions in the Customs Act 1901, whilst goods deemed to be involved in an offence under the Act, consistent with provisions provided in the Customs Act 1901 and the Crimes Act 1913, may be forfeited to the Commonwealth.

The bill also provides requirements for importers and processors to provide statements and declarations of compliance, undertake audits and remedial action, provide reports and other information to the Minister and publish information for compliance and enforcement purposes.

The results of audits will provide a basis for continuous improvement of importers and processors due diligence systems and processes, where deficiencies are identified, and for enforcement purposes by the Commonwealth where breaches are detected. To ensure there are satisfactory levels of transparency of compliance with the due diligence requirements of the bill, importers and processors are required to make an annual statement of compliance. The nature and detail of these statements will be prescribed by regulations to be developed in consultation with key stakeholders. This information may be used by the Commonwealth to publicly report on the performance and level of compliance of importers and processors, consistent with privacy and commercial-in-confidence considerations. The coverage and detail of public reporting requirements will be developed in consultation with key stakeholders.

The bill provides for the government to undertake a review of the first five years of the operation of the Act. This review is to be commenced no later than 12 months after the 5 year period is complete. This provision should ensure ongoing improvement in relation to the operational aspects and effectiveness of the legislative framework.

International alignment

The bill aligns Australia's efforts to combat illegal logging with international initiatives, including legislation already implemented in the United States and developments in the European Union.

It is therefore sensible that this bill should work towards alignment with international regimes.

In establishing the regulations, the government will continue to develop requirements that, to the greatest extent possible, align with the measures being introduced as part of the US Lacey Act Amendments (2008) and the EU Regulation (2010) in order to minimise compliance costs for exporters. This will have the effect of engendering greater cooperation amongst timber importing markets like Australia, Europe and the US and help to facilitate higher compliance amongst exporting countries.

For example, the Government anticipates that certification systems (either third party or government) recognised by EU or the US frameworks will be capable of meeting Australia's requirements.

The bill will also strengthen Australia's leadership position in the Asia–Pacific region on forestry issues and facilitate continued bilateral and multilateral cooperation with developing countries to promote legal and sustainable forest management.

Conclusion

The bill allows the Government to work with key stakeholders to stamp out illegal logging and trade in illegally logged timber products.

An illegal logging working group, comprising industry sectors and non-government organisations is already established to assist the government in this process and help minimise the compliance and administrative costs for both industry and government, whilst driving behavioural change in the global timber trade. The government will continue to work closely with its illegal logging working group and state and territory governments to develop the subordinate legislative instruments required.

The Government appreciates the work of the Senate Committee for Rural Affairs and
Transport for its contribution to the development of the Bill. The Government also acknowledges the input of industry, both importers and domestic producers, and other members of the community for their input into the process thus far.

The Illegal Logging Prohibition Bill (2011) delivers on the Government's policy to restrict the importation and sale of illegally logged timber in Australia. It will remove unfair competition posed by illegally logged timber for Australia's domestic timber producers and suppliers establish an even economic playing field for the purchase and sale of legally logged timber products and provide assurance to consumers that products they purchase have been sourced in compliance with Government legislation.

**PUBLIC SERVICE AMENDMENT BILL 2012**

Mr President, this bill makes some important amendments to the Public Service Act 1999.

On 8 May 2010, the then Prime Minister announced that the Government had accepted all of the recommendations made in the earlier report, Ahead of the Game: Blueprint for the Reform of Australian Government Administration.

This report, 'the Blueprint', outlined a comprehensive reform agenda to position the Australian Public Service to better serve the Australian Government and the Australian community. It is an agenda that requires modernisation of the Public Service Act, bringing it into line with contemporary needs.

The amendments in the bill will strengthen the management and leadership of the public service and help to embed new practices and behaviours into its culture. The bill recognises that the delivery of high quality services and policy advice requires effective and committed leadership, supported by a public service that is efficient, driven by its desire to serve the community, and contemporary in its outlook.

**Strengthen the leadership of the APS**

Part 1 of Schedule 1 to this bill provides for a clearer articulation of the roles and responsibilities of Secretaries, particularly in relation to their stewardship of the Australian Public Service. The revised descriptions clarify the service and performance expected of Secretaries and strengthen Secretaries' accountability to Ministers in performing their roles and discharging their responsibilities.

The amendments restore the arrangements which operated prior to 1999. The amendments provide for appointment and termination decisions of Secretaries to be made by the Governor-General, on the recommendation of the Prime Minister, following receipt of a report from the Secretary of the Prime Minister's Department in consultation with the Public Service Commissioner.

The minimum length of a Secretary's appointment will be five years—unless the Secretary requests otherwise. This provides for continuity of leadership and strengthens the integrity of the appointment process.

Part 2 of Schedule 1 to this bill creates the Secretaries Board, comprised of the Secretary of each Department and the Commissioner. The Secretaries Board, which replaces the Management Advisory Committee, will identify strategic priorities for the APS and take responsibility for its stewardship.

Part 3 of Schedule 1 to this bill amends the role of the Senior Executive Service to strengthen APS leadership by expanding the descriptors of Senior Executive Service leadership responsibilities, supporting collaboration and the development of whole-of-government responses to issues.

**Modernise and clarify the functions of the Public Service Commissioner**

Part 4 to Schedule 1 of this bill modernises the functions of the Public Service Commissioner.

The bill specifically recognises the Commissioner's role as the central authority for APS workforce development and reform, an authority that will take a leading role in ensuring that the Service has the organisational and workforce capability to meet future needs.

The Commissioner will have three broad functions:

- to strengthen the professionalism of the APS and facilitate continuous improvement in workforce management in the APS;
● to uphold high standards of integrity and conduct in the APS; and
● to monitor, review and report on APS capabilities within and between Agencies to promote high standards of accountability, effectiveness and performance.

A new function will allow the Commissioner to undertake those tasks and responsibilities which are issue-specific or which may change over time.

**Review and inquiry functions**

The Commissioner has extensive powers to undertake reviews or inquiries which were introduced with the 1999 Act, including in certain circumstances the ability to exercise the same information-gathering powers as are available to the Auditor-General. The bill provides more detail on how reviews may be initiated and reported.

In particular, the Commissioner will be able to undertake a 'systems review' or a 'special review' in specific circumstances.

'Systems reviews' will allow the Commissioner to review and report on the management and organisational systems, structures and processes of an APS body, or the functional relationship between two or more bodies. These powers do not derogate from the inquiry functions of other statutory officers and it will be a matter for Government as to who is the most appropriate entity to conduct a review.

By contrast, 'special reviews' will be able to be initiated only at the direction of the Prime Minister. While it is expected that special reviews will be uncommon, the bill makes clear such a review is available to Government in those rare circumstances where the public interest demands it. The Commissioner's information-gathering powers under section 43 of the Act will be available for special reviews.

To augment the capacity of the Commissioner to conduct reviews and call on specialised knowledge, the bill provides for the appointment of Special Commissioners by the Governor-General to assist in undertaking all or part of a systems or special review and report through the Commissioner.

**Agency Head Code of Conduct**

Under the Public Service Act, the Commissioner has a specific power to inquire into alleged breaches of the Code of Conduct by Agency Heads and report to the appropriate authority on the results of such inquiries.

Unlike the discretion available to Agency Heads in respect of APS employees, there is little scope for the Commissioner to conduct a preliminary assessment before launching a formal inquiry. To remedy this, the bill provides a regulation-making power to prescribe the circumstances in which the Commissioner may exercise discretion to decline to conduct an inquiry into alleged breaches of the Code by Agency Heads, or to discontinue an inquiry without invoking the reporting requirements. This element of discretion is desirable to deal with trivial or futile matters or matters that have previously been dealt with.

**APS employee Code of Conduct**

Currently, the responsibility for investigating and determining breaches of the Code of Conduct by APS employees rests with Agency Heads. On occasion Agency Heads have wanted the Commissioner to conduct an independent investigation into suspected misconduct by one or more of their own employees. This is typically when public interest concerns raised by a particular allegation make it desirable that matters are investigated and determined by an authority that is both expert and independent.

The bill proposes that the Commissioner will have a new function to determine alleged breaches of the Code by APS employees. This function will be triggered when requested by the Agency Head or by the Prime Minister. The Commissioner may decline to conduct such an investigation.

**Revise the APS Values and introduce APS Employment Principles**

Part 6 of Schedule 1 to this bill revises the APS Values and introduces a set of APS Employment Principles.

The Values and the Employment Principles are statements about the essential character and philosophy of the APS. They define what the APS is, and how it should operate.
The proposed Values—that the APS is Committed to Service, is Ethical, Respectful, Accountable and Impartial—are more succinct and memorable, easy to understand, and will help the Service to create an ethical, high performance culture.

The Values and Employment Principles together capture the essence of the existing 15 Values, blending contemporary ethics with enduring principles of public administration that go to the heart of the Westminster model. No important concepts have been lost.

Agency Heads and APS employees will, by law, be required to uphold the Values and the Employment Principles. Agency Heads and Senior Executive Service employees will also be required to promote them, reflecting the key responsibility that they have as leaders within their agencies to set the tone for the right culture.

**Technical and operational amendments**

The bill also contains a number of other, largely technical, amendments aimed at more effective management of the Service. These amendments reflect the experience of working with the Act over the last 12 years.

**Code of Conduct**

Part 7 of Schedule 1 of this bill relates to the handling of misconduct in the Australian Public Service.

The bill provides for amendments to the Code of Conduct so that its first four elements will apply when there is a direct connection with the employee's employment.

Other amendments to the Code or provisions for handling misconduct will allow agencies to deal more effectively and efficiently with other unacceptable behaviour.

The bill also provides for a misconduct investigation to be finalised after an employee has separated from the APS, providing more certainty for agencies and making it less attractive for employees who are under investigation to resign before a finding is made, as many employees in this situation currently do.

**Whistleblower reports**

The Act currently provides protection for whistleblowers in the APS. The Regulations provide the framework under which whistleblower reports are handled.

The bill makes two small amendments to the scheme. It provides a specific regulation making power and allows for matters to be excluded from inquiry, including those that relate to an employee's own employment. Such complaints are better directed to the existing Review of Action scheme.

**Temporary APS employees**

Part 10 of Schedule 1 of this bill simplifies the operation of the non-ongoing employment provisions. The Act will provide that regulations may prescribe, rather than limit, the circumstances under which a non-ongoing employee may be engaged, and may prescribe the grounds for the termination of employment of non-ongoing employees.

The principle that ongoing employment is the usual basis for engagement will be retained.

**Machinery of Government changes**

Part 11 of Schedule 1 of the bill improves the operation of the Machinery of Government provisions by providing the Commissioner with discretion to determine whether employment-related matters can continue following a Machinery of Government change.

The bill also makes clear that the power to move staff out of the APS in order to give effect to a Machinery of Government change covers those non-APS Commonwealth bodies that do not have separate legal identity, such as the Australian Federal Police.

