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SITTING DAYS—2008

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RADIO BROADCASTS
Broadcasts of proceedings of the Parliament can be heard on the following Parliamentary and News Network radio stations, in the areas identified.

- **CANBERRA**: 103.9 FM
- **SYDNEY**: 630 AM
- **NEWCASTLE**: 1458 AM
- **GOSFORD**: 98.1 FM
- **BRISBANE**: 936 AM
- **GOLD COAST**: 95.7 FM
- **MELBOURNE**: 1026 AM
- **ADELAIDE**: 972 AM
- **PERTH**: 585 AM
- **HOBART**: 747 AM
- **NORTHERN TASMANIA**: 92.5 FM
- **DARWIN**: 102.5 FM
FORTY-SECOND PARLIAMENT
FIRST SESSION—THIRD PERIOD

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

Senate Officeholders

President—Senator Hon. John Joseph Hogg
Deputy President and Chair of Committees—Senator Hon. Alan Baird Ferguson

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. Nicholas Hugh Minchin
Deputy Leader of the Opposition in the Senate—Senator Hon. Eric Abetz
Manager of Government Business in the Senate—Senator Hon. Joseph William Ludwig
Manager of Opposition Business in the Senate—Senator Hon. Helen Lloyd Coonan

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. Nicholas Hugh Minchin
Deputy Leader of the Liberal Party of Australia—Senator Hon. Eric Abetz
Leader of the Nationals—Senator Barnaby Thomas Gerard Joyce
Deputy Leader of the Nationals—Senator Hon. Nigel Gregory Scullion
Leader of the Australian Greens—Senator Robert James Brown
Deputy Leader of the Australian Greens—Senator Christine Anne Milne
Leader of the Family First Party—Senator Steve Fielding

Government Whips—Senators Kerry Williams Kelso O’Brien, Donald Edward Farrell and Anne McEwen

Liberal Party of Australia Whips—Senators Stephen Shane Parry and Judith Anne Adams
The Nationals Whip—Senator John Reginald Williams
Australian Greens Whip—Senator Rachel Mary Siewert
Family First Party Whip—Senator Steve Fielding

Printed by authority of the Senate
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(1) Chosen by the Parliament of South Australia to fill a casual vacancy vice Amanda Eloise Vanstone, resigned.

(2) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Ian Campbell, resigned.

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

**PARTY ABBREVIATIONS**

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

**Heads of Parliamentary Departments**

Clerk of the Senate—H Evans
Clerk of the House of Representatives—I C Harris
Secretary, Department of Parliamentary Services—A Thompson
RUDD MINISTRY

Prime Minister
Hon. Kevin Rudd, MP

Deputy Prime Minister, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion
Hon. Julia Gillard, MP

Treasurer
Hon. Wayne Swan MP

Minister for Immigration and Citizenship and Leader of the Government in the Senate
Senator Hon. Chris Evans

Special Minister of State, Cabinet Secretary and Vice President of the Executive Council
Senator Hon. John Faulkner

Minister for Finance and Deregulation
Hon. Lindsay Tanner MP

Minister for Trade
Hon. Simon Crean MP

Minister for Foreign Affairs
Hon. Stephen Smith MP

Minister for Defence
Hon. Joel Fitzgibbon MP

Minister for Health and Ageing
Hon. Nicola Roxon MP

Minister for Families, Housing, Community Services and Indigenous Affairs
Hon. Jenny Macklin MP

Minister for Infrastructure, Transport, Regional Development and Local Government and Leader of the House
Hon. Anthony Albanese MP

Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate
Senator Hon. Stephen Conroy

Minister for Innovation, Industry, Science and Research
Senator Hon. Kim Carr

Minister for Climate Change and Water
Senator Hon. Penny Wong

Minister for the Environment, Heritage and the Arts
Hon. Peter Garrett AM, MP

Attorney-General
Hon. Robert McClelland MP

Minister for Human Services and Manager of Government Business in the Senate
Senator Hon. Joe Ludwig

Minister for Agriculture, Fisheries and Forestry
Hon. Tony Burke MP

Minister for Resources and Energy and Minister for Tourism
Hon. Martin Ferguson AM, MP

[The above ministers constitute the cabinet]
RUDD MINISTRY—continued

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<td>Assistant Treasurer and Minister for Competition Policy and</td>
<td>Hon. Chris Bowen MP</td>
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<td>Consumer Affairs</td>
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<td>Minister for Veterans’ Affairs</td>
<td>Hon. Alan Griffin MP</td>
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<td>Minister for Housing and Minister for the Status of Women</td>
<td>Hon. Tanya Plibersek MP</td>
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<td>Minister for Employment Participation</td>
<td>Hon. Brendan O’Connor MP</td>
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<td>Hon. Warren Snowdon MP</td>
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<td>Minister for Small Business, Independent Contractors and the Service</td>
<td>Hon. Dr Craig Emerson MP</td>
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<td>Economy and Minister Assisting the Finance Minister on Deregulation</td>
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<td>Minister for Superannuation and Corporate Law</td>
<td>Senator Hon. Nick Sherry</td>
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<td>Hon. Justine Elliot MP</td>
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<td>Minister for Youth and Minister for Sport</td>
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<td>Hon. Maxine McKew MP</td>
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<td>Hon. Greg Combet AM, MP</td>
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<td>Hon. Dr Mike Kelly AM, MP</td>
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<td>and Parliamentary Secretary Assisting the Prime Minister for Social</td>
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<td>Parliamentary Secretary for Multicultural Affairs and Settlement Services</td>
<td>Hon. Laurie Ferguson MP</td>
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SHADOW MINISTRY

Leader of the Opposition  
The Hon Malcolm Turnbull MP  
Shadow Treasurer and Deputy Leader of the Opposition  
The Hon Julie Bishop MP  
Shadow Minister for Trade, Transport, Regional Development and Local Government and Leader of The Nationals 
  The Hon Warren Truss MP  
Shadow Minister for Broadband, Communications and the Digital Economy and Leader of the Opposition in the Senate  
  Senator the Hon Nick Minchin  
Shadow Minister for Innovation, Industry, Science and Research and Deputy Leader of the Opposition in the Senate  
  Senator the Hon Eric Abetz  
Shadow Minister for Infrastructure and COAG and Shadow Minister Assisting the Leader on Emissions Trading Design  
  The Hon Andrew Robb AO, MP  
Shadow Minister for Foreign Affairs and Manager of Opposition Business in the Senate  
  Senator the Hon Helen Coonan  
Shadow Minister for Finance, Competition Policy and Deregulation and Manager of Opposition Business in the House  
  The Hon Joe Hockey MP  
Shadow Minister for Energy and Resources  
  The Hon Ian Macfarlane MP  
Shadow Minister for Families, Housing, Community Services and Indigenous Affairs  
  The Hon Tony Abbott MP  
Shadow Special Minister of State and Shadow Cabinet Secretary  
  Senator the Hon Michael Ronaldson  
Shadow Minister for Human Services and Deputy Leader of The Nationals  
  Senator the Hon Nigel Scullion  
Shadow Minister for Climate Change, Environment and Water  
  The Hon Greg Hunt MP  
Shadow Minister for Health and Ageing  
  The Hon Peter Dutton MP  
Shadow Minister for Defence  
  Senator the Hon David Johnston  
Shadow Minister for Education, Apprenticeships and Training  
  The Hon Christopher Pyne MP  
Shadow Attorney-General  
  Senator the Hon George Brandis SC  
Shadow Minister for Agriculture, Fisheries and Forestry  
  The Hon John Cobb MP  
Shadow Minister for Employment and Workplace Relations  
  Mr Michael Keenan MP  
Shadow Minister for Immigration and Citizenship  
  The Hon Dr Sharanman Stone  
Shadow Minister for Small Business, Independent Contractors, Tourism and the Arts  
  Mr Steven Ciobo  

[The above constitute the shadow cabinet]
SHADOW MINISTRY—continued

Shadow Minister for Financial Services, Superannuation and Corporate Law
The Hon Chris Pearce MP

Shadow Assistant Treasurer
The Hon Tony Smith MP

Shadow Minister for Sustainable Development and Cities
The Hon Bruce Billson MP

Shadow Minister for Competition Policy and Consumer Affairs and Deputy Manager of Opposition Business in the House
Mr Luke Hartsuyker MP

Shadow Minister for Housing and Local Government
Mr Scott Morrison

Shadow Minister for Ageing
Mrs Margaret May MP

Shadow Minister for Defence Science and Personnel and Assisting Shadow Minister for Defence
The Hon Bob Baldwin MP

Shadow Minister for Veterans’ Affairs
Mrs Louise Markus MP

Shadow Minister for Early Childhood Education, Childcare, Status of Women and Youth
Mrs Sophie Mirabella MP

Shadow Minister for Justice and Customs
The Hon Sussan Ley MP

Shadow Minister for Employment Participation, Training and Sport
Dr Andrew Southcott MP

Shadow Parliamentary Secretary for Northern Australia
Senator the Hon Ian Macdonald

Shadow Parliamentary Secretary for Roads and Transport
Mr Don Randall MP

Shadow Parliamentary Secretary for Regional Development
Mr John Forrest MP

Shadow Parliamentary Secretary for International Development Assistance and Shadow Parliamentary Secretary for Indigenous Affairs
Senator Marise Payne

Shadow Parliamentary Secretary for Energy and Resources
Mr Barry Haase MP

Shadow Parliamentary Secretary for Disabilities, Carers and the Voluntary Sector
Senator Cory Bernardi

Shadow Parliamentary Secretary for Water Resources and Conservation
Senator Fiona Nash

Shadow Parliamentary Secretary for Health Administration
Senator Mathias Cormann

Shadow Parliamentary Secretary for Defence
The Hon Peter Lindsay MP

Shadow Parliamentary Secretary for Education
Senator the Hon Brett Mason

Shadow Parliamentary Secretary for Justice and Public Security
Mr Jason Wood MP

Shadow Parliamentary Secretary for Agriculture, Fisheries and Forestry
Senator the Hon Richard Colbeck

Shadow Parliamentary Secretary for Immigration and Citizenship and Shadow Parliamentary Secretary Assisting the Leader in the Senate
Senator Concetta Fierravanti-Wells
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The PRESIDENT (Senator the Hon. John Hogg) took the chair at 9.30 am and read prayers.

MS ANDREA GRIFFITHS: USHER OF THE BLACK ROD

The PRESIDENT (9.31 am)—This is the last sitting day for the Usher of the Black Rod, Andrea Griffiths, before her retirement. Andrea started in the Department of the Senate on 1 July 1982—more than 26 years ago. Andrea’s first job here was in the Senate Table Office producing the Senate red. In those days, I understand she did the Journals with an old typewriter, and cutting and pasting was done more literally than today. In 1987 Andrea moved to the Black Rod’s Office as Deputy Black Rod and performed that role for nearly 12 years. She helped with the move to the new Parliament House in 1988—a most significant moment in the history of the parliament. In order to broaden her experience Andrea transferred to the committee office in 1999 as secretary to a number of committees, including the Environment, Communications, Information Technology and the Arts References Committee.

In 2001, Andrea was promoted to the position of Usher of the Black Rod—the first woman to be promoted to this position in the federal parliament. Andrea has been involved in arranging every opening of parliament since 1987, so the last one was her eighth opening and third as Black Rod; the swearing-in of five Governors-General, two as Black Rod; the swearing-in of many senators; and she has attended countless divisions and quorums over the years. Andrea announced three presidents of foreign nations at joint meetings in the House of Representatives chamber—United States President Clinton in 1996, and United States President Bush and President Hu of the People’s Republic of China in 2003. Her work in this ceremonial role has been acknowledged by the offices of the Governor-General, the Chief Justice of the High Court, the Prime Minister and the Speaker. The new Governor-General, Ms Quentin Bryce, also singled out Andrea for looking after her so well at Parliament House on the occasion of her swearing-in.

Andrea has advised seven presidents, including me, and advised committees of this place over many years. Those who know her will know she is not backward in providing frank and fearless advice. She has been a welcoming face at the entrance for new senators when they arrive at Parliament House for the first time, and many senators have commented on how important that friendly welcome has been. Andrea has been on a number of parliamentary delegations as delegation secretary. I was fortunate to be on one with her—not only was she very well organised, but also she was very good company. Andrea embodies the parliamentary service values to the highest standard. She has the qualities of honesty, integrity and enthusiasm. She is a straight shooter when dealing with senators and is respected by all sides of politics.

Andrea could not have had this successful career without the support of her husband, Keith, who played a major role in raising their children, Kate and Thomas, on all those late sitting nights. I am sure all senators will join with me in thanking Andrea for her contribution to the parliament and particularly to the Senate over many years. We wish Andrea and her family all the best for the future.

Senator LUDWIG (Queensland—Minister for Human Services) (9.35 am)—by leave—The government associates itself with your remarks, Mr President, but I also want to say that this place does not work
without the support, dedication and hard work of people like Andrea. The Black Rod’s office is pivotal in ensuring that this place works both effectively and well. Andrea, on a personal note, as well as on behalf of the government, we were very pleased to see you appointed to the position of the Usher of the Black Rod—the first woman to be promoted to such a position. It was the fact that you are a fantastic person, a person who is confident in your ability and the advice that you have provided, which won you that position above all.

We also want to acknowledge the service that you have provided to this Senate, and the invaluable support. I think the President summed it up well when he said that Andrea has provided a smiling face to all of the new senators who have come to this place—not only a smiling face to new senators but to existing senators who continue to work here as well. I want to finally thank Andrea on a personal note. I know that Andrea has supported me and others in the chamber well with her advice, confidence and the words of wisdom that she has provided to individual senators to get them through each day. With that, I wish you well in the future, Andrea, and we hope to still see you around the place, providing that smiling face on occasions.

Senator MINCHIN (South Australia—Leader of the Opposition in the Senate) (9.37 am)—by leave—Mr President, on behalf of the coalition, I express our total support for the warm and appropriate remarks that you have made on this occasion—the solemn but, I hope, happy occasion of Andrea’s retirement from this place after an extraordinary contribution culminating in the role of Usher of the Black Rod and creating history by being the first female to occupy that position. We on our side, as great defenders of the traditions of the parliament and the Senate, think it is fantastic that there is still an Usher of the Black Rod. As Senator Ludwig said, it is a critical role in this place, and it reflects the great Westminster traditions that we have in the Senate. Andrea, you have performed that role professionally and absolutely impeccably.

It is remarkable that you have served as an official for some 26 years. When you think about it, that is a quarter of the existence of the Senate itself—and you still look very young, younger than most of us on this side and a lot younger than me! It really is extraordinary, and it is historic as well. It says something about the Senate itself. It is remarkable the dedication, loyalty and long service that so many officials of this great institution contribute. That is reflected in your long service. It shows the respect and dedication that you and your colleagues, as officials of the Senate, have for this wonderful institution.

I speak on behalf of all coalition senators who have served with you. I have been here for nearly 16 years and you were here 10 years before that, so you have seen a lot on our side come and go. I speak on their behalf to sincerely thank you for all you have done for us and for this great institution. As others have said, the one thing about Andrea is that she seems to be always smiling. It is fantastic. Andrea, you are always very calm, unflustered and professional in the way you go about your work. On behalf of the coalition, I thank you very much and wish you all the very best for your life after such a long time in this place. Well done.

Senator FERGUSON (South Australia) (9.39 am)—by leave—Mr President, I wish to associate myself with the remarks that have been made about our Black Rod, Andrea Griffiths. For the duration of the time that I was President, Andrea was a wonderful person to work with. You know, Mr President, how daunting the first few days can be.
as a presiding officer. The sure-handedness with which Andrea went about her job put me at ease and she made sure that I knew exactly what was happening. Andrea is respected equally on all sides of the parliament and is a true professional. Andrea, I just want to place on record my appreciation of all you did for me while I was President of the Senate. I understand your reasons for leaving at such a young age and I wish you and Keith and your family all the best in your retirement.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (9.40 am)—by leave—I also want to concur with the remarks that have been made and wish Andrea and Keith and their family all the best. We have had no reason to meet Andrea except on the best of terms. We acknowledge the professionalism that Andrea has put into her job. She has been an absolute delight to work with and has managed to break us in, so to speak. I think we all behave pretty well. On behalf of National Party members now and in the past, I wish you all the best in the future, Andrea, and God bless.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.41 am)—by leave—I too want to support the words that have been made and wish Andrea and Keith and their family all the best. We have had no reason to meet Andrea except on the best of terms. We acknowledge the professionalism that Andrea has put into her job. She has been an absolute delight to work with and has managed to break us in, so to speak. I think we all behave pretty well. On behalf of National Party members now and in the past, I wish you all the best in the future, Andrea, and God bless.

Senator FIERRAVANTI-WELLS (New South Wales) (9.43 am)—by leave—Andrea and I have known each other for about 30 years. We were at university together. I know that I can count Andrea as one of my closest friends. We shared a lot of things together at university and through our lives. We went to each other’s weddings. The biggest privilege of my life was to be welcomed here by you, Andrea, on the day that I became a senator. Thank you for all your support. For me it was a long road into politics, and you were there every step of the way. We knew at university that we would go into politics. I knew where I wanted to go, and Andrea knew that she would go in on the organisational side. The day that you became Deputy Usher of the Black Rod and the day you became Usher of the Black Rod were very, very special days which we celebrated. I know you...
want to spend more time with Keith and Kate and Thomas and I know that I will certainly see a lot more of you. Andrea, all the very, very best. You deserve everything that everybody says about you. You are a wonderful lady. Thank you.

The PRESIDENT—Having finished the most important business of the day, we shall now get down to the mundanity of work! Thank you, Andrea. I am sure you will enjoy your last day, no matter how long it may well be.

NOTICES
Presentation
Senator Abetz to move on the next day of sitting:
That—
(a) there be laid on the table by the Chair of the Economics Committee (Senator Hurley), no later than 3 February 2009, an answer to question on notice no. 730, asked by Senator Abetz of the Chair of the Economics Committee on 2 September 2008 (Senate Notice Paper, 3 September 2008, p. 18), which reads:
(1) What was the urgency for releasing the committee’s interim report National Fuelwatch (Empowering Consumers) Bill 2008 and National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008.
(2) Were there communications between the office of the Chair, or the Chair herself, and the office of the Assistant Treasurer or the office of the Prime Minister, on the issuing of this report; if so, what was the: (a) time; (b) duration; and (c) medium, of each of these communications; and
(b) the Senate notes that it has been 93 days since the question was placed on notice.

Withdrawal
Senator WORTLEY (South Australia) (9.45 am)—Pursuant to notice given at the last day of sitting I now withdraw notices of motion Nos 1 to 4 standing in my name for today.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.45 am)—I withdraw government business notice of motion No. 2 listed on today’s Notice Paper.

LEAVE OF ABSENCE
Senator PARRY (Tasmania) (9.45 am)—by leave—I move:
That leave of absence be granted to Senator Boyce for today, for personal reasons.
Question agreed to.

NOTICES
Postponement
The following item of business was postponed:
Business of the Senate notice of motion no. 6 standing in the name of Senator Barnett for today, proposing a reference to the Legal and Constitutional Affairs Committee, postponed till 3 February 2009.

COMMITTEES
Environment, Communications and the Arts Committee
Reference
Senator SIEWERT (Western Australia) (9.46 am)—I seek leave to amend business of the Senate notice of motion No. 5 standing in my name.
Leave granted.
Senator SIEWERT—I move the motion as amended:
That the following matters be referred to the Environment, Communications and the Arts Committee for inquiry and report by 25 June 2009:
(a) an assessment of the environmental, economic and community impacts of existing and proposed forestry and mining operations on the Tiwi Islands including compliance with relevant environmental approvals and conditions;
(b) a review of governance arrangements relating to existing forestry and mining operations on the Tiwi Islands, including the examination of consent and approval processes to date;

(c) in respect to forestry operations, an examination of the adequacy of contractual, commercial and legal arrangements between project proponents and operators and the Tiwi Land Council;

(d) an examination of the economic opportunity costs associated with existing developments including forestry operations;

(e) an examination of the prospects for alternative economic development opportunities and impediments for the Tiwi Islands including sale and promotion of cultural products, community development activities, land and sea management, and opportunities for involvement in future carbon trading and emissions offsets schemes; and

(f) any related matters.

Question agreed to.

Procedure Committee

Reference

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.47 am)—I move:

That the following proposed amendments to standing order 25 be referred to the Procedure Committee for inquiry and report by 25 February 2009:

Omit paragraphs (5) and (6), substitute:

(5) The committees shall each consist of 7 senators, 3 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 largest party on the Senate crossbench, in consultation with independent members and other minor parties.

Omit paragraph (9)(a), (b) and (c), substitute:

(9) (a) The Standing Committee on Community Affairs shall elect as its chair a member of the largest party on the Senate crossbench, and as its deputy chair a member of the Government.

(b) The Standing Committee on Rural and Regional Affairs and Transport shall elect as its chair a member of the Opposition, and as its deputy chair a member of the largest party on the Senate crossbench.

(c) Of the remaining committees:

(i) each of 3 committees shall elect as its chair a member nominated by the Leader of the Opposition in the Senate and as its deputy chair a member nominated by the Leader of the Government in the Senate, and

(ii) each of 3 committees shall elect as its chair a member nominated by the Leader of the Government in the Senate and as its deputy chair a member nominated by the Leader of the Opposition in the Senate.

(d) The allocation of chairs and deputy chairs in accordance with paragraph (c) shall be determined by agreement between the Government and the Opposition, and, in the absence of agreement duly notified to the President, any question of the
allocation of chairs shall be determined by the Senate.

Question agreed to.

Rural and Regional Affairs and Transport Committee

Reference

Senator LUDLAM (Western Australia) (9.48 am)—I move:

That the following matter be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 18 June 2009:

The investment of Commonwealth and State funds in public passenger transport infrastructure and services, with reference to the August 2005 report of the House of Representatives Standing Committee on Environment and Heritage, Sustainable Cities, and the February 2007 report of the Senate Standing Committee on Rural and Regional Affairs and Transport Committee, Australia’s future oil supply and alternative transport fuels, including:

(a) an audit of the state of public passenger transport in Australia;
(b) current and historical levels of public investment in private vehicle and public passenger transport services and infrastructure;
(c) an assessment of the benefits of public passenger transport, including integration with bicycle and pedestrian initiatives;
(d) measures by which the Commonwealth Government could facilitate improvement in public passenger transport services and infrastructure;
(e) options for Commonwealth funding for public passenger transport services and infrastructure;
(f) the role of Commonwealth Government legislation, taxation, subsidies, policies and other mechanisms that either discourage or encourage public passenger transport; and
(g) best practice international examples of public passenger transport services and infrastructure.

Senator LUDWIG (Queensland—Minister for Human Services) (9.49 am)—by leave—The government understands the sentiment behind the motion. For 12 years the previous government ignored the plight of our major cities and absolved themselves from any responsibility for investing in public transport. They believed that public transport and urban congestion were not their responsibility. The government is disappointed that the opposition are taking this position.

In 12 short months the Rudd government has taken decisive action to address the neglect of the previous 12 years. The Rudd government recognises the importance of the seamless movement of both people and freight within and between cities. We have already taken action under AusLink to fund freight transport corridors in cities to clear congestion on our roads and free up lines for passengers. We have made public transport a critical component of the national transport policy being developed in partnership with the states and territories through the Australian Transport Council. We have allocated $75 million to do the planning work on projects that will relieve urban congestion and improve public transport.

The Rudd government recognises that tackling the challenges of our major cities, especially improving public transport infrastructure, is not just about funding; it will require national leadership and cooperation across all spheres of government. That is why we have also established the Major Cities Unit, co-located with Infrastructure Australia, which supports the Commonwealth focus on cities and more broadly on urban development, including public transport. For those reasons we are unable to support the motion as put but we do, as I indicated earlier, understand the sentiment that is contained within it.

Question agreed to.
Procedure Committee
Reference
Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.51 am)—

That the following matter be referred to the Procedure Committee for inquiry and report by 25 February 2009:

The temporary orders of the Senate of 15 October 2008 and 13 November 2008, relating to the abolition of questions to senators other than ministers and to chairs of committees, and the restructuring of question time.

Senator FERGUSON (South Australia) (9.51 am)—by leave—All I want to say to Senator Ludwig is that, at the time the temporary orders were put into place, it was always decided that after a trial period it would go back to the Procedure Committee. It was always going to go back to the Procedure Committee. The Procedure Committee can meet at any time to review temporary orders. It was my intention as the chair to call a Procedure Committee hearing in the first week back anyway to discuss the trial. There is no problem with it being made a reference, but that was the intention as you will see by the following notice of motion where I have moved to continue the trial until such time as we get a chance to review it.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.52 am)—by leave—If it has the same effect, we could withdraw No. 9 and support yours. I am quite happy to do that. I seek leave to withdraw the motion.

Leave granted; motion withdrawn.

BUSINESS
Rearrangement

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.52 am)—I ask that government business notice of motion No. 1 to vary the hours of meeting and routine of business for the remainder of the week be taken as formal.

The PRESIDENT—Is there any objection to this motion being taken as formal?

Senator FIELDING (Victoria—Leader of the Family First Party) (9.53 am)—I seek leave to make a short statement.

The PRESIDENT—Is leave granted for Senator Fielding to make a brief statement?

Senator Coonan—For one minute.

The PRESIDENT—Leave is granted for one minute.

Senator FIELDING—From what I can read, this is about the hours that we are sitting today. I understand that we will be sitting past 11 o’clock tonight. I wonder whether that is the right thing to be doing, given that the decisions to be made are important. I wonder whether running so late at night is reasonable, given that I thought that originally we were going to stop at 11 o’clock and come back tomorrow morning if we were still going. I do not see the sense in rushing through decisions today.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.54 am)—The normal way that these things would be done, of course, is that you would be given formality. I was going to speak to the motion after I moved it. I seek leave to speak to it now instead.

Leave granted.

Senator LUDWIG—What I have put forward is the usual position that happens each year at this time of the year. What we normally do—and that is what this motion contains—is put the list of bills that we seek to achieve before we break for Christmas. I also indicate that occasionally some of those bills might fall off the end, and they are usually put at the last time—such as the Tax Laws Amendment (Political Contributions
and Gifts) Bill 2008 and the horse disease response bills. With all good cooperation, if we get to those, we do; if we do not, they sometimes, to say it euphemistically, fall off the edge. The bills on that list are the bills that we seek to achieve. At the conclusion of those bills, we would then propose the adjournment and go home. That is the usual process that we adopt every year and at the end of every session as well.

In this instance, the way we then structure breaks is by the cooperation of all around the chamber—the opposition, the minor party and the Independents. We would then suspend. As I understand the workload ahead of us today, it would be more than likely that we will be debating some of these bills into the evening. Usually at about 10 or 11 o’clock in the evening we make a judgement call as to whether or not we require another hour to finish or whether we are more likely to come back the next day. At that point—between 10 and 11 o’clock—we usually consult around the chamber as to the likelihood of that. If it looks unlikely that we would finish and that we would need to come back tomorrow, we would then suspend. We would then come back. Usually we would start at nine, but we usually agree on that as well with everyone’s cooperation in the chamber. We would then come back at nine and start the program again. Of course, if there were a need for any other breaks, past experience has indicated to me that we normally finish some time during the Friday. We usually try to agree amongst ourselves when we are likely to propose the adjournment. At that point, the adjournment would be proposed. In the past, it has varied between midmorning, lunch and sometimes it has been, from my recollection, a little later on early Friday evening.

That is the process that this hours of meeting motion seeks to put in place. The way the chamber works at this time is by cooperation in order to get through the program that has been outlined. There are not, in the usual course of events, a significant number of bills to be dealt with. There is a package of bills. It is not longer than what I have experienced in the past; in fact, it is probably a little shorter. There are some bills that will require significant debating time, such as, as I understand it, the COAG bill. With good cooperation around the chamber, we should be able to work through that program and hopefully propose the adjournment this evening, but we may end up sitting tomorrow. Of course, it will also depend on those bills which have to go across to the other chamber, should they be amended, and then return for consideration. That sometimes creates a delay while we send the bill across to the House. I hope that larger explanation assists.

Senator MINCHIN (South Australia) (9.58 am)—by leave—On behalf of the opposition, could I just indicate to Senator Fielding that the opposition supports in principle the procedures outlined and proposed by Senator Ludwig on behalf of the government. It is consistent with the procedures we have adopted in these circumstances in years past. I indicate to Senator Fielding that it is our view that the Senate should suspend at 11 o’clock tonight unless, as Senator Ludwig has indicated, it is abundantly clear to all of us that we could finish all of the business within one or two hours, and therefore it would make more sense to just continue. But our prima facie preference would be to finish at 11 and resume in the morning.