**Confidentiality of information, privacy and immunity from suit**

Part 12 of Schedule 1 to this Bill provides protections for an Agency Head or APS employee who provides information voluntarily to the Commissioner or Merit Protection Commissioner in the course of the exercise of their review and inquiry functions.

Part 13 of Schedule 1 to this Bill moves the immunity from suit provisions from the Regulations to the Act and provides consistency in the functions which attract immunity.

The act will provide that regulations may be made to authorise by law the use, as well as
disclosure, of personal information in certain circumstances. This reduces the uncertainty expressed by many APS agencies as to their capacity to use personal information relating to employees for a range of purposes in managing their staff.

**Legislative instruments**

Part 14 of Schedule 1 to this bill rationalises the subordinate instruments under the Act. The Commissioner's direction-making power has been expanded to allow directions on employment matters relating to all APS employees, such as engagement, promotion, redeployment, mobility, training schemes and termination.

The matters set out in the Prime Minister's Public Service Directions will be moved to the Commissioner's Directions under the consolidated power. The Commissioner's Directions will be legislative instruments, registered in accordance with the Legislative Instruments Act 2003, correcting an oversight when that Act was introduced.

The Classification Rules, which prescribe a Service-wide framework for the classification of APS employees, will be made by the Public Service Commissioner, reflecting the movement of this function from the Department of Education, Employment and Workplace Relations to the Commission in July 2010.

**Miscellaneous amendments**

Parts 9 and 15 of Schedule 1 to this bill improve the operation of the act by making a range of other minor technical amendments.

Schedule 2 to this bill repeals the Public Employment (Consequential and Transitional) Amendment Act 1999. This act was the accompanying legislation to the current act when it was introduced in 1999 and is now largely redundant although some provisions will be retained through regulations.

Schedule 3 to this bill makes a number of consequential amendments to other acts.

Schedule 4 to this bill puts in place a number of application, saving and transitional provisions to ensure the continuity of certain matters, such as investigations, reviews or inquiries in progress.

**Summary**

In summary, this bill responds to the reform agenda of the Blueprint by implementing significant reforms relating to the leadership of the Australian Public Service.

It is important that the public service legislation supports a Service which is fit for purpose, meeting the legitimate needs of the Government of the day both now and into the future.

This bill provides for a modern, contemporary employment framework that will allow greater agility and responsiveness by the APS to the community and government. It will result in greater efficiency and more effective use of Commonwealth resources. It will also facilitate and accelerate the cultural shift towards operating more effectively as 'One Australian Public Service'.

**VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 2012**

I am pleased to present legislation that will give effect to a number of measures that will improve or clarify services and benefits to the veteran and Defence Force community and make various amendments to update Veterans' Affairs and related legislation.

Benefiting the veteran and Defence Force community are amendments to the Income Tax Assessment Act that will exempt from income tax, payments made under the new Veterans' Pharmaceutical Reimbursement Scheme.

The Scheme commenced on 1 January 2012 and the first payments will be made in the first quarter of 2013.

The Scheme provides for the reimbursement of out-of-pocket expenses incurred by eligible veterans and members in the purchase of pharmaceuticals.

The implementation of this Scheme has been achieved through amendments to the legislative instruments that govern the Repatriation Pharmaceutical Benefits Scheme under the Veterans' Entitlements Act and the MRCA Pharmaceutical Benefits Scheme under the Military Rehabilitation and Compensation Act.
Amendments are required to the Income Tax Assessment Act to grant payments under the Veterans' Pharmaceutical Reimbursement Scheme, the necessary income tax exempt status.

These amendments have the added benefit of also clarifying the income tax exempt status of other reimbursements that may be made under the Repatriation Pharmaceutical Benefits Scheme and the MRCA Pharmaceutical Benefits Scheme.

It is expected that approximately 50,000 veterans and members will benefit from the Veterans’ Pharmaceutical Reimbursement Scheme.

Further amendments to the Income Tax Assessment Act will make it clear that treatment costs reimbursed under the Australian Participants in British Nuclear Tests (Treatment) Act are income tax exempt.

The Australian Participants in British Nuclear Tests (Treatment) Act provides treatment and testing for cancer for eligible nuclear test participants.

In some circumstances, treatment costs incurred by an eligible participant may be reimbursed.

Changes in the bill to Veterans' Affairs legislation will clarify the approval and authorisation arrangements for travel for treatment for eligible persons and attendants under the Veterans' Entitlements Act and the Australian Participants in British Nuclear Tests (Treatment) Act.

In 2010-11 the Department processed over 155,000 claims for reimbursement for travel expenses for treatment purposes.

Travel expenses can include costs for transport, meals and accommodation for eligible persons and where necessary an attendant to accompany the eligible person.

Amendments to the Veterans' Entitlements Act and the Australian Participants in British Nuclear Tests (Treatment) Act will make it clear that Repatriation Commission approval or authorisation for such travel may be given before or after the travel has been undertaken.

Further beneficial amendments in the bill will enable special assistance under the Veterans' Entitlements Act and the Military Rehabilitation and Compensation Act to be delivered in a more timely manner.

This will be achieved by enabling special assistance to be provided by legislative instrument instead of by regulation.

The result will be a more streamlined and therefore speedier process for providing special assistance to veterans, members, former members and their dependants.

The remaining amendments in the bill will make minor changes to clarify and update Veterans' Affairs legislation and further align the Veterans' Entitlements Act with the social security law.

These changes are part of the Government's ongoing commitment to continually review, update and improve the services and administration of benefits to our current and former military personnel and their families.

Debate adjourned.

Ordered that the bills be listed on the Notice Paper as separate orders of the day.

REGULATIONS AND DETERMINATIONS

Small Pelagic Fishery Total Allowable Catch (Quota Species) Determination 2012

Disallowance

Senator WHISH-WILSON (Tasmania) (17:43): I move:


Something quite extraordinary happened in my home state this afternoon that relates directly to the debate on the Greens' disallowance motion in the Senate tonight. I would like to table a document in the Senate that relates to a motion that was passed in the
Tasmanian lower house, the House of Assembly, today.
It was quite extraordinary in the sense that from what we can gather from the Greens here federally it is the first time that we have seen tripartisan support for a conservation outcome. It is the first time that Liberal and Labor MPs have broken ranks with their federal MPs on a conservation issue. I seek leave to table a document.

Leave granted.

Senator WHISH-WILSON: I start by reading it. I had a speech prepared but I think this summarises a lot of the issues upfront and then I will address a couple of key points. The final amended motion passed reads as follows:

That this House
1. Notes that:
   (a) The growing community concern and disquiet over the potential arrival of the super trawler, FV Margiris, to operate in Australian waters to fish the small pelagic fishery;
   (b) The questions raised regarding the potential impact of the increased quota of 18,000 tonnes per annum on local fisheries;
   (c) This is a matter for Federal authorities who are responsible for access to ports, fishing in Commonwealth waters and the setting of quota in those waters;
   (d) That the Tasmanian local recreational and commercial fishing communities remain strongly opposed to the FV Margiris operation and have held large protest rallies around the state to stress their concerns;
   (e) Both the Tasmanian Greens and the Tasmanian Liberal parties have publicly voiced their respective opposition to this proposed super trawler, with the shared concern that the Federal Labor Minister, Senator Joe Ludwig, has failed to demonstrate that this commercial fishery activity will be sustainable and will not cause localised depletion off Tasmania;
2. Requests the Speaker to write to Senator Ludwig, to advice him that the House will not support the FV Margiris operation in Australian waters and waters around Tasmania until the Parliament can be satisfied that the vessel and proposed harvest strategy will not adversely impact on the recreational fishery.
3. The House recognises the need for a balanced approach between the needs of a sustainable commercial fishing industry, access for recreational fishers and appropriate marine conservation outcomes.

What is very important about this motion passed by the lower house is that, in a state that is divided by conflict, we have seen a rare glimpse of all political parties putting aside politics and coming together on an issue that is very important to the community.

The issues relating to the super trawler have been around for three or four months—in fact, the issues internationally relating to concerns and the risks posed by super trawlers to commercial fisheries, recreational fisheries and ecosystems have been around for years. The super trawler as a large fishing vessel that targets the small pelagic fishery has come to symbolise to lots of people everything that is wrong with the overfishing that occurs in the world's oceans.

While I commend the lower house in Tasmania's parliament for their brave stance on supporting both recreational fishers and conservationists, I make it very clear that standing behind the motion from Tasmania today are both recreational fishermen and conservationists working side-by-side to get a conservation outcome. This is not something that we see very often and, while it is powerfully symbolic and very important in so many ways that we see the old divisions being put aside, it does not have any teeth in preventing this super trawler from operating in Australian waters. Today we are proposing to debate and seek the support of fellow senators in the chamber to
disallow the quota that has been set for the small pelagic fishery.

This is not something that the Greens have done lightly. We have been speaking to the Minister for Agriculture, Fisheries and Forestry. We have put two series of complex, well researched questions on notice. We have met with AFMA. We have met with one of the chief AFMA commissioners and scientists who supports the super trawler. We have met with all recreational fishing groups and conservationists and only in recent days I have met the proponent, Seafish Tasmania.

Moving this motion has not been done lightly and we have done it as a last-ditch attempt to get parliament to debate this issue tonight and get support for what the public are clearly saying, which is: 'This super trawler shouldn't be allowed to operate in Australian fisheries until key risks have been addressed.'

I understand it is quite likely that the Greens are going to be criticised for shutting down a fishery. I also understand there are a number of fishermen out there who have investments in fisheries equipment and it creates some uncertainty. This is also something we have taken into account. The small pelagic fishery for which we are asking for the quotas to be disallowed for all intents and purpose was not fished last year—99.6 per cent of the quota was not fished. In large zones of the fishery, the small pelagic has not been fished for eight to 10 years.

We understand potential issues with investor uncertainty and operators in this industry but we feel that the risks posed to recreational fishermen, other commercial fishermen and ecosystems by the lack of a management plan that addresses the risk of allowing a super trawler to operate in Australian waters far outweigh the potential negatives that we may see by shutting down the quota. We also understand—and I am happy to stand corrected on this—that the government can introduce a new set of quotas fairly quickly once the issue has been properly looked at.

I mentioned earlier that there were concerns from the recreational fishing groups. The key concern relates to local fish depletion. A trawler this size has the capability to stay out at sea for months on end, and has very large refrigeration units, very large nets and all the best technology in the world for catching fish. The concern is that this trawler could deplete fish in any given area, and that would have an impact on local ecosystems and local fishing activity.

I heard the proponent, Seafish, this morning on the radio saying that concerns about local fish depletion is misinformation being peddled by the Greens. I have been involved for three months with various stakeholders, and I know that the local fish depletion issue was brought to the Greens by recreational fishermen. It is not the Greens who are peddling this information, nor is it recreational fishermen. This is a valid community concern and there is disregard for a large number of Tasmanians and a large number of Australians who enjoy fishing. Localised depletion is where fishing reduces the abundance of fish in an area for a period of time. That is the technical definition. I heard a fisherman at a rally in Hobart recently say: 'It's when one of the world's largest supertrawlers comes to your local fishing spot, takes lots of fish and buggers up your fishing.' That is to put it in another way.

What is very encouraging to me, to the Greens and also to those outside this chamber who have concerns about this issue is the scientific report that was released yesterday by a number of key eminent scientists in this country. I would like to read a couple of conclusions from that report.
This relates directly to the issue local fish depletion. It says:

Fishing should be spread out so as to avoid localised depletions, especially in relation to any local ecological 'hotspots' where there is particularly strong local dependency between predators and prey (e.g. in the vicinity of some seabird rookeries).

In the final paragraph in the conclusion of the report, the scientists say:

However given uncertainties about detailed movement patterns of several of the species targeted in the SPF, it would be prudent to distribute catches to minimise the chance of local depletion. This is consistent with global scientific advice on best practice for managing such species.

In terms of the science on this issue, it seems like everyone is in agreement. The scientists are in agreement, and these scientists have been involved with this fishery for a long period of time. Some of them are very well respected in terms of their publications and their standing in the community in Hobart. I would like to acknowledge that on the record tonight. We have never intentionally set out or implied that we do not respect the work of our scientists in our Commonwealth or state fisheries—quite the opposite. Scientists are saying it, local rec fishers are saying it, and conservationists are saying it.

To highlight the issue of local depletion with rec fishers, the government set up a working group several weeks ago. The working group brought in a number of stakeholders who had concerns about the impact that a supertrawler may have on their local fisheries. It is now common knowledge that that working group has fallen apart. The local fishing groups have walked. Their key concerns were very simple. They did not believe that this local fishing issue about depletion had been addressed in any detail. The report released yesterday, which I just mentioned, has been talked about today on every radio station around the country by the scientists involved. While it says that more work needs to be done to address this issue in a management plan, why hasn't it been done already, and why wasn't it in the report today?

Rec fisher groups started asking questions on rumours that they had heard that one of the largest trawlers in the world was coming to Tasmanian waters to fish the small pelagics, which are forage fish that big fish such as tuna feed on. They heard this rumour back in March and started speaking to their elected representatives and other people. It is now nearly the end of August. We asked the fisheries minister detailed questions about local depletion back in June. Only yesterday did a research report arrive that acknowledged that this is an issue for the management of this fishery, but it does not say how that local depletion is going to be managed or what science we have to address that at this point in time. If our disallowance motion is supported, it will give the government a chance to step back from this process and put in place regulations—whether it is adjustment to the Fisheries Management Act or whatever the appropriate format is that satisfies the stakeholders in this debate.

The other issue on which the rec fishers walked from negotiations was that they did not feel that a voluntary agreement would satisfy them. The Greens have said publicly that they did not feel that a voluntary agreement would work. A legislated agreement was what the fishermen were asking for—a legislated agreement that provides safeguards for the risks of local fish depletion. Conservation groups have a larger list of requirements as well: guarantees of 24-hour monitoring on a vessel this size and lots of issues surrounding the potential for by-catch, which is when local sealife is killed by a large trawler—which happens all
the time. These issues can be worked through. I would urge the other senators, especially those from Tasmania who have seen such a strong message from our state, to take note of the concerns. In the *Sydney Morning Herald* today there was an article with the headline 'Angling for power'. It talks about the power of rec fishers in this country when they come together to get outcomes.

I want to stress that it is not just the Greens and conservationists who have valid concerns about ecosystem impacts. Rec fishers are one of the largest lobby groups in the country. I have not heard one of Senator Boswell’s infamous rumblings about rec fishers and how the armies of Armageddon, armies of rec fishers, are going to march over the horizon and tread on the Greens, but I understand that there are nearly five million across the country—which is a large number. A lot of them have concerns that need to be addressed.

We all agree that more scientific research needs to be done, we all agree that we could tighten up regulations and we all agree that risks need to be addressed before we let this supertrawler operate in Australian waters. One question that I have been asked in recent days when speaking to media and to a number of constituents is: why is this supertrawler coming to Australia? The technical answer is that we have an underutilised fishery. It is not economic to fish these fish because they are low value and it is high cost. That is why the fishery is not being utilised at the moment. Only a supertrawler has the capacity to fish these waters economically.

There is also a bigger issue here—a desire or a dream to use Australian protein from these small pelagic fisheries to feed the world. It is a sad irony that we may use our small pelagic fish to send to and feed countries like Africa who have had their local waters depleted by exactly the same supertrawlers. This is just one of many issues of concern that the community have with this boat. That may be scientifically valid and it may be that daily egg production method studies show that this fishery is sustainable into the future. But that work has not been done yet either. None of that work has been done for eight to 10 years in this fishery. I understand it will happen if the boat arrives and the company pays for it. This is another issue that conservationists would like addressed.

There is also a lot of very strong public concern about the process that has led to the quota allocation—the AFMA process. We have seen significant media on that in recent weeks. The only way we can allay those concerns is to revisit the quota allocation process—stand back, take our time and do this properly. It is my job as a parliamentarian, as it is the job of everyone in this chamber—and I am learning these things very quickly—to represent my constituents, voters for my party, and all concerned Tasmanians, on this issue. Once again, I applaud all the MPs in the lower house of Tasmania today—Labor, Liberal and Greens—for presenting such a strong message to their federal counterparts here tonight that they do not want this supertrawler to operate in Australian waters without the appropriate checks and balances put in place. Only we can put checks and balances in place, and we need to do it now. This boat is due to arrive in Australian waters any day. Any day now we have the potential for more public concern and an escalation of this conflict. It is our duty as parliamentarians to take action. I know that a lot of my federal counterparts in the Labor Party have concerns about this—it is all documented in the media. I have had discussions with my Liberal senator counterparts, and I know they
take this issue seriously as well. I am not pointing fingers at anyone; I am just saying, 'Listen to the spirit of Tasmania tonight.' It is not very often we see such a divided state come together and vote on a conservation outcome. We need to listen to and take note of what they have done and we need to take action on this tonight.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (18:04): I rise somewhat flustered, as I was not actually sure that this was coming on for debate and I just happened to be here at the time. I would like to make a bit of a contribution. Firstly, I would like to congratulate Senator Whish-Wilson for his contribution. It was from the heart, and I believe as a Tasmanian he is reflecting the will of the parliament in Tasmania and, to some degree, the people of Tasmania.

As some of you would know, I have been around in fishery politics for some time—it is a pretty tough game—and I have also been around for long enough to know and to perhaps provide some insight about what we should not be doing. We see the headlines in the papers: 'Supertrawler!' and we read that it is not extraordinarily good, that it is large and a fishing boat—and children have to go to bed earlier—and that this is a very serious threat to our way of life. In fact, from my perspective, it is quite the opposite, and I did not think for a moment that the Tasmanian parliament would come to that conclusion. I thought it would simply pass on.

I had a passing look at the work that AFMA, the Australian Fisheries Management Authority, had done—and, again, I acknowledge the credit that Senator Whish-Wilson piled on the scientists from that august body. I will deal with some of the issues about the size. Particularly to Senator Whish-Wilson and the Greens, I would say that the supertrawler is catching a particular amount of fish; it is not just catching any amount of fish. This is actually an output control fishery. So, for example, we say, 'We don't care how you catch it, but you are only allowed to catch 10 fish.' That is how it is. For those who are not familiar with input and output controls, with an input control fishery you are allowed to catch as many fish as you like with one hand behind your back or with a captain with an IQ of four—and I have been in fisheries that have that impediment, I have to say. An output control fishery is considered one of the best ways to manage fisheries.

I will give you a bit of a quantum on that. There is a benefit to this, because you could have maybe 10 or 20 trawlers go out there now and 'pelagically' trawl. So there is a great deal of efficiency with this. You could certainly call it a super-efficient trawler. There is no doubt about that. The efficiency is all about using less fuel to gather the protein. This trawler would undoubtedly provide for a much smaller carbon footprint—and we have certainly been lectured on those sorts of issues by the Greens a number of times in here, and perhaps rightly so.

The last issue I will touch on is that we provide protein. It is a very important foodstuff and we should think very carefully. Last night I was listening to Tim Costello on the television expounding the virtues of looking after people in Africa, particularly in the Horn of Africa, who are going through the most extraordinary drought. We keep talking about extraordinary droughts in Africa, but certainly this drought is having just a horrific impact on the population there, who have, right at the moment, almost no access to protein in particular. This is a market. This particular boat and this particular fishery is targeted specifically at filling that market. I just want to make that clear.
I will just quickly go through the process. The Australian Fisheries Management Authority have made an investment in science. They have not just run out and said, 'Big trawler—no worries, fill your boots; it will all be okay.' They have put so much work into ensuring that they have the total allowable catch. This particular boat will take 18,000 tonnes. That is a lot of jack mackerel—and four other smaller species—but it is out of a conservative estimate that built in precautionary principles of 360,000 tonnes annually, just to put it in context. The total allowable catch for the fishery is about 36,000 tonnes, of which this vessel will be taking 18,000 tonnes. We are talking 3.6 per cent of the total fishery, just to put it in context. It is a big trawler. It can hold it flat, it can do what it likes, but that is the maximum that it is going to be able to take.

I have only just stood up—I am not really across some of the things—but the senator did provide some interesting statistics showing that 99.6 per cent of the quota was not actually fished. I know we may have fundamentally different views on this, but my view is that we have a responsibility to be able to fish and allow fishing sustainably, within sustainable levels. I think if everything stays to the model that AFMA has got, then that is certainly what will happen. I think you could reasonably say that it is an unfished fishery. The senator made a comment along the lines of 'We are only using a super trawler because it is an unfished fishery'. I will use an analogy. I live in Darwin and I can tell you there is a very good reason we do not hook up the house trailer, put some vegies in it and tow it behind the Holden to Darwin, because we have got to use big trucks. It is a critical mass and efficiency issue. I would never be able to afford vegies if we used the house trailer and I can tell you that catching fish in pelagic fisheries any other way would simply be too much for the market and I think we should also take that into consideration.

This has been heavily politicised in a short time and I have had the experience in my home territory of similar things. I will just deal with a couple of the key issues. I notice that in terms of local fish depletion there were a couple of other issues that the senator brought up. I will quote from a scientific paper by Colin Buxton, Gavin Begg, Jeremy Lyle, Tim Ward, Keith Sainsbury, Tony Smith and David Smith. If you do not know them, take it from me and google them: they are the key scientists in small pelagic fisheries internationally. In regard to local depletion in this exact fishery, they say:

Localised depletion is evaluated as unlikely with the proposed harvesting fractions applied in the SPF because most small pelagic species, and their predators, are highly mobile and local areas replenish quickly provided the overall stocks are not depleted. This has been the experience with small pelagic fisheries that have been similarly managed in Australia.