The PRESIDENT—Is there any objection to the motion being taken as formal? There being no objection, I call Senator Ludwig.
Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.58 am)—I move:

That on Thursday, 4 December 2008:

(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
(b) consideration of general business, and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) shall not be proceeded with;
(c) the routine of business from 12.45 pm till not later than 2 pm, and from not later than 3.45 pm shall be government business only;
(d) divisions may take place after 4.30 pm;
(e) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed below and any messages from the House of Representatives:

- Schools Assistance Bill 2008 (message)
- Interstate Road Transport Charge Amendment Bill (No. 2) 2008
- Road Charges Legislation Repeal and Amendment Bill 2008
- Temporary Residents’ Superannuation Legislation Amendment Bill 2008
- Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008
- Water Amendment Bill 2008 (message)
- Aged Care Amendment (2008 Measures No. 2) Bill 2008
- Nation-building Funds Bill 2008
- Nation-building Funds (Consequential Amendments) Bill 2008
- COAG Reform Fund Bill 2008
- Social Security Legislation Amendment (Employment Services Reform) Bill 2008
- Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Bill 2008
- Corporations Amendment (Short Selling) Bill 2008
- Tax Laws Amendment (Luxury Car Tax—Minor Amendments) Bill 2008
- Tax Laws Amendment (Political Contributions and Gifts) Bill 2008
- Safe Work Australia Bill 2008 (message)
- Horse Disease Response Levy Bill 2008
- Horse Disease Response Levy Collection Bill 2008
- Horse Disease Response Levy (Consequential Amendments) Bill 2008.

Question agreed to.

HUMAN RIGHTS

Senator HANSON-YOUNG (South Australia) (9.59 am)—Given that 10 December is the 60th anniversary of the Universal Declaration of Human Rights, I move:

That the Senate—

(a) notes that:

(i) 9 December 2008 is the 60th anniversary of the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, and
(ii) 10 December 2008 is the 60th anniversary of the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights;

(b) pays tribute to those Australians who played leading roles in the development and adoption of these important instruments of international law and who, since then, have contributed to their implementation;

(c) recognises, with regret and disappointment, that in the intervening 60 years, violations of human rights have continued to occur in Australia and in other countries;

(d) affirms that ‘the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want [is] the highest aspiration of the common people’;
(e) declares its own ‘faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women’; and

(f) renews its commitment to the principles contained within the Universal Declaration of Human Rights, and to their promotion within Australia and through Australia’s international policies and activities.

Question agreed to.

CARBON POLLUTION REDUCTION SCHEME

Senator CASH (Western Australia) (9.59 am)—I move:

(a) notes and commends the sensible action taken by Labor Senators Sterle and Hutchins and also the Labor Member for Throsby, Ms George, in expressing concern over the proposed Carbon Pollution Reduction Scheme (CPRS);

(b) notes the concern expressed publicly by a number of industries that may be potentially affected by the proposed CPRS including BlueScope Steel, Nyrstar, Qantas and Visy; and

(c) calls on the Government to delay the introduction of the proposed CPRS until these concerns are addressed.

Question put.

The Senate divided. [10.04 am]

(The President—Senator the Hon. JJ Hogg)

Ayes........... 32
Noes........... 34
Majority......... 2

AYES

Fisher, M.J.     Heffernan, W.  
Humphries, G.  Johnston, D.  
Joyce, B.       Kroger, H.    
Macdonald, I.   Mason, B.J.    
McGauran, J.J.J.  Minchin, N.H.  
Nash, F.        Parry, S. *     
Payne, M.A.     Ronaldson, M.  
Ryan, S.M.      Troeth, J.M.    
Trood, R.B.     Williams, J.R.  

NOES

Arbib, M.V.  Bilyk, C.L.  
Bishop, T.M.  Brown, B.J.  
Brown, C.L.   Cameron, D.N. 
Carr, K.J.    Conroy, S.M.  
Crossin, P.M.  Farrell, D.E. 
Faulkner, J.P.  Feeney, D.  
Fielding, S.  Forshaw, M.G.  
Furner, M.L.  Hanson-Young, S.C.  
Hogg, J.J.    Hurley, A.  
Hutchins, S.P.  Ludlam, S.  
Ludwig, J.W.  Lundy, K.A.  
Marshall, G.  McEwen, A. *  
McLucas, J.E.  Milne, C.  
Moore, C.  Pratt, L.C.  
Sherry, N.J.  Siewert, R.  
Stephens, U.  Sterle, G.  
Wortley, D.  Xenophon, N.  

PAIRS

Abetz, E.       Evans, C.V.  
Adams, J.       O’Brien, K.W.K.  
Boyce, S.       Pelley, H.  
Brandis, G.H.   Collins, J.  
Scullion, N.G.  Wong, P.  

* denotes teller

Question negatived.

DUCK HUNTING

Senator SIEWERT (Western Australia) (10.07 am)—Mr President, before I move my motion on duck hunting, I seek leave to table a document. I understand I have support from the government and the opposition to do this.

Leave granted.
Senator SIEWERT—I table the document National common position statement of conservation, animal welfare and political groups calling for a permanent ban on recreational shooting of native waterbirds and move:

That the Senate—

(a) notes the joint Common Position Statement which highlights the unsustainable and cruel nature of recreational shooting of native waterbirds which is endorsed by 136 organisations, including the World Wildlife Fund, Birds Australia, Bird Observation and Conservation Australia, RSPCA Australia, Australian Conservation Foundation, and the Wilderness Society;

(b) explores permanently banning recreational duck shooting on all:

(i) Commonwealth controlled land, and

(ii) Ramsar sites throughout Australia; and

(c) considers working in co-operation with Victoria, Tasmania, South Australia and the Northern Territory to negotiate an intergovernmental agreement for nationally-consistent legislation for a permanent ban on the recreational shooting of native waterbirds.

Senator LUDWIG (Queensland—Minister for Human Services) (10.08 am)—by leave—This is a short statement, I need only one minute and I thank the opposition for their agreement as to leave. The government opposes this motion because the management of recreational shooting is primarily a regulatory responsibility of the states and territories. Queensland, New South Wales and Western Australia have chosen to introduce a ban on duck shooting. Other states and also the territories have not. With regard to Commonwealth responsibilities, shooting native waterbirds would only trigger the relevant federal legislation, the Environment Protection and Biodiversity Conservation Act 1999, where it had a significant impact on matters of national environmental significance.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.09 am)—by leave—This is a one-minute contribution as well. What the minister said is just not satisfactory. We have a prolonged drought. Most states in this country have banned duck shooting in recent seasons. Sadly, Tasmania has not. What we are seeing is falling populations and concentrations of wild ducks, including in Ramsar wetlands and a totally unnecessary carnage for recreational purposes. There is no recreation in this. This is destruction. It has got nothing to do with creation. This motion should be supported by the government.

Question put:

That the motion (Senator Siewert's) be agreed to.

The Senate divided. [10.14 am]

(The President—Senator the Hon. JJ Hogg)

Ayes........... 5
Noes........... 51
Majority....... 46

AYES

Brown, B.J. Hanson-Young, S.C.
Ludlam, S. Milne, C.
Siewert, R. *

NOES

Arbib, M.V. Barnett, G.
Bernardi, C. Bilyk, C.L.
Birmingham, S. Bishop, T.M.
Boswell, R.L.D. Brown, C.L.
Bushby, D.C. Cameron, D.N.
Cash, M.C. Colbeck, R.
Conroy, S.M. Coonan, H.L.
Cormann, M.H.P. Crossin, P.M.
Eggleston, A. Ellison, C.M.
Farrell, D.E. Farrell, M.J.
Feeney, D. Fierravanti-Wells, C.
Fielding, S. Fisher, M.J.
Fifield, M.P.
Senator SHERRY—I will be seeking leave to delete section (2). The membership of the committee does not reflect—

Senator Minchin—Just change it to four, three and one.

Senator SHERRY—Well, I still do not agree with that anyway—and it would have been nice to have been told that you were going to move an amendment. If you had done so and informed us as to the detail we could perhaps have saved some time by negotiation and discussion; that has not happened.

Opposition senators interjecting—

Senator SHERRY—You want some cooperation. It would have been nice for the government to have been told that you were amending the motion. But, anyway.

Opposition senators interjecting—

Senator SHERRY—I am just being told by interjection that it is to be three, three, one. (Time expired)

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.19 am)—by leave—I want to make it clear that the Greens’ position on this motion is that we will support it if the numbers are changed to three, three, one. That is in the spirit of a reference to do with committees that we had before the Senate a short while ago. I have indicated this to Senator Bushby. Otherwise, we are left with no option but to oppose the motion. I think the amendment ought to be considered.

Senator XENOPHON (South Australia) (10.20 am)—by leave—I wish to make a short statement, and this is perhaps directed to the opposition: my position is that I support the motion of Senator Bushby that this matter go to the select committee, but I think the appropriate thing is for the composition of the committee to reflect the composition of the chamber, and that it be three govern-
ment members, three opposition members and one crossbencher. I do not know whether that could be dealt with. Perhaps the opposition could reconsider their position in respect of that.

The PRESIDENT—Senator Xenophon, I can only deal with what Senator Bushby has put to the Senate by way of notice of motion, and that is what is currently before the chamber.

Senator Faulkner—And if he loses he loses.

The PRESIDENT—No, the leave has been granted to those who want it.

Senator Bob Brown—Mr President, I have a point of order. I am unclear as to whether you have called for formality, and I would like that matter clarified, please.

The PRESIDENT—No, I will come to that now.

Senator COONAN (New South Wales—Manager of Opposition Business in the Senate) (10.21 am)—Thank you, Mr President. Given that there is obviously a bit of confusion about what is being proposed here, could it be deferred until a later hour? I seek leave to defer it to a later hour.

The PRESIDENT—I was talking to the Clerk, Senator Coonan, and I missed what you said: are you seeking leave to withdraw?

Senator COONAN—Yes, well, we were seeking to—

Senator Faulkner—Mr President, I raise a point of order. My point of order is that Senator Coonan was given the call without either taking a point of order or seeking leave. Of course, if Senator Coonan seeks leave, I am sure leave will be granted.

Senator Ian Macdonald—She did seek leave.

Senator Faulkner—No, leave was not granted in this chamber. To my knowledge, leave was not sought—and I was listening pretty carefully—nor was it granted. It will be if it is. I think we have a problem if senators just stand up and speak, particularly when debate is constrained in this sort of matter. I might say in conclusion to my point of order—and that is my substantive point of order—that this shows the absurdity of dealing with these sorts of matters when formality has been granted. It would have been better, of course, in relation to this matter if it had been dealt with in a different manner.

The PRESIDENT—I know you want to respond, Senator Macdonald, but I was asked a question previously. Formality has not been granted at this stage to this motion. Senator Macdonald, is this a point of order?

Senator Ian Macdonald—I am speaking on Senator Faulkner’s point of order, Mr President. I thought Senator Coonan did seek leave. If she did not, we all agree with Senator Faulkner: you cannot just get up in this chamber and chat away; you have to seek leave. I thought Senator Coonan did, but if she did not I am sure she will seek leave. What she wants to do, as I understand, is to move this motion to a later hour this day.

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The PRESIDENT—I know you want to respond, Senator Macdonald, but I was asked a question previously. Formality has not been granted at this stage to this motion. Senator Macdonald, is this a point of order?
The PRESIDENT—The Clerk advises that the simple solution is to withdraw the formality and come back and deal with it later on.

Senator COONAN—I seek leave to withdraw formality. Leave granted.

The PRESIDENT—The matter is to be considered later.

Legal and Constitutional Affairs Committee

Meeting

Senator CROSSIN (Northern Territory) (10.25 am)—I move:
That the Legal and Constitutional Affairs 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, 4 December 2008, from 1.30 pm, in relation to its inquiry on the effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality.

Question agreed to.

SENATE TEMPORARY ORDERS

Senator FERGUSON (South Australia) (10.26 am)—I move:
That the temporary orders of the Senate of 15 October 2008 and 13 November 2008, relating to the abolition of questions to senators other than ministers and to chairs of committees, and the restructuring of question time, continue as temporary orders during 2009.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.28 am)—I move:
That the Senate—
(a) expresses its concern about the ongoing shortage of air traffic controllers at Australian airports;
(b) welcomes the Government’s acknowledgement of the shortage in its National aviation policy green paper, released on 2 December 2008; and
(c) calls on the Minister for Infrastructure, Transport, Regional Development and Local Government, given the delay before an aviation white paper is released and implemented, to intervene now to ensure Airservices Australia employs adequate numbers of air traffic controllers to achieve safety standards and allow airlines to run services on schedule.
Question agreed to.

GREEN COOLING COUNCIL LTD

Senator MILNE (Tasmania) (10.28 am)—I move:

That the Senate—

(a) notes that the Green Cooling Council Ltd’s highly significant and internationally-recognised work to facilitate a reduction in the use of high global warming potential hydrofluorocarbon (HFC) greenhouse gases in the refrigeration and air conditioning industry through the replacement of HFCs with natural refrigerants has been funded under a Greenhouse Gas Abatement Program grant of up to $2 million over 4 years;

(b) recognises that this is making a valuable contribution to reducing Australia’s greenhouse emissions and preparing Australian industry for the introduction of the Carbon Pollution Reduction Scheme, and without immediate measures the Green Cooling Council faces imminent termination;

(c) expresses concern that delays by the Department of the Environment, Water, Heritage and the Arts in making due payments in respect to the Green Cooling Council Greenhouse Gas Abatement Program grant has today caused the company to go into administration, and urges the Government to take urgent action to avoid termination of the project; and

(d) calls on the Government to ensure the ongoing success of the project.

Question agreed to.

DENISON ELECTORATE

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.29 am)—I move:

That the Senate asks the Minister responsible for the Australian Electoral Commission to:

(a) furnish the Senate with reasons for rejecting the name Inglis Clark (Andrew Inglis Clark was a key contributor to the drafting of the Australian Constitution) for the Tasmanian seat of Denison; and

(b) seek to have the decision reconsidered.

Question put.

The Senate divided. [10.34 am]

(The President—Senator the Hon. JJ Hogg)

Ayes……………. 6
Noes……………. 47
Majority………. 41

AYES

Brown, B.J. Hanson-Young, S.C.
Ludlam, S. Milne, C.
Siewert, R. * Xenophon, N.

NOES

Arbib, M.V. Barnett, G.
Bilyk, C.L. Birmingham, S.
Boswell, R.L.D. Brown, C.L.
Bushby, D.C. Cameron, D.N.
Carr, K.J. Cash, M.C.
Colbeck, R. Collins, J.
Coonan, H.L. Cormann, M.H.P.
Crossin, P.M. Ellison, C.M.
Farrell, D.E. Faulkner, J.P.
Feeney, D. Fielding, S.
F ierravanti-Wells, C. Fifield, M.P.
Fisher, M.J. Forshaw, M.G.
Furner, M.L. Hogg, J.J.
Humphries, G. Hurley, A.
Hutchins, S.P. Ludwig, J.W.
Landy, K.A. Macdonald, I.
Marshall, G. McEwen, A.
McLucas, J.E. Minchin, N.H.
Moore, C. Nash, F.
Parry, S. * Payne, M.A.
Pratt, L.C. Sherry, N.J.
Stephens, U. Sterle, G.
Troeth, J.M. Trood, R.B.
Wortley, D.

Question negatived.
KOALA HABITAT

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.37 am)—I move:

That the Senate—

(a) welcomes the reported decision of the Minister for Climate Change and the Environment (Ms Tebbutt) to spend $1.23 million on a recovery plan for koalas, including revegetating koala habitat; and

(b) calls on the New South Wales Government to halt logging of any koala habitat forest including that in the Bermagui region on the state’s south coast.

Question put.

The Senate divided. [10.39 am]

(The President—Senator the Hon. JJ Hogg)

AYES

Brown, B.J. Hanson-Young, S.C.
Ludlam, S. Milne, C.
Siewert, R. * Xenophon, N.

NOES

Arbib, M.V. Barnett, G.
Bernardi, C. Bilyk, C.L.
Birmingham, S. Boswell, R.L.D.
Brown, C.L. Bushby, D.C.
Cameron, D.N. Carr, K.J.
Cash, M.C. Colbeck, R.
Collins, J. Coonan, H.L.
Cormann, M.H.P. Crossin, P.M.
Ellison, C.M. Farrell, D.E.
Faulkner, J.P. Feeney, D.
Fielding, S. Fierravanti-Wells, C.
Fifield, M.P. Fisher, M.J.
Forshaw, M.G. Fowler, M.L.
Hogg, J.J. Humphries, G.
Hurley, A. Hutchins, S.P.
Joyce, B. Ludwig, J.W.
Landy, K.A. Macdonald, I.
Marshall, G. McEwen, A. *
McLucas, J.E. Minchin, N.H.

Moore, C. Nash, F.
Parry, S. Payne, M.A.
Pratt, L.C. Ronaldson, M.
Sherry, N.J. Stephens, U.
Sterle, G. Troeth, J.M.
Trood, R.B. Williams, J.R.

* denotes teller

Question negatived.

NOTICES

Withdrawal

Senator BUSHBY (Tasmania) (10.41 am)—Mr President, I withdraw general business notice of motion No. 324 standing in my name for today, proposing the establishment of a select committee on the bank deposit scheme.

COMMITTEES

Publications Committee

Senator McEWEN (South Australia) (10.42 am)—On behalf of Senator Carol Brown, I present the 8th report of the Senate Standing Committee on Publications.

Ordered that the report be adopted.

BUDGET

Consideration by Estimates Committee

Additional Information

Senator McEWEN (South Australia) (10.42 am)—I present additional information received by committees relating to estimates.

Additional estimates 2007-08—

Economics—Standing Committee—Additional information received between 4 September and 3 December 2008—Treasury portfolio.

Budget estimates 2008-09—

Community Affairs—Standing Committee—Additional information received between 5 November and 3 December 2008—Health and Ageing portfolio.

Economics—Standing Committee—Additional information received be-
It is my pleasure this morning, on behalf of the Joint Committee of Public Accounts and Audit, to present report No. 413, creatively entitled The efficiency dividend and small agencies: size does matter. I move:

That the Senate take note of the report.

The efficiency dividend was introduced in 1987-88 and designed to encourage productivity improvements in the public sector. Each year since, the public funding component of agencies’ budgets has usually been trimmed by 1.25 per cent. For the 2008-09 year only, the efficiency dividend was increased by an additional two per cent.

In June, the committee initiated an inquiry into the effects of the efficiency dividend on small agencies. We were concerned that, after 20 years, the dividend may be leading to reductions in service rather than genuine efficiencies, particularly in the case of many smaller agencies. The evidence provided to us proved that these concerns were indeed well founded. It is clear that the smaller agencies have difficulty, relative to large agencies, in attracting funding for new policy proposals. We also heard repeated instances of small agencies being forced to reduce services or delay initiatives as a result of the dividend. Reducing functions in regional areas and a diminished capacity for innovation are two particular consequences of squeezing more and more out of agencies that are already suffering.

While we accept that some sort of efficiency incentive is warranted, we are concerned about the unintended consequences for smaller agencies that have come about as a result of the ongoing efficiency dividend.

To address these concerns we have made several recommendations. First of all, we recommend additional safeguards in the budget process to reinforce the independence from the executive of the Auditor-General, the courts and the parliamentary departments.

In the case of the Auditor-General, the committee has repeatedly expressed the view that the modest budget of the Audit Office is a cost-effective mechanism for identifying areas for better administration on behalf of

COMMITTEES

Public Accounts and Audit Committee Report

Senator FEENEY (Victoria) (10.43 am)—It is my pleasure this morning, on behalf of the Joint Committee of Public Accounts and Audit, to present report No. 413, creatively entitled The efficiency dividend and small agencies: size does matter. I move:

That the Senate take note of the report.
this parliament and the Australian people. The Audit Office is at the front line in ensuring government accountability and integrity, and the parliament is not only well served by it but also not well served by a reduction in its work program.

The committee therefore recommends that, in addition to being adequately funded for other assurance activities, the Audit Office be funded to conduct the number of performance audits that is determined by the Auditor-General and endorsed by the committee. The actual number would be determined by the Auditor-General, but the committee notes that 50 performance audits per annum has always been considered appropriate in recent years.

In relation to the parliamentary departments, we recommend that a parliamentary commission co-chaired by the President and the Speaker and comprising elected representatives be established to recommend funding levels for the parliamentary departments in each annual budget. We note that this is consistent with custom and practice in other jurisdictions, including in Canada, the United Kingdom and New Zealand.

In relation to the courts, we propose that the Attorney-General establish an independent body to recommend funding levels for the Commonwealth courts. The courts should be treated as a separate portfolio under the Attorney-General in the budget process and in the budget papers.

We found that many of Australia’s major cultural institutions, including the Australian War Memorial, the National Gallery and the National Library are being compromised in their capacity to grow their collections and to maximise public access to those collections, including through touring exhibitions and initiatives such as digitisation.

There are a number of features that distinguish cultural agencies from other agencies. These cultural agencies often hold a large number of valuable assets and have a high proportion of relatively fixed costs related to maintaining those collections and the buildings in which they are housed. Many of the cultural agencies’ discretionary functions, such as travelling exhibitions, serve to benefit large numbers of regional and rural communities, as well as the broader Australian public. Importantly, collecting institutions are also often subject to a mandate to grow their collections. We recommend that a new funding model be developed for cultural agencies. This model should recognise the importance of funding the mandate for growth and development of collections and the high proportion of their expenses apportioned to depreciation.

Finally, we recommend that the first $50 million of all agencies’ appropriations, excluding departments of state, should be exempt from the efficiency dividend and that this amount should be indexed. This would obviously provide proportionately higher relief for smaller agencies. For the sake of administrative simplicity, it was the committee’s preference that there not be a threshold in terms of an agency’s budget to access this partial exemption from efficiency dividends. However, if the government does wish to impose a threshold, we have suggested that departmental expenses of $150 million or less would be an appropriate figure. Again, this amount should be indexed. We believe these recommendations, if adopted, will provide some important relief for small agencies at a very modest additional cost to the budget.

This was the very first occasion I had as a new senator in this place to participate in a committee inquiry, and I would like to particularly thank my colleagues on the committee for their diligence during the inquiry and, indeed, for my baptism of fire in understanding the exciting work that committees under-
take. I would also thank very much those organisations and individuals who gave valuable evidence. I commend the report to the Senate.

Question agreed to.

MIGRATION LEGISLATION AMENDMENT (WORKER PROTECTION) BILL 2008

Returned from the House of Representatives

Message received from the House of Representatives returning the bill without amendment.

COMMITTEES

Intelligence and Security Committee

Membership

Message received from the House of Representatives informing the Senate of the appointment of Mrs Hull to the Parliamentary Joint Committee on Intelligence and Security.

Rural and Regional Affairs and Transport Committee

Report

Senator CROSSIN (Northern Territory) (10.50 am)—On behalf of Senator Sterle, I present the final report of the Rural and Regional Affairs and Transport Committee on climate change and the Australian agricultural sector, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CROSSIN—by leave—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Community Affairs Committee

Report

Senator CROSSIN (Northern Territory) (10.51 am)—On behalf of Senator Moore, I present the report of the Senate Standing Committee on Community Affairs, Government expenditure on Indigenous affairs and social services in the Northern Territory, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CROSSIN—by leave—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Economics Committee

Report

Senator CROSSIN (Northern Territory) (10.52 am)—On behalf of Senator Hurley, I present the report of the Senate Standing Committee on Economics, Disclosure regimes for charities and not-for-profit organisations, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CROSSIN—by leave—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Education, Employment and Workplace Relations Committee

Report

Senator CROSSIN (Northern Territory) (10.53 am)—On behalf of Senator Marshall, I present the report of the Senate Standing Committee on Education, Employment and Workplace Relations, Allegations of academic bias in universities and schools, together with the Hansard record of proceed-
plings and documents presented to the committee.

Ordered that the report be printed.

**Senator CROSSIN**—by leave—I move:

That the Senate take note of the report.

**Senator FIFIELD** (Victoria) (10.54 am)—The genesis of this inquiry was the concern expressed by many students at both secondary and tertiary level about the perceptions of academic bias on campus, the reasons for this and avenues of redress and appeal. Government senators have stated, as though it is evidence of a grand conspiracy, that Young Liberals, Liberal Students and other campus Liberals argued for the establishment of such an inquiry. They did. Senate inquiries are often instigated by concerns expressed by members of the community, and this inquiry was no exception.

Although he did not agree with this particular reference, I nevertheless wish to thank Senator Marshall for his chairmanship of the inquiry. He is certainly one of the better and more even-handed committee chairs in this place.

In moving the motion to establish this inquiry, I thought it was important to ensure that students at school or university are not discriminated against or fed a particular ideological or political view. I was and am keenly aware of the power imbalance between students and institutions and the relative weakness of students. Our schools and universities need to be places where a plurality of views is not only tolerated but encouraged. Education needs to be about free inquiry and thought. Courses need to be taught in context and in a fair, accurate and balanced way. All Australian university students should have the right to study and inquire in an open and free academic environment.

This inquiry provided the opportunity for matters that impinge on this freedom to be highlighted, and the committee uncovered a number of matters of particular concern—firstly, the hostility of the university sector to examination. Several academic witnesses as well as Universities Australia gave evidence to the effect that the very existence of the Senate inquiry was itself a threat to academic freedom and would impinge on that freedom and that academics would exercise self-censorship in the face of a Senate inquiry. I for one do not believe that Australia’s academics are anything other than robust and I do not believe that they would be cowed by a Senate inquiry. It is indeed a bizarre proposition, I think, that universities should be entitled to free inquiry but not the parliament itself. Given taxpayers spend some $6.7 billion per annum on the university sector, I think it is not unreasonable or inappropriate that the parliament ask a few questions of the university sector from time to time.

Another area of concern was the denial by many academics that bias exists. Clearly it does and probably has since the establishment of the university at Fez in Morocco in the year 859. The questions which should be asked are: is the bias that exists systemic or is it isolated, and what avenues of appeal exist? I for one believe that instances of bias of a deliberate and specific nature by academics are uncommon, but in such cases I am of the view that the avenues of appeal need to be better publicised and more transparent.

True bias, I think, exists in the nature of the curriculum in many faculties. It ensures a monoculture—what James Cook University academic Merv Bendle calls an ‘intellectual monoculture’. Dr Bendle told the inquiry—and Miranda Devine notes this today in a piece in the *Sydney Morning Herald*—of his view that:

In another age this could be a fascist far Right intellectual monoculture and it would do just as much damage to our society as a left-wing or far
Left intellectual monoculture. It is not so much the politics of the thing: it is the fact that it is an intellectual monoculture, that it is one voice being heard over and over again unrelentingly.

We do not want to have at campuses around Australia an environment where students feel the need to be strategic and to tailor their work to the prevailing curriculum taste. We need to move from a situation where academic freedom is seen as just that—freedom for the academic faculty. We need to shift to a broader concept that involves the academic freedom of students as well.

The opposition make a number of recommendations in this report which seek to underpin and reinforce the academic freedom of faculty and students, to provide avenues for redress for those rare specific cases of individual academic bias, and also to encourage institutions to ensure a variety in curriculum which I think is lacking at the moment.

Senator MARSHALL (Victoria) (11.00 am)—This inquiry has been unusual in a number of respects. It has not really been an inquiry into academic freedom in the sense that this term is generally understood. It has really been an inquiry into allegations of biased teaching in social science and humanities courses as they are taught in universities and schools. It was never clear to the government party senators what the purpose of the inquiry was, or what possible use it would be. A Senate committee is unsuited to the task of chasing after evidence of subversive teaching, not least because we could never agree on what it is. This inquiry has been a waste of our time, in my view, though it has not been without interest.

The inquiry is based on the premise that there is a strongly leftist agenda which is influencing the course content and the teaching of it, and this presents a problem of unspecified magnitude and importance. The committee received fewer than 30 submissions making this point. We do not know what the other 300,000 undergraduate students thought about the issue. Even if it were true that the majority of academics have a broadly left liberal political stance, the question is whether this matters. Clearly, graduates of Australian universities over the past 50 years or more have been more or less evenly distributed across both sides of the houses of the Parliament of Australia. If there is a leftist conspiracy in universities it has not been conspicuously successful in achieving any political ends.

The difficulty the committee had was in dealing with the evidence of bias. Submissions and testimony gave us anecdotes which did not provide much context for the complaints. Even if we had received much more information, it would have been difficult to reach any conclusions other than that there probably were cases where academics were exceeding the proprieties of lecturing and tutoring. There is probably a very small amount of bad teaching going on. What surprised the committee was that students with complaints about bias did not appear to use the fairly elaborate complaint mechanisms which universities have instituted. Apparently, they were happy to come to us, rather than complain directly to their deans and department heads, or through the very formal processes that all universities have in place for addressing complaints of this nature. The quality assurance measures which have been instituted across the higher education sector are intended to deal with problems of poor teaching. If there is a problem—and the evidence was so scant as to be insignificant—then the solution lies there. It is not the role of the Senate to go blundering in to sort out the internal affairs of universities. I seek leave to continue my remarks later.

Leave granted.
Senator HUMPHRIES (Australian Capital Territory) (11.03 am)—I want to make a very brief contribution to this debate, given the pressure of other business before the Senate today. I think that the evidence that there is a problem in Australia with academic bias is very clear as a result of this inquiry. I do not pretend that the problem is widespread, in the sense that it affects a large number of students in a large number of institutions, but I think that the evidence is compelling and irrefutable that there is an issue with bias in the case of some students. I have little doubt that in some cases that political bias will affect students with left-wing perspectives faced with a lecturer or tutor with a right-wing bias, but there was no evidence of that put before the committee. I have no doubt that it must exist. But the evidence of the other kind of bias was put before the committee and in sufficiently compelling detail to suggest that it needs to be examined as an issue confronting Australian universities.