People say this is the first time this has ever really been done. We have a total allowable catch in the sardine fishery of South Australia, and that total allowable catch is 34,000 tonnes. It is double the quota we are talking about here. They are a very similar fish to manage, and this sardine quota is taken in an area half the size. I am not saying this as a contradiction. I just hope those listening will take that into consideration and that it will provide them with some comfort. I also note their recommendation in regard to by-catch:

AFMA has committed to 100% observer coverage to monitor by-catch and other aspects of fishery operations for the factory trawler.

I think that will give everybody an awful lot of confidence in what is happening.

I want to briefly touch on fishing politics. We can manage fisheries from this place. We can manage them from here. I was part of a
political party that managed fisheries in the Northern Territory. Way back in the day, if we put an Aboriginal and a commercial fisherman in a paddock and threw rocks at them, everybody in the Northern Territory would vote for us. But I tell you, it did not do much for the management of fisheries. It was not useful at all. I would urge all those involved in this debate to simply allow this to be left to the scientists. If you have a question with the science, if it is a question about the validity of it, if it is about 'have not had enough time', I would be the first person to say we need seriously to consider the precautionary principle and go back and look at that particular element. I know Senator Whish-Wilson has called for further consideration and that in the future we might go and do these things. Perhaps I do not know enough about the issue, but I am certainly concerned that this is simply a delaying tactic and that this will never happen. It is a real boat, there is a real quota, it is a real fishery and there is a real protein need in Africa. I have not heard in the debate that there is a particular piece of an element of the science that is flawed or that the scientists do not know enough about it or that somehow the application of the precautionary principle is not there. I suspect this is a reaction after recreational fishermen have come to you and said, 'Look, this is going to cause fish depletion.' And I am sure they have but, frankly, local recreational fishermen—I love them; I am one of them; I have bred them—probably are not quite as switched on to the science as the scientists are. I think we should leave this to science and we need to really think about the fact that a super trawler is actually a super-efficient trawler.

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (18:14): A few months ago Seafish Tasmania announced that they would be bringing the super trawler FV *Margiris* into Australian waters and the super trawler would seek to fish there. The super trawler is proposed to be based out of Devonport in Tasmania and has caused deep community concern throughout our state.

We have never had a factory ship super trawler fish in Australian waters before. Tasmanians are concerned about the environmental impact that the *Margiris* will have on our fish stocks now and for generations to come. The super trawler, as I understand it, is unlike anything that has ever operated in Australian waters. The *Margiris* is a 142-metre midwater trawler and weighs nearly 10,000 tonnes. It can process over 250 tonnes of fish a day. It has a cargo capacity of 6,200 tonnes. It is being brought here by Seafish Tasmania, which has secured an 18,000-tonne quota for jack mackerel, blue mackerel and red bait—key prey fish which help to sustain populations of the larger animals like southern bluefin tuna, fur seals, dolphins and other marine animals and birds. The *Margiris* will tow a 300-metre-long net through the waters above the bottom of the ocean. The catch will be frozen whole and most, as I understand it, will then be exported to West Africa.

So what has happened? In response to community concern the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig, established a working group, inviting ENGOs, recreational fishing groups and Seafish Tasmania to be part of a group to try to reach an agreement on the super trawler. Of course, the ENGOs did not participate in the working group. The minister established the working group as a means of bringing the company and the community together on a set of additional voluntary measures regarding the operation of the FV *Margiris*. No outcome was reached and, on exiting the working group
process, TARFish CEO Mark Nikolai issued a media statement. I will read some of that:

Reviewing the Small Pelagic Fishery science has heightened our concerns and raised more questions without answers.

Mr Nikolai went on to say:

Recreational fishers call on Minister Ludwig to not allow industrial scale fishing operations to occur in the Small Pelagic Fishery and address the significant public concerns surrounding the risks of local area depletion on fish stocks.

I attended a number of rallies in Hobart in July and August with Senator Lin Thorp which were organised by Tyson Clements, Martin Haley and Neil Clark. Rallies were held around the state. At the rallies we attended we heard the concerns of the recreational fishers and the local community. Many of the main issues were centred around spatial management, the science and, indeed, the science as it relates to the vessel—the size of the trawler and the impact this will have on the local ecosystem. Recreational fishers, game fishers, tuna fishers, tourism operators and conservation groups have been very active and vocal in calling for sound spatial management to ensure that our fishing stocks are a resource that is not just for ourselves but also for our children and our children's children.

We also need to ensure that there are no adverse impacts on our local ecosystems. Indeed, there are concerns regarding the science and how it relates if the volumes are being taken by one large vessel. This super trawler is a size we have never seen before and it throws up a number of questions that I believe were not thought of when the science was last done. It is also worth noting that, due to the important place small fish such as redbait and jack mackerel have in the food chain, there are concerns about the impact on local ecosystems that could occur through overfishing of these species.

At the rally in Hobart Senator Lin Thorp and I accepted a petition on behalf of Julie Collins, the member for Franklin. We also raised the concerns. After that meeting and at the rally we indicated quite clearly to the people who attended the rally that we would go back to Minister Ludwig—indeed, to the Prime Minister's office—and raise the concerns that were given to us at those rallies and at meetings that we held privately with TARFish and other fishing groups.

Last week I was among a group of parliamentarians—Senator Whish-Wilson was there as well—on the Parliament House lawns to view a petition of 35,000 signatures. It was a massive petition. This petition was later presented to Minister Ludwig and has been tabled in the Senate. The size of this petition again highlights the enormous community concern about the FV Margiris across Australia. Minister Julie Collins, the member for Franklin, Lin Thorp and I have also asked the federal Minister for Sustainability, Environment, Water, Population and Communities, Mr Tony Burke, to intervene on the super trawler on environmental grounds. Minister Burke has himself stated his concerns regarding the FV Margiris and highlighted that super trawlers pose new issues for fishery management.

I believe we must see this issue resolved quickly. I am unconvinced of the safeguards that are in place to ensure our local ecosystems are not impacted by the super trawler. Consequently, I am of the view that the FV Margiris should not be here. Senator Whish-Wilson, I know, has genuine concerns about the long-term future of the Tasmanian fisheries. What we—Minister Collins, Senator Thorp and other members of the caucus—have been doing is using avenues available to us to address the valid concerns of our community that we share to deal with the super trawler now and, I hope, into the future.
So, while a disallowance motion is one tactic that can be used, I believe this motion is really nothing more than a gesture, but an empty gesture because it will not succeed and does nothing to address the issues we are facing. It does not address the issues in the long term that we are currently facing. Senator Whish-Wilson even talked in his own motion about the quota being reissued and the like. Anyway, I believe that the action that Senator Thorp, Minister Collins and others have taken in briefing the Prime Minister's office about the real concerns of the recreational fishers and the Tasmanian community, and working with the appropriate ministers to raise these concerns and awareness of the issues, is the best way to resolve this issue. Do I want the super trawler here? No, I do not. Do I think this motion is the best way to proceed? No, I do not.

Senator SIEWERT (Western Australia—Australian Greens Whip) (18:23): I rise to support this disallowance motion, and I put on the record that, yes, this will succeed if people vote for it. What we are seeing here is a doubling of the quota without scientific support to show the super trawler will deplete our local fish and also take bycatch, which I will address in a minute. But I also go back to the science that Senator Scullion was talking about. He was waving around the Commonwealth Small Pelagic Fishery: general background to the scientific issues report, and he quoted from it. I am aware that Senator Whish-Wilson also quoted from it, but I put in context Senator Scullion's quote. He quoted the first bit of an important point when he said:

Localised depletion is evaluated as unlikely with the proposed harvesting fractions applied in the SPF because most small pelagic species—and Senator Scullion articulated that. But he left off the important bit:

However given uncertainties about detailed movement patterns of several of the species targeted in the SPF, it would be prudent to distribute catches to minimise the chance of local depletion. This is consistent with global scientific advice on best practice for managing such species.

Of course, there is not the appropriate data to do a proper risk assessment on the likelihood of localised depletions occurring, and there is not any adequate information on the movement of target species in the region. That is also from scientific papers. So, on this issue that we will just have to rely on the science, that paper is saying we need more information.

We are particularly concerned about the impact that this super trawler will have on our fisheries in Australia. I will point out here that there has been some mention of whether this super trawler is subsidised and whether it is getting subsidised for this action. The fact is that, to operate, this super trawler has to be, has been and is subsidised by the European Union. Whether it is being subsidised to actually operate in our waters is important to know but is not the full story. The fact is that to exist it needs a subsidy. If it is being subsidised to exist, it is therefore being subsidised to operate in our waters.

It is very important that we deal with this quota issue, and it has highlighted the science arguments around our fisheries and the fact that we do not have as much information about our fisheries as AFMA would have us think. If this gets passed, it will send a clear message that we need better management of our fisheries and we are not prepared to support massive super trawlers—in this case the second biggest in the world—to come and fish in a rapacious manner in our waters. As I think other people have said, this super trawler is a game changer in the way we manage our fisheries in Australia, and that is why you are finding fishers,
conservationists and industry standing up around Australia—particularly focused in Tasmania—to say no to this sort of fishing in our waters. Australia has in the past claimed that we have some of the best-managed fisheries in the world, and I have in this chamber acknowledged that also, for some fisheries. But this clearly demonstrates that we cannot just rely on our so-called reputation as being among the best fisheries managers in the world. We need to demonstrate that on the water as well.

I know that Senator Whish-Wilson has articulated some of the key issues, but I particularly want to focus on the issues around bycatch and point to what happened in New Zealand, where they have had some issues with the super trawlers there. The New Zealand government experienced difficulty in effectively enforcing fisheries regulations in their well-managed fisheries, and it should provide us with a very sobering lesson about the realities of super trawlers and the way they operate. Recently a local New Zealand company chartered Korean super trawlers to fish New Zealand waters, with observers from the New Zealand government on board. However, the observers were unable to monitor the whole ship the whole time. Catches were done when the observers were either asleep, on the other side of the boat or looking at something else, and the quota apparently was surpassed. As with many super trawlers around the world, the New Zealand experience has ended in legal action and is a very sorry example of the impact that super trawlers can have.

Have we learnt from this experience? It looks as if we may not have when we go back to the issue of bycatch. Apparently we are supposed to believe that this massive, great, big ship will move on when it sights a dolphin, but we have no assurances that this ship will have enough observer coverage to even flag that there is a dolphin there, without contemplating the issue of whether the ship will, in fact, move on or not. I draw attention to our most recent experience in Australia around bycatch, and that is the South Australian experience with sea lions. As we know, AFMA has had to close trawl fisheries in South Australia because of the question of bycatch. I also need to acknowledge that my colleague Senator Wright put a lot of effort into following up this issue. In fact, in this very chamber she raised questions about it. When they started looking at observer studies in that fishery, they identified that 374 sea lions were dying in 18 months.

They also uncovered a further 56 dolphin deaths. Because they started looking, they actually worked out what was happening in that fishery. There were attempts to deal with that, and what has had to happen is that they have had to close some of those fisheries. AFMA had to take decisive action in that case because it was clearly demonstrated that there was adverse impact on bycatch. We are now talking about a boat that is much bigger and which has had a lot of other trouble dealing with bycatch in other areas.

I think that super trawlers have earned a bad name because of their impacts on local depletions and because of their impacts in other countries. In the past 15 years 20 super trawlers off the west coast of Africa are estimated to have killed in bycatch 1,500 critically endangered turtles, 18,000 giant rays and 60,000 sharks. And you can bet your bottom dollar that that number of deaths is adding to what we already know about the low stocks of sharks globally. As a result of this sort of behaviour by super trawlers in West Africa, Senegal has recently banned all super trawlers. Just like New Zealand, they have learnt their lesson the hard way.
Why does Australia have to learn its lesson the hard way? Surely we should be learning from the experiences of our neighbours and from experiences elsewhere? We know that our fish stocks are plummeting globally. Why does Australia have to contribute to that? Why are we so determined to allow that to happen in our waters? We have held ourselves high, saying that we are some of the best fisheries managers in the world, and now it seems like we are coming down to the lowest common denominator with a super trawler that is subsidised to exist.

We have always said, 'No, we shouldn't be doing that,' and yet now we are facilitating the entry into our waters of a super trawler that is subsidised—

Senator Feeney: Who subsidises it?

Senator SIWEERT: The European Union does. I do not know if you were here a bit earlier, Senator Feeney, when I was saying that whether it is being directly subsidised to operate in our waters or not—to exist—that boat has the potential to come into our waters. It is subsidised to do that. If it were not for European subsidies this super trawler would not be able to operate anywhere. It has to have that to exist.

We are talking about a game changer here. On Radio National this morning we heard that if this season is successful we can expect it to stay. This is not a once off; this is a game changer for the way we manage our fisheries in this country. We are saying that it is okay for massive, great big super trawlers to come into our waters and fish hundreds of tonnes of fish at a time. It is a super trawler that can go into a local area and scoop up all those fish. Not only are those fish important as far as recreational fishermen are concerned but other industry players are also concerned that this will have an effect on our ecosystems and other fish species in those ecosystems. We need to think about what we are doing here.

We need to think about why there was a doubling of the quota to enable this super trawler to come into our waters. The background paper that was released yesterday by seven fisheries scientists concludes with this statement, 'It would be prudent to distribute catches to minimise the chance of local depletion.' We do not know what impact this is going to have on our fish species and we do not know what impact it is going to have on local depletions. We do know that fish stocks around the world are at risk and that we have tried hard to get an adequate and good management system in this country—and I am not about to stand here and say that I think it is perfect, because I have said on other occasions that it is not. But it is certainly better than in a lot of other countries. So instead of maintaining that standing and building on it, what we want to do is join the common denominator and let this sort of operation happen in our waters.

I have to say that it is a strange experience to be in the position where rec fishermen are lobbying us to oppose something. I have not had that experience too often, I have to say, other than that there are a group of rec fishermen who see the benefits of marine protected areas and the way that they operate to help fish stocks—and I am not going to go over that argument here. So I am not saying that we have not worked with rec fishermen in the past, but it is fairly unusual for rec fishermen to be lobbying us to oppose something like this. It is the same with the broader commercial industry; that is also unusual.

So there has to be something—and I will use it, pardon the pun—'fishy' about this particular proposal if there are so many stakeholders that are opposed to this particular proposal. We need to be operating under the precautionary principle in our
management of our fisheries. Any definition of the precautionary principle would say that you do not allow this sort of massive fish-gathering implement to operate in our waters when it will lead to local depletions and when we do not have the science. We do not know what impact it will have.

The science report that people are now holding up as saying that it supports it does not. It does not say it is okay to go ahead. We should be operating under the precautionary principle. We should not allow this material—

Senator Colbeck: It actually does. You are misrepresenting the science, as usual—no respect for science.

Senator SIEWERT: I hear the coalition across the chamber saying that we are no respecters of science. It is we who have been looking at the science around marine protected areas. It is we who have been looking at that.

Senator Feeney: What about climate change science?

Senator SIEWERT: Exactly! Do not lecture me about not looking at the science.

Senator Colbeck: Read the paper and give it its due!

The ACTING DEPUTY PRESIDENT (Senator Boyce): Senator Siewert, ignore the interjections.

Senator SIEWERT: I will take your direction, Madam Acting Deputy President, and I will ignore them.

This approach is not good enough. We should not be doubling the quota and we should not be allowing that super trawler to operate in Australian waters. We have too much to lose: our fisheries are too much to lose by allowing this operation to happen in our waters.

Senator COLBECK (Tasmania) (18:37): I have had some quite instructive conversations with Senator Whish-Wilson in respect of this issue. We have sat down on a couple of occasions and had a discussion about it. But I have to say that Senator Siewert's contribution was, quite frankly, reminiscent of some of what her state colleagues have done in whipping up fear and frenzy around this issue and causing a large amount of the concern that exists in my home state of Tasmania and in other places, I might add, with absolutely irresponsible rhetoric around this particular issue. I recognise the concern that exists in my home state of Tasmania and I have had conversations with the recreational fishermen myself. I have sat down with them and we have been through the issues and I think that we understand our issues and I understand their concerns around localised depletions.

As for the paper that came out yesterday, about eight weeks ago when this process started I went to some scientists and said, 'We would like you to publish something. We would like you to put something together that gives some information to the community around this,' because I have to say, the government's approach to this has been dead-set hopeless—absolutely dead-set hopeless. Going and talking to the Prime Minister achieves nothing. This does achieve something, because it provides some information to the community.

I am really disappointed, Senator Siewert, in your misrepresentation of what is said. I have read the report. Senator Whish-Wilson read the same half of the paragraph out that you read and Senator Scullion read the other half of the paragraph, so when you put them together, you get the actual picture. As Senator Scullion said, here we have seven of the most respected marine scientists in small pelagics in the world. Professor Sainsbury has just spent two weeks at the United Nations FAO on small pelagics, lecturing on
this—and I will come to that later in my contribution. These people are highly respected, and to misrepresent their writings as you have done is quite disgraceful.

I am going to quote a part of the introduction. It says:

Several groups of scientists worldwide, including from CSIRO and IMAS, have recently examined the effects of fisheries on small pelagic species (also sometimes called forage fish) and how they should be managed so as to avoid undesirable flow-on effects of these fisheries on the food web and ecosystem.

Very important, because it comes to the issues that Senator Brown talked about. It continues:

There is now clear and widely agreed understanding about how these fisheries should be managed, and this understanding has a strong scientific basis—

That is the introduction to this paper. So suggestions that the science is not known, that there are doubts about the science, is complete rubbish. This is a very well-studied fishery and it is very well studied globally, and there are a number of papers that I will cite as part of the discussion here today that actually talk about it. So the rhetoric that the Greens have been going on with and the misrepresentation particularly by Paul O'Halloran, the member for Braddon in Tasmania, and Mr Kim Booth, the member for Bass in Tasmania, have been quite outrageous. It has whipped people into a frenzy. I have had people in my office who say that they cannot sleep at night because of the concerns that have been raised. They come in and quote the lines that the Greens are running out in Tasmania.

As Senator Brown said, and I agree with her on this point, this motion will not necessarily achieve anything. This is a typical Greens process—delay, delay, add cost, try and make an industry or a business unviable by applying additional cost to the business. They have done it in the forest industry and they do it in a whole range of other industries. They have said they are going to target the mining industry—same toolkit, same process. They demonise the industry, they destroy the reputation of the business, and then they cause delay after delay after delay, which increases costs and therefore makes the project financially unviable. That is their strategy. That is the strategy that is being used here. As Professor Sainsbury says:

The demand that there is scientific knowledge about the detailed local movement dynamics of fish stocks is an example of the approach that we must know everything about everything before we can do anything.

That is the way that the Greens operate—‘unless you know everything’. But we know that science continues to evolve, and we should continue to invest in science so that we get a good outcome, and we must continue to improve our fisheries management. Not only do we say that we are a good fisheries manager, we are globally benchmarked as being a good fisheries manager. According to the fisheries research reports, the 2008 volume, as far as sustainability is concerned, Australia ranks second in the world.

Mr Burke this morning on Radio National made some quite extraordinary statements. He has actually redefined the issue of localised depletion. He is now talking about seals and dolphins and, quite extraordinarily, albatross. I have not seen an albatross 100 metres deep in the water. I have talked to the industry and to the owner of the vessel, who have fished with this method in this fishery previously—so we are not talking about a new process; it has occurred before—using very similar equipment. Mr Burke is now talking about localised depletions in a way that is different from what everybody else who has been talking about it understands.
The paper that was released by those seven scientists yesterday actually deals with the issue of localised depletion. On top of that, the company is offering a move on provision to deal with the concerns of the local fishermen—quite responsibly. They are not necessarily required to do it; the fishery is already spatially managed. You just cannot go to the east coast of Tasmania, for example, and take fish. It already has some spatial management around it, and he is offering more. There is a huge opportunity.

I was really disappointed when I heard that the recreational fishing sector had removed themselves from the discussions last week, as I said to you this morning, Senator Whish-Wilson, because we lost an opportunity to work with the recreational sector, those who are concerned, to do some more science around the issue of how we move around the fishery and how the fish move within the fishery. The offer is on the table. In fact, if you go back to the proposal that SeaFish put over nine months ago to gather new science, that was part of it. If you go back and do that research, that was part of their proposal months ago: to do some more research on the movement of the fish around the fishery so that it was better understood.

There was an opportunity that the recreational fishing guys could have taken to do that. I can understand their lack of confidence in the way the government has managed this—I sincerely can. The government should have said there is a shortage of information or there needs to be a compilation of information. That could have been put on the table. We all know that they were asking for it as part of the talks, but they were told it was not there. It has come out afterwards because somebody else asked for it.

Minister Burke said this morning he now accepts the science. He said on Radio National, in respect of localised depletions: 'I accept the science of that absolutely. The question then becomes whether those volumes, if taken by one vessel using these particular fishing methods, throw up anything that was not contemplated when the science was last done. That is the issue where I think it is quite responsible that questions be checked and checked through very thoroughly, and I am still waiting for some work to come back on that.'

Minister Burke, when he was minister for fisheries between 2007 and 2010, actually presided over the drafting of the small pelagics plan. On the very first page of the small pelagics plan, which was initially put out in 2008 and updated in 2009, it says:

- there are considerable economies of scale in the fishery and the most efficient way to fish may include large scale factory freezer vessels.