I put to the Senate that what they should take from this inquiry is not a sense of denial of there being any issue or problem—which is, with respect, what we can take from Senator Marshall’s comments today—but rather an acceptance that, if there is an issue, even if it affects a small number of students, it is incumbent on universities, as places which are properly regarded as bastions of intellectual freedom and the capacity to express and articulate thoughts in a way which we may not have the freedom to do in other parts of our society, to facilitate devices to prevent any student having his or her grades affected or his or her capacity to express views in an academic context compromised by virtue of the existence of bias in universities.

The coalition senators’ additional comments in their dissenting report are, I think, well worth considering—that is, not that the government rush to legislate to deal with this issue, but that the universities themselves, who have said repeatedly that they have robust mechanisms for dealing with problems of competence and quality in teaching, actually address this issue specifically and allow it to be properly expressed in the form of a charter that sets out the freedom not only of academics but of students in those institutions. If we accept that there is an issue there—and there certainly has been an issue raised in the Australian context of the freedom of academics to express their views—you cannot not deal with the issue of the freedom of students at the same time. You have got to deal with both of them. If we accept that there is an issue about the way in which these problems are addressed in our universities—and even those opposite would concede that on occasions that has occurred—we should deal with it in the way suggested in the dissenting comments of coalition senators. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Rural and Regional Affairs and Transport Committee Report
Senator MILNE (Tasmania) (11.07 am)—I seek leave to comment on the report on agriculture and climate change tabled by the Senate Standing Committee on Rural and Regional Affairs and Transport.

The ACTING DEPUTY PRESIDENT (Senator Trood)—That matter was dealt with earlier in the day and leave has been refused.

WATER AMENDMENT BILL 2008 Adoption of Report
Debate resumed from 2 December, on motion by Senator Wong, as amended:
That the report of the committee of the whole be adopted but, due to the Government’s failure to support in the House the amendments made by
the Senate, the Senate calls on the Government to immediately:

(a) prohibit construction of the North-South Pipeline and extraction of water from the Goulburn and Murray rivers for use in that pipeline;

(aa) encourage and support other populations outside the Basin who currently rely on the extraction of water from the basin to broaden their water security by expanding their use of other water sources such as stormwater capture and recycling;

(b) ensure that water saved through the Living Murray Initiative is immediately guaranteed and then released for environmental flows in the Goulburn and Murray rivers and to replenish the Lower Lakes;

(c) deliver $50 million in emergency relief funding to the Lower Lakes and Coorong communities;

(d) direct the Commonwealth Scientific and Industrial Research Organisation (CSIRO) to undertake a comprehensive hydrological assessment of the proposed North-South pipeline project, and the proposed extraction of water for the pipeline; including an audit of the water savings to be achieved by the Victorian Food Bowl Modernisation Project and its impact on the water resources and environment of the Murray-Darling Basin; and

(e) ensure that the CSIRO is adequately funded to undertake that assessment.

Question agreed to.

Report adopted.

SCHOOLS ASSISTANCE BILL 2008
Consideration resumed from 3 December.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.09 am)—I move:

That the committee does not insist on its amendment to which the House of Representatives has disagreed.

(Quorum formed)

I have moved this motion on the advice of the clerks, because I may want to revisit this issue.

The TEMPORARY CHAIRMAN (Senator Trood)—We all rely on the clerks, Senator Carr.

Senator CARR—I understand that there will be additional amendments moved. I will just indicate the strength of our view on this issue to Senator Mason. Essentially, as far as the government is concerned, the position that has been put by Family First and the coalition is unacceptable. We are insisting that the bill be proceeded with on the basis on which the House of Representatives has insisted—that the national curriculum be an integral part of that bill and not be divided from it. We do so on the basis that every Australian child deserves the best education we can deliver and every Australian child deserves a decent chance in life, regardless of what their postcode is, what their background is or how their parents earn a living.

Every Australian child deserves access to the skills and knowledge that they will need as they grow and take their place in the world. That is why the government is proposing to invest $58 billion in school education over five years. That includes new funding for national partnerships on quality teaching, on literacy, on numeracy and on low socioeconomic status schools. This is an increase of some 29 per cent on the previous five years. It is precisely because we are serious about quality education that we are developing a national curriculum.

This is not an optional extra. It is not a political plaything. It is the key to creating a world-class education system that produces the outcome that our children deserve. That is why we went to the last election promising to do precisely that. That is why we started to work on the delivery of this promise as soon
as we assumed office and it is why we estab-
lished the national curriculum board and en-
sured that it included representatives from all
school systems, including Catholic and inde-
pendent schools. We are consulting every
step of the way, with curriculum experts,
with teachers in both government and non-
government sectors, with specialist associa-
tions and with the community. We have es-

tablished this process because we believe the
national curriculum should be developed by
experts and not by politicians. We want eve-

deryone to be involved.

The national curriculum will detail the
content and the achievable standards all
young Australians in our education system
should have access to. It will make the entire
school system, government and non-
government sectors, more transparent and
accountable. It will enable us to give all
young Australians the best possible prepara-
tion for the challenges and opportunities of
their century. The national curriculum will
not mandate particular classroom practices.
It will give schools and teachers plenty of
room for innovation and creativity. It will
allow them to use their own professional
judgement about how to develop and deliver
learning programs and the sequence in which
that material is covered. Schools and teach-

ers will continue to make their own decisions
about how best to reflect their unique cir-
cumstances and philosophies in the curricu-

lum.

They will still be free to take advantage of
teachers’ specialist knowledge and to pursue
students’ special interests. The national cur-
riculum will be flexible enough to accom-
modate all schools, including Montessori and
Steiner schools, preparing children for the
International Baccalaureate, the University
of Cambridge International Examination and
programs of that quality. We will ask the na-
tional curriculum board to advise on the best
way of acknowledging the curriculum these
schools offer.

Only yesterday the Montessori Australia
Foundation confirmed its support for the in-
troduction of a national curriculum. The
chair of the foundation, Christine Harrison,
said:
We are confident that Montessori schools will be
able to offer the Montessori curriculum under the
framework of the new national curriculum.
That confidence is well founded. Ms Harri-
son also called on the Senate to pass the bill.
She is not alone. Yesterday we heard from
Bill Daniels, Executive Director of the Inde-
pendent Schools Council of Australia. He
had this to say:
The Independent Schools Council of Australia has
right from the start backed the government on its
quadrennium funding legislation.
Mr Daniels went on:
This is legislation that was flagged pre-election.
This is the Government doing exactly what it said
it would do.
On the national curriculum, Mr Daniels said,
‘We are part of the national curriculum de-
velopment process. We are comfortable with
the role we have in the development of the
national curriculum.’ We also heard yester-
day from Dr Bill Griffiths, Chief Executive
Officer of the National Catholic Education
Commission. He was equally forthright. He
reminded us:
The National Catholic Education Commission is
comfortable with the process underway to de-
velop the national curriculum.
Dr Griffiths went on, ‘We’ve been involved
in that process from the very beginning and
have been appreciative of the way in which
our contribution has been received and the
tenor and nature of the debate at that profes-
sional level.’ Mr Daniels and Dr Griffiths
also agree on another critical point. They
agree that it is absolutely essential to get this
legislation passed before the end of the year.
They agree that we have to give schools and parents the certainty and the funding stability that they need from 1 January next year. Everyone seems to understand that, except the coalition senators here. Everyone seems to understand that fundamental principle of the way in which our education system actually operates.

The opposition has the same problem with the national curriculum that it has with a number of other matters. It simply cannot make up its mind. The Liberal Party says that it is in favour of the national curriculum, but it is absolutely opposed to the legislation that we require to actually make it happen. It is clear that the Liberal Party is prepared to say and do anything for a headline. The Liberal Party has backed a national approach to schooling many times in the past.

In June 2003 the former Minister for Education, Science and Training, Brendan Nelson, said he wanted to ‘drive Australia’s eight different educational jurisdictions to one education system’. In June 2004, even John Howard said he would make school funding conditional—I emphasise ‘conditional’—on greater national consistency in curriculum and testing standards. In February 2007, another education minister, Julie Bishop, said, ‘I am focusing on higher standards through greater national consistency.’ And of course we all know that consistency is a matter of deep expertise in the Liberal Party. She said, ‘If I can’t get cooperation on a national curriculum I will tie funding to it.’ That was the position of the Liberal Party just last year. Now they have abandoned that long-held position in pursuit of a wacky right-wing agenda that even most Liberals would repudiate.

For 12 years, the Liberals have made noises about a national curriculum, but they have failed to deliver. Now they are holding Australian schools to ransom. They are jeopardising the funding for thousands of schools and millions of students. They are putting $28 billion in funding at risk, and it appears that they could not care less. Those opposite say that they care about Australian jobs. Obviously they do not care about the jobs of teachers, administrators and all the other staff in non-government schools. Now those schools are staring down the barrel of not getting their money by 1 January. We have an opposition here that is holding the gun to their heads. Yesterday, the member for Sturt—who humiliates himself by coming to this chamber to try to stand over his senators—said, ‘We take our sweet time on it.’

Senator Ian Macdonald—I take a point of order, Mr Temporary Chairman, under the provision of the standing orders about reflections upon members of other chambers in this parliament. This minister is quite incapable of speaking for 10 words without going back to his bullyboy union tactics. The point of order is that he is reflecting on another member by saying that he is here bullying or standing over people. Not only is it untrue, it is a reflection on another member of the parliament. I would ask you to ask the minister to withdraw and apologise.

The TEMPORARY CHAIRMAN (Senator Trood)—I understand that you are unable to ask him to apologise, but you are able to ask him to withdraw, which I take you to be doing.

Senator Ian Macdonald—Yes, thank you.

Senator CARR—Mr Temporary Chairman, withdraw what?

The TEMPORARY CHAIRMAN—The aspersion cast, I think, Senator.

Senator CARR—What is the aspersion? That the member has humiliated himself?

Senator Ian Macdonald—The aspersion is that he is standing over his colleagues. It is
an appalling reflection—and quite untrue, I might say. But this minister thinks he can get away with any sort of union bullyboy tactics in this chamber, and we are not prepared to let him do that. If he does not withdraw, then perhaps there are other matters that we should be considering in relation to the whole program.

The TEMPORARY CHAIRMAN—Perhaps I could encourage the Senate to move forward with the items on the agenda. Senator Carr, may I caution you to be careful about your language.

Senator CARR—I take that advice. Yesterday the member for Sturt said, ‘We can take our sweet time about this matter.’ Twiddling their thumbs was, of course, the characteristic of the now opposition when they were in government, and we see it again. They are now prepared to twiddle their thumbs in opposition. At least they are consistent about that, I suppose. The opposition does not care about educational standards and they do not care about funding certainty for non-government schools. It is about time that they actually accepted the responsibility for their actions.

Bill Griffiths, of the National Catholic Education Commission, raised another interesting point earlier today. He said that he does not know who the opponents of this legislation actually speak for. I think that many others are asking that same question. They do not speak for the Australian independent and Catholic schools. They do not speak for the hundreds of non-government schools pleading with them to pass this legislation. They do not speak for the 80,000 students who move interstate each year and go into a school with a different curriculum. They certainly do not speak for the majority of Australians, who voted for a national curriculum in November last year.

Senator Fielding himself admitted yesterday that most Australians want a national curriculum. So what part of the word ‘democracy’ does the opposition not understand? The reality is this: the opposition speak for no-one but themselves. Their only motivation is to score cheap political points. They think that this will not cost them anything and that they can act in their own sweet time, but their grandstanding is actually threatening to impose huge costs on Australian children and parents. They should make no mistake about this: our non-government schools need this $28 billion. The government cannot spend this money without parliamentary authorisation. The only way to provide that authorisation is by passing this bill. The opposition need to be very, very clear on this point. There is no contingency plan. There is nowhere for you to hide. You are the ones who are holding back the $28 billion which is so vital to the education of over 1.1 million Australians. The opposition are the ones who are actually threatening to wreck the non-government schools sector. They are the ones who are playing fast and loose with the education of Australia’s children. They had better be prepared to live with the consequences.

Senator MASON (Queensland) (11.28 am)—I was in a good mood this morning, and I was going to be very generous to the Minister representing the Minister for Education and to the government. I nearly changed my mind, but I am always too generous by nature. I wish to thank the government for its cooperation on the Schools Assistance Bill 2008 thus far. We have had a history of productive compromise on this bill. That is why we have moved the debate forward. It is a much better bill today than it was on Tuesday.

The compromises thus far—with respect to an audit when it is to be qualified for reasons not relating to financial viability and the
minister’s refusal to authorise the payment of a non-government body now being disallowable by the Senate—throw the minister’s discretion to legislative review. That is a good thing for the bill, a good thing for the act and a good thing for this parliament. That is an improvement to the act. I want to thank you, Minister Carr, for your cooperation on that.

The second improvement is the disclosure clause, clause 24. Again, I thank the minister for specifically excluding the identification of individuals who make a bequest to schools. The idea of identifying individuals who make bequests to schools or for educational purposes was bad public policy. This is an improvement to the bill as well. As my friend Senator Macdonald so eloquently placed on the record on Tuesday night, amendments relating to the capacity of the minister to provide for remote Indigenous students also greatly enhance this bill. I think those were three significant improvements to the bill. It is a much better bill now than it was on Tuesday night. But I thought we could make the bill better still.

On points of philosophy—you have been discussing points of educational philosophy for the last 20 minutes—I remind the minister and the government that the national curriculum was initiated by the Howard government. It was initiated by us because we accept that world-class educational systems are very important. I accept that education is critical to the future of this country. I think you and I, Minister, agree on that. I do not think we have ever had a debate about that. It is a fact. More importantly, over the last few weeks all of my colleagues in the coalition have agreed with the broad spirit of your and Ms Gillard’s public announcements about transparency, about accountability, about teacher training and about educational outcomes. We all agree there should be more significant outcomes, greater transparency and greater accountability. None of us at all disagree with that. It was never our intention to hold up the distribution of $28 billion; rather, the amendment put this morning, sponsored by Senator Fielding and co-sponsored by the opposition, was all about seeking reassurance for alternative educational philosophies such as Steiner and Montessori and different curricula such as the International Baccalaureate and the University of Cambridge international examinations.

We were concerned that they would be prejudiced by this bill. You may not have been concerned about it, Minister; we were. It affects thousands of students in this country—and their parents. We did not do this for some reason of high principle per se; it was a practical reassurance that we were after. Minister, I congratulate you for this morning coming into the Senate and providing that practical reassurance. You have said that the bill will not mandate teaching methods or philosophies, and I thank you for making that clear. It is very important to us in the opposition and to all those students studying in those different curricula or educational philosophies. Upon reflection, I do wish that the assurance had been given right at the beginning of this debate. Then, perhaps, we would not have had to have this back-and-forth between here and the other place, all the tension, all the press releases, all the news conferences about this issue. If we had just been given the reassurance—perhaps weeks ago—we would have been much better off.

It was never, ever the intention of the opposition to hold back funding. We agree with the government that this funding must be given to schools by the end of this year. We agree that the national curriculum is a very good idea. We do not, in fact, at all object to the idea of funding being tied to the national curriculum. That is not the issue. We were
simply concerned that some schools would be prejudiced by it. I thank the minister very much for clarifying that. The opposition will be withdrawing its amendment and will be supporting the bill.

Senator FIELDING (Victoria—Leader of the Family First Party) (11.33 am)—I think there are some facts that have not been presented by the Minister for Education. It is worth noting these. The Senate, if I recall, passed the funding. That is fact 1. Fact 2 is that the Rudd government blocked the funding in the lower house. The third point is that—and the minister did acknowledge this—Family First does support a national curriculum. The fourth important point is that, regarding the unseen, undeveloped national curriculum, the government can come back in here at any stage they want and show it to all of us. Then we can all be reassured that schools will not be disadvantaged in any way. I do not hear a lot of complaints about the standard of teaching and curricula of non-government schools. The fifth point I would like to make is about whether there is enough concern in the community to have the national curriculum come back at another stage where it is not tied to the Schools Assistance Bill 2008.

It can come back at any stage. You could split the bill. The minister did not raise the issue of the media release from the Association of Independent Schools of Victoria that went out yesterday. It was made quite clear in their first sentence:

The Association of Independent Schools of Victoria (AISV) calls on the government to pass the Schools Assistance Bill with the amendments made in the Senate.

For the minister to come here and say that no-one out there has any concerns is very mischievous. Given the level of concern from some schools and some associations, given that you do not have to tie the national curriculum to this bill and given that there is bipartisan support for a national curriculum, taking it out would take a lot of angst out of people and would not divide certain communities.

Family First, from day 1, has been genuine in trying to find a way forward with this. That is why we want to go down the track of adding some simple words to the bill before us. We want to add to the clause on the national curriculum the words ‘or an equivalent accredited curriculum’. I wonder whether that sort of principle makes sense. I wonder whether that principle has been considered before somewhere else. In the state of Victoria there is financial assistance for non-government schools. That sounds interesting. If you have a look at page 19 of their guidelines, guess what words they use in clause 7. It is basically talking about making sure there are some standards for schools in Victoria, but it also has some extra words that say ‘or as broadly equivalent by the registered schools board’. There are the words showing this being done before in an equivalent system, so there is some basis for this.

Given the angst out there, I do appreciate how the Rudd government has backed down on a number of the issues in regard to disclosure and a few of the other items. But this is still an issue of concern. Given that you do not have to necessarily tie it to this bill and you can do it somewhere else at a later stage when the undeveloped curriculum has been developed, it would make sense to then maybe have it tied in such a way.

The TEMPORARY CHAIRMAN (Senator Troeth)—Senator Fielding, are you actually moving your amendment?

Senator FIELDING—I will seek leave to maybe just amend that motion, given that the coalition—

The TEMPORARY CHAIRMAN—Are you moving the amendment or not?
Senator FIELDING—Yes, Madam Temporary Chair. I move the amendment on sheet 5697 Revised:

At the end of the motion, add “but agrees to the following amendment in place of that amendment:

(1) Clause 22, page 25 (line 9), at the end of subclause 22(1), add “or an equivalent accredited curriculum”.

Senator MILNE (Tasmania) (11.37 am)—I wish to indicate I will not be supporting the amendment. I think it is fairly clear now that the coalition has said that it is supporting the bill with the national curriculum in it, and so it should be. The Greens have made it very clear from the start that this is an integral part of this legislation as far as we are concerned. A national curriculum is a national curriculum. Once you start going down the track of saying that you also recognise a broadly alternative curriculum, you do not have a national curriculum; you have a curriculum and any other curriculum that anyone thinks is broadly equivalent. So we will not be supporting the amendment. It is a mechanism for gutting the notion of a national curriculum, and we will not live with it. We will not support legislation with such an amendment in it because it destroys the whole notion of a national curriculum.

On a second matter, I think it is unfortunate that neither the government nor the opposition were prepared to support a Greens amendment to limit this funding to two years and to tie it to a bringing forward of the review of non-government school funding so that the community could have considered that before the election. I think that is important. Also, I note it was a mechanism to try to get equity with public schools. That is an issue which we really need to see addressed, and I think it has been a shame and actually wrong to decouple public school funding and non-government school funding. Now there is not a mechanism to actually link the two and see if there is parity—and there clearly is not.

I also want to put on the record how disappointed I am that this parliament was prepared to make a payment of $2.7 billion as a result of an overpayment, to almost half of the non-government schools in Australia, that is over and beyond what the SES formula said. I think that it would have been entirely appropriate to make the same payment to the public schools of Australia and for the parliament to decide to recognise that an overpayment for the non-government sector but not for public schools is wrong. I think that, with decoupling the two and having it in such a way that in the next two years the states are likely to cut their budgets to education—because of the economic downturn, the lack of GST receipts, the lack of corporate profits, taxation and so on—what we are going to see is a widening gap between the funding for public education and the funding for private education in this country. That is why it would have been very sensible to limit this funding for two years to see what that gap actually ends up as in two years and what we can do to fix it—because four years hence we would be going to see a significant widening of the gap in terms of equity and justice—so that all students, whether they go to a government or a non-government school, have equal opportunity in education. That is what we ought to be doing, and no more so than with Indigenous education.

I have made it very clear that I think it is a dysfunction of the federal system that we have a situation where 80 per cent of Indigenous students go to public schools and will be funded less than the students in private education. But I want to make it clear that getting a national curriculum as part of this bill is critical to the Greens support for it and
we feel very strongly about our opposition to the proposed amendment.

Senator XENOPHON (South Australia) (11.41 am)—I indicate that I have maintained my position in relation to this bill. I was satisfied with the comments made by the minister two days ago in relation to this bill. He has added to them today and obviously that has given a level of comfort to the opposition, and that is a good thing. I have to take issue with what the minister said about the member for Sturt, Christopher Pyne, and something to do with a standover. I should disclose that Mr Pyne was a student of mine when I was a lecturer at what is now the University of South Australia a few years ago, so some might say that I have taught him everything he doesn’t know!

Can I say that I think that sort of language—with respect to the minister—is quite unfortunate; the hyperbole is unfortunate. But stripping away the point scoring, I think what the minister has said today adds to the debate. In terms of the two issues that were dealt with and that the government agreed to, in respect of private sources of funding not being disclosed and the qualified audit provision being subject to being a disallowable instrument, I think it was a case of the government listening to concerns. It was not a case of the government backing down, as the opposition portrayed it. It was a case of the government clarifying the intent of the legislation, and that is a good thing. So I think there has been a lot of goodwill shown this morning with respect to this bill and I look forward to the matter being resolved and our getting on with the issue of a national curriculum and funding for these schools.

Senator IAN MACDONALD (Queensland) (11.43 am)—I would like to speak at some length on this particular matter before the chamber, but I am conscious of the timetable here and of a lot of legislation to go through, so I am going to confine my comments to no more than three minutes. I might say that will be quite difficult after listening to 15 minutes of a foul-mouthed diatribe by the minister which did not in any way contribute to the debate. Having to sit—because it is their program—through that 15 minutes of foul-mouthed accusations makes it very difficult for me to confine my comments to no more than three minutes. The hypocrisy that comes from the Labor Party in relation to this and other matters is just breathtaking.

I wanted to rise to thank the Minister for Education—because it would not have been Senator Carr, who spent over an hour and a half arguing against this in this chamber—for agreeing to the amendment that the crossbenchers and the coalition insisted upon. It will facilitate funding for those schools—and they are mainly in North Queensland—which deal with Indigenous boarders, Indigenous children who come in from very remote areas to the more settled areas to go to boarding school. This amendment is very important to their future education. As I said, the minister in this chamber did not understand and spent over an hour and a half arguing against it the other night. But I am delighted that the Minister for Education took over and agreed with those amendments. In this brief time that I have allowed myself I want to again thank the crossbenchers for their support and thank the minister and all of the members of the lower house for agreeing to that particular amendment, because it means so much for Indigenous children and schools—mainly those in North Queensland.

Before sitting down, I want to again highlight that during the debate the other night the minister gave an assurance that none of those schools that I mentioned, and others that I could not name, would receive less money—indexed—in the future than they are receiving in this current year. I have made known to all those schools that the minister
has given that assurance. So we will look with interest to next year to make sure that the assurances given by the minister in this chamber are in fact honoured.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.46 am)—I would like to take this opportunity to indicate that the government will not be supporting any further amendments to this legislation. I will also take this opportunity to thank Senator Mason for his constructive engagement on these questions. The extraordinarily difficult circumstances under which he was working within his own party should be acknowledged. The proposition that has now been reached is an inevitable position that has to be reached in any political dialogue of this type. It is disappointing to me that the opposition are such slow learners. Nonetheless, they have reached the conclusion that they have.

Senator Ronaldson—That is not very gracious.

Senator CARR—Senator Ronaldson, at least a slow learner knows that there is something to learn. Some people are incapable of learning and you would fit clearly into that category.

The point that Senator Mason made about the comments that I made this morning in regard to the assurances about Montessori and what have you were of course made in the debate when we first canvassed this issue. More importantly, the Deputy Prime Minister delivered a speech on 10 November in which these same points were made. It has been a consistent part of the debate in regard to the development of the national curriculum. That is why these particular schools—Montessori schools and so on—and their associations have supported the action that we have taken in the development of the national curriculum. So it has been an absolutely consistent part of the approach that we have taken.

Some senators here do not like me speaking strongly on these matters. The fact is, these are incredibly serious issues. These are not light-hearted matters or playthings of particular cliques within the Liberal Party. They ought to be seen in context. This reform agenda is a fundamental part of this government’s program and it affects the welfare and opportunities of many Australians. Therefore, we will take these matters up forcefully and we will insist at every opportunity on everyone getting a fair go in this country, irrespective of the opposition of sections of the Liberal Party to what are very sensible, straightforward and widely supported reforms. They were endorsed by the Australian people as a result of last year’s election.

Senator MASON (Queensland) (11.49 am)—I would like to address Senator Carr’s comments regarding the development of the national curriculum. The issue was this: as Senator Fielding eloquently put it before, the national curriculum has yet to be devised, both the content of it and its level of prescription. For that reason we were very concerned about how that would interact and engage with Montessori and Steiner schools, which are about educational philosophy. But more particularly, we were very concerned about how that would engage with the International Baccalaureate and the Cambridge University entrance examination schools, because they are specifically about curricula.

In addressing the national curriculum, we do not know now what that will include. We are talking about an embryonic curriculum that is still to be developed. The concern of the opposition for months now has been how that will mesh with existing world-class and world-respected curricula such as the International Baccalaureate and the Cambridge
University international entrance examinations. That has been our problem. Minister, I heard your reassurances and the opposition is gratified by them. But that is why we maintain this concern, but I am gratified by your reassurance.

The TEMPORARY CHAIRMAN (Senator Troeth)—The question is that the amendment moved by Senator Fielding be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question before the chair now is that the Senate not insist on the amendment disagreed to by the House.

Question agreed to.

Resolution reported; report adopted.

BUSINESS

Rearrangement

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.52 am)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 6 (Nation-building Funds Bill 2008 and related bills).

Question agreed to.

NATION-BUILDING FUNDS BILL 2008
NATION-BUILDING FUNDS (CONSEQUENTIAL AMENDMENTS) BILL 2008
COAG REFORM FUND BILL 2008

Second Reading

Debate resumed from 3 December, on motion by Senator Chris Evans:

That these bills be now read a second time.

Senator MINCHIN (South Australia) (11.52 am)—I rise on behalf of the coalition to speak on the Nation-building Funds Bill 2008, the Nation-building Funds (Consequential Amendments) Bill 2008 and the COAG Reform Fund Bill 2008. These bills provide the legislative framework for the government’s budget announcement to create the Building Australia Fund, the Health and Hospitals Fund, and the Education Investment Fund. The COAG Reform Fund Bill provides the government with the mechanism for channelling funding to respective state governments.

The BAF, as it is known, is aimed at providing capital investment in transport, communications, energy and water infrastructure. The fund will have an initial capital of $12.6 billion. This figure comprises $7.5 billion from the 2007-08 Howard government surplus; proceeds from the second instalment of the sale of T3, thanks to the then finance minister and courtesy of the Howard government, and of course opposed by Labor at every step of the way; and the balance of the cohort’s Communications Fund, another Howard government initiative.

We need only look at the government’s budget announcement to determine the initial aspirational level of this Building Australia Fund. According to the government’s budget announcement:

The Government will commit funds from the 2007-08 and 2008-09 surpluses, once realised, to the BAF bringing total funding of the BAF to $20.0 billion. A proportion of future surpluses may be allocated to the fund as appropriate.

It seems very clear to us and the general public that this Building Australia Fund, or BAF, will not even have $20 billion, let alone any greater sum. Of the $12.6 billion currently available, no less than $4.7 billion, approaching half of the fund, is already committed to Labor’s mythical national broadband network, leaving only $7.9 billion in the Building Australia Fund, which, frankly, is not going to go very far at all. Indeed, $7.9 billion is the equivalent of 10 days of federal government expenditure. So the reality is that with the disappearance of future sur-
pluses, as revealed by this new government, and indeed the very real prospect of the budget going into deficit under the Rudd government, these funds really will not amount to much at all. Indeed, it appears that the government has now become so desperate that we read in today’s newspapers that it is considering setting up its own nationalised bank to help bail out the Labor state governments, which so criminally wasted the last 12 years of economic prosperity, having absolutely nothing to show for it, and are now coming to the Rudd Labor government to be bailed out.