That is in the Small Pelagic Fishery Management Plan that was issued twice under Minister Burke when he was minister for fisheries. I am not sure what he was doing back then and whether he was moving a motion of no confidence in his role as a fisheries minister when he was there or whether he was just trying to find ways to intercede in this particular issue now, which I have to say I think is the case because, in my view, Minister Burke is completely out of control on a number of issues. But that is his record in this particular matter: he presided over the management plan that suggested a large trawler might be part of the deal back in 2008 and 2009. So for anybody in government to be suggesting that this is a huge surprise is quite outrageous.

I want to go now to the question of global fisheries and how they are managed. I mentioned that Professor Sainsbury was involved in some work in Europe and for the United Nations recently. I go to a piece of
science that was issued back in April this year by the Lenfest Forage Fish Task Force. I want to talk about how that works and how our Small Pelagic Fishery Management Plan is established. In the small pelagic fisheries globally, the practice has been to fish down to 20 per cent of the biomass—that is, to take out 80 per cent. That has been the global practice until recently. What this report recommends is that the minimum remaining amount of biomass is doubled to 40 per cent. That is what they observe. The task force also talk about making allowance within that 40 per cent that is to remain for all the other species that forage on the small pelagics—it recognises that they are an important part of the food web.

When we come to the Australian Small Pelagic Fishery Management Plan, where is it set? We say you can take a maximum of 20 per cent. So Lenfest says double it from leaving 20 to leaving 40. We say leave 80, and that is with the most up-to-date science. We then overlay another precaution where we say: as the science decays so does the quota, by 2½ per cent per annum, and when you get to a certain stage you go to a tier-2 level, which has to be below 10 per cent. Where is it set right now? It is set for jack mackerel and blue mackerel at less than 7½ per cent and for red bait at 10 per cent.

So the frenzy that has been whipped up around this, around the science and the level of the quota and the sustainability of the quota, I think is quite outrageous. As Senator Scullion mentioned, there is a small pelagic fishery in South Australian state waters, in a very confined area, that takes 34,000 tonnes per annum. It is well studied. Its impacts are well understood. It does not have impacts on localised depletion and all of the other important marine mammals that are around it because we have a very precautionary approach to the way that we set our quotas and we take into account the importance of these species in the food chain. But nobody has been prepared to say that. Nobody has been prepared to put that important information on the table as part of this debate. All we have had is hysteria and innuendo and claims that will denigrate the name of the business that is operating in this fishery. I think that is an absolute disgrace. We saw that again in the Tasmanian parliament where the press release put out by the Greens does not even reflect the motion that was passed in the house today in Tasmania. Mr Deputy President, I seek leave to continue my remarks.

Leave granted.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (18:50): I table a copy of a letter that Senator the Hon. Joseph Ludwig has issued in response to the resolution passed today by the Tasmanian parliament.

Debate adjourned.

ADJOURNMENT

The DEPUTY PRESIDENT: Order! There being no motions to take note of government documents, I propose the question:

That the Senate do now adjourn.

Tibet

Senator SINGH (Tasmania) (18:51): In the parliamentary break in July I had the extraordinary opportunity to travel to Dharamsala, the exile capital of Tibet, with my colleague Senator Waters as part of an Australia Tibet Council delegation. The Australia Tibet Council supports this exchange as a way of assisting members of parliament to understand more deeply the situation of the Tibetan people. Tibet lies within Chinese territory, amongst the peaks of the Himalayas, and is home to people with a deep and important connection to their culture and their home. Tibet has over 2,000
years of written history and, prior to occupation by China, existed as an independent sovereign state.

Tibetan identity is built on a foundation of profound spirituality and the leader of the Tibetan Buddhist religion, His Holiness the Dalai Lama, is known and revered the world over.

Tragically, the leadership and the culture it represents has been systematically undermined by an occupying regime. Since China asserted its authority in the region in 1949 the loss of life, property and significant sites of heritage—for example, more than 6,000 monasteries have been destroyed—has been equalled only by the corresponding loss of liberty, freedom of expression and culture. China has falsely imputed motives of violence and separatism to His Holiness in order to justify targeting Tibetan culture and has pursued a deliberate strategy of Chinese immigration and militarisation in order to subsume the local population.

Under Chinese rule, teachers and religious leaders require permission to practise and are typically subject to forced re-education. Local language is totally delegitimised. The everyday commerce and movement of residents in Lhasa, the capital of Tibet, is subject to intense surveillance and, as the Prime Minister in exile of the central Tibetan administration, Dr Lobsang Sangay, explained when he was in Australia a short time ago, it is impossible for ordinary citizens to express their deeply-held spirituality without fear of arrest, torture or even disappearance.

Since last year 49 Tibetans have taken the extraordinary step of setting themselves alight in order to highlight the oppression of their people and to assert a level of control over their own destiny. These self-immolations are not just acts of desperation; they are acts of political expression. Indeed, according to Dr Sangay, the self-immolations are somehow an assertion of freedom: 'You can restrain my freedom but I can choose to die as I want.' That a people should feel that their form of death is the only avenue for expression is an indication of the gravity and urgency of the situation in Tibet. Australia has a longstanding position of recognising China's sovereignty over the Tibet Autonomous Region. But the principles of liberty, freedom of speech and expression, and security of heritage that the Tibetan people seek are universal standards. Unfortunately, for many the only option, in order to openly practise their culture, is to seek refuge in the exile capital, Dharamsala, located on the other side of the Himalayas in Himachal Pradesh in India. It is a city above the clouds on the slopes of the Kangra Valley, not easily reached by either the southern or the northern approach. It has, however, become home to the exiled government that represents Tibet.

I had the privilege of learning about traditional Tibetan Buddhism and meditation at the Gyuto monastery and meeting his eminence the Karmapa. We also met with the director of the Tibetan Nuns Project, Mrs Rinchen Khandro, at the nunnery at Sidphur and learned of her work and the support given to Tibetan nuns. The new reception centre for new arrivals seeking asylum, which has been funded by the US Congress, provides refuge and the necessary medical attention for new arrivals. Many arrive with frostbite and other injuries after enduring a journey across the Himalayan ranges to get to a place of freedom. The records revealed that from 1991 to 2004 the centre had hosted a total of 42,634 new arrivals from Tibet, more than half of whom were children and young people under the age of 25. Yet I was informed that since 2008, the time of the Olympic Games in China, the military presence had increased dramatically in Tibet.
across the borders and in the streets, which has led to a reduction of new arrivals at the reception centre in Dharamsala. Nevertheless, while there I was able to talk to some new arrivals, who had only been there a day, about their journey, their hopes and their ambitions now that they were free. Many had never had any formal education and had left their families behind for a future where they could be free to live out their lives.

What Tibetans are doing every day in India is really what they should be able to do in Tibet and what we all take for granted—that is, to keep their culture alive and practise their art, language and religion. I am so pleased the Indian government has provided support and the opportunity for Tibetans to educate their people so that they are able to learn their language and culture, and practise their art through the Tibetan Institute for Performing Arts and Norbulingka in Dharamsala.

The Tibetan Children's Village is a remarkable achievement, with a number of students going on to become Rhodes scholars and leaders all over the world. In 1959, the Dalai Lama recognised that so many orphaned refugee children, separated from their families, would need a centre to care for and educate them. The TCV today houses, cares for and educates thousands of Tibetan children and it was indeed an honour to be able to meet them. Its mission is to ensure that all Tibetan children under its care receive a sound education and cultural identity and become self-reliant, contributing members of the Tibetan community and the world at large. I certainly believe that is being achieved at the TCV.

Not only did we meet with the Tibetan parliament in exile, we also met with civil society—a number of Tibetan NGOs, including the Tibetan Youth Congress, the Tibetan Women's Association, Students for a Free Tibet, Gu-Chu-Sum and the National Democratic Party of Tibet. Given the experience of the Tibetan people, it is perhaps no surprise that civil society has thrived when it has been allowed to. All of these organisations are run by passionate, dedicated individuals.

I am pleased that Australia continues to highlight the question of Tibet in the Australia-China Human Rights Dialogue. However, China has recently closed entry to the region and refused a request from Australian officials to visit there and neighbouring Sichuan province. At the same time, under the guise of maintaining stability, 3,000 new troops have entered Tibet, with soldiers standing on the street corners and outside people's homes.

Ultimately, the Tibetan character is one of humility, gentleness and hopefulness. Each person I met in Dharamsala is imbued with a powerful conviction that democracy will outlast authoritarianism and Tibetan culture will once again thrive in the open air of their homeland. I sincerely hope that Australia and the world can continue to contribute to that worthy aim of making China understand that with power comes responsibility to all members of the human family.

Hearing Awareness Week

Senator McKENZIE (Victoria) (18:59): I rise tonight to acknowledge that this week is Hearing Awareness Week.

Senator Feeney: Pardon?

Senator McKENZIE: Thank you, Senator Feeney. I will take that interruption and let you know that there are places you can go this week that offer free hearing tests. Hopefully, you would be able to hear my contribution with interest in the Senate tonight if you turned the hearing aid up. I also let you know that there are 3½ million Australians who suffer from hearing loss. I
want to relate an experience I had this morning, because it is Hearing Awareness Week. I am a very old and, after a game, sore member of the parliamentary netball team. This morning I participated in a very exciting game of netball organised by the Parliamentary Sports Association with local deaf athletes, including former Paralympians. We all had to participate with earplugs in our ears so that those of us who are hearing athletes—and I use that term loosely—could experience a game of netball in almost silence. There was no whistle to stop the play of the game, only flags. Dave, our usual volunteer umpire from Netball ACT, was really excited to be able to umpire the game using flags and no whistle.

One of the interesting things that we found in experiencing this morning's game was that those who were hearing impaired stopped immediately when the flags were raised to see what the umpire was going to call, yet those with earplugs, such as me, Graham Perrett and associated others, just kept running and attempted to win the game. We competed hard for the ball, whether the flags were waved or not. The lesson is that the other four senses of the hearing impaired were heightened over time in order to take in their surrounds and participate effectively in the fast-moving game of netball. Those of us with hearing intact were slower to adapt and perhaps not used to having to use the other senses in such a way for those external cues.

I thank the Parliamentary Sports Association, the MPs involved and our staff who participated in this bipartisan event. Tomorrow, for those who are interested, the touch team will be playing a deaf game of touch, so watch out!

Although hearing loss changes the way a person might communicate it should not limit their involvement in society. That is what this morning's event was all about: full participation in all the richness of our community activities, including sport. In this instance, there were a few minor changes to how we play netball. The game was competitive and just like any other that I have participated in.

One in six Australians suffers from some form of hearing loss, although this is expected to climb to one in four by 2050. Do not assume it is always our ageing population, Senator Feeney, who are affected. Over one third of people acquire hearing difficulties through preventable means. Just today I was talking to one of our shadow ministers in the other place who was deaf for the first four years of his life due to an infection as a child. He relayed to me the experience at the age of four when the issue was resolved: how afraid he became of the world because he had been living in a quiet bubble for four years, and how all the new noises and changes affected his young experience.

As I mentioned, there are 3½ million Australians with hearing loss—that is, roughly 2,500 people in each federal electorate. For those who are aged between 45 and 65 with hearing loss, your chances of participating in the workforce are 20 per cent lower if you are male and 16 per cent lower if you are female. That is interesting, considering that constant exposure to excessive workplace noise leads to an increased chance of hearing loss later in life. Hearing loss costs Australia $11.5 billion annually, mostly in productivity, yet those who are affected suffer their own financial hardships. Personal expenses can climb. Hearing aids are expensive, as are their upgrades, and it can be difficult to communicate using Auslan because of the lack of trained interpreters. For regional sufferers, that issue is compounded.
School is a challenge for hearing impaired students when it cannot provide the essential services they need. While hearing impairment can also be quite isolating and the social disconnect can be great, a crowded, loud restaurant can prove challenging to hear a conversation across the table. A concert can cause hearing distress and discomfort, despite an otherwise loud environment, while a ringing telephone would mean little to someone who is deaf or hearing impaired and, therefore, they are missing out on human contact. There are special telephones for the hearing impaired but, as I have mentioned before, this would be a cost additional to a list of other costly factors associated with hearing loss.

It is important to note, though, the advancements society has made to ensure that hearing impaired people are still very much part of our community. Open and closed captioning on televisions, in the workplace and in movie theatres and schools help make hearing impairment less isolating. It is also useful to know that there are a number of Australian workplaces trying to ensure they include hearing impaired employees and that the valuable contribution they make in their chosen role is recognised.

Australia has come a long way since the developments of the hearing aid and the Cochlear implant. Both devices have changed the lives of many. I touch on a great innovation by Dr Anthony Hogan at the ANU in Canberra. Dr Hogan designed a great little card with the title 'Hear Here'.

Senator Parry: Hear, hear!

Senator McKenzie: Thank you, Senator Parry, for your additional comment. The idea is that you keep some cards in your wallet or handbag and, when you are in a public place such as a restaurant or café and you find the noise levels are causing discomfort, you can leave the card for management to let them know. The card has a few practical things that the venue can do to make it a little easier for people to hear, such as acoustic barriers between tables, sound absorbent hangings on the walls, soft furnishings and floor coverings, and isolating background noise in areas such as the washing and kitchen areas. Mr President, I am sure you could think of instances when you might like to use the card within this chamber. I am sure that during certain question times it might come in useful! This simple yet effective idea may well contribute to these venues considering the hearing impaired and lead to better hearing environments in such public venues.

Today's netball game was proof of how far we have come. The hearing impaired faced challenges, but their ability to adapt was remarkable and our inability to adapt was probably less remarkable—you could have seen the writing on the wall there. To foster this development, those who are not hard of hearing must adapt to ensure our society is inclusive of all. It is important that society continues to include the hearing impaired and find ways in which they can actively participate in the workplace, sport and the community.

I finish with a quote from Helen Keller, who was both deaf and blind:

I am just as deaf as I am blind. The problems of deafness are deeper and more complex, if not more important, than those of blindness. Deafness is a much worse misfortune. For it means the loss of the most vital stimulus—the sound of the voice that brings language, sets thoughts astir, and keeps us in the intellectual company of man. Blindness separates us from things but deafness separates us from people.

Children who hear acquire language without any particular effort; the words that fall from others' lips they catch on the wing, as it were, delightedly, while the little deaf child must trap them by a slow and often painful process …
Gradually from naming an object we advance step by step until we have traversed the vast distance between our first stammered syllable and the sweep of thought in a line of Shakespeare.

I wish everybody a happy Hearing Awareness Week, and I wish the hearing participants of tomorrow’s touch footy game all the best. I hope they do better than we did against the hearing impaired in netball this morning.

**Nuclear Safety**

Senator LUDLAM (Western Australia) (19:09): I rise to make some brief remarks and I will commence with the news which is on the wires this afternoon that BHP Billiton has shelved its proposed expansion of what would have been the world’s largest uranium mine and the largest excavation on the surface of the earth. Obviously there is a lot of chatter and analysis around at the moment about why it has done that. It seems to relate mostly to falling commodity prices and the fact that this gargantuan project was always going to be very difficult for the company to get across the line.

One of the aspects of it, though, that has perhaps escaped analysis thus far is the collapse of the world uranium price since the disaster on 11 March last year at the Fukushima-Daiichi plant along Japan’s Pacific coast. I cannot help but imagine that that must have played some part in the decision by BHP to shelve this project, but I have wanted to know for a very long time, whether it is the Roxby expansion or the Ranger mine in the Northern Territory, what happens to our uranium when it leaves. Where does it go? It is a question that I wish more Australians would ask. It is a question that I wish more politicians would ask because, of course, we see the dollar signs but we very rarely take heed of the danger signs.

In the interests of finding out where our uranium ends up, I travelled during the winter break and spent a few days in Tokyo and three days in Fukushima prefecture, between Fukushima city, which lies about 60 kilometres from the reactor complex, and coastal towns to the north of the plant. I found where our uranium goes. Some of it is in the form of caesium, which is a fission product, so it is effectively a broken uranium atom that has been cracked into an uneven and radioactive fragment by neutron bombardment inside a nuclear power plant. Quite a lot of the uranium from Australia appeared to be in the soil in a field that I visited on the edge of a dead village formerly known as Iitate. When I was there, work crews of a couple of dozen or so in plastic masks and clean suits were working earthmoving equipment slowly through this field, stripping the top 50 centimetres of soil, bagging it in black plastic and containing it under blue tarpaulins. I have no idea where that material was headed or even why they were doing it.

Some of the uranium from Australia we even found in the form of caesium in Keiko Sasaki’s lounge room in Fukushima city, where the ambient radiation levels are two or three times what they would be in this chamber or in an ordinary environment anywhere in Australia. This caesium is now part of the subliminal background radiation which these people who were not evacuated will have to live with for as long as they stay in their homes.

Some of that uranium from Australia is now buried under a small hill in a park in Minamisoma. This is a city on the coast that was not as badly hit by the fallout from the Fukushima plant as some places that were evacuated. It was terribly damaged by the tsunami that washed through on 11 March, instantly killing 19,000 people. That uranium buried under the hill, now in the form of
caesium and other fission products, is the result of 16 or 17 months of work in which the city authorities and the local people, conducting their own radiation monitoring, have stripped the topsoil from that park. They have sandblasted the bark from the trees and they have buried the contaminated waste under a small hill in their park because they were worried that their kids had now had 16 months without being able to play outside. They balanced the risks of long-term chronic radiation exposure with the risks of vitamin D deficiency, depression and the lack of outdoor exercise.

Some of that uranium from Australia is in the fish. Some of it is in the food and fresh produce which can now no longer be put onto the market. Some of it is in the horticultural produce. These industries have been destroyed right across the prefecture. After a lot of time spent with the local people I discovered that that was obviously a result of the disaster that overtook Tohoku on 11 March. The wave height at the point where it crossed the coast at the Fukushima-Daiichi plant was 14 metres, more than twice the size of the seawall that the Japanese utility Tepco had built to protect the plant. Although two of the operators were killed instantly in the impact, the rest of them then had to contend with a plant that had had all its power knocked out. So, although the reactors had closed down, as designed, one hour before the disaster, the remaining residual decay heat, even of the closed down reactors, was high enough to melt the fuel and set off hydrogen explosions in all four plants that then blew the containment buildings apart and left those crews contending with, quite literally, a worst-case scenario in which they would have had to pull back and let the disaster run its course. Had they done that, as Prime Minister Naoto Kan revealed some months later, the Japanese would have had to evacuate the northern half of Honshu Island, including greater Tokyo, a population of around 30 million.

That is how close they came. The Prime Minister stormed into Tepco headquarters on 15 March, just four days after the disaster, with three of the plants in full meltdown and demanded that Tepco keep their staff on site and do everything that they could to keep the melted reactor piles covered in seawater lest that worst-case scenario take place.

Millions of Japanese right across the country, not just those in the impact area, are now aware that, but for a different fall of the dice, they would have lost their country. The Prime Minister last September told journalists:

It was a crucial moment when I wasn't sure whether Japan could continue to function as a state.

That stuff came from here; it came from Australia. I will not be shedding any tears tonight about BHP's dilemma in terms of their proposed expansion of the world's largest uranium mine.

I was also very fortunate to attend the launch of the Japanese Greens, and that is something I think quite closely mirrors the history of the party here in Australia. We are a global party. We have members in regional and national assemblies around the world and our footprint in South and East Asia is growing all the time. In Japan we are being seen as the answer to a political system that is simply paralysed. The nuclear industry is now openly referred to as the nuclear mafia. It is being treated as a self-interested and extremely dangerous organised crime syndicate with very deep roots that go right to the base of Japanese society.

I attended the largest demonstration of my entire life on the streets of Tokyo in which the people effectively took back the streets and are hoping to take back their country. The Japanese are a patient people, and their
patience has run out. Things have changed. I was proud to be a part of the launch of the Japanese Greens. It will cost them something in the order of A$60,000 for every single candidate that they put into the field simply to lodge the nomination forms to take part in national elections. I believe they can do it, and they know what is at stake and how difficult it is going to be to break into the entrenched power structures that have prevailed in Japan in the postwar era and have now brought their country to the brink of ruin.

But for another tectonic act of random and cruel misfortune, they still could lose their country because in unit 4, which was the plant that was not operating at the time of the tsunami impact, more than 1,500 spent fuel rods are perched quite precariously in a building that has been severely compromised. So I hope that the Roxby uranium expansion joins Jabiluka, Arkaroola, Koongarra, Angela Pamela and Toro's doomed Wiluna project as one of the uranium mines that never was and must never be.

I owe a huge debt of gratitude to the people who showed me around, took me through the contaminated zones and down to the coast, and also to the Japanese Greens, who now have such a task ahead of them—nonetheless, I know they are up to it. My deep thanks are from here to you in Japan: to Koriyama Masaya; Akira Kawasaki; Meri Joyce, one of our own from Melbourne; Sasaki Keiko, in whose lounge room I learnt firsthand exactly what it means to live in an area that was not subject to evacuation; Matsumoto Namiko; Rikiya Adachi; and Mr and Mrs Murakami, who told us what it was like on the afternoon of the tsunami that flattened their entire neighbourhood and killed everyone in the district completely out of the blue. They told us their story of what it is like to live in temporary accommodation centre not too far from Minamisoma where they have effectively rebuilt a traditional Japanese village as a community of reciprocity and care while they wait for their resettlement.

I wish BHP well and I wish that BHP would take a look at the writing on the wall and tune its investments more towards the gigantic abundance of free energy that is falling from the sky every single day. Colleagues, there are better ways of shunting electrons down wires than nuclear fission reactors. I thank the chamber.