This contrasts with the fact that the coalition government, just 12 months ago, left Australia with a strong and growing economy. Over our period in office, without any assistance whatsoever from the other side, we repaid Labor’s $96 billion in debt, saving the Commonwealth no less than $8 billion per year in interest payments, and left Australia with a $20 billion budget surplus. We fully provided for the Commonwealth’s $96 billion in unfunded superannuation liabilities by establishing the Future Fund, again ultimately saving the Commonwealth some $4 billion per annum. I am personally very proud to have worked with the then Treasurer and to have had ministerial responsibility for setting up and operating the Future Fund, one of the great achievements of the Howard government. The coalition left government with the strongest economy in Australia’s history and one of the strongest in the world. Labor is only able to deliver the funds it now proposes to establish because of the fiscal prudence of the coalition government.

The bills before us give the Future Fund board responsibility for managing the investments of the three funds. It was the coalition that established that board and appointed the current members to it, so we are, of course, fully supportive of the proposed role for the Future Fund and its board, and we are relieved that Labor’s hands have not yet stretched to raiding the Future Fund.

Prior to the last federal election, and with all of that $96 billion of Labor debt repaid, the coalition were able to invest in Australia’s future not only through the Future Fund but also through the Higher Education Endowment Fund and the announcement of our Health and Medical Infrastructure Fund. We created those funds in government to help build Australia’s future, and they were the dividend from 11½ years of strong economic management, the complete repayment of Labor’s debt and the provision for our unfunded liabilities.

I turn now to the funds proposed to be established by Labor. Apart from the Building Australia Fund, the first is the medical infrastructure fund. As I said, this builds on the announcement by the coalition prior to the last election of the establishment of our Health and Medical Infrastructure Fund. The fund we proposed to establish was to commence with an investment of $2½ billion from the 2007-08 surplus and would have been added to with the sale proceeds from the privatisation of Medibank Private, which was our government’s policy and would have occurred under our government. Now, of course, the new Labor government has denied access to that source of funding by abandoning the proposed sale of Medibank Private Ltd. It apparently believes that we should have money tied up in a private health insurance business rather than made available for a fund of this kind, a remarkably odd set of priorities. The capital of the Howard government’s fund was to be preserved in perpetuity and the earnings made available for new capital and medical facilities such as surgical theatres and high-technology medical equipment. This was a very, very important commitment by the coalition that would have strengthened our in-
vestment in health initiatives both now and in perpetuity.

Labor’s Health and Hospitals Fund, mirrored by the coalition’s fund and established under this legislation, is being funded from prospective budget surpluses. Initially anticipated to be $10 billion, $5 billion of the fund will be delivered from the Howard government’s 2007-08 budget surplus, and of course the remaining $5 billion is now highly questionable as it was anticipated that it would flow from the 2009-10 surplus. The important point to note is that this fund is not preserved in perpetuity under Labor’s plan and is entirely dependent on Labor running future budget surpluses for it to continue. Given Labor’s history on this matter and their current willingness to abandon fiscal prudence, fiscal surpluses are very far from certain.

Of course, this same issue applies with the government’s proposed education investment fund. Again, this is built on a coalition initiative. I remind the Senate that in the 2007 budget the coalition announced the establishment of the Higher Education Endowment Fund. That fund was a $6 billion investment by the coalition. Again, the capital of that fund was designed to be preserved in perpetuity and its earnings available to build first-class facilities for universities and the education system in perpetuity. As I mentioned, the HEEF, as it is called, is a perpetual fund with the capital to be retained and the earnings spent for capital works and research facilities in our higher-learning institutions. It was warmly welcomed by the higher education sector. It was an ongoing investment by our government in the future of education. It is important to stress that the capital of that fund was to be preserved, not spent, to provide a permanent source of ongoing funding from its earnings—again, in perpetuity.

We see no ongoing commitment from the new government to retain the capital balance in their education fund. Any ongoing benefit from the fund relies on what are increasingly looking like mythical future surpluses. In the government’s budget papers this year, the government said that, on top of the $6 billion in the HEEF, the government will commit a further $5 billion from the 2007-08 and 2008-09 surpluses, once realised, to the EIF, bringing total funding to over $11 billion. A proportion of future surpluses may be allocated to the fund as appropriate. Again, we will have to await the next budget to determine whether there is any funding available for this fund.

Before touching on the raid on the Howard government’s Communications Fund that is also proposed in these bills, I want to touch on our concern about how state Labor governments are going to see these funds. The Parliament Library Bills Digest for the Nation-building Funds Bill states, I think most appropriately:

The states and territories are likely to welcome the three Funds, first because it will be the Commonwealth—and not the states—funding projects and secondly, because the states will see scope to shift costs on the Commonwealth. In other words, expenditure from the Funds may, to some extent, substitute for state and territory investment rather than add to overall investment.

The coalition is extremely concerned about these funds resulting in cost-shifting by the states, particularly in debt-ridden Labor states like New South Wales. If that occurs and there is no mechanism to prevent it, it will result in no net new investment whatsoever. All we will have is the Commonwealth substituting for the broken-down state Labor governments shifting their costs to the Commonwealth.

This legislation, as I mentioned, also closes the Howard government’s Communications Fund. The coalition remains totally
opposed to that proposal. The coalition established the Communications Fund in 2005 so that the future of rural and regional telecommunications would be secure. The legislation that established the fund was considered by the Senate at the time of the 2005 Telstra sale legislation. The fund is, again, a fund in perpetuity, with the capital maintained and the ongoing income—expected to be $100 million a year—invested in rural and regional telecommunications.

The Communications Fund was established to fund the government’s response to the recommendations of the Regional Telecommunications Independent Review Committee. The committee was required to commence its first review before the end of 2008, and that occurred under the chairmanship of the highly regarded Dr Bill Glasson. Last September, under the former government, the parliament passed legislation to ensure that the principal of the Communications Fund would not fall below the $2 billion figure and to protect the fund from misuse—as, frankly, was clearly threatened, and is now delivered by the Labor government in these bills.

Earlier this year, the minister introduced legislation to raid the Communications Fund. The bill was referred to a Senate committee for examination but was subsequently withdrawn when the government announced its last-minute budget night plans for this trio of funds. The Rudd government’s proposed amendments to the bill, consistent with the bill from earlier this year, will remove the safeguards that we sought to have in place and constitutes a raid on the Communications Fund. In its submission to the Senate inquiry into the initial legislation to abolish the Communications Fund, the New South Wales Farmers Association appropriately stated:

... any withdrawal, dilution or diversion of the fund and any future interest earned, could have devastating consequences for farm businesses, farm families and rural communities. The fund must be continued, with firm commitments set in place to ensure that current and future telecommunications technologies are available to all Australians in an affordable and timely fashion.

Coalition senators recommended back in April, when the initial legislation was considered, that the bill not be passed and that all moves to strip the Communications Fund be opposed. That remains the coalition’s position. The fund was established by our government and we will oppose Labor’s abolition of the fund as it clearly puts at risk future and in perpetuity investment in telecommunications in our rural and regional areas.

Overall, we are not going to oppose these bills, nor are we going to oppose the fast-tracking of infrastructure spending, which the government has indicated a willingness and enthusiasm for. But we do propose a number of very important amendments: to establish a parliamentary joint committee on nation building; to ensure transparency by ministers in relation to these funds; to preserve the Communications Fund; and to involve the Productivity Commission in assessing the productivity benefits of spending from these funds and the potential for cost-shifting by the states in relation to expenditure from these funds—a risk we see as very high. We also will move amendments dealing with the issue of whole-of-life costs associated with expenditure from these funds. These amendments address significant gaps in these bills, and we earnestly hope the Senate will support them.

Senator MILNE (Tasmania) (12.06 pm)—I rise today to support the Nation-building Funds Bill 2008 and cognate bills. It has been apparent for some time that Australia desperately needs to invest in infrastructure, and there has been a dearth of that in the last 10 years of the Howard government.
There has also been in that time incredible pork-barrelling and failure of many of the public-private partnerships, which delivered us some white elephants around the country that the community is going to long live to regret.

We have now a coincidence of a global financial crisis and the climate crisis. Indeed, we have peak oil as well. There is a recognition that the solution to the financial crisis is actually a solution to the climate crisis and to the adaptation mechanisms that are necessary to deal with peak oil. Broadly that is being called around the world ‘the green new deal’, because what it is saying is that, just as with the Great Depression of the last century when President Roosevelt came out with the New Deal to dig America out of the hole it was in, now we need that to go global with a green new deal. That has been picked up by the new President-elect of the United States, Barack Obama, who has come out saying that the United States will spend in order to generate a clean energy revolution as part of the green new deal. He has allocated $150 billion over the next decade. He is saying that in the context of energy security, but it is certainly in the context of climate change and peak oil—accelerating investment in delivering an electric car, accelerating investment in renewable energy and energy efficiency, thereby building competitive advantage globally in green-collar jobs and revitalising manufacturing as part of the US economy. To that end, the United States and China have just signed a memorandum of understanding to accelerate the development and rollout of technologies in this clean energy revolution.

So the challenge here now is to recognise that the vulnerability in the Australian economy that was created over the last 10 years was a failure to act on climate change, a hollowing-out of the manufacturing sector and a reversion to the days of riding on the sheep’s back, except that in the last 10 years it has been riding on the quarry, digging holes in the ground. The third vulnerability in the Australian economy was the complete under-funding not only in education, in particular, but also in public service infrastructure, education and health, in general. There is a desperate need to address climate change, peak oil and the financial crisis, and so getting together the three funds covered by this legislation to recognise that we need to spend money in Australia for the future is critical.

We support it. However, the key will be that we do not see the challenge of responding to climate change in direct opposition to what is happening with investment in infrastructure. If we now go down the path of investing in infrastructure that makes it more difficult to respond to climate change and peak oil then we will have exacerbated the problem. It is absolutely critical that in considering these funds we make sure they are set up with the right kinds of goals and objectives, advisory bodies and transparency in the first instance.

There are new forms of infrastructure which need to be addressed in Australia, and one of them is intelligent networks—that is, the bringing together of the latest intelligence in terms of information technology and the latest in terms of energy technology. If you build a smart grid, for example, you improve your whole energy system performance, you reduce energy losses and you enhance customer service. If you infuse digital intelligence, you will enable horizontal integration of traditional and new sources of power—wind, plug-in hybrid electric cars, solar et cetera—so that you will be able to provide end-to-end insight across all forms of energy, making possible greater levels of repeatability, reliability and security. We need to make sure that when we roll out renewable energy we have an intelligent network that is capable of seeing from one end of the grid to the other, where you can bring
on the sources of power at any one time and where you can switch them off, and that means rolling out sophisticated smart meters across the country as well.

At the same time we also need to be extending the transmission infrastructure in Australia in order to be able to deliver a green energy revolution; in order to be able to maximise the opportunities that the private sector is prepared to provide through the new renewable energy in particular. But it requires complementary measures to such infrastructure investment to make it happen so that you have the gross feed-in tariff, you have the energy efficiency measures, you have the mandatory renewable energy target, and you have this infrastructure being put in place in terms of an intelligent network and in terms of the extended transmission. There are ways of investing in that, maybe through the permit finance raised under the emissions trading system or it might be that Infrastructure Australia considers it.

My great fear is that what we are going to see with these funds is the same thinking that has built us the problem we have got at the moment, with unfettered emissions coming from the transport sector and the energy sector in particular. What we have heard about when people talk about these infrastructure funds is new coal ports and new roads everywhere. It is all about maximising our dependence on imported foreign oil and maximising the vulnerability of the Australian economy to its exposure to the rest of the world deciding that they are going to move beyond coal and beyond digging holes in the ground. That is why the Greens will be moving amendments in relation to this bill which will make climate change and peak oil part of the principles of the nation-building fund so that in addressing these criteria, if you like, for national infrastructure priorities, addressing climate change mitigation, adaptation and biodiversity conservation will be one and preparing for the global oil production peak and subsequent decline in oil production is another. It is very sensible that that be included.

I hope that the government is serious about the climate effort and the need to restructure our cities. Our fundamental task now is to redesign Australian cities so that we reduce our dependence on foreign oil. That means a major investment in public transport infrastructure; it also means a major investment in getting freight back on the railway around Australia, which means getting the north-south freight capacity up and running and in place; and it means improving substantially mass transit in the cities.

Relocalisation is again just coming into people’s perspective in terms of adapting to peak oil and climate change. The redesigning of cities needs to be along the lines of making the cities not only more energy efficient but also have better amenity for the people who live in them. So we need everything from better pedestrian access to more cycle-ways in our cities, to improved public transport, to improved rail access to freight. Then, in regard to the energy infrastructure across the country, instead of seeing infrastructure in terms of more coal ports we need to see it in terms of intelligent networks and extensions to the grid so that we are ready for the renewable energy revolution. Otherwise we will be left behind with our holes in the ground and wondering what happened.

The financial crisis has made it very clear just how vulnerable this economy is to a resource downturn. Look at what has happened. The minute that China cannot buy Australia’s resources, the economy here is exposed. What we are going to see is a reduction in company profits flowing back in taxes into the Treasury. The whole economy here is so dependent on the resource based export market that we are really in a difficult
situation and will continue to be. As the rest of the world moves beyond coal, we are in a dire position. That is why it is essential not only that we have these principals in the fund but also that we make sure—in relation to Infrastructure Australia, in particular—that two members overseeing it are people with specific expertise and experience in climate change mitigation and adaptation, in global peak oil production and in the expected decline in oil production and its ramifications. At the moment, you have an outstanding person, Peter Newman, on the board, but the advisory committees need to have that kind of expertise.

In relation to this, we also need to make sure that there is transparency, because if you get expert advisory committees you need to make sure that the community can see what advice was given to the minister. That is important to prevent the pork-barrelling that we have seen, with millions wasted in Australia in the last decade. We are proposing an amendment to make sure that the advice that is given to the minister from those advisory boards is made public in a timely manner so that the parliament can scrutinise it.

The third amendment relates to setting up a joint committee between the House of Representatives and the Senate, in the same way that other joint house committees are set up, with a view to the joint house committee being able to scrutinise the advice that the advisory boards are giving the government. It will be able to scrutinise how the government intends to spend its money and so on—that is in cases where the spending allocation is more than $50 million. That is entirely appropriate. Why shouldn’t a parliament, where a government intends to spend $50 million or more, have the capacity to scrutinise it?

Right around Australia, state and federal governments have in recent times been moving away from what in the old terms used to be public accounts committees. Those public accounts committees used to look at how the people’s money was being spent in the interests of the people. That has been lost in recent times, and there have been a lot of grey areas, particularly because of the popularity of private-public partnerships, and the community has been left out being able to scrutinise where the money is spent. When you talk to people around Australia, they ask the question: ‘What has happened. Why haven’t we got the money that we need to have spent on public hospitals, for example?’ We get back to the old argument of state governments versus the federal government and who is responsible for what. The community is tired of that argument. They just want to know that the money is going to be spent on improving health facilities and health services delivery in Australia. They want to know that money is being spent on education infrastructure, because if you are going to have an intelligent nation—one that is capable of the innovation that we know Australians are capable of—we need to be investing in our people and in our education infrastructure in a physical sense as well.

There is a lot to be done in Australia and it is an exciting agenda. But I do take the point about ongoing funding into these particular funds, because, again, the Australian people expect that after the first rollout of funds there would be consistency and a capacity to keep investing in infrastructure so that we do not have a stop-start process. Given the vulnerability of these future funds, it makes it even more important that in the first allocations we get the most sensible and rigorous assessment to make sure that the investments really are in the national interest and are those of the highest priority; otherwise, it may well be that these funds run dry in the not-too-distant future because of their vulnerability to how well the federal budget is
going. I think that is a critical point and why this joint house committee proposal is such a sensible idea. I certainly thank the coalition for their support of the amendment calling for the setting up of a joint house committee to oversee the funds. While some people might say that there are other committees and so on, we are talking about a huge amount of money being spent in the public interest, and if the priorities are as the government is saying—those that are in the national interest and have the greatest urgency—then the committee will be able to oversee that and no doubt be supportive of such investments.

I also would hope for government and opposition support for the amendments that I will be moving in relation to climate change and peak oil. As I indicated, the last thing we want to see is a situation where these funds are used in a way that undermines the effort to address climate change and energy security, rather than accelerating our readiness for a low-carbon economy, and a world which is even more constrained not just by climate but by oil prices. I am sure everybody in this chamber will welcome the time when we have plug-in electric vehicles which are fuelled by renewable energy, and then we will not have vulnerability to foreign oil. That is clearly the direction that the United States wants to head in and that is the direction that no doubt we in Australia want to head in.

I think this could be an enormously exciting time for infrastructure and an exciting time for redesigning Australia’s cities to be more people friendly, to have cleaner air, to be less congested, with better education services for our whole population for whole-of-life learning, with better hospital and health facilities for the country and an increasing shift towards primary health care and the infrastructure necessary for that. But it is not just about buildings for infrastructure. It is also about providing the backbone to the low-carbon economy, which is the intelligent network and the intelligent grid, if you like. It is about having the transmission capacity to make sure that the whole economy is enabled to maximise energy efficiency, maximise energy generation in the renewables and maximise jobs in the green-collar economy.

I note at this point that the CSIRO did some work recently on this. It has the capacity now to audit the skills gap that we have for the green-collar economy. What we have not done is an audit to look at how you would move people from one industry to another, particularly those who are dependent on the coal industry, for example, from the Hunter Valley, in New South Wales, and the Latrobe Valley, in Victoria. You would audit those skills and see what upgrading or conversion of those skills might be necessary so that the gaps in the new carbon economy can be filled with the transfer of those skills. That is so you do not end up with a dislocation; you end up with a just transition out of one industry and into another. I am certainly encouraged by the fact that the city of Geelong recognises that it cannot rely on the car industry in the way that it did, even if the green car is built in the medium term. People in that industry are recognising that one way to use their manufacturing expertise and manufacturing base is to encourage solar and renewable energy to generate jobs and technology there.

We are on the brink of a revolution just as great as the steam engine was and just as great as information technology was. With the coming together of information technology and an energy revolution, we are on the brink of something fantastic. But we must make sure that Australia is not bypassed, which will be the outcome if we focus on coal ports and more roads. That is why there is an urgency to accepting the Greens amendments, to make sure that climate
change and peak oil are major considerations in the disbursement of these moneys.

**Senator LUDLAM** (Western Australia) (12.26 pm)—I would like to follow on with some comments, in the same vein as those of Senator Milne, about the importance of seeing these funds as essentially a once-in-a-generation opportunity to contribute to the transition to a low-carbon economy that Australia so desperately needs. I would like to preface my remarks by saying that there was an unreasonably short time frame given for the Nation-building Funds Bill 2008, the Nation-building Funds (Consequential Amendments) Bill 2008 and the COAG Reform Fund Bill 2008 to be reviewed. The very brief inquiry of the Senate Standing Committee on Economics essentially heard quite unrepresentative comment and input from only five organisations. There were no independent experts and there were no non-government organisations that were really given the ability to comment in the time provided. So what we are seeking to do, particularly with the foreshadowed amendments and the proposal for a joint standing committee on nation building, is to provide a measure of that accountability which, unfortunately, was lacking in the run-up.

This really goes to the question: what are these funds for? Are they preparing Australia for the challenges of the 1950s or the challenges of the 21st century? That is really what this debate rests on. The global economic crisis has prompted the call for swift passage of the bills, but, given the sums of money involved and the problems that would result from policy of this kind being made on the run, it would be worth taking a little more time than has been allowed to improve the transparency and accountability measures and to reach a consensus on how these funds should be managed and invested, particularly given the concerns that the committee heard from the Australian National Audit Office.

As Senator Milne has said, the overarching principles of the bills that we are addressing today do not touch on the urgent and fundamental priorities of reducing greenhouse gas emissions, adapting to climate change impacts and preparing for peak oil. I think that in the 21st century that is what nation building is really all about. If these principles were to be incorporated, the Nation-building Funds Bill and the COAG Reform Fund Bill would represent a real opportunity to build the infrastructure that we need for this important transition.

This morning was the occasion of the launching of, I think, the first ever Senate inquiry into public transport. I want to make a few comments about the central role that public transport can play, if we are going to be talking about nation building, in refashioning Australia as a renewable economy. In Victoria alone, emissions from the transport sector are growing four times as fast as general energy use. This is not necessary. Not only is an efficient mass transit system an essential component of any carbon reduction strategy, but improving mass transit means Australians will spend less on petrol, waste less time in traffic jams, reduce congestion and be able to access the services that they need. Other benefits of course include clean air, the increased safety of our communities, more open spaces and so on.

What we have now are some of the most car-dependent cities anywhere in the world. They have a very high ecological footprint, but they also come at a very high cost to the people who live there. Our cities rely on the availability of cheap fossil fuel, which will shortly be running out. The dip that we are seeing in world oil prices at the moment, due to the global economic uncertainty, should be seen as very much a transitory stage. It perhaps gives us an opportunity to address peak oil before we are in the midst of an oil shock, when it will be all that much more difficult.
The people who are shoulderingshouldering the real cost burden at the moment are people living on the outer fringes of Australia’s cities because these areas have vastly less access to public transport services and are thus greatly more vulnerable to the sort of oil price shocks that we are going to be seeing down the line. These are the people who will be left stranded by us if the funds that are to be shortly administered under these bills are not directed to genuine sustainability initiatives. It is in these postcodes—if you look at the most recent figures—that the mortgage defaults are occurring. It is the people stranded on the outer fringes of cities who are most acutely vulnerable to rising transport costs and falling land values. Bringing in public transport and beginning, for the first time, genuine Commonwealth funding commitments to public transport would have quite lasting and quite profound impacts on the way our cities are designed and the way that we live in them. Because public transport, particularly fixed infrastructure public transport like bus rapid transit or light rail, creates high-density cores where people can invest and in which land values improve. In addition, jobs and services can be concentrated close to public transport nodes. That is one way of rescuing land values on the fringes of our cities, rather than leaving people stranded and leaving them to mortgage defaults.

We know, after years of research, that building road capacity does not make public transport a more attractive travel alternative. It does not encourage people to make more sustainable transport choices. The opposite, really, is true. Any gains made on improving public transport patronage are immediately cancelled out by incentives to travel by car. We have seen this in some of the sketchy detail that is available on the bids that the state and territory governments have been putting forward to the Building Australia Fund. One small example is in Western Australia where the new Premier, Mr Barnett, has proposed half a billion dollars worth of Commonwealth funding on further freeways—which we simply do not need—around the airport. This is one of the reasons why we were proposing the joint standing committee to look at the appropriateness of the sorts of bids that are coming through these funds. We were proposing it in order that we do not end up just building infrastructure fit for the 1950s. The minister is required to have regard to the advice that is provided by the various advisory boards but, as yet, no evaluation criteria have been developed to which Infrastructure Australia and other advisory bodies have to apply when giving this advice. The details obviously require some further refinement, and the principles and scope of these evaluation criteria ideally should have been included in the legislation.

As recently as October, in estimates hearings, the department was unable to tell us how they were modelling oil prices and future carbon prices into their evaluation criteria as to which projects would be funded. Obviously, a choice of whether to fund half a billion dollars worth of freeways or urban public transport would rest very, very heavily on assumptions about where the price of energy is going. So we would—very much—like to see the establishment of this parliamentary joint committee as a crucial accountability mechanism so that these funds are put absolutely to their best use, and so that we take full advantage of this once-in-a-generation opportunity.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (12.32 pm)—I would like to thank those who have contributed to this second reading debate, and I will
make some final remarks on this second reading stage of the bills. The Nation-
building Funds Bill 2008 and the Nation-
building Funds (Consequential Amendments) 
Bill 2008 give effect to the government’s 
2008-09 announcement to establish the 
Building Australia Fund, the Education In-
vestment Fund and the Health and Hospitals 
Fund. To provide a mechanism to distribute 
grants payments from funds to states and 
territories, the Treasurer has also introduced 
the COAG Reform Fund Bill 2008 to estab-
lish the COAG Reform Fund. With these 
significant commitments in transport, com-
 munications, energy, water, education, re-
search and health infrastructure, the nation-
building funds will assist in addressing Aus-
tralia’s immediate challenges in response to 
the global financial crisis as well as its 
longer-term challenges over the next decade 
and beyond. The government will contribute 
a total of $26.3 billion to the funds this fi-
nancial year. The funds will be established as 
special accounts in the Consolidated Revenue 
Fund, meaning that amounts credited to 
the funds represent amounts that have been 
appropriated and clearly committed for fu-
ture expenditure for the creation and devel-
opment of infrastructure.

In view of a strong commitment to shield 
Australians from the global financial crisis, 
the government will accelerate its nation-
building agenda. The legislation allows for 
the interim advisory board arrangements that 
have now commenced. Allowing expenditure 
in critical infrastructure to commence from 
2009 will contribute to economic activity in 
the short term and extend growth potential in 
the medium to long term. The nation-
building funds will utilise and build on the 
governance arrangements for the Future 
Fund. The Future Fund Board of Guardians 
will manage the investments of the funds. So 
there will be a high level of transparency and 
accountability associated with both the man-
gagement and the payments from the funds. 
For example, the legislation establishes an 
evaluation framework that provides for rig-
orous assessment of projects by independent 
advisory bodies. Projects will need to satisfy 
r rigorous evaluation criteria, and these criteria 
will be tabled in the parliament as disallow-
able legislative instruments. There will be a 
common and rigorous approach in the 
evaluation criteria framework across the 
three funds that is consistent with the nation-
building objectives of the funds. In line with 
the government’s overarching principles, 
projects that are financed from the funds 
should address national infrastructure priori-
ties, demonstrate high benefits and effective 
use of resources, efficiently address infra-
structure needs and demonstrate that they 
have achieved established standards in im-
plementation and management.

The government will consider which of 
those projects will be funded through the 
budget process and will include details of 
infrastructure payments in the budget docu-
mentation. Parliamentary transparency and 
scrutiny for payments from the funds will 
also be provided by the general drawing 
rights limit which will be included in the 
annual appropriations acts for financial years 
2009-10 onwards. The drawing rights limit 
restricts the total amount that may be paid 
out in a financial year to support relevant 
infrastructure expenditure. This will give the 
parliament a mechanism by which it may 
sight the rate at which amounts are being 
expended. The portfolio ministers will be 
responsible and accountable for payments 
and for the delivery of projects in line with 
their portfolio responsibilities. The legisla-
tion therefore provides for these arrange-
ments and clear policy accountability for 
payments from the funds. The funds demon-
strate the government’s commitment towards 
building the nation’s capabilities, strengthen-
ing the economy and providing critical in-
vestment in key areas of nation-building infrastructure. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

NATION-BUILDING FUNDS BILL 2008

Bill—by leave—taken as a whole.

Senator MILNE (Tasmania) (12.38 pm)—by leave—I move, on behalf of the Australian Greens and the opposition, amendments (1) to (8) on sheet 5963 together:

(1) Clause 4, page 5 (after line 29), after the definition of COAG Reform Fund, insert:

committee means the Parliamentary Joint Committee on Nation-Building for the time being constituted under Part 2.5A.

committee member means a member of the Parliamentary Joint Committee on Nation-Building.

(2) Page 90 (after line 22), after Part 2.5, insert:

Part 2.5A—Parliamentary Joint Committee on Nation-Building

(1) As soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of the Parliament to be known as the Parliamentary Joint Committee on Nation-Building is to be appointed according to the practice of the Parliament with reference to the appointment of members to serve on joint select committees of both Houses of the Parliament.

(2) The committee must consist of 12 committee members; namely, 6 members of the Senate appointed by the Senate, at least one of whom is to be nominated by any minority group or groups or independent senator or independent senators, and 6 members of the House of Representatives appointed by that House; provided that there must not be more than 5 members in total from either the Government or the Opposition.

(3) A member of the Parliament is not eligible for appointment as a committee member if he or she is:

(a) a Minister;
(b) the President of the Senate;
(c) the Speaker of the House of Representatives; or
(d) the Deputy-President and Chairman of Committees of the Senate or the Chairman of Committees of the House of Representatives.

(4) A committee member ceases to hold office:

(a) when the House of Representatives expires by effluxion of time or is dissolved;
(b) if he or she becomes the holder of an office specified in any of the paragraphs of subsection (3);
(c) if he or she ceases to be a member of the House of the Parliament by which he or she was appointed; or
(d) if he or she resigns his or her office as provided by subsection (5) or (6).

(5) A committee member appointed by the Senate may resign his or her office by writing signed by him or her and delivered to the President of the Senate.

(6) A committee member appointed by the House of Representatives may resign his or her office by writing signed by him or her and delivered to the Speaker of that House.

(7) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the committee members appointed by that House.

115B Powers and proceedings of the committee

All matters relating to the powers and proceedings of the committee must be
The duties of the Committee are:

(a) to consider Infrastructure Australia advice that is referred to the committee under section 119B;

(b) to consider EIF Advisory Board advice that is referred to the committee under section 171A;

(c) to consider HHF Advisory Board advice that is referred to the committee under section 246A;

(d) to consider relevant Ministers’ statements of reasons;

(e) to report to both Houses of the Parliament, with such comments as it thinks fit, on any advice referred to it under paragraph (a), (b) or (c), and on any matter appertaining to or connected with that advice to which, in the opinion of the committee, the attention of the Parliament should be directed;

(f) to examine each annual report on Infrastructure Australia and report to the Parliament on any matter appearing in, or arising out of, any such annual report;

(g) to examine trends and changes in infrastructure provision and provision of education, health and hospital services and report to both Houses of the Parliament any change which the committee thinks desirable to:

(i) the functions, structure and operations of Infrastructure Australia, the EIF Advisory Board or the HHF Advisory Board; or

(ii) the operation of the Building Australia Fund, the Education Investment Fund or the Health and Hospitals Fund;

(h) to inquire into any question in connection with its duties that is referred to it by either House of the Parliament, and to report to that House upon that question.

(3) Page 93 (after line 4), after clause 119, insert:

119A Infrastructure Australia advice to be tabled

On receiving any advice prepared by Infrastructure Australia under subsection 116(1), 117(1), 118(1) or 119(1), the relevant Minister must cause a copy of the advice to be laid before each House of the Parliament within 3 sitting days of that House after the day on which he or she receives the advice.

(4) Page 93 (after line 4), after clause 119, insert:

119B Reference of advice of Infrastructure Australia to the Parliamentary Joint Committee on Nation-Building

(1) If Infrastructure Australia provides advice in accordance with subsection 116(1), 117(1), 118(1) or 119(1) in support of infrastructure the estimated cost of which exceeds the threshold amount, the advice and any document it considered when formulating that advice stands referred to the Parliamentary Joint Committee on Nation-Building for consideration and report.

(2) If Infrastructure Australia provides advice in accordance with subsection 116(1), 117(1), 118(1) or 119(1) in support of infrastructure the estimated cost of which does not exceed the threshold amount, the advice and any document it considered when formulating that advice must be provided to the Parliamentary Joint Committee on Nation-Building.

(3) On receiving the advice of Infrastructure Australia in support of infrastructure the estimated cost of which exceeds the threshold amount, the Minister must cause a copy of the advice to be laid before each House of the Parliament within 3 sitting days of that House after the day on which the Min-
ister receives the advice, together with such plans, specifications and other particulars as the Minister thinks necessary.

(4) Development of infrastructure which is the subject of advice that has been referred to the committee in accordance with this section must not commence before a report of the committee concerning the work has been presented to both Houses of the Parliament.

(5) If, after a report of the committee in accordance with subsection (1) has been presented to both Houses of the Parliament and before the development of the infrastructure has commenced, each House resolves that, for reasons or purposes stated in the resolution, the advice of Infrastructure Australia is again referred to the committee for consideration and report, the committee must further consider the advice and the development of the infrastructure must not commence before a further report of the committee concerning the advice has been presented to both Houses.

(6) In this section:

estimated cost, in relation to the development of infrastructure, means an estimate of cost made when all the particulars of the development of the infrastructure substantially affecting its cost have been determined and includes the life-cycle costs of the infrastructure.

threshold amount means:

(a) $50,000,000; or

(b) if another lower amount is specified in the regulations for the purposes of this definition—that other amount.

(5) Clause 171, page 132 (after line 21), after subclause (4), insert:

(4A) On receiving any advice prepared by the EIF Advisory Board under subsection (1) or (6), the relevant Minister must cause a copy of the advice to be laid before each House of the Parliament within 3 sitting days of that House after the day on which he or she receives the advice.

(6) Page 133 (after line 7), after clause 171, insert:

171A Reference of advice of EIF Board to the Parliamentary Joint Committee on Nation-Building

(1) If the EIF Advisory Board provides advice in accordance with subsection 171(1) or (6) in support of infrastructure the estimated cost of which exceeds the threshold amount, the advice and any document it considered when formulating that advice stands referred to the Parliamentary Joint Committee on Nation-Building for consideration and report.

(2) If the EIF Advisory Board provides advice in accordance with subsection 171(1) or (6) in support of infrastructure the estimated cost of which does not exceed the threshold amount, the advice and any document it considered when formulating that advice must be provided to the Parliamentary Joint Committee on Nation-Building.

(3) On receiving the advice of the EIF Advisory Board in support of infrastructure the estimated cost of which exceeds the threshold amount, the Minister must cause a copy of the advice to be laid before each House of the Parliament within 3 sitting days of that House after the day on which the Minister receives the advice, together with such plans, specifications and other particulars as the Minister thinks necessary.

(4) Development of infrastructure which is the subject of advice that has been referred to the committee in accordance with this section must not commence before a report of the committee concerning the work has been presented to both Houses of the Parliament.
(5) If, after a report of the committee in accordance with subsection (1) has been presented to both Houses of the Parliament and before the development of the infrastructure has commenced, each House resolves that, for reasons or purposes stated in the resolution, the advice of the EIF Advisory Board is again referred to the committee for consideration and report, the committee must further consider the advice and the development of the infrastructure must not commence before a further report of the committee concerning the advice has been presented to both Houses.

(6) In this section:

estimated cost, in relation to the development of infrastructure, means an estimate of cost made when all the particulars of the development of the infrastructure substantially affecting its cost have been determined and includes the life-cycle costs of the infrastructure.

threshold amount means:

(a) $50,000,000; or

(b) if another lower amount is specified in the regulations for the purposes of this definition—that other amount.

(7) Clause 246, page 186 (after line 8), at the end of the clause, add:

(3) On receiving any advice prepared by the HHF Advisory Board under subsection (1), the Health Minister must cause a copy of the advice to be laid before each House of the Parliament within 3 sitting days of that House after the day on which he or she receives the advice.

(8) Page 186 (after line 8), after clause 246, insert:

246A Reference of advice of HHF Board to the Parliamentary Joint Committee on Nation-Building

(1) If the HHF Advisory Board provides advice in accordance with subsection 246(1) in support of infrastructure the estimated cost of which exceeds the threshold amount, the advice and any document it considered when formulating that advice stands referred to the Parliamentary Joint Committee on Nation-Building for consideration and report.

(2) If the HHF Advisory Board provides advice in accordance with subsection 246(1) in support of infrastructure the estimated cost of which does not exceed the threshold amount, the advice and any document it considered when formulating that advice must be provided to the Parliamentary Joint Committee on Nation-Building.

(3) On receiving the advice of the HHF Advisory Board in support of infrastructure the estimated cost of which exceeds the threshold amount, the Minister must cause a copy of the advice to be laid before each House of the Parliament within 3 sitting days of that House after the day on which the Minister receives the advice, together with such plans, specifications and other particulars as the Minister thinks necessary.

(4) Development of infrastructure which is the subject of advice that has been referred to the committee in accordance with this section must not commence before a report of the committee concerning the work has been presented to both Houses of the Parliament.

(5) If, after a report of the committee in accordance with subsection (1) has been presented to both Houses of the Parliament and before the development of the infrastructure has commenced, each House resolves that, for reasons or purposes stated in the resolution, the advice of the HHF Advisory Board is again referred to the committee for consideration and report, the committee must further consider the advice and the development of the infrastructure must not commence before a further report of the committee concerning the
advice has been presented to both Houses.

(6) In this section:

estimated cost, in relation to the development of infrastructure, means an estimate of cost made when all the particulars of the development of the infrastructure substantially affecting its cost have been determined and includes the life-cycle costs of the infrastructure.

threshold amount means:

(a) $50,000,000; or

(b) if another lower amount is specified in the regulations for the purposes of this definition—that other amount.

These amendments give effect to the parliamentary joint standing committee on nation building, to which I referred in my speech in the second reading debate. As I indicated, it is essential that there is parliamentary scrutiny over the disbursement of taxpayers’ funds to be spent on infrastructure in excess of $50 million and that the priorities that have been recommended are reflected. These amendments essentially establish a joint house committee that will consist of 12 people—six from each house and with each house having one independent committee representative—that is, five coalition, five Labor, one Independent and one representative from the crossbenches of the Senate. The committee members would scrutinise the three funds that are being set up.

These amendments enable the setting up of the joint house committee and provide for its reference, which pertains to the three funds. The amendments also provide that the advice on which the advisory bodies make their decisions, those decisions and the advisory bodies’ reports to the minister be laid on the tables of the houses of parliament within three sitting days after that report to the minister has been made so that the parliament has the ability to scrutinise the advice and the basis on which that advice was made.

That advice would then clearly inform the deliberations of the joint house committee.

These are extremely sensible amendments that go to transparency, and we have heard a lot from the government about the need for transparency. The amendments go to the heart of accountability and will enable the community to see within a short time the recommendations of the advisory bodies for each of the three funds. Having given the advice to the minister, that advice is then made available to the parliament and to the people so that they can read the basis upon which the advisory committee’s recommendations to the minister have been made. The joint house committee will then be in a position to scrutinise that. Of course, that means that the community, through the joint house committee, will be involved in the process of nation building and of making determinations about nation-building priorities.

This process will take away the temptation of government to pork barrel with taxpayers’ money for the purpose of influencing election outcomes and providing election sweeteners. There has been way too much of that in this country. The amendments provide for transparency, accountability and proper parliamentary scrutiny. I urge the support of the Senate for these amendments to establish the joint standing committee on nation building.

Senator MINCHIN (South Australia—Leader of the Opposition in the Senate) (12.41 pm)—On behalf of the coalition, I indicate our pleasure to be moving these amendments jointly with the Greens. We think that this is a very important initiative to ensure proper parliamentary scrutiny of these three new funds. We think that it is in the government’s own interest to support these amendments. Any rejection of these amendments by the government for the very important element of parliamentary scrutiny of these funds will, in the public’s mind and
indeed in the minds of members of this chamber, suggest that the government has something to hide.

When we were in government we were lectured for 11½ years by the Labor Party about the importance of parliamentary scrutiny, transparency and oversight of activities of this kind. I would be amazed if the government had any credible arguments about a joint committee of this kind between the two houses, with neither the government nor the opposition having a majority of members. It is appropriate that there be a specialist committee of the parliament that pays close and particular attention to the activities of these funds and to which Infrastructure Australia is accountable. It is important to have a committee dedicated to this task rather than only having, as we heard from the government, general parliamentary oversight.

It is important to stress that we are not submitting here any proposal that involves a committee having veto power over expenditure from these funds. That is not what this is about. We are not trying to prevent the government exercising its proper executive authority but we are saying that there should be a mechanism of this kind to ensure proper transparency, accountability and parliamentary oversight of the activities of the government with respect to these funds, which at least initially do involve some substantial sums of money. I would have thought it would be in the government’s interest to be able to avoid any suggestion, which will arise if this is not in place, that there is partisanship involved in expenditure from these funds. Having been in government I am well aware—and certainly the Labor Party accused us of this—that governments can be tempted to use these as ‘slush funds’. If the government wants to avoid that sort of accusation, the best way to do so is to accept these amendments. They do not cramp the government in any way. All these amendments do is ensure that there is parliamentary oversight and parliamentary scrutiny, without any veto being applied. I commend the amendments to the Senate.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (12.44 pm)—The government will be opposing the jointly sponsored amendments. There might be some validity in the claims made by the opposition and the Greens if, in fact, we had not sought to increase transparency, over and above that which we saw from the former government, in the assessment of these projects. The point I would make is that we have gone well beyond what the former government did in this regard in other areas. The Nation-Building Funds Bill 2008 already provides for rigour and transparency in relation to payments from the funds—much greater levels of rigour, I would argue, than we ever saw from the former government with respect to other allocations for particular projects. We have improved transparency and accountability.

The spending on specific projects is to be assessed by independent advisory bodies against evaluation criteria, and that is a significant change. The projects will then be considered through the budget process, and the infrastructure projects will be reported in the budget papers. Having improved the rigour and accountability of projects through an independent advisory body, we do not see why it is then necessary to add to the existing accountability processes, which are significant—all of us from the government and the opposition are very well used to the rigours of the estimates process. We fail to see why it is then necessary to add yet another duplicative parliamentary process to the existing rigour of the Senate estimates process, given that we have included independent advisory bodies in the bill—which, as said, we did not see from the former government.
The annual appropriation acts will include the maximum limit on the amount that can be paid out in a particular financial year. The annual limit on expenditure will provide that parliament has the mechanism to oversee the rate at which amounts are being expended. As we all know from estimates, there are a whole range of projects which are funded through the appropriation bills and which are subject to enormous rigour at estimates. So we do not see why there needs to be the creation of yet another parliamentary committee beyond that which exists at the present time.

Senator MILNE (Tasmania) (12.47 pm)—I am disappointed that the government is not supporting these amendments. I think it is disingenuous to say that there is a rigorous assessment of government spending through the estimates process. I remind the parliament about the grants that were made under the last government and the absolute rorting of some of those, particularly those regional grants and also the forest industry grants. I have been pursuing those through estimates. The Auditor-General wrote scathing reports on both sets of grants programs, saying they were appallingly administered.

In relation to DAFF’s oversight of grants, particularly those forest industry grants, DAFF have of course had to change their assessment procedures and so on. They were in a situation where grants were made without any kind of proper scrutiny at all. Getting the information out of them as to what happened has been like drawing teeth. There has been money spent in Tasmania in terms of the bushfire expenditure that the Commonwealth made after those terrible bushfires that happened. I have been asking for the last six months: how was the money spent? That is not an unreasonable question. Where was the money spent? How was it spent? The Commonwealth minister says to me: ‘We’re awaiting a report from Tasmania. Tasmania hasn’t provided that report.’ The people of Tasmania do not know where the money is spent. The federal parliament does not know how the money is spent.

So, whilst you might say that there are technically processes for securing this kind of information, they are long and drawn-out processes. It can take a year to get that information after the money is expended, or even longer—if you ever get to the bottom of how the money was spent. But the issue here is not that those processes do not exist; it is that it is important that those advisory boards—they are appointed with expertise and they are going to make recommendations to ministers—make their advice public in a timely manner and that it is scrutinised by the parliament. If that advice is not public, how do we know, when the minister announces his infrastructure project, whether in fact that was what was recommended?

I remind this chamber that, just before the last election, the then Minister for the Environment and Water Resources, Malcolm Turnbull, now the Leader of the Opposition, changed a recommendation that came in about a university grant process. He crossed out ‘ANU’ and put in the university of his choice, in the lead-up to the election—after an assessment process had been gone through and a recommendation had been gone through as to which universities should get this research funding, he just put his pen through it. We could not get that information for a long time—and now we have. The point I am making is that the people of Australia want the recommendations that the advisory boards are making, and any documents pertaining to that, to be available for people to scrutinise and for the parliament to scrutinise. So, whilst I totally accept the processes that the parliament has, they are neither timely nor particularly efficient in providing all the information you need. Whilst the grants I have spoken about were important, in terms of their dollar value they
were small, compared with what we are talking about. That is why I have said that, where the expenditure is $50 million or more—we are not talking about every grant that is made; we are talking about grants where a significant sum is being spent—it is appropriate that the parliament scrutinise the grant.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (12.51 pm)—I will not be repetitive because of the time constraints but, on the logic that is being advanced, where we have significant expenditure in any government department on a major program, under these amendments we would set up yet another committee to oversee a program. We have got committees to do that and the process works very well—that is, the estimates process. We do not support the amendments. I recognise the numbers and we will not be calling a division.

Senator XENOPHON (South Australia) (12.51 pm)—I indicate my support for these amendments. I believe they do increase transparency and accountability. I note the arguments of the government in relation to this matter and what the government said occurred when they were in opposition. I also note the criticisms of the Commonwealth Auditor-General in relation to the Regional Partnerships grants. I think it is important that we learn from what has occurred in the past and these amendments give an added degree of accountability and transparency. I therefore welcome and support these amendments.

Senator MINCHIN (South Australia) (12.52 pm)—I want to take this opportunity to reject completely the accusations by our co-sponsor on these amendments of any rorting of programs under the coalition government. I want to place on record our complete rejection of those suggestions. Nevertheless, I do think Senator Milne is absolutely right about the virtues of increasing parliamentary scrutiny of these three funds.

These are three brand new capital funds, the like of which the Commonwealth government has never had before, that I think would benefit considerably from a committee of both houses specialising in the scrutiny of their activities and taking a proactive role in examining the virtues of prospective decisions. We have the estimates committee process but that is all after the event, and in the short time they have available to them estimates committees often get diverted by a whole lot of other issues that deny them the opportunity to properly scrutinise the sort of activities which these funds are undergoing.

Of course at some point down the track, if Senator Sherry was right and it was the case that other parliamentary oversight was sufficient to mean that this committee was no longer serving a proper purpose, that could be considered by the parliament. But we think that, given the uniqueness of these funds and the moneys available to them, specialist parliamentary scrutiny is entirely appropriate.

Question agreed to.

Senator MINCHIN (South Australia) (12.54 pm)—by leave—I move opposition amendments (1) to (24) on sheet 5684 together:

Transparency by ministers
(1) Clause 52, page 47 (after line 7), after sub-clause (3), insert:

(3A) If the Infrastructure Minister makes a recommendation under subsection (1) in relation to a payment, the Infrastructure Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.
(2) Clause 52, page 47 (after line 23), after subclause (6), insert:

(6A) If the Communications Minister makes a recommendation under subsection (4) in relation to a payment, the Communications Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(3) Clause 52, page 47 (after line 27), after subclause (7), insert:

(7A) If the Communications Minister makes a recommendation under subsection (7) in relation to a payment, the Communications Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(4) Clause 52, page 48 (after line 11), after subclause (10), insert:

(10A) If the Energy Minister makes a recommendation under subsection (8) in relation to a payment, the Energy Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(5) Clause 52, page 48 (after line 26), at the end of the clause, add:

(14) If the Water Minister makes a recommendation under subsection (11) in relation to a payment, the Water Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(6) Clause 64, page 55 (after line 24), at the end of the clause, add:

(4) If the Infrastructure Minister makes a recommendation under subsection (1) in relation to a payment, the Infrastructure Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(7) Clause 71, page 60 (after line 8), after subclause (3), insert:

(3A) If the Communications Minister makes a recommendation under subsection (1) in relation to a payment, the Communications Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(8) Clause 78, page 63 (after line 23), at the end of the clause, add:

(4) If the Energy Minister makes a recommendation under subsection (1) in relation to a payment, the Energy Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(9) Clause 85, page 67 (after line 23), at the end of the clause, add:

(4) If the Water Minister makes a recommendation under subsection (1) in relation to a payment, the Water Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(10) Clause 90, page 71 (after line 16), at the end of the clause, add:

(4) If the Infrastructure Minister makes a recommendation under subsection (1) in relation to a payment, the Infrastructure Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(11) Clause 95, page 74 (after line 19), at the end of the clause, add:

(4) If the Communications Minister makes a recommendation under subsection (1) in relation to a payment, the Communications Minister must cause a written statement of reasons for the recom-
mendation to be laid before each House of the Parliament within 9 sitting days of that House.

(12) Clause 100, page 77 (after line 25), at the end of the clause, add:

(4) If the Energy Minister makes a recommendation under subsection (1) in relation to a payment, the Energy Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(13) Clause 105, page 80 (after line 29), at the end of the clause, add:

(4) If the Water Minister makes a recommendation under subsection (1) in relation to a payment, the Water Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(14) Clause 177, page 136 (after line 10), after subclause (3), insert:

(3A) If the Education Minister makes a recommendation under subsection (1) in relation to a payment, the Education Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(15) Clause 177, page 136 (after line 26), after subclause (6), insert:

(6A) If the Research Minister makes a recommendation under subsection (4) in relation to a payment, the Research Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(16) Clause 177, page 137 (after line 10), at the end of the clause, add:

(10) If the EIF designated Ministers make a recommendation under subsection (7) in relation to a payment, the EIF designated Ministers must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(17) Clause 184, page 141 (after line 20), after subclause (3), insert:

(3A) If the Education Minister makes a recommendation under subsection (1) in relation to a payment, the Education Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(18) Clause 184, page 142 (after line 2), at the end of the clause, add:

(7) If the EIF designated Ministers make a recommendation under subsection (4) in relation to a payment, the EIF designated Ministers must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(19) Clause 191, page 146 (after line 2), after subclause (3), insert:

(3A) If the Research Minister makes a recommendation under subsection (1) in relation to a payment, the Research Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(20) Clause 191, page 146 (after line 18), at the end of the clause, add:

(7) If the EIF designated Ministers make a recommendation under subsection (4) in relation to a payment, the EIF designated Ministers must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.
(21) Clause 195, page 149 (after line 16), at the end of the clause, add:

(4) If the Education Minister makes a recommendation under subsection (1) in relation to a payment, the Education Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(22) Clause 252, page 188 (after line 24), at the end of the clause, add:

(4) If the Health Minister makes a recommendation under subsection (1) in relation to a payment, the Health Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(23) Clause 258, page 191 (after line 23), at the end of the clause, add:

(4) If the Health Minister makes a recommendation under subsection (1) in relation to a payment, the Health Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

(24) Clause 263, page 195 (after line 9), at the end of the clause, add:

(4) If the Health Minister makes a recommendation under subsection (1) in relation to a payment, the Health Minister must cause a written statement of reasons for the recommendation to be laid before each House of the Parliament within 9 sitting days of that House.

While these are lengthy amendments they all go to the one purpose and that is to improve transparency. I would have thought the Labor Party, given its track record and rhetoric in relation to transparency of executive decisions, should not have any objection to this series of amendments. All the amendments do is to seek to improve that transparency. All that is required is that when a minister chooses a project he or she table in the parliament a statement of reasons why that project was supported. The requirement would not go to all the supporting material but it would allow the public and the parliament to compare the project supported by the relevant minister to both the report of the joint standing committee, which the Senate has agreed should be established, and to the projects recommended by advisory boards.

We think this is an important element in the establishment of these funds. This is not a great burden on the government but, of course, governments find these things a nuisance. By virtue of these amendments the parliament would be asking the government to ensure that, when the government chooses a project to be funded from one of these funds, they lay on the table in the parliament a statement of reasons why the project was supported. I commend the series of amendments to the Senate.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (12.56 pm)—As I have previously pointed out, the bill already provides for rigor and transparency. Spending on specific projects would be assessed by independent advisory bodies and I would point out that the Senate has added yet another body, a joint parliamentary committee, on top of the additional rigor of independent advisory bodies. Here we have a set of amendments that go to further requirements over and above that which this government has set out, which are a considerable improvement on the practices of the previous government. These amendments go over and above the joint committee that has just been supported by amendment. All the agreed infrastructure projects will be reported in the budget papers.

I point out, as I did earlier, that as all of these projects are reported we have the capacity, which no doubt will be used, for each minister that is referred to in these amend-
ments to be questioned—as I am sure they will be, very rigorously and vigorously—as is the Senate’s rights at estimates. We already have a process, so why do we need to add another? I note that there are other amendments that go to even more processes over and above what has already been agreed to by the government in the bill and over and above what has already been included via passage of the amendment that has just been added by the Senate. We do not support the amendments moved by the opposition.

Senator MILNE (Tasmania) (12.57 pm)—I want to indicate that the Greens will be supporting the amendments.

Senator XENOPHON (South Australia) (12.58 pm)—I indicate my support for these amendments.

Question agreed to.

Senator MINCHIN (South Australia) (12.58 pm)—by leave—I move opposition amendments (25) to (47) on sheet 5684 together:

Payment recommendation criteria

(25) Clause 52, page 46 (lines 26 to 29), omit subclause (2), substitute:

(2) The Infrastructure Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 116 that:

(a) the payment satisfies the relevant BAF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(26) Clause 52, page 47 (lines 12 to 15), omit subclause (5), substitute:

(5) The Communications Minister must not make a recommendation under subsection (4) in relation to a payment unless Infrastructure Australia has advised under section 117 that:

(a) the payment satisfies the relevant BAF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(27) Clause 52, page 48 (lines 1 to 4), omit subclause (9), substitute:

(9) The Energy Minister must not make a recommendation under subsection (8) in relation to a payment unless Infrastructure Australia has advised under section 118 that:

(a) the payment satisfies the relevant BAF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(28) Clause 52, page 48 (lines 16 to 19), omit subclause (12), substitute:

(12) The Water Minister must not make a recommendation under subsection (11) in relation to a payment unless Infrastructure Australia has advised under section 119 that:

(a) the payment satisfies the relevant BAF evaluation criteria; and
(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(29) Clause 64, page 55 (lines 14 to 17), omit subclause (2), substitute:

(2) The Infrastructure Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 116 that:

(a) the payment satisfies the relevant BAF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(30) Clause 71, page 59 (lines 27 to 30), omit subclause (2), substitute:

(2) The Communications Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 117 that:

(a) the payment satisfies the relevant BAF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(31) Clause 78, page 63 (lines 13 to 16), omit subclause (2), substitute:

(2) The Energy Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 118 that:

(a) the payment satisfies the relevant BAF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(32) Clause 85, page 67 (lines 13 to 16), omit subclause (2), substitute:

(2) The Water Minister must not make a recommendation under subsection (1) in relation to a payment unless Infrastructure Australia has advised under section 119 that:

(a) the payment satisfies the relevant BAF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(33) Clause 90, page 71 (lines 6 to 9), omit subclause (2), substitute:

(2) The Infrastructure Minister must not make a recommendation under subsection (1) in relation to a grant unless Infrastructure Australia has advised under section 116 that:

(a) the grant satisfies the relevant BAF evaluation criteria; and
(b) if the grant will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

c) the grant will not be made in relation to a project that requires the payment of an upfront fee.

(34) Clause 95, page 74 (lines 9 to 12), omit subclause (2), substitute:

(2) The Communications Minister must not make a recommendation under subsection (1) in relation to a grant unless Infrastructure Australia has advised under section 117 that:

(a) the grant satisfies the relevant BAF evaluation criteria; and

(b) if the grant will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the grant will not be made in relation to a project that requires the payment of an upfront fee.

(35) Clause 100, page 77 (lines 15 to 18), omit subclause (2), substitute:

(2) The Energy Minister must not make a recommendation under subsection (1) in relation to a grant unless Infrastructure Australia has advised under section 118 that:

(a) the grant satisfies the relevant BAF evaluation criteria; and

(b) if the grant will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the grant will not be made in relation to a project that requires the payment of an upfront fee.

(36) Clause 105, page 80 (lines 19 to 22), omit subclause (2), substitute:

(2) The Water Minister must not make a recommendation under subsection (1) in relation to a grant unless Infrastructure Australia has advised under section 119 that:

(a) the grant satisfies the relevant BAF evaluation criteria; and

(b) if the grant will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the grant will not be made in relation to a project that requires the payment of an upfront fee.

(37) Clause 177, page 135 (line 27) to page 136 (line 2), omit subclause (2), substitute:

(2) The Education Minister must not make a recommendation under subsection (1) in relation to a payment unless the EIF Advisory Board has advised under paragraph 171(1)(a) that:

(a) the payment satisfies the relevant EIF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(38) Clause 177, page 136 (lines 15 to 18), omit subclause (5), substitute:

(5) The Research Minister must not make a recommendation under subsection (4) in relation to a payment unless the EIF Advisory Board has advised under paragraph 171(1)(b) that:

(a) the payment satisfies the relevant EIF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and
(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(39) Clause 177, page 136 (line 31) to page 137 (line 2), omit subclause (8), substitute:

(8) The EIF designated Ministers must not make a recommendation under subsection (7) in relation to a payment unless the EIF Advisory Board has:

(a) given advice under subsection 171(6) about the payment; and:
(b) if the payment will result in the creation or development of an asset—advised that the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and
(c) advised that the payment will not be made in relation to a project that requires the payment of an upfront fee.

(40) Clause 184, page 141 (lines 9 to 12), omit subclause (2), substitute:

(2) The Education Minister must not make a recommendation under subsection (1) in relation to a payment unless the EIF Advisory Board has advised under paragraph 171(1)(a) that:

(a) the payment satisfies the relevant EIF evaluation criteria; and
(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and
(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(41) Clause 184, page 141 (lines 25 to 28), omit subclause (5), substitute:

(5) The EIF designated Ministers must not make a recommendation under subsection (4) in relation to a payment unless the EIF Advisory Board has:

(a) given advice under subsection 171(6) about the payment; and:
(b) if the payment will result in the creation or development of an asset—advised that the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and
(c) advised that the payment will not be made in relation to a project that requires the payment of an upfront fee.

(42) Clause 191, page 145 (lines 22 to 25), omit subclause (2), substitute:

(2) The Research Minister must not make a recommendation under subsection (1) in relation to a payment unless the EIF Advisory Board has advised under paragraph 171(1)(b) that:

(a) the payment satisfies the relevant EIF evaluation criteria; and
(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and
(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(43) Clause 191, page 146 (lines 7 to 10), omit subclause (5), substitute:

(5) The EIF designated Ministers must not make a recommendation under subsection (4) in relation to a payment unless the EIF Advisory Board has:

(a) given advice under subsection 171(6) about the payment; and:
(b) if the payment will result in the creation or development of an asset—advised that the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and
(c) advised that the payment will not be made in relation to a project that re-
quires the payment of an upfront fee.

(44) Clause 195, page 149 (lines 5 to 8), omit subclause (2), substitute:

(2) The Education Minister must not make a recommendation under subsection (1) in relation to a grant unless the EIF Advisory Board has advised under paragraph 171(1)(a) that:

(a) the grant satisfies the relevant EIF evaluation criteria; and

(b) if the grant will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the grant will not be made in relation to a project that requires the payment of an upfront fee.

(45) Clause 252, page 188 (lines 13 to 16), omit subclause (2), substitute:

(2) The Health Minister must not make a recommendation under subsection (1) in relation to a payment unless the HHF Advisory Board has advised under paragraph 246(1)(a) that:

(a) the payment satisfies the relevant HHF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

(46) Clause 258, page 191 (lines 12 to 15), omit subclause (2), substitute:

(2) The Health Minister must not make a recommendation under subsection (1) in relation to a payment unless the HHF Advisory Board has advised under paragraph 246(1)(a) that:

(a) the payment satisfies the relevant HHF evaluation criteria; and

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

We think this is a very important series of amendments to this bill which will improve it. The amendments ensure that any project recommended by a relevant minister must have taken into account the running costs of the project and prohibits any upfront fees being charged on a project, as we have seen occur in New South Wales where the government has required project proponents to pay upfront fees to the government. The wording is set out most clearly, for example, in subclause 25:

The Infrastructure Minister must not make a recommendation … unless Infrastructure Australia has advised … that:

(b) if the payment will result in the creation or development of an asset—the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and
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(c) the payment will not be made in relation to a project that requires the payment of an upfront fee.

As Senator Sherry would now know, being in government—as I certainly experienced in government—one of the real traps in providing capital funding to particular projects is the issue of ongoing running costs of the project. We think there is a real risk to the budget in future and to the recurrent expenditures in the budget in future, if there is no account taken of ongoing running costs, and who is going to pay for them, in the assessment of projects. We had a dramatic example of this problem with the Labor Party’s glib promise at the last election to provide computers to everybody in schools. It is a promise that has not been honoured in full and there has now been a massive blow-out in the total cost of that promise because they did not properly allow for the associated running costs of such a capital expenditure, with the government having to find another $800 million to ensure that these computers can actually be used. That is a classic case of not taking full account. I saw, in sitting around the NSC with Defence projects, that taking into account ongoing running costs is critical.

We think this is a very important series of amendments and we see no reason why the government would not want to support them. In relation to the prohibition of upfront fees, that has been raised with the coalition by a lot of firms in the development and examination of this legislation. As I understand it, without this prohibition there is a risk of superannuation funds being involved in these projects because they cannot make such payments. That is the advice as I understand it. In any event, we think the practice of these upfront fees being paid to governments is wrong and should be prohibited. I commend this set of amendments to the Senate.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.02 pm)—These amendments cover two broad thematic areas. With respect to the requirement that all project funding decisions need to ensure there are financial commitments from all asset owners and stakeholders to meet the whole-of-life asset costs, I would point out that under the evaluation criteria framework for the funds, a core principle is that proponents must demonstrate they can achieve established standards in implementation and management. They cannot get beyond first base unless they disclose that. This framework includes that a recipient can support infrastructure once it is built. I think it would be very obvious that, in that criteria framework, you would take into account that the recipient can support the infrastructure once it is built. There would obviously have to be some ongoing arrangement.

The interim evaluation criteria for the Education Investment Fund and the Health and Hospitals Fund require a demonstration of how the infrastructure proposal can continue to operate beyond receiving payments from the funds. It would seem to me to be fundamental common sense that you include that in the evaluation criteria, and we do that.

With respect to the prohibition of the payment of upfront fees on projects in situations where the federal government puts its money in but the state or the private sector do not, funding arrangements will be covered in funding agreements which will protect the Commonwealth’s interests. Prohibiting upfront fees could lead to less coinvestment from certain sectors, such as with the higher education institutions. The evaluation framework requires proponents to demonstrate that they can achieve established standards in implementation and management.

I do not know where Senator Minchin got his information about superannuation funds
from. I do spend a fair bit of time with them in discussions around all manner of issues, but this issue around upfront fees and/or financial commitments over whole-of-life asset costs has not been raised with me by superannuation funds. I cannot recall one fund raising it with me. They have raised other matters about infrastructure investment generally, and a whole range of fronts where they experience some alleged frustration, I would have to say—sometimes a legitimate frustration and sometimes other issues I am not quite so sure about. But I have not had them raise any specific concerns about the government’s proposals in evaluation criteria. Indeed, superannuation funds that I have talked to overwhelmingly support the initiatives of the government and are not looking to this sort of amendment. Anyway, I suspect that Senator Milne is going to get up and support it, I recognise the numbers and I will not be calling a division.

Senator MINCHIN (South Australia) (1.05 pm)—I thank Senator Sherry for his remarks, but I am disappointed he does not see the purpose of making the amendments. In relation to the first part of the clause in relation to the ongoing running costs, Senator Sherry is the star witness for the prosecution. If he says it is obvious that all this would be taken into account, then he cannot have any grounds for objecting to this being a requirement placed upon the minister in relation to any payments. I would have thought that would be of no concern to the government if the government is confident that this will be a function of the way in which the payments will work. I thank him for his support.

Senator MILNE (Tasmania) (1.06 pm)—The Greens will be supporting the amendments.

Question agreed to.
into the funds is open and transparent and able to be scrutinised by the parliament.

We do not think this is onerous in any way. You would anticipate that, in the normal course of events, no disallowance would ever be moved. But we do think that it is appropriate that there is the parliamentary opportunity to scrutinise the funding sources of the funds in an open and transparent fashion. So I commend this set of amendments to the Senate.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.07 pm)—Again, the government will not be supporting this new requirement. The arrangement for credits to the funds is consistent with the approach taken for the Future Fund and the Higher Education Endowment Fund. Credits to the fund are determined through legislative instruments which are required to be tabled in the parliament and are also registered on the Federal Register of Legislative Instruments. Normally such determinations would be regarded as administrative rather than legislative in character; however, to provide transparency to the parliament, these determinations have been made non-disallowable instruments. We will not be supporting the amendments.

Senator MILNE (Tasmania) (1.08 pm)—The Greens will be supporting those amendments.

Question agreed to.

Senator MINCHIN (South Australia) (1.08 pm)—by leave—I move opposition amendments (55) to (61) on sheet 5684:

(55) Clause 4, page 6 (after line 2), after the definition of Communications Minister, insert:

Competitive Neutrality Guidelines means the Australian Government Competitive Neutrality Guidelines for Managers contained in Finance Management Guidance No. 9, published by the Department of Finance and Deregulation, as in force from time to time.

(56) Clause 116, page 91 (lines 11 and 12), omit subclause (2), substitute:

(2) In giving advice under subsection (1), Infrastructure Australia must:

(a) apply the BAF evaluation criteria; and

(b) apply the Competitive Neutrality Guidelines, if applicable; and

(c) if the payment will result in the creation or development of an asset—take into account whether the owners of the asset will meet all the whole-of-life asset costs, including operational costs; and

(d) take into account whether or not the project will require the payment of an upfront fee.

(57) Clause 117, page 91 (lines 23 and 24), omit subclause (2), substitute:

(2) In giving advice under subsection (1), Infrastructure Australia must:

(a) apply the BAF evaluation criteria; and

(b) apply the Competitive Neutrality Guidelines, if applicable; and

(c) if the payment will result in the creation or development of an asset—take into account whether or not the owner or owners of the asset will pay the whole-of-life costs; and

(d) take into account whether or not the project will require the payment of an upfront fee.

(58) Clause 118, page 92 (lines 11 and 12), omit subclause (2), substitute:

(2) In giving advice under subsection (1), Infrastructure Australia must:

(a) apply the BAF evaluation criteria; and

(b) apply the Competitive Neutrality Guidelines, if applicable; and

(c) if the payment will result in the creation or development of an as-
In giving advice under subsection (1), Infrastructure Australia must:

(a) apply the BAF evaluation criteria; and

(b) apply the Competitive Neutrality Guidelines, if applicable; and

(c) if the payment will result in the creation or development of an asset—take into account whether or not the owner or owners of the asset will pay the whole-of-life costs; and

(d) take into account whether or not the project will require the payment of an upfront fee.

(60) Clause 171, page 132 (lines 20 and 21), omit subclause (4), substitute:

(4) In giving advice under paragraph (1)(a) or (b), the EIF Advisory Board must:

(a) apply the EIF evaluation criteria; and

(b) apply the Competitive Neutrality Guidelines, if applicable; and

(c) if the payment will result in the creation or development of an asset—take into account whether or not the owner or owners of the asset will pay the whole-of-life costs; and

(d) take into account whether or not the project will require the payment of an upfront fee.

This is quite an important issue. It goes to the matters that should be taken into account in giving advice on projects. The important issue here is that of competitive neutrality. It is always an issue when governments fund projects—and I saw this often through the 11½ years that we were in government, and I am sure Senator Sherry is well aware of this.

It is quite an important principle that government funding of particular projects does not breach the very important principle of competitive neutrality and, either by design or inadvertence, disadvantage private providers of similar or equivalent services by virtue of taxpayers' money being used to fund particular projects.

It is an inherent principle of government—one not always necessarily properly observed by either side of the parliament at state or federal level, but one the coalition does believe is very important. It is one that I personally believe is critically important and, in my years as finance minister, it is one that I took great account of. So I do think it is quite important that, in relation to projects that are to be funded, there is this assessment of the question of competitive neutrality. It is quite important that the rights of private providers of services derived from infrastructure are taken proper account of and they are not commercially disadvantaged by the consequences of taxpayers' money being used to fund particular projects. So I do commend these amendments.
**Senator MILNE** (Tasmania) (1.11 pm)—
The Greens will be supporting those amendments.

**Senator SHERRY** (Tasmania—Minister for Superannuation and Corporate Law) (1.11 pm)—I must say that I am surprised the Greens are supporting this—for a pretty obvious reason. It is not always easy to tell what is in fact competitive neutral policy. Competitive neutral policy requires that the Commonwealth does not use its legislative or fiscal powers to advantage its own businesses over the private sector. As I say, it is not always easy to tell, as we have seen with ABC Learning, for example—which is why I would have thought the Greens would have been a little more hesitant to jump in to support these amendments.

The government does adhere to the neutrality policy. Consistent with best practice, applications for payments from the funds will be managed on a competitive basis. Existing government policy will apply to the funds where relevant, including competitive neutrality guidelines. Therefore, we do not believe there is any need to legislate this requirement.

Question agreed to.

**Senator MINCHIN** (South Australia) (1.12 pm)—Mr Temporary Chairman, I note that amendments (62) to (69) all deal with the issue of the Communications Fund, but I seek leave to move them in the following manner, as set out in the running sheet: amendments (62) to (64) and (66) to (68) and then, separately, (65) and (69), because the nature of the question to be put to the chamber is different in relation to (65) and (69). Do I have leave to act accordingly?

Leave granted.

**Senator MINCHIN**—I move opposition amendments (62) to (64) and (66) to (68):

(62) Clause 11, page 15 (lines 10 and 11), omit:

- The balance of the Communications Fund is to be transferred to the Building Australia Fund.

(63) Clause 11, page 16 (lines 12 to 14), omit note 1.

(64) Clause 14, page 18 (lines 15 to 18), omit notes 1 and 2.

(66) Clause 19, page 23 (lines 1 to 7), omit paragraph (b).

(67) Clause 19, page 23 (lines 13 to 17), omit paragraph (d).

(68) Clause 19, page 23 (lines 20 to 22), omit note 2.

I will speak to opposition amendments (62) to (69) together because they all relate to the Communications Fund. I referred to this very important matter in my speech in the second reading debate. One of the most significant initiatives of the coalition government was to set aside in perpetuity an amount of $2 billion in the Communications Fund, as I recall, to be managed, separately and independently, by the Future Fund board and to be preserved and set apart and unable to be tampered with for any partisan reason by any government of the day. It was set aside in perpetuity to provide in perpetuity the earnings from the fund—which, if you estimated at five per cent a year, would give you $100 million a year—to meet the telecommunications needs of rural and regional Australians.

Rural and regional Australians are the most underserved when it comes to telecommunications, as we all know, by virtue of the evident geography of this country. We set up—and I am pleased to see the government has continued—the regular Glasson reviews of the state of telecommunications in rural and regional Australia. The whole design was to ensure that, based on the findings of the regular Glasson reviews of telecommunications needs in this country, there was then available to meet the identified needs coming...
out of the regular reviews $100 million a year—every year in perpetuity—to assist rural and regional Australians approach metro equivalent telecommunications services. And that was going to be there forever, as I said.

The government are purporting to say, ‘We’re going to rip that $2 billion out of the Communications Fund and dump it into our Building Australia Fund. We’ll then run it down and it will be gone forever. But don’t worry about that because we’re going to provide in the budget $100 million a year. Trust us; it’ll be there.’ Well, frankly, rural and regional Australians do not trust the government when it comes to the ongoing provision of that $100 million a year. It may have appeared in this budget to get them through this electoral cycle, but, given that we are rapidly seeing the advent of deficits, you can bet your bottom dollar that the first thing to be cut out of the budget by a Labor ministry will be the $100 million per annum for rural telecommunications needs. It would be highly vulnerable to an expenditure review committee looking for easy money in a situation, like the one we are rapidly approaching, of deficit budgets. In stark contrast, the coalition’s provision was of an in perpetuity fund providing, separately and independently, $100 million to ensure that rural and regional telecommunications would be preserved in perpetuity.

What we have here is a proposal by the Labor Party to breach the walls surrounding this Communications Fund and to grab the money. It will all be gone—the $2 billion—in a flash, and then rural and regional Australians will be left to rely on the charity, at their whim and pleasure, of the Labor government. As I said, having sat around the expenditure review committee myself for many years, you can bet that the first thing that will be targeted will be that $100 million for rural and regional telecommunications. We know that the Labor government has slim regard for the needs of rural and regional telecommunications users, having cancelled the OPEL contract in relation to broadband for rural and regional Australians. So rural and regional Australians need the protection provided by the ongoing status of this Communications Fund.

These amendments seek to prevent this Labor government from getting its hands on the Communications Fund and from dissipating it within a few years. Therefore we urge the Senate to support these amendments to preserve the Communications Fund. This is the opportunity for the Senate to say to all those living outside metropolitan Australia that we do care for your vital telecommunications needs; we do understand how important this is to you. In my speech on the second reading debate I cited the fears of the New South Wales Farmers Association were the Communications Fund to be abolished. So I plead with the Senate to support all those that we represent outside the major cities of Australia who need this fund—to preserve it and protect it by supporting these amendments.

Senator MILNE (Tasmania) (1.17 pm)—The Greens will not be supporting amendments (62) to (68), (65) and (69)—that double lot of amendments. I certainly agree that it is absolutely critical that we get broadband to rural and regional Australia. We are totally committed to that happening and in my view Senator Conroy should have made clear that the tender guarantees access to broadband for rural and regional Australia. We are totally committed to that happening and in my view Senator Conroy should have made clear that the government was going to roll out broadband from the outside in, if you like—to go to those areas which are underserviced and make sure that the rollout starts in rural and regional Australia rather than in the more profitable large city centres. The way to ensure that happening would be to make sure that the tender guarantees access to broadband for rural and regional Australia. So
there is certainly an absolute commitment to that.

The reason that I think it makes sense to put the Communications Fund into the Building Australia Fund is that there is a high level of compatibility between rolling out energy infrastructure, intelligent networks, smart grids and so on and rolling out information technology. In the same way, when Basslink was built, linking it to Tasmania, we worked to make sure that we were able to attach to that the information technology capacity and so on. Increasingly, as information technology works with new energy technologies and, as I said, intelligent networks, we are going to see a recognition that you have to plan both together and maximise the synergies that those opportunities provide.

So I do not think you can continue to see communications as being separate from other forms of infrastructure when there is a high level of compatibility and you can maximise effectiveness and maximise efficiency. But I would like to hear from the government, once again, their commitment to getting broadband to rural and regional Australia. We do not want to see the blowing of a big hole in the fund for rolling out broadband—as I think the coalition’s amendments would do. That is one of the other reasons we do not support what the coalition is proposing. But we certainly do support rolling out broadband in rural and regional Australia as a priority. So I would like to hear from the government exactly how they intend to reassure everyone that that is still going to be the case.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.20 pm)—I can reaffirm that we have a commitment. It would best come from the minister, Senator Conroy, because that is a debate about which there has been constant questioning in the Senate. Frankly, it is not my responsibility to give those assurances; it is up to Senator Conroy on behalf of the government. But I can give those assurances. That is the purpose for the transfer of the funds. I am sure there will be a very lengthy debate about whatever is the outcome of the process that Senate Conroy is overseeing. I am sure there will be an extensive debate about that but I really do see that as a detailed debate to have on another day.

The blunt point I make is that we do not even get to that point, whenever that debate takes place, without the funds. I hope Senator Xenophon, in particular, takes note of what is taking place here. This is an attempt by the opposition to gut the funding so we do not even get to first base. This is an attempt by the former government, the Liberal opposition, a judgement having been cast by the Australian public at the last election—the coalition spent years and years struggling with this very issue and its failure was recognised by the Australian people—to override an election promise of the Australian Labor Party.

Honourable senators interjecting—

Senator SHERRY—That is right, again. It is non-stop. It is a totally irresponsible amendment. It threatens the funding source for the government’s NBN. Broadband is a critical enabling technology that will change how businesses serve their customers, how government delivers services and how citizens collaborate in the future.

I am following this very closely because I live in an area—the Forth Valley in Tasmania—that did not even have mobile phone reception until two years ago because of the nature of the terrain. So I am particularly interested in this, as one who lives in rural and regional Australia and has experienced the difficulties of ensuring adequate technology in the area in which I live. I know many
others in this country—perhaps for different reasons, not just the nature of the terrain—have experienced significant frustration. The whole point of this is that we are providing funding to ensure that my colleague Senator Conroy gets on with the job of dealing with these issues.

On 13 November the government introduced the Nation-building Funds Bill 2008 into parliament. The bill establishes three separate funds: the Building Australia Fund, the Education Investment Fund and the Health and Hospitals Fund. The bill and the associated transitional provisions abolish the Communications Fund and transfer the balance of the fund into the Building Australia Fund. Other funding can be transferred by relevant ministers. The Building Australia Fund will be used to provide the government’s contribution of up to $4.7 billion to the national broadband network.

As I say, the previous government spent years trying to get this right and failed. Judgement was cast on the opposition by the Australian people at the election, at least in part for their failures in this area. There were other reasons too, I accept. The Liberal opposition are here attempting the outrageous stunt of trying to gut a large part of the funding from the election promise we gave and which we intend to implement. We have only just got to first base on implementing the election promise and they want to knock one of the legs from the stool that enables us to progress this very, very important issue. It is simply outrageous and it is just another example of the generally negative approach to a range of issues we have seen from the Liberal opposition since their ‘transition’ from government to opposition.

We have had a debate and we accept—at least at this point of time—that we have not been able to influence the chamber in respect of a range of governance and oversight matters, but if this is passed it will have very severe ramifications for the future of the NBN program, for the reasons I have outlined.

Senator LUDLAM (Western Australia) (1.25 pm)—As Senator Milne has indicated, the Australian Greens will not be supporting these amendments, for the reasons that the minister has just outlined. But there is a question that I think we need to put to you, Minister. Senator Minchin is correct in that the Communications Fund was earmarked for telecommunications services to rural and regional areas, and no such commitment has been made under Minister Conroy’s request for proposals that is afoot at the moment. For example, Telstra, one of the bidders to the process, have made no commitment to rolling the network in from the fringes, where services are extremely patchy, because they were not required to make any such commitment under the RFP. We do not know which way the other bidders are going. I think it is quite important and I would like to see that addressed. What guarantees can you give that the RFP will not simply lead to $4.7 billion being spent on broadband services in profitable inner city areas while rural and regional areas will continue to be disadvantaged—because there is nothing in the RFP that says that that cannot happen?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.26 pm)—As I have already indicated—perhaps not precisely enough, given I had a range of other commentary around—we are well aware of your concerns, but there will be a time for debate for you to determine whether those concerns are met when Senator Conroy has completed his process. I am not going to pre-empt the outcome of that process at the moment. The tender process has only just commenced. Whatever legislative requirements flow from the process that Senator Conroy has oversighted, there will...
be a judgement made. You may or may not be satisfied. I would contend you will be satisfied, without pre-empting that process’s outcome. But you will have a capacity to address whatever deficiencies you identify—hopefully you do not identify any—after Senator Conroy’s process is completed, when we consider effectively the outcome of the process he has been through in that legislation. I think that is the time for you to make your call. It is very difficult if we are expected not even to get to first base because the funding is not provided. That is what this bill goes to. I understand your concerns, but my hope is that you will make a judgement when Senator Conroy gets to the legislative requirements around his process, when it is completed.

Senator MINCHIN (South Australia) (1.28 pm)—The coalition have had some salacious accusations from Senator Sherry on this matter. What is outrageous is what the Labor Party is doing here. This $2 billion only exists because the federal coalition government proceeded with the sale of the remaining 50 per cent of the shares of Telstra, something that the Labor Party bitterly opposed and fought all the way. But we had a clear mandate to sell those remaining shares. The shares were sold, and our undertaking with the Australian people and with this parliament was that $2 billion from the proceeds would go into the Communications Fund. That was our act of faith with people in rural and regional Australia who we understand had concerns about the sale of Telstra. But we said, ‘We’re going to take part of the proceeds of that sale and preserve them in perpetuity for the purposes of providing rural and regional Australians with ongoing funding in perpetuity to support them in their rural and regional telecommunications needs.’

So here is Senator Sherry on behalf of the government saying, ‘Isn’t it dreadful that the coalition wants to preserve this $2 billion?’ The $2 billion would not be there if Labor had had their way. If they had succeeded in preventing us selling our remaining shares in Telstra then this $2 billion would not exist. So for them to accuse us of hypocrisy on this and to be outraged is ridiculous. The money is there for rural and regional Australians because of a policy we pursued that the Labor Party opposed at every step. Our act of faith with the people of rural and regional Australia was that that money would be preserved to support their communications needs. I urge the Senate to support us in this endeavour of preserving this funding.

Senator Ludlam, I think quite properly, raised the fact that Labor propose to grab this $2 billion and use it as part-payment towards Labor’s ill-fated and deeply-flawed national broadband network. This again shows the hypocrisy of the Labor Party. As I have said, the $2 billion comes from the proceeds of the sale. The other $2.7 billion also comes from the proceeds of the sale. What Labor have done is grabbed the second instalment of the payment for Telstra shares—and they have the capacity to do this. That was meant to go to the Future Fund in fact. So they have deprived the Future Fund of the $2.7 billion to go towards paying the superannuation for our soldiers, sailors, airmen and public servants, and whacked it into Senator Conroy’s national broadband network.

As Senator Ludlam has properly said, Telstra has made it abundantly clear that all the $4.7 billion is going to do is subsidise the provision of broadband in metropolitan Australia. Rural and regional Australians are not going to see the benefit of this $4.7 billion so they are double losers—they lose the $2 billion from the Communications Fund and then they see it go into metropolitan Australia to provide fibre in metropolitan areas. With the cancellation of the OPEL contract by this government, rural and regional Australians are going to be left hanging out to
This is a moment for the Senate to really stand up for rural and regional Australians. Do you care about them or don’t you? What are your priorities? If your priorities are to ensure that rural and regional Australians are protected from the ravages of this Labor government wanting to take away that $2 billion then you will support these amendments.

Senator WILLIAMS (New South Wales) (1.32 pm)—I would like to add to what Senator Minchin has said. The minister used the word ‘outrageous’. I am going to use the word ‘outrageous’ too. The minister knows full well that that $2 billion was set aside for the future proofing of rural and regional communications. That is what it was put away for in the bank, to earn interest—to keep those services up in rural and regional areas. I find it appalling that the government now want to withdraw that money. They knew what it was put aside for. They knew the previous government put it there. I know full well that people like John Anderson argued very hard, when it came to the debate on the full sale of Telstra, that this money should be put aside for the future of those country communities, and I think it is deplorable that you consider withdrawing it.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.32 pm)—There is just one problem with your argument, Senator, through you, Madam Temporary Chairman: the Australian people do not agree with you.

Senator WILLIAMS—The coalition got more votes in the Senate than you.

Senator SHERRY—Governments are not formed in the Senate. We gave a specific election promise. We have not done this after the election; we put it up there in lights. I remember the announcements made. I remember the discussion, as a member of the shadow ministry in opposition, about this and I remember the announcements about this. It was put up in lights well before the election. It is a fact of life that you lost the election. Learn to live with it. This is an election promise—an election commitment. I want to borrow a phrase from Senator Conroy yesterday—

Senator Minchin—That’s dangerous.

Senator SHERRY—I actually want to borrow the same phrase, Senator Minchin, because I would suggest that you are putting the cart before the horse. What you are attempting to argue in your assertion—and it is an assertion—is that the process that Senator Conroy has commenced is deeply flawed.

Senator Minchin interjecting—

Senator SHERRY—Well, we do not know, Senator Minchin, because it has not been concluded. You can assert a process is flawed but, as Senator Conroy has pointed out, well and very effectively, I might say—other than putting the cart before the horse—what you are trying to do is to bring a halt to a process that you claim is flawed by refusing to allocate the moneys, in large part. We gave an election commitment, a specific promise, which we went to the election on. We won the election—you lost the election.

Senator Jacinta Collins—I think it is called a mandate.

Senator SHERRY—I think it is called a mandate. I can think of a lot of other things to say but I know that time is getting away.
Senator Minchin—It is called a rip-off, actually.

Senator Sherry—You cannot call it a rip-off. Here you are alleging a rip-off. We sat down in a considered way and developed a policy which we believe will ensure the development of a national broadband network that will well service the needs of rural and regional Australians as well as everyone else who lives in Australia, as I said. It was a well-announced policy. As I recall it was very well received. The people of Australia voted on it, and they voted in favour of us.

Senator Xenophon (South Australia) (1.35 pm)—I have some questions to ask of both the mover of these amendments and of Senator Sherry on behalf of the government. As I understand it, the $2 billion Communications Fund was set up by the coalition. I think it was supported by the Labor Party. And that fund arose out of the proceeds of the sale of Telstra—something I would have opposed if I had been in this place. But that is another debate that has been and gone. We would not have had this problem if it had not been sold. Be that as it may—

Senator Minchin—You wouldn’t have had the money without the sale of Telstra.

Senator Xenophon—I do not want to get into a debate about the privatisation of Telstra, Senator Minchin.

Senator Sherry—Let’s live today’s battles.

Senator Xenophon—Yes, let us deal with today’s battles. But I do have concerns in respect of the Communications Fund being transferred into the Building Australia Fund because there does not appear to be any legislative guarantee that that $2 billion that has been earmarked for regional and rural Australia’s telecommunications needs will be spent on that. So, as I see it, there is no guarantee that that will occur. That is my principal reservation.

If there were an alternative approach that would see these moneys transferred into the Building Australia Fund but guaranteed by legislation on the basis of how they were supposed to be used and subsumed in the processes that are in this legislation—improved on, I believe, by the amendments of the opposition and the Greens—then I would be more disposed towards that. I do not know what Senator Minchin’s views are in relation to that, but I think the important thing is to guarantee that the money that has been earmarked for telecommunications in regional and rural Australia is there for the purpose for which it was intended—and which, I note, the Labor Party supported, albeit in the circumstances of a privatisation that they opposed.

Senator Minchin (South Australia) (1.38 pm)—In relation to Senator Xenophon’s points, there are no guarantees. The only guarantee is preserving the Communications Fund under the legislation which was passed by this parliament—and which was not opposed by the Labor Party—to establish this Communications Fund in perpetuity in order to protect it from the passing whims of governments of the day and ensure that all of the earnings, which at five per cent would be $100 million a year, go to rural and regional telecommunications. The government has sought to provide some assurances about that, as I mentioned before, by providing in this year’s budget for $100 million a year over the forward estimates. But that lasts as long as each year’s budget. All of the moneys in the forward estimates can be taken away in next year’s budget. I am sure Mr Tanner and Mr Swan are right now looking for as many savings as they can possibly find to try to prevent the budget from going into deficit.

So there are no guarantees on that score and there are no guarantees in relation to these moneys—the $2 billion here and the
$2.7 billion from the second tranche of T3—going to rural and regional telecommunications. All we have is a glib promise from the Labor Party to use $4.7 billion to roll out a national broadband network. Those of us who have been on the Senate Select Committee on the National Broadband Network are increasingly appreciating that that is not going to go any way towards ensuring broadband gets to rural and regional Australia. There is no commitment from the Labor Party on that score. All they can do is make glib assurances.

There are no requirements that any part of that money be used to ensure metro-equivalent services for rural and regional Australians. They have cancelled the OPEL contract, which was specifically to subsidise rural and regional Australians to acquire high-speed broadband. No such guarantees exist at all in relation to the $4.7 billion. The government quite glibly says that there will be no cost-benefit analysis of the expenditure of this $4.7 billion, unlike other expenditure from the Building Australia Fund. This will just be spent on whichever proponent comes out of this extraordinary process. As Telstra has already said, you cannot roll this out beyond metropolitan Australia with $4.7 billion.

I say to the Senate: do not trust Labor on this. Respect the needs of rural and regional Australians. Respect the fact that this parliament set up this Communications Fund specifically to provide that support for rural and regional Australia.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.41 pm)—The purpose of the NBN, the national broadband network—not solely but in large part—is to meet the needs of rural and regional Australia, Senator Xenophon. That was the purpose of our election commitment. To deliver, to meet the needs of rural and regional Australia through the NBN, we need the funding. It will cost up to $4.7 billion. We came to the conclusion before the election that transferring the $2 billion in the Communications Fund was the most effective way to deliver.

People can make a judgement about the outcome of the national broadband network, but we are not doing that today. The process has just begun, effectively. We cannot make a judgement about that. What Senator Minchin is effectively doing is bagging the outcome before the outcome is known. I accept the political critique of the opposition and Senator Minchin, although it is a somewhat negative approach. They have reached the conclusion that it is a failure when the process has barely begun. I would suggest that that is not an appropriate way to make a judgement. As I said, there will be a debate about whether the national broadband network delivers to rural and regional Australia on another occasion, when Senator Conroy brings his legislation to this parliament. That debate will occur, but that process is not complete. What we do know is that, if the opposition’s amendments are adopted, that is the end of the funding. What hope is there for the current process that Senator Conroy is going through if the $2 billion cannot be transferred? I would suggest the implications of these amendments being carried would be very, very significant indeed.

The bottom line is that the setting aside of the fund and of the income that was being derived from the fund—and I acknowledge that it was set up by the former government—was not working. It was not delivering the outcome. We established through our policy that an alternative approach was needed. We carefully researched our policy and we presented it before the people. At the end of the day, the Australian people liked our policy—the Labor Party’s policy—in this regard more than they did the Liberal and
National parties’ approach. The Liberal and National parties had years to deal with this issue. It was not working, and our approach was preferred. It was an election commitment given very specifically. What we now have is a backdoor attempt by the Liberal opposition to kneecap the process—which has only just started—of establishing a national broadband network to, in part, deliver to the people who live in rural and regional Australia.

Senator XENOPHON (South Australia) (1.44 pm)—Let’s cut to the chase. We have a situation here where $2 billion was set aside with respect to the communications fund. I think it would be fair to say that that money was supported in a bipartisan fashion. That money was earmarked, quarantined for regional and rural Australian telecommunications—which obviously would principally include broadband services and the like. My concern—and I believe it is a legitimate one—is that, if you transfer it into the Building Australia Fund, there is no guarantee that the entire quantum of the money that was earmarked before will necessarily be earmarked for the purpose for which the communications fund was set out. That is my concern. I flagged that, if there were a way that that could be quarantined within the Building Australia Fund, there is no guarantee that the entire quantum of the money that was earmarked before will necessarily be earmarked for the purpose for which the communications fund was set out. That is my concern. I flagged that, if there were a way that that could be quarantined within the Building Australia Fund through a legislative guarantee, I would be quite comfortable with that. I invite the government, if they wish to report progress, to look at this as an alternative amendment. In the absence of that, I am inclined to support the opposition’s amendment.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.46 pm)—I ask the government to consider that it might be more expeditious to allow an adjournment so that the matter can be resolved or at least an amendment can be put. Otherwise, yes, we will go to a division, and that will be the end of it.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.46 pm)—I ask the government to consider that it might be more expeditious to allow an adjournment so that the matter can be resolved or at least an amendment can be put. Otherwise, yes, we will go to a division, and that will be the end of it.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.47 pm)—Whilst I understand your consideration, Senator Brown, I will be frank with the chamber: there is no way the government would consider this amendment given what I have outlined. I think it is better that we cut to the chase. We will be voting no, and we will be having a division on it.

The CHAIRMAN—The question is that opposition amendments (62) to (64) and (66) to (68) on sheet 5684 be agreed to.

The committee divided. [1.51 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes……….. 34
Noes……….. 32
Majority……… 2

AYES

Senator MINCHIN (South Australia—Leader of the Opposition in the Senate) (1.54 pm)—by leave—I indicate that the opposition opposes clause 16 and clause 33 in the following terms:

(65) Clause 16, page 19 (lines 13 to 23), clause TO BE OPPOSED.

(69) Clause 33, page 32 (line 19) to page 33 (line 9), clause TO BE OPPOSED.

The CHAIRMAN—The question is that clauses 16 and 33 stand as printed.

Question negatived.

Senator MILNE (Tasmania) (1.55 pm)—I move Australian Greens amendment (1) on sheet 5645:

(1) Page 2 (after line12), after clause 2, insert:

2A Principles of Nation-building Funds

(1) The underlying principles of the Nation-building Funds established by this or any other Act are that projects financed from the Funds must:

(a) address national infrastructure priorities;

(b) demonstrate high benefits and effective use of resources;

(c) address climate change mitigation and adaptation and biodiversity conservation;

(d) prepare for the global oil production peak and subsequent decline in oil production;

(e) efficiently address infrastructure needs;

(f) demonstrate achievement of established standards in implementation and management.

This amends the principles relating to the funds. In particular, it requires that the principles be amended so that the principles now have inserted in them that projects must address ‘climate change mitigation and adaptation and biodiversity conservation’ and ‘prepare for the global oil production peak and subsequent decline in oil production’. These two insertions are critical if we are to make sure that these funds actually do not act as a counterpoint to our climate change mitigation efforts. What I am trying to do here is make sure we have a whole-of-government approach that is internally consistent. The government says its aim is to reduce greenhouse gas emissions. I have not heard it say so, but it should be saying that we ought to also be addressing energy security to make sure we reduce our dependence on foreign oil as that was certainly a recommendation of the Senate committee of inquiry into Australia’s future oil supplies and alternatives.

What I am saying is that if the whole-of-government approach is to ensure we reduce greenhouse gas emissions and we reduce our dependence on foreign oil then the best way of doing that is to make sure that, in considering what infrastructure to support, we prioritise infrastructure which gives us a win-win situation as to the climate and the econ-
omy, which helps us make the transition to a low-carbon economy, and which helps us restructure our cities and redesign our cities accordingly. I cannot believe, in this day and age, with the climate crisis as it is, that anybody would not want to see infrastructure be under, as one of the principles of the fund, consideration as to climate change, greenhouse gas abatement and peak oil. I look forward to the support of both the government and the opposition for this amendment.

Senator MINCHIN (South Australia) (1.58 pm)—While we understand the motivation of the Greens for this amendment as to the principles that would be required in relation to grants made from these funds, the opposition do not, on balance, support this amendment. There are one or two elements of the six requirements that we might otherwise have been able to support, but we do believe it would be very difficult to apply appropriately several of these criteria. We also believe that all of these projects, being major infrastructure projects, will be subject to the normal laws of the land and of course there are, at a state level and at federal level, significant requirements in relation to infrastructure projects that go to environmental impact statements. So we believe the environmental scrutiny that will be applied to all these projects, by dint of existing state and federal laws, will be sufficient to meet the concerns of the Greens in this matter. While I have enjoyed supporting the Greens—and have enjoyed their support—on several of the amendments to these bills, on balance I am afraid the opposition is not in a position to support this particular amendment.

Progress reported.

QUESTIONS WITHOUT NOTICE

Uranium

Senator COONAN (2.00 pm)—My question is to the Minister representing the Minister for Foreign Affairs, Senator Faulkner. In today’s first national security statement to the parliament, the government identified climate change as a ‘most fundamental national security challenge’. Why then does the government refuse to export uranium to India under International Atomic Energy Agency safeguards, which can both cut India’s greenhouse emissions and meet 35 per cent of its future energy needs?

Senator FAULKNER—The first thing I should say in relation to the national security statement is that it sets out the full range of national security challenges from defence and domestic security to more non-traditional threats like terrorism and energy security. It also outlines the institutional framework within which the government determines our national security policy settings for the future. In relation to the specific element of the national security statement that Senator Coonan raises, let me say that building resilience to climate change is critical for highly vulnerable countries in our region. The Niue Declaration on Climate Change commits forum members, including Australia, to continue to develop ways of combating climate change which are tailored to the Pacific. Working with— (Time expired)

Senator COONAN—Mr President, I ask a supplementary question. Given that the United States has established a safe basis on which to sell uranium to India and that today’s national security statement says that the US is fundamental to our security interests, how can the government continue to deny the sale of uranium to India?

Senator FAULKNER—As Senator Coonan would be aware, the government has had a consistent approach on this particular issue, which I have spoken about previously in this chamber. The government’s approach has been clear. It has been consistent. It is not affected at all by the commitments that
the Prime Minister announced in relation to our national security statement. The national security statement clearly reinforces the importance of a robust—(Time expired)

Senator COONAN—Mr President, I ask a further supplementary question even though the minister is clearly unable to reconcile the questions I have already asked. Given the key issues identified in the first national security statement, including the importance of India, the importance of climate change and the fundamental strategic importance of the United States, isn’t the government’s policy on uranium exports to India and the need to combat climate change hopelessly conflicted?

Senator FAULKNER—No, our position is not conflicted. Our position on uranium exports is clear and consistent. We will only allow exports to countries which are signatories to the NPT. Therefore, as I have said on so many other occasions, India is not eligible to receive Australian uranium. As Senator Coonan knows, Australia supported the IAEA-India Safeguards Agreement at the IAEA Board of Governors meeting in August. It joined the consensus on the Nuclear Suppliers Group. This is a consistent, strong and appropriate approach for the government to take and it is reinforced by our national security statement. (Time expired)

Economy

Senator ARBIB (2.06 pm)—My question is to the minister representing the Prime Minister, Senator Evans. Can the minister outline to the Senate how the government’s Economic Security Strategy will deliver extra support to pensioners, carers and working families?

Senator CHRIS EVANS—I thank Senator Arbib for the question. Next week is an important week for Australian pensioners, carers and working families and also for Australia’s economic future. From next Monday, the government’s Economic Security Strategy will deliver $10.4 billion extra into the economy by providing extra support to four million pensioners and 1.9 million families. It is a vital economic strategy to give Australians help with cost-of-living pressures and to sustain economic growth.

The payments to pensioners are a down payment on our pension reforms. The government know that pensioners are doing it tough, so we are providing a down payment to give the pensioners support now. We will make a $4.8 billion down payment through lump sums paid to age pensioners. Single pensioners will get $1,400 each and pensioner couples will get $2,100 per couple. The payments will begin next week, from Monday, 8 December. They will arrive in bank accounts on around the individual’s regular payment date, although not necessarily on the same date.

These payments will provide additional support in the nine months between now and when long-term reforms are introduced from next financial year. That will assist pensioners to cope with cost-of-living pressures, and it will provide a very strong stimulus to the economy. We think it is a win for pensioners and it is a win for the economy, and it builds on the support we provided in our first budget. We think it is a very important part of assisting age pensioners and ensuring that we provide as much stimulus as we can to the Australian economy in these difficult economic times.

Senator ARBIB—Mr President, I ask a supplementary question. Can the minister please provide details of what support will be provided to people with a disability and also to carers?

Senator CHRIS EVANS—Traditionally, under the previous government, disability pensioners missed out on major payments. For the first time, under the Rudd Labor
government, disability support pensioners will get a lump sum payment. We recognise that they are also doing it tough. Along with all the other pensioners, people on the disability support pension will get a lump sum payment. We are going to ensure that they get the support they need, both through the COAG reform of disability services and also in terms of financial support.

We also are ensuring that those who receive carers allowance will receive $1,000 for each eligible person being cared for. This marks a recognition of the tremendous work that carers are doing and the stress that they are under, and we think this will assist them to cope. We also acknowledge the great sacrifices that carers make. (Time expired)

Senator ARBIB—Mr President, I ask a further supplementary question. Can the minister now please outline to the Senate which families will receive support as part of the Economic Security Strategy?

Senator CHRIS EVANS—The government’s package will next week deliver to more than 1.9 million families, which support 3.9 million children all around Australia. It is huge package, aimed at supporting families while also providing a stimulus to the economy. Three-quarters of Australian families with dependent children will benefit. It will give them vital help to meet their cost-of-living needs and, as I say, will help stimulate the economy.

Families who receive family tax benefit part A will get a one-off payment of $1,000 for each eligible child in their care—that is $1,000 per child for those on family tax benefit A. Another 190,000 families with dependent children who receive youth allowance or Abstudy or benefit from the veterans’ children’s service scheme will get the $1,000 payment as well. This will go a long way to supporting families and to helping them meet their cost-of-living challenges. (Time expired)

Automotive Industry

Senator ABETZ (2.11 pm)—My question is to the Minister for Innovation, Industry, Science and Research, Senator Carr. Does the minister fully support the recommendations of the Australian government’s Green Vehicle Guide website?

Senator CARR—I thank the senator for the question. I am not familiar with the absolute detail of the Green Vehicle Guide. My recollection is that it is actually another minister’s portfolio responsibility.

Honourable senators interjecting—

The PRESIDENT—Order! Senator Abetz is on his feet, waiting to ask a supplementary question. He is entitled to be heard in silence.

Senator ABETZ—Believe it or not, Mr President, I do have a supplementary question to the minister who is responsible for the manufacture of automobiles in Australia. My supplementary question is this: given the 22 per cent collapse in new car sales last month revealed today, what action will the minister take to address the fact that the Green Vehicle Guide, which he seems to know nothing about, is being used by two state Labor governments—

Senator Sherry—You’re asking the wrong minister.

Senator ABETZ—Queensland and Tasmania, Senator Sherry—to actively discriminate against Australian-made Ford Falcons and Holden Commodores being purchased for these states’ car fleets?

Senator CARR—I thank the senator for his questions. He thinks this is yet another cunning plan. Of course, the problem is that Senator Abetz has clearly got control of the tactics committee of the opposition on this.

Senator Minchin interjecting—
Senator CARR—You would have thought that more attention would be paid, Senator Minchin, to asking serious questions. We now have a situation in Australia where we have a new government with a commitment to the automotive industry, a commitment which has been demonstrated with a $6.2 billion package, a government which has produced the most comprehensive industry package of any government in the history of the Commonwealth of Australia. We have a situation where the industry is facing acute challenges all around the world, and we have acute challenges being faced in this country by the automotive industry, but the truth of the matter is that the automotive industry in this country, despite the constant attempts to denigrate that industry by the opposition, is actually doing so much better. (Time expired)

Senator ABETZ—Can I remind the minister that abuse is no substitute for substance. Mr President, I ask a further supplementary question. Given the $13 million grant to Ford for its Geelong engine plant upgrade, can the minister confirm whether the upgraded engine produced there will achieve the 5.5 rating or better on the Green Vehicle Guide website, as required of the Tasmanian and Queensland governments for their car fleets?

Senator CARR—What the Australian government, the Labor government, has been able to do is, on the second occasion now, overturn decisions taken by companies to take action which would have been to the detriment of the Australian automotive industry. The first was, of course, with the hybrid Camry by Toyota, where we made a—

Senator Abetz—Mr President, I raise a point of order. Today is the last day of the trial and I direct your attention to the standing order on direct relevance. I would invite you, Mr President—

Honourable senators interjecting—
relation to the question about the Geelong engine plant. That is the question that was asked and Senator Carr was on the point—the quite narrow point—about the Geelong plant. In fact, the previous point of order that was taken was attempting to draw Senator Carr back to the Geelong plant. Senator Carr is on the Geelong plant and I humbly submit there is no point of order.

The PRESIDENT—There are six seconds left to answer the question, Senator Carr. I remind you of the question—

Senator Carr—Jobs, jobs, jobs!

The PRESIDENT—I have not called you yet—

Senator Carr—Jobs, jobs, jobs!

The PRESIDENT—Senator Carr, I have not called you yet. You are getting a little bit excited. We will set the clock at six seconds, as I said—

Senator Carr—Jobs, jobs, jobs!

The PRESIDENT—Senator Carr, you have not been called. You have six seconds to answer the question, and remain relevant.

Senator CARR—I want to reinforce the point that this is all about jobs, jobs, jobs for Australian workers—high-quality, high-skilled jobs for Australian workers. (Time expired)

Child Care

Senator HANSON-YOUNG (2.19 pm)—I hope that Minister Carr will answer my questions with such enthusiasm. My question is to the Minister representing the Minister for Education, Senator Carr. On 22 October, during estimates, the minister’s department assured us that the government had a contingency plan for dealing with the potential collapse of ABC Learning. We now know that we are facing a childcare crisis, with the potential closure of almost 400 centres around the country, leaving thousands and thousands of mums and dads in the lurch before Christmas. On 22 October we were told by the minister that she had a plan. Where is the plan?

Senator CARR—I thank Senator Hanson-Young for her question. The government has provided $22 million to ensure all ABC centres remain open until 31 December. The Australian government has committed up to $22 million to ensure that that happens, to provide some security for parents, for staff and of course for children using those centres. However, since that has occurred, there has been a movement towards voluntary liquidation and an attempt made by the receiver to try to work through the issues in dealing with the other centres that are now in question—other than those that have indicated that there will be ongoing operations. We are expecting further announcements from the receiver to be made shortly, and it is my expectation that in terms of the existing 656 identified centres that will continue their operations in 2009, there will of course be further developments from the receiver in the near future. The centres that remain under review by the receiver have been selected and have a larger proportion of younger children up to two years of age. The receiver is very clear that the centres on his list will not necessarily close. A proportion is expected to remain open. I am advised that the receiver is reviewing the future prospects of each of these centres, based on their individual merits. The Australian government is playing a strong and decisive role in supporting this process and has, as I have indicated, committed $22 million to ensure that that process can run smoothly.

Senator HANSON-YOUNG—Mr President, I thank the minister for his answer and I ask a supplementary question. Today is the last day of parliament—the last day that the minister has an opportunity to level with Australian mums and dads, to tell the parliament, as requested time and time again
over the last few weeks, what the minister’s contingency plan is. If I wanted the details on what the receiver was doing, I would give them a call. I want to know what the education minister’s contingency plan is.

**Senator CARR**—The government, I repeat, has taken decisive action to ensure that working parents have access to child care. We are working closely with the ABC Learning receivers to determine the longer-term future of the 386 centres, and more information will be provided to parents in the near future. We are anticipating that that close working relationship with the receiver will mean that the determinations on those 386 centres—well, of course, it is under review, and we expect the decisions on those matters to be made shortly.

**Senator HANSON-YOUNG**—Mr President, I ask a further supplementary question. Given that the Senate passed a motion on 10 November calling on the minister to hold an emergency summit of stakeholders and yet we have had no response, and given that the Senate called on the minister yesterday to table her plan for 2009 to ensure that parents had some certainty for the care of their children when they return from Christmas, is it right to assume that the minister has little regard for the decisions made by the Senate, and little regard for the concerns of parents? Is the minister snubbing the Senate? And is the minister snubbing Australian mums and dads?

_Honourable senators interjecting—_

**Senator Ian Macdonald**—Come on, Michael; come on down. You could do better than they are! Come on, Michael.

**The PRESIDENT**—Order!

_Honourable senators interjecting—_

**The PRESIDENT**—Order! I am not going to sit here and call for order. I am waiting for silence.

**Senator CARR**—The senator, I think, should have heard me on the first and second occasions on which I have indicated to her that our actions are predicated on the fact that we are determined to ensure that we are able to help families and help workers involved directly in industry to maintain employment and that people have direct access to child care. We are working very closely with the receiver. As to the issue of the minister’s attitude towards the Senate, she works very closely with senators and is determined to ensure that the government’s legislative program is carried out. She takes the opinions of the Senate very seriously, and I have got no doubt that, like all ministers in this government, we will be able to work very cooperatively with senators who actually have their eye on the ball.

**Commonwealth Scientific and Industrial Research Organisation**

**Senator BARNETT** (2.25 pm)—My question—

_Opposition senators interjecting—_

**The PRESIDENT**—Just a minute; resume your seat. Senator Barnett, you get up to ask a question and it is your own side that interject on you.

_Honourable senators interjecting—_

**The PRESIDENT**—Order!

**Senator BARNETT**—Thank you, Mr President. My question is to the Minister for Innovation, Industry, Science and Research, Senator Carr. Does the minister agree that Labor’s efficiency dividend applied to the CSIRO this year is arbitrary and unfair?

**Senator Faulkner**—You just say ‘Yes’.

**Senator CARR**—The position of the government—

_Opposition senators interjecting—_

**Senator Ian Macdonald**—Mr President, I raise a point of order. Can I request that the
Hansard records Senator Faulkner’s answer, ‘Just say “Yes.”’

The PRESIDENT—There is no point of order. Senator Faulkner, do you have a point of order?

Senator Faulkner—It is always risky—

Government senators interjecting—

The PRESIDENT—Resume your seat. You are entitled to take a point of order, but those on your side, Senator Faulkner, need to be quiet. You are entitled to be heard.

Senator Faulkner—Thank you, Mr President. It is always risky when—

Senator Ronaldson—What’s the point of order?

Senator Faulkner—I am speaking to Senator Macdonald’s point of order. On the point of order—

Opposition senators interjecting—

Senator Faulkner—Well, I am taking a further point of order, if that’s the case.

Honourable senators interjecting—

Senator Abetz interjecting—

The PRESIDENT—Order! Senator Abetz, I will run the chamber, thank you. Senator Faulkner, you have got the call on your point of order.

Senator Faulkner—It is always risky when—

The PRESIDENT—Order! Resume your seat. Senator Faulkner. Resume your seat, Senator Joyce—I am taking a point of order from Senator Faulkner.

Senator Joyce interjecting—

The PRESIDENT—You will have to wait for your turn.

Senator Faulkner—This is my point of order: it is always risky when a senator tries to take advantage of half a comment they hear in the chamber.

Senator Ian Macdonald—What’s your standing order?

Senator Faulkner—And, Mr President, I would have thought that Senator Macdonald, given some of the comments he makes in the chamber, should know better. But, out of respect for the chamber, I will not be outlining my complete comment to the chamber because it might very much embarrass Senator Macdonald and one or two of his colleagues.

The PRESIDENT—There is no point of order, Senator Faulkner. I call the minister, who has one minute 55 seconds to complete his answer to the question.

Senator CARR—I thank the senator. Part of the government’s election commitments was to require an additional, one-off further efficiency dividend of two per cent, from all agencies—not just the CSIRO. In going through a series of savings exercises in the budget, we also made decisions to effectively apply these dividends, as I indicated, to a range of agencies. The CSIRO performs a vital function within the Commonwealth. It is our leading scientific agency within the Commonwealth. We have, of course, ensured that the CSIRO’s appropriation has actually increased.

What we see of course is that the balance of the CSIRO’s funding arrangements provides a new opportunity as a result of new budgetary decisions that were also taken in the context of the last budget. For instance, on Labor’s clean-energy election commitment, we have delivered $25 million for CSIRO’s work on clean-coal technologies and CSIRO is likely to have access to additional funding from the Australian Solar Institute.

The opposition may well seek to present these issues in a partisan manner, and they may seek to misrepresent the situation, but the priorities given to the flagships—and of
course through the science investment process—has ensured that the impact of the efficiency dividends on the flagship program has actually been minimal. Since the launch of the flagship program in April 2003 nearly 100 patents have been lodged, nearly 400 formal agreements with industry and research partners have been put in place and nearly 350 of those agreements are still running. Research and scientific reports to clients and publications of the flagships—

(Time expired)

Senator Barnett—Mr President, I ask a supplementary question. I would first like to quote from the report of the Labor dominated Joint Committee of Public Accounts and Audit on the efficiency dividend, which was released today. The report said that the efficiency dividend represented:

… a significant additional burden on the organisation, one that resulted in the closure of regional facilities. The Committee would hope that such seemingly arbitrary and unfair decisions will not be imposed in the future. Furthermore, should any further ‘one-off’ efficiency dividend or an increase to the existing 1.25% efficiency dividend be imposed in the next financial year, the Committee believes that the CSIRO warrants special consideration.

Will the government be accepting this recommendation?

Senator Carr—In regard to the committee report that has been referred to, which I understand was tabled today, I frankly have not had an opportunity to read the report. We will examine the report and we will study it carefully because the efficiency dividend has been developed as an integral part of a devolved financial management framework where agencies are in fact provided with the flexibility and the autonomy to spend the funds appropriately directed to them by parliament. The actions of the CSIRO in responding to the decisions of government have been to maintain the scientific integrity of the CSIRO and to demonstrate its leading role—

Senator Abetz—I rise on a point of order on the issue of direct relevance. The minister has clearly indicated to us that he has not had the opportunity to read the committee’s report. The question asked was whether or not he would adopt the committee’s recommendation. If he has not read it, he clearly is not in a position to advise whether or not it is going to be adopted. As a result, he should take the question on notice and sit down and not just prattle on from a brief that bears no relevance to the question that was asked.

Senator Conroy—On the point of order, we have had a quite extraordinary proposition being put now on a number of occasions during this question time trial where those opposite have stood up and said, ‘The answer has to be yes or no; make them answer yes or no.’ This is clearly and patently a ridiculous interpretation that the opposition are trying to badger the chair into adopting. Senator Carr is clearly relevant to the question. He has been referring to the report and to the discussions arising from the report. It is absolutely on message and relevant and this should be dismissed along with the rest of the spurious points of order that they have raised in the last two weeks.

The President—The minister has 20 seconds remaining to answer the question and I draw the minister’s attention to the question.

Senator Carr—The government welcomes the committee’s report and we will consider its recommendations carefully, as we do with all Senate reports. I thank the senator for his question.

Senator Barnett—Mr President, I ask a further supplementary question. I quote further from the report:

The Committee appreciates that the scientific and technical agencies that provided submissions to
the inquiry are suffering from the impost of the ongoing, and the recently imposed ‘one-off’, efficiency dividend.

So doesn’t this report from the Labor dominated committee prove that this efficiency dividend has significantly damaged the capacity of Australia’s research and development organisations?

Senator CARR—I indicate to the Senate that it was a report of the Joint Committee of Public Accounts and Audit, in which senators participated. The government, as I have indicated, welcomes the report. We will consider its recommendations very carefully. However, the government takes the view that it is confident that all of our agencies will be able to deliver the outcomes that we require within the financial constraints the government considers are necessary and appropriate. I remain absolutely confident that the CSIRO can manage its budget effectively and continue to produce very high-quality research to keep it as a leading agency within this country.

Australian Public Service

Senator MOORE (2.35 pm)—My question is addressed to the Cabinet Secretary and Special Minister of State, Senator Faulkner. Will the minister inform the Senate of measures being taken by the government to ensure that employees of the Australian Public Service perform their duties in accordance with the highest ethical standards? Will the minister take measures also to ensure that parliament is kept informed of Public Service ethics issues?

Senator FAULKNER—I acknowledge Senator Moore’s very close and long-term interest in Public Service issues. I am pleased to be able to inform the Senate that the government is today honouring another of its election commitments. It is an important one; I think it is fundamental to our approach to integrity in government. I acknowledge that in September last year my colleague Senator Wong, in an excellent speech on Labor’s approach to the Australian Public Service, said:

A Labor government would require that the Australian Public Service Commissioner provide public ethics advice, as part of its functions.

The government, therefore, is establishing an Ethics Advisory Service within the Australian Public Service Commission. Funds for this purpose are being provided in the 2008-09 additional estimates. It will be operational from April next year.

Senator Abetz—What about the leaking of telephone calls?

Senator FAULKNER—I know, Senator Abetz, that you have no interest in ethics. Others do.

Opposition senators interjecting—

The PRESIDENT—Order! Senator Faulkner, you should withdraw that comment.

Senator FAULKNER—I withdraw it. Obviously he does have an interest. The service will be the key platform within the commission for working with all APS agencies to enhance ethical awareness and decision-making capabilities. As well as providing advice to agencies on specific ethical issues and problems, the service will review and develop publications and advice on ethical issues, establish and maintain an ethics website and a phone line for advice and set up agency networks for the discussion and exchange of views and experiences on ethical issues. There will be an annual report to parliament, which will identify and analyse ongoing and emerging ethical trends and issues. I commend this to all senators in the chamber and I hope all senators will acknowledge that this is an important and very long overdue initiative. (Time expired)
Senator MOORE—Mr President, I ask a supplementary question. Can the minister inform the Senate of how this Ethics Advisory Service will operate and how it will relate to the responsibilities that agency heads already have for the management of their own departments?

Senator FAULKNER—It is an important issue that Senator Moore raises in her supplementary question. The commissioner will establish a new ethics team in the APSC. It will assist rather than direct. While emphasising the service-wide standards expected of all public servants, the team’s approach will recognise that individual agencies face particular challenges and acknowledge that some agencies already have arrangements in place for providing advice specifically relevant to their circumstances. The team will assist a network of agencies’ ethics contact officers in responding to ethical issues within agencies. In conjunction with the commissioner, it will also handle queries from agency heads, SES employees and other staff. Although much of its work will be public, the team will be able to handle sensitive issues with appropriate confidentiality when that is required.

Senator MOORE—Mr President, I ask a further supplementary question. Minister, does establishing this new Ethics Advisory Service imply that the government has particular concerns about ethical standards within our public sector?

Senator FAULKNER—No, it does not. I want to place clearly on the record that the government believes that it and the Australian people are very well served by its public servants, who, with remarkably few exceptions, are honest and hardworking and take extremely seriously the obligations placed on them by the APS Values and the code of conduct set out in the Public Service Act. I hope senators all around the chamber will acknowledge that. I know that Senator Mason does, and I appreciate that.

I think we should never be complacent about these things. The legislation provides a sound framework, but it is the right culture and leadership which matter and which, in all organisations, public and private, need to be carefully nurtured and consistently reinforced. I might say that in honouring this important election commitment the government is providing the means to enhance—(Time expired)

Border Protection

Senator BRANDIS (2.41 pm)—My question is to the Minister representing the Minister for Home Affairs, Senator Wong. Why did the government reject the submission of the minister responsible for the Australian Customs Service, Mr Debus, to upgrade the Customs fleet of patrol boats?

Senator WONG—I am not sure what submission the senator is referring to. If the submission relates to cabinet processes then obviously I am not going to respond to that question. I would mention that the Prime Minister today, in his national security statement, made clear the importance and the priority we as a government continue to place on Australian border security. In the national security statement he put forward the initiative in relation to customs and border protection, which is an augmented Australian Customs and Border Protection Service with the capability to task and analyse intelligence, coordinate surveillance and on-water responses and engage internationally. This service will report to the Minister for Home Affairs and represents, yet again, this government’s commitment to securing our borders and to ensuring that we have a strong Customs and Border Protection Service here in Australia.

Senator BRANDIS—Mr President, I ask a supplementary question. I refer the minister
to the national security statement delivered by the Prime Minister in the other place this morning. I remind the minister that the national security statement contains no commitment whatever to expand or upgrade the Customs fleet. I refer the minister, however, to the centrepiece of the Prime Minister’s new border protection strategy, which is that the Australian Customs Service will be renamed the Australian Customs and Border Protection Service. Would the minister care to explain how simply renaming the Australian Customs Service without upgrading or expanding its fleet or capabilities will strengthen border protection?

Senator WONG—Through you, Mr President, the senator has made a number of assertions. I remind him that, since coming to office, the government has increased funding to our law enforcement and border protection agencies to better target and respond to threats and funded new capacity-building initiatives throughout the region to develop the border protection and immigration systems of our neighbours. As I said, the Prime Minister made the point in his national security statement that this government inherited a wide range of government agencies that lacked unified control, direction and a single point of accountability. The Prime Minister has made clear that the government has therefore decided to move quickly to better enable our Customs Service to meet the resurgent threat to border integrity, and it is in this context that the initiative to retask and augment the Australian Customs Service in the context of the Australian Customs and Border Protection Service is being put forward. (Time expired)

Senator BRANDIS—Mr President, I ask a further supplementary question. Does the minister not agree that giving Customs the additional patrol boats it needs would be a more effective border protection strategy than giving Customs a different title? Would a larger fleet not be more useful than a longer name? Particularly in view of the $51.5 million cut to Customs announced by the Prime Minister in May, why has Labor gone soft on border protection?

Senator WONG—The senator knows that this government regards Australia’s national security as being of the highest priority and will continue to ensure that we have a strong and effective border security strategy. The Prime Minister’s national security statement makes it very clear that we will continue to ensure a strong border protection strategy and an Australian Customs and Border Protection Service that will have the capability to task and analyse intelligence, coordinate surveillance and on-water response, and engage internationally with both source and transit countries to comprehensively address and deter people smuggling. So these are the measures the government is taking. There has been no diminution of operational capability, and I say again that this is a government committed to ensuring the security of Australia’s borders.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from the Republic of Indonesia, led by the Speaker of the House of Representatives, His Excellency Mr Agung Laksono. 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 propose to invite the Speaker to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Alcohol Abuse

Senator FIELDING (2.47 pm)—My question is to the Minister representing the Minister for Health and Ageing, Senator
Ludwig. Does the government agree that it is an important consumer right to have safety information on products, and, if so, shouldn’t there be health information labels on all alcohol products?

**Senator Ludwig**—I thank the senator for his question. This government does have an interest in ensuring that, with ready-to-drink products, alcopops and the like, we do not allow issues such as binge drinking and the like to come to the fore. To that end, on 23 November 2008, of course, the government’s anti-binge-drinking campaign kicked into action, because what we have is a focus on doing everything that we can to ensure that those people who are using those products understand what is in those products and also doing as much as we can to ensure that people do not binge drink, and to that end we have provided that campaign.

It is important to ensure not only that we do the work such as providing the campaign, the TV advertisements and the like but also that we then take into account the broader issues around binge-drinking strategies. They also include some of the key facts that are in this area. Between 2000 and 2004, the percentage of female drinkers aged between 15 and 17 reporting that they had consumed alcopops at their last drinking occasion increased from 14 per cent to 60 per cent. It is important that we continue to remain focused on ensuring that we do everything we possibly can. Of course, guidelines for Australian—

**Senator Fielding**—Mr President, I raise a point of order on the issue of relevance. I asked a question about health information labels on alcohol products. He has not mentioned it once.

The **President**—Senator Ludwig, your time has expired.

**Senator Fielding**—Mr President, I ask a supplementary question. It is on the same issue, but maybe I will try a different way. Is the government aware of research by Professor Sandra Jones at the University of Wollongong which says that effective health message labels on alcohol products can help reduce the level of binge drinking?

**Senator Ludwig**—I am not personally aware of that research, but the research that I can point to, of course, is that of the National Health and Medical Research Council. The NHMRC has a mandate to develop evidence based health advice to support decision making by governments, consumers and health professionals alike, which deals with the broader issue of the Australian alcohol guidelines for low-risk drinking and other alcohol health initiatives. It is important that, when you look at the previous edition of the guidelines in 2001, there are significant changes in the revised draft guidelines. The revised draft guidelines are intended to provide population-level advice to the community to allow people to make informed decisions about their own alcohol consumption based on the latest scientific evidence available at the time of the review. The revised draft guidelines do not represent a safe or no-risk drinking level; neither is there a prescription level of drinking that must be followed in all situations. Of course, for these reasons the draft guidelines take the new approach— *(Time expired)*

**Senator Fielding**—Mr President, I ask a further supplementary question. Australian alcohol exported to the US and the UK already has health information labels. Why does the Australian government think health information labels are not important to help Australians drink sensibly?

**Senator Ludwig**—Can I say, with respect, that I reject the premise of the question. The government has been doing a lot of work in this area. There are the health advisory labels on packaged alcohol. On 2 May
2008 the Australia and New Zealand Food Regulation Ministerial Council requested Food Standards Australia New Zealand to consider mandatory health warnings on packaged alcohol, taking into account the work of the Ministerial Council on Drug Strategy and any other relevant ministerial council, any relevant guidelines in New Zealand and the alcohol guidelines for low-risk drinking, and to consider the broader community and the population-wide context of the misuse of alcohol. This is a government that takes these matters seriously. Not only has it looked at this issue but it has been doing the work in this area. (Time expired)

Broadband

Senator NASH (2.53 pm)—My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. I refer to the minister’s recent reaffirmation of the government’s commitment to deliver a fibre-to-the-node broadband service to 98 per cent of Australian homes and businesses. Isn’t the minister aware that not one of the proposals submitted to the expert panel provides for 98 per cent of Australian homes and businesses to receive a fibre-to-the-node service?

Senator CONROY—I thank Senator Nash for her question and her ongoing interest. I have not yet actually received a briefing from the department or the expert panel about what is contained in the bids. The process is that, next weekend, the proponents will be making presentations to the expert panel and then I will be in a position where I will have some further information—not that I would be intending to discuss it publicly, as I have said, because there is no way that, in the middle—

Senator Minchin—They’ve all said publicly it can’t be done. Don’t you read the newspapers?

Senator CONROY—Senator Minchin, you have fallen for that trap a couple of times now—through you, Mr President. Senator Minchin has unfortunately fallen for that trap. One proponent, I note, in the media said recently, ‘Of course we could reach 98 per cent if the government gave us more money.’ What a surprise! What a surprise that, in a live tender process, some proponents may actually want to minimise the amount of money that they will put forward and maximise the amount of money that the taxpayers put forward. What we have created is competitive tension among the proponents. So we are in a much, much stronger position than those opposite were when they ran their sham of a process revolving around Broadband Connect.

Senator Coonan interjecting—

Senator CONROY—Senator Coonan keeps interjecting because she does not want the chamber to hear exactly what a sham process was run under the last government. The former minister changed the— (Time expired)

Senator NASH—Mr President, I ask a supplementary question. I ask the minister: wasn’t respected telecommunications analyst Paul Budde right in his evidence to the Senate select committee that fibre to the node beyond 91 per cent was ‘silly’ and ‘not necessary’ and that you could spend all your $4 billion on the last two to four per cent of the 98 per cent, which would make no sense?

Senator CONROY—Whether 98 per cent coverage is achievable, the competitive tension in the government’s NBN process will maximise coverage outcomes. At the end of the day, we are happy to be judged on what the winning proposal delivers, because it is the clearly stated election commitment to deliver 98 per cent. So I am not going to be drawn into any individual commentary on individual tenders. I am not going to be
drawn into individual commentary on experts who know far more about it than most of those opposite, like Paul Budde. I am not going to be drawn into commenting on the process.

In contrast, the Howard government was happy to accept an FTTN network that covered only—quoting here directly—the capital cities—(Time expired)

Senator NASH—Mr President, I ask a further supplementary question. Wasn’t Telstra right when it said in evidence to the Senate select committee that a much bigger contribution from the government than $4.7 billion would be required to roll out fibre to the node to 98 per cent?

Senator CONROY—This is one of the problems when you have prewritten your questions, like Senator Nash has. I have actually already answered the question she has now asked. Let us be clear: Senator Nash signed her name, along with Senator Joyce, to the proposition of the Page research foundation, that National Party think tank. I know, Senator Macdonald, you will laugh at the concept of a National Party think tank, but they actually put forward a proposition of fibre to the home to 99 per cent of regional Australians. That is actually what Senator Nash and Senator Joyce signed up to, yet they turn up in this place and they decide they want to criticise this government for the election commitment of 98 per cent. Labor is not prepared to abandon rural and regional Australia in the way the former government did. Five capital cities—(Time expired)

Superannuation

Senator STERLE (2.59 pm)—As the last questioner of the year, I have a question to the Minister for Superannuation and Corporate Law, Senator Sherry. Is the minister aware of the ballooning problem of lost superannuation and its effect on retirement incomes for millions of Australians? Can the minister explain how this problem has eventuated and what measures have been previously introduced? And what effect did these measures have on this significant problem?

Senator SHERRY—I am sorry to finish on such a sombre note of concern for Australians, but there are a staggering 6.4 million lost superannuation accounts in Australia, containing a staggering almost $13 billion. Lost superannuation comes about because a contribution has not been received for two years and the member statement is returned ‘address unknown’. This staggering figure has been increasing exponentially over the last decade. Six years ago there were 3.8 million lost accounts and $5.5 billion in lost superannuation. So there has been a staggering increase in the number of accounts and moneys lost.

Senator Ian Macdonald interjecting—

Senator SHERRY—It is a very serious issue and I do wish members of the Liberal opposition would listen. It is a very serious problem, and I am sure that there are many senators, as well as many people in the community, who have lost accounts. There are some important adverse consequences of having a lost superannuation account. One adverse consequence is a pretty obvious one: in the main most people never collect their money when they reach retirement. Given the staggering numbers of lost accounts, it is a very serious issue.

Of course, the other very serious issue is that, in the main, the longer you wait to claim your money—if in fact it is ever claimed—the more it is eroded by fees and charges. So your account goes backwards and it could sit in lost superannuation for 20 or 30 years and be eroded to nothing—if there is anything left to collect. It is a very serious structural issue in our superannuation system. The former government did try a range of initiatives to minimise this growth
in lost superannuation. We had SuperMatch, SuperSeeker online and telephone SuperSeeker. We did not have SuperWatch, I am pleased to say. (Time expired)

Senator STERLE—Mr President, I ask a supplementary question—the last of the year! Can the minister update the Senate on any measures the government is taking to rectify this problem and how this will impact on fund members’ eventual retirement income?

Senator SHERRY—As I mentioned, there is almost $13 billion in lost super and there are 6.4 million lost accounts. The Labor government have decided that we need to update our superannuation system in a number of ways and bring it into the 21st century. Of course, fees and charges are a contentious issue in superannuation—the more accounts you have, the more fees you pay. So it is very important to minimise this problem. We intend to introduce a policy of what is called auto rolling together. In this process TFNs will be used to identify and cross transfer a member’s lost account to their latest active account. In this way, we will significantly reduce the number of accounts. Individuals will be allowed to opt out if they do not want auto rolling together. This is a very positive initiative, a very practical solution to minimising the sheer number of lost superannuation accounts, which is a very serious problem in Australia. As I said, it is another example of a very positive practical policy to modernise our system. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Internet Filtering

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (3.03 pm)—Could I just update an answer I gave yesterday. I indicated that Senator Bernardi may have signed the letter supporting ISP filtering. He has informed me that he was not one of the 62 coalition backbenchers who actually did sign that ISP letter. So I apologise.

Agriculture

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (3.03 pm)—I wish to provide answers to the questions I took on notice, in my capacity as Minister representing the Minister for Agriculture, Fisheries and Forestry, during question time on 25 November from Senator Payne. The answers are very detailed and lengthy and I seek leave to incorporate them in Hansard.

Leave granted.

The answers read as follows—

Answers to questions taken on notice during question time on 25 November 2008 from Senator Payne to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Sherry

(1) ‘My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Sherry. I refer the minister to comments made by the Minister for Agriculture, Fisheries and Forestry in a speech to the United Nations Food and Agriculture Organisation on 19 November:

“Governments must refocus on investment in agricultural research and development to boost productivity within the constraints of land and resource availability.”

‘What steps will the government take to ensure that this approach is upheld in government policy in all Australian jurisdictions?’

The Australian Government is committed to a dynamic agricultural sector and continues to be a strong supporter of rural research, development and extension.

In 2006-07 total expenditure by the rural research and development corporations and industry-owned companies (RDCs) was in the order of
The government’s investments in rural innovation, research and development and training include matching contributions, exceeding $200 million for each of the financial years from 2003-04 to 2007-08, to the 16 rural RDCs.

The important partnership and financial support of government and industry recognises the significant contribution research and development makes to the productivity of our primary producers. Agricultural productivity has increased more than two per cent per annum over the last 30 years.

The government is also committed to helping address the impacts of climate change on our rural industries and is investing $130 million in Australia’s Farming Future. The Climate Change Research Program ($46.2 million) will invest in the leading edge research and development that is needed to reduce greenhouse gas pollution; improve soil management; and help farmers adapt to a changing climate. FarmReady ($26.5 million) provides training opportunities for primary producers and aims to get research findings from the lab to the farm, enabling farmers to develop strategies to adopt and respond to the impacts of climate change.

The Regional Food Producers Innovation and Productivity Program will provide $35 million over four years to encourage innovation and improve food productivity for regional food producers and processors in Australia. The government is deeply committed to research, development and extension in our rural industries. This is vital to meet the challenges of drought, climate change, food security concerns and the global financial crisis.

The Australian Government will ensure national priority areas for rural research, development and extension are not left behind. The Minister for Agriculture, Fisheries and Forestry is working through the Primary Industries Ministerial Council and the rural research and development corporations to maintain Australia’s national research capability. The government will use the nation’s research resources more efficiently and effectively to deliver the best outcomes right along the value chain. The activities of the Primary Industries Ministerial Council ensure the states are working together to see the most important areas for rural research and development are adequately resourced.

The National Primary Industries Research, Development and Extension Framework (National RD&E Framework) is being jointly developed by industry peak bodies, rural RDCs and the Primary Industries Standing Committee. It includes fourteen industry sectors and seven cross-sector research, development and extension plans. The framework provides the structure and institutional arrangements needed to strengthen national research capability and better address cross-sectoral and sectoral research and development. The Primary Industries Ministerial Council considered and endorsed progress on the development of the framework on 6 November 2008. Research, development and extension in primary industries are essential to increasing productivity and sustainability.

The report of the review of the national innovation system (Cutler Review) highlighted under-investment in research and development by previous governments and foreshadowed the need for increased investment and stronger strategic planning. The government will be responding to the report in the near future. The government has also acted on its commitment to establish a Rural Research and Development Council. The Minister recently selected the members of the new Council. The Council will provide high level advice and coordination to better target and improve the effectiveness of the Australian Government’s investment in rural research and development.

The CSIRO has advised that it is maintaining its research efforts in the areas of wine/rootstock and livestock. The CSIRO advises that staff will be located at sites other than Merbein and Rockhampton. The CSIRO has advised that it currently invests approximately 30 per cent of its budget in...
agriculture and agriculture-related programs. The CSIRO advises that the total budget for the Agribusiness Group is approximately $315 million for 2008-09. The CSIRO advises that it has also increased funding for climate and water research.

(3) ‘… can the minister advise how Mr Burke’s comments measure up with the New South Wales Labor government’s decision to sell off nearly 90 per cent of Hurlstone Agricultural High School in Western Sydney and its productive land, and also the world-leading Glen Innes Agricultural Research and Advisory Station? Will the minister make representations to the New South Wales Labor government to prevent these sales from occurring, both in Glen Innes and at Hurlstone, and Hurlstone itself becoming unviable and no longer productive?’

The Minister for Agriculture, Fisheries and Forestry recognises the importance of a continued rural research and development effort. Keeping Australia’s farmers ahead of the rest of the world is a key priority for the Australian Government especially in the face of increasing international concerns about food security.

Research into soil carbon is a priority of the Australian Government and research projects on improving Australia’s soils will be the first tranche of projects under the $46.2m allocated for research under Australia’s Farming Future. The government will also be prioritising research into reducing greenhouse pollution and adapting to climate change. The government will work together with industry and local community on these issues.

EXECUTIVE SALARIES

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.04 pm)—by leave—On Tuesday last week I moved a motion:

That the Senate calls on the Government to detail before Parliament rises in 2008, the actions it will take in relation to the concerns about excessive executive salaries expressed by the Prime Minister (Mr Rudd) in both Australian and international forums.

That was followed by the Minister for Superannuation and Corporate Law saying that the Prime Minister would reveal by this date the action he was going to take on excessive executive salaries. I call on the government to make that statement today, because I do not want to have to move further motions later in the day to ensure that we do get that information before parliament rises.

COMMITTEES
Selection of Bills Committee

Report

Senator McEWEN (South Australia) (3.05 pm)—by leave—I present the 17th report of 2008 for the Selection of Bills Committee.

Ordered that the report be adopted.

Senator McEWEN—I seek leave to have the report incorporated in Hansard:

Leave granted.

The report read as follows—

(1) The committee met in private session on Thursday, 4 December 2008 at 10.44 am.

(2) The committee resolved to recommend—

That—

(a) the provisions of the Defence Legislation (Miscellaneous Amendments) Bill 2008 be referred immediately to the Foreign Affairs, Defence and Trade Committee for inquiry and report by 20 February 2009;

(b) the provisions of the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 24 February 2009;

(c) the provisions of the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 20 February 2009 (see appendix 1 for a statement of reasons for referral);

(d) the provisions of the Federal Justice System Amendment (Efficiency Meas-
The provisions of the Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 17 February 2009 (see appendix 2 for a statement of reasons for referral);

(e) the provisions of the Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 17 February 2009 (see appendix 2 for a statement of reasons for referral);

(f) the provisions of the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008 be referred immediately to the Economics Committee for inquiry and report by 20 February 2009 (see appendix 3 for a statement of reasons for referral);

(g) the provisions of the Uranium Royalty (Northern Territory) Bill 2008 be referred immediately to the Economics Committee for inquiry and report by 30 April 2009 (see appendix 4 for a statement of reasons for referral); and

(h) the Water Amendment (Saving the Goulburn and Murray Rivers) Bill 2008 be referred immediately to the Environment, Communications and the Arts Committee for inquiry and report by 27 March 2009.

(3) The committee resolved to recommend—

That the following bills not be referred to committees:

- Auditor-General Amendment Bill 2008
- Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008
- Corporations Amendment (No. 1) Bill 2008
- Customs Amendment (Enhanced Border Controls and Other Measures) Bill 2008
- Employment and Workplace Relations Amendment Bill 2008
- Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2008
- Migration Legislation Amendment Bill (No. 2) 2008
- Tax Laws Amendment (2008 Measures No. 6) Bill 2008
- Telecommunications Interception Legislation Amendment Bill (No. 2) 2008
- Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008.

The committee recommends accordingly.

(4) The committee deferred consideration of the Resale Royalty Right for Visual Artists Bill 2008 to its next meeting.

(Anne McEwen)
Acting Chair
4 December 2008

Appendix 1

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008
Reasons for referral/principal issues for consideration
Complex changes to Federal Court procedures
Possible submissions or evidence from:
Federation of Community Legal Services; Liberty; Human Rights Law Centre
Committee to which bill is to be referred:
Legal and Constitutional
Possible hearing date(s):
February 2009
Possible reporting date:
March 2009

(signed)
Whip/Selection of Bills Committee member

Appendix 2

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Federal Justice system Amendment (Efficiency Measures) Bill (No. 1) 2008
Reasons for referral/principal issues for consideration
The number of changes to judicial process, referrals, interlocutory orders

Possible submissions or evidence from:
Federation of Community Legal Services; Liberty; Human Rights Law Centre

Committee to which bill is to be referred:
Legal and Constitutional

Possible hearing date(s):
February 2009

Possible reporting date:
March 2009

Whip/Selection of Bills Committee member

Appendix 4

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Uranium Royalty (Northern Territory) Bill 2008

Reasons for referral/principal issues for consideration
Ensuring world’s best practice implemented regarding Australian uranium developments and process

Possible submissions or evidence from:
Australian Uranium Association; ANSTO; Northern Lands Council; Top End Aboriginal Conservation Alliance; Central Lands Council; Arid Lands Environment Centre; Australian Conservation Foundation; Australian Alliance Against Uranium

Committee to which bill is to be referred:
Economics

Possible hearing date(s):
March 2009

Possible reporting date:
April 2009

Whip/Selection of Bills Committee member

Appendix 3

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Trade Practices Amendment (Cartel Conduct and Other Measures) Bill

Reasons for referral/principal issues for consideration
Complex legislation with jail term should be looked at by the Economic Committee

Possible submissions or evidence from:
Trade Practices Committee Law Council, Chair David Poddar; Prof Bob Baxt, Brent Fisse plus other Trade Practices Lawyers

Committee to which bill is to be referred:
Senate Economics Committee

Possible hearing date(s):
_ _

Possible reporting date:
20 February 2009

Whip/Selection of Bills Committee member

BUDGET
Proposed Additional Expenditure
Consideration by Estimates Committees

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (3.06 pm)—I table particulars of proposed expenditure, as well as the Issues from the Advance to the Finance Minister as a final charge for the year ended 30 June 2008 and the final budget outcome 2007-08.

I seek leave to move a motion to refer the documents to legislative and general purpose standing committees.

Leave granted.
Senator FAULKNER—I move:

That—

(a) the documents, together with the final budget outcome 2007-08 (see entry no. 2, 14 October 2008) and the Advance to the Finance Minister as a final charge for the year ended 30 June 2008 (see entry no. 2, 11 November 2008), be referred to committees for examination and report; and

(b) consideration of the Issues from the Advance to the Finance Minister as a final charge for the year ended 30 June 2008 in committee of the whole be made an order of the day for the day on which committees report on their examination of the additional estimates.

Question agreed to.

Portfolio Budget Statements

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (3.07 pm)—I table portfolio additional estimates statements and a portfolio supplementary additional estimates statement for 2008-09 for portfolios and executive departments in accordance with the list circulated in the chamber. I inform the Senate that copies are available from the Senate Table Office.

The list read as follows—

Portfolio Additional Estimates Statements

Agriculture, Fisheries and Forestry
Attorney-General
Broadband, Communications and the Digital Economy
Climate Change (Prime Minister and Cabinet portfolio)
Defence
Education, Employment and Workplace Relations
Environment, Water, Heritage and the Arts
Families, Housing, Community Services and Indigenous Affairs
Finance and Deregulation
Foreign Affairs and Trade
Human Services
Immigration and Citizenship
Infrastructure, Transport, Regional Development and Local Government
Innovation, Industry, Science and Research
Prime Minister and Cabinet
Resources, Energy and Tourism
Treasury
Veterans’ Affairs.

MINISTERIAL STATEMENTS

Restoring Integrity to Government

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (3.08 pm)—I table a ministerial statement relating to restoring integrity to government.

Senator RONALDSON (Victoria) (3.08 pm)—by leave—I move:

That the Senate take note of the document.

In relation to the first of those ministerial statements, I will give Senator Faulkner his due. He has attempted in some way to restore some transparency into the system after a fairly inauspicious start. I might say, however, that he is in some respects the white knight that has been splattered in mud from those around him. While I will accept that the minister is genuine in his endeavours in relation to this, this is very much a self-serving statement in relation to what allegedly has been achieved in this portfolio over the last 12 months. Fortunately, all other ministers have not provided a self-serving statement such as that. Having said that, I acknowledge that the minister has attempted to achieve some goals. It is those around him, quite frankly, who have let him down. There is no point in having a white knight in relation to openness and transparency if the white knight is constantly compromised by those around him.
While his document clearly articulated what he believed were the upsides of things that had been achieved in his portfolio, I do not need to remind the minister of the lack of openness and lack of transparency in a number of ministerial offices. Of course, that starts in the Prime Minister’s own office. It finished in the office of Parliamentary Secretary McKew. I do not need to remind the minister—nor do I need to remind the Senate—about the deplorable events earlier this year, when a job was effectively given out of the Prime Minister’s office to the partner of a ministerial staffer. Others in the chamber will know that it has quite rightly been called ‘the CMAX affair’. Senator Faulkner, in a self-serving document—though I acknowledge there has been some movement forward—failed to tell the Senate that the slippage in relation to action regarding the CMAX affair was quite deplorable. The action in relation to the Parliamentary Secretary McKew matter was quite deplorable. I will be interested to see what the outcome is when the Auditor-General’s report is released.

What Senator Faulkner must go into at the end of the year is acknowledging that the standards he has ostensibly set for those around him—for other ministers, including the Prime Minister—have failed abysmally. There is no point putting out ministerial statements that are effectively of what the minister might have wanted to achieve through the year but which, in actual fact, was not delivered. I acknowledge that it was not the minister who did not deliver it; it was not delivered by other ministers, who failed the test of openness and transparency.

I take this opportunity to also refer to the matter of their pre-election promise on government advertising. Before the last election, Kevin Rudd and Labor released a document called Cleaning up government, where they boldly claimed:

Labor will end the abuse of Government advertising. All ad campaigns in excess of $250,000 will be vetted—

and I repeat the word ‘vetted’—by the Auditor General or their designate.

But the government’s advertising guidelines, released on 2 July this year, make no such reference to the power of the Auditor-General to vet the proposed advertising. So what we saw in the pre-election document and what we saw in the final document were, of course, two entirely different things. It suited the government in the election campaign to talk about these things, but when they got into government they then changed their minds. Despite the openness and transparency that was preached prior to the election, when it came to the crunch, the rhetoric did not match the actions.

The other matter that I want to refer to and to which the minister referred earlier—I will not take up much more than another minute; I am aware of the time constraints—is Public Service ethics and an independent committee, I think; I did not catch the full comment.

Senator Faulkner—Ethics Advisory Service.

Senator RONALDSON—But when you look at the openness, transparency, independence and ethical background of the Public Service, the one person who has demeaned all of that is the Prime Minister himself by cutting out the coordination comments.

This has historically—for decades—been an opportunity for an independent Public Service to have appropriate input into cabinet submissions. Because of a leak—or under the guise of a leak—out of cabinet—

Senator Abetz—On Fuelwatch.

Senator RONALDSON—That is right: as my colleague reminds me, it was on Fuelwatch. Under the guise of a cabinet leak
on Fuelwatch by a minister who was appalled at the policy—which has now been pulled, and quite rightly—an institution that has served governments of all political persuasions over decades was pulled. If that is an example of the openness, transparency and accountability referred to in the minister’s document, heaven help us.

There are a number of other examples. I am mindful of the time. I will not go into those except to mention once more this notion of campaign finance reform. I am pleased that both of the bills that are relevant in the portfolio of the minister and I have now gone over until next year; but, if you, Minister, were serious about openness and transparency, these matters would never even have got into this chamber until the release of your green papers and the opportunity for the joint standing committee and this chamber to take a holistic view of the issue. It was party partisan. It was a political move. The government stands condemned for that. I will finish on this note: this ministerial statement does contain some measures the minister has implemented which I think are for the benefit of all, and I congratulate him on that. But, Minister, you cannot table a self-serving document which sums up your year’s activities without any acknowledgement at all that the standards that you set for your ministerial colleagues simply have not been met.

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (3.17 pm)—I had not intended to speak on this matter, but I will respond to some of the points that have been made by the shadow minister. First of all, the Australian Labor Party went to the last election with a commitment to restoring a high standard of integrity to government in Australia. Australia endured over a decade of ministerial scandals and abuse of power from the Howard government, and when we took office over a year ago there was a great deal of work to do to repair the damage. One of our first steps was to bring under a single minister integrity agencies across the Commonwealth such as the ANAO, the Inspector-General of Intelligence and Security, the ombudsmen, the Public Service Commissioner, the Archives and the like. But another immediate reform