_Perkins, Miss Josie_

_Senator PRATT (Western Australia) (19:18):_ Every day in this place all of us are incredibly privileged to be at the centre of our great democracy. It is a democracy that is grounded in the power of the collective action of our citizens, and we are here to give a voice to those who often do not have a voice.

Tonight I have been afforded an even greater privilege, and that is to speak about a young woman who embodies the very best qualities of our democracy and has indeed raised her voice quite loudly in the community. Young Josie Perkins is nine years old, although I think most people would agree that Josie's actions show a maturity far beyond her years. In January this year, Josie became particularly concerned about the survival of Sumatran elephants—animals which she had come to love during a family trip to Bali. Josie had good reason to be concerned, as Sumatran elephants are listed as critically endangered by the International Union for Conservation of Nature.

In letters that she has written to politicians, Josie points out that by some estimates there are only around 2,600 Sumatran elephants left in the wild. That would amount to a population decline of
roughly 80 per cent over the last 100 years. So it is clear that Josie's cause is admirable and in desperate need of attention. However, I think her actions are all the more admirable for the huge amount of organisation and initiative that she has shown at such a young age. I was very pleased today to be able to lodge a petition before this parliament with almost 300 signatures. Josie spoke to Geoff Smith, the principal of her school, Connolly Primary School, who gave her permission to address the whole school at an assembly and to collect signatures. Josie was inspired to do this after reading an article in the West Australian in January and deciding that something had to be done.

Josie has gone on to transform her campaign efforts into strong political change. She started by meeting with her state member, Tony O'Gorman, who was only too happy to sign her petition and to give her further assistance. She has written to the Minister for Sustainability, Environment, Water, Population and Communities, the Hon. Tony Burke, raising the need for action. I would like to make special mention of Senator Farrell, the parliamentary secretary to the minister, who took special time to respond to Josie's letter in detail. Josie asked if I could speak on her behalf in parliament this evening, and this is what she would like me to say to you. She says:

I am speaking to you today because of an article I read in the West Australian newspaper dated 26th January 2012. The article brought my attention to the possible extinction of the Sumatran elephants within the next 30 years. I was very saddened to learn that the elephant's lives are threatened and felt that I would like to try and help them to survive.

I would like to ask the Australian Government to encourage the Government of Indonesia to prevent the illegal destruction of Tesso Nilo National Park, in Riau Province. Tesso Nilo is one of the last homes of the Sumatran elephant (and Sumatran Tigers), but this supposed protected area is rapidly disappearing as a result of illegal logging which is being destroyed for timber, palm oil and the encroachment of agricultural plantations that surround the park.

I was lucky enough to spend some time with these elephants last year whilst on a trip in Indonesia. I was able to feed them, have a ride on them and even gave one a shower, which is not that easy. I am trying to save as many of these elephants as I can, there are only Two Thousand Six Hundred left in the wild. I am hoping that you will want to be part of this project.

I have also spoken to Senator Louise Pratt, who has kindly agreed to speak to you today on my behalf.

I believe that Government has a responsibility to preserve these amazing animals and their habitat. She asks us to act now and make a difference. She says:

In the words of Michael Jackson, let's 'Heal the world, make it a better place.'

I thank you for taking the time to listen to Senator Louise Pratt today and hope I have inspired you to help me.

I was very moved by this young lady, as you can tell, and I am very pleased to be able to speak on her behalf tonight in the Australian Senate. Josie is a very inspiring young lady and she has reminded me why it is so important that we work to save endangered species around the globe.

It is a well-established fact that biodiversity is a key indicator of the health of our ecosystems. Ecosystems that are more stable and more resilient are the more diverse ones on our planet. Of course, the science is well known by our friends in the Indonesian government. The Sumatran elephant is protected under Indonesian law, and a two-year moratorium on new permits to clear primary forests came into effect in Indonesia from May 2011. While those efforts are commendable, it is the unfortunate reality for these elephants—as Josie has pointed out—is
that there are significant industrial pressures in Sumatra that mean that the moratorium is not as effective as it could be. That is the challenge facing our neighbours as they balance environmental protection against raising the standard of living of their citizens.

I look forward to working with Josie to help her raise awareness of the things we can do as an Australian community, in partnership organisations like the WWF and many other environmental groups, to protect this amazing animal. Australia is doing its bit and that is one of the reasons that I had no hesitation in arranging a meeting between Josie and the Minister for Foreign Affairs, Senator Carr, during the minister's last visit to Perth. I thank the minister for meeting Josie Perkins, and I know that the minister would agree that Josie Perkins is a wonderful example of the kind of young Australians who take such a wonderful interest in our environment and in our community. It is an example that should be taken up by children and adults alike, right around Australia. I commend and thank her.

**Senate adjourned at 19:25**

**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:

[Literary instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]

- Environment Protection and Biodiversity Conservation Act—Amendment of list of exempt native specimens—EPBC303DC/SFS/2012/45 [F2012L01717].
- National Health Act—
  - National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2012 (No. 7) [F2012L01730].
  - National Health (Listed drugs on F1 or F2) Amendment Determination 2012 (No. 6) [F2012L01716].
  - Private Health Insurance Act—Private Health Insurance (Prostheses) Rules 2012 (No. 2) [F2012L01722].
- Radiocommunications Act—
  - Radiocommunications (118MHz to 137MHz Amplitude Modulated Equipment – Aeronautical Radio Service) Standard 2012 [F2012L01728].

**Tabling**

The following government documents were tabled:

Migration Act 1958—Section 486O—
Assessment of detention arrangements—Personal identifiers 662/11, 675/12, 677/12, 690/12, 709/12, 711/12, 715/12, 723/12, 730/12, 733/12, 735/12, 739/12, 756/12, 759/12, 761/12, 765 to 766/12, 772/12, 775 to 776/12, 778 to 780/12, 782/12, 785/12, 787 to 789/12, 794/12, 797/12, 800 to 803/12, 805/12, 808/12, 811 to 812/12, 819 to 821/12, 833 to 834/12, 844/12, 846/12, 857/12 and 863/12—

Commonwealth Ombudsman’s reports.

Government response to Ombudsman’s reports.

**Departmental and Agency Contracts**

The following document was tabled pursuant to the order of the Senate of 20 June 2001, as amended:

Departmental and agency contracts for 2011-12—Letter of advice—Treasury portfolio.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Employment and Workplace Relations**

(Question No.1861)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 18 May 2012:

With reference to the Fair Work (Registered Organisations) Act 2009:

1. Is the Act operating as intended?
2. Have any problems with the Act been detected; if so, when were they first identified?
3. Has the Minister considered any amendments to the Act; if so:
   a. on what exact date/s was consideration given; and
   b. what was the Minister’s decision?
4. Have former Ministers Evans, Crean or Gillard considered any amendments to the Act?
5. Has the Government received any advice from the department or Fair Work Australia that there are problems with the Act; if so, on what date/s was the advice received?

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator’s question:

1. Is the Act operating as intended?
2. Have any problems with the Act been detected; if so, when were they first identified?

The Fair Work (Registered Organisations) Act 2009 (the Act) essentially mirrors Schedule 1 to the Workplace Relations Act 1996. While the Act and its predecessor, Schedule 1, generally operated as per Parliament’s original intention, the recently concluded investigations by Fair Work Australia into the Health Services Union have highlighted a number of areas where the Act could be strengthened.

The Government has identified that the Act could be strengthened to:

- require that the rules of all registered organisations deal with disclosure of remuneration, pecuniary and financial interests;
- increase the civil penalties;
- enhance the investigative powers available to Fair Work Australia; and
- require education and training to be provided to certain officials of registered organisations about their governance and accounting obligations.

3. Has the Minister considered any amendments to the Act; if so:
   a. on what exact date/s was consideration given; and
   b. what was the Minister’s decision?

The Government introduced the Fair Work (Registered Organisations) Amendment Bill 2012 (the Bill) on Thursday 31 May following consultation with key stakeholders at the meeting of the National Workplace Relations Consultative Council on 25 May. The Bill was passed on 26 June 2012. It implements substantial reforms in the areas identified in the response to question 2.

4. Have former Ministers Evans, Crean and Gillard considered any amendments to the Act?

Other than minor amendments to ensure Schedule 1 aligned with the Fair Work framework and the amendments referred to in question 3, the legislation governing registered organisations has not been amended since 2002 and consideration has not previously been given to broader amendments.
(5) Has the Government received any advice from the department or Fair Work Australia that there are problems with the Act; if so, on what date/s was the advice received?

As previously noted, the recently concluded investigations by Fair Work Australia into the Health Services Union have highlighted a number of areas where the Act could be strengthened. Other than in that regard, neither the Department or Fair Work Australia have provided any advice regarding problems with the Act.

Employment and Workplace Relations
(Question No. 1915)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 25 June 2012:

With reference to the appointment of Mr Bernie Riordan to Fair Work Australia (FWA):

(1) With whom did the Minister or the Minister's office discuss the issue of the civil case outstanding against Mr Riordan.

(2) When was the Minister made aware that the case had settled.

(3) Was there any delay on the announcement of the appointments to FWA as a result of the outstanding case.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

(1) The Minister's Office discussed the case with Mr Riordan.

(2) The Minister's Office was made aware on 22 February 2012 that an application for the case to be discontinued was to be filed by the applicant on 23 February 2012.

(3) The appointment of Mr Riordan, and also the president and a number of other members of Fair Work Australia, were announced on the day they were made, 24 February 2012.

Employment and Workplace Relations
(Question No. 1918)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 25 June 2012:

With reference to the decision of Senior Deputy President (SDP) Richards of Fair Work Australia, in the case CFMEU v. Brookfield Multiplex Australasia, in which SDP Richards found it was not permissible to include a contractors clause in an enterprise agreement, does the Government agree with the decision.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator’s question:

As the decision is currently under appeal, it would be inappropriate to comment on the decision.

Agriculture, Fisheries and Forestry
(Question No. 1982)

Senator Abetz asked the Minister for Agriculture, Fisheries and Forestry, upon notice, on 2 August 2012, with reference to the answer to Question no. 19 from the Budget Estimates hearings of the Rural and Regional and Transport Legislation Committee in May 2012, and given that the question did not seek the content of the legal advice:

(1) Was legal advice provided to Cabinet prior to the 7 June announcement?
(2) Has the Government received a claim for compensation as a result of its decision to impose a full ban on live export cattle to Indonesia?

(3) (a) Why was the draft advice never finalised; and (b) was this because Cabinet made a decision prior to any potential finalisation of the advice?

Senator Ludwig: The answer to the senator's question is as follows:

(1) It is a long standing practice of successive governments not to disclose cabinet deliberations.

(2) Please refer to evidence given at May Senate Estimates.

(3) (a) The department was in the process of changing legal advisors at the time. The request for advice overlapped with the department's transition to the new legal service provider. Finalisation was not requested because the department's service provider had changed.

(b) It is a long standing practice of successive governments not to disclose cabinet deliberations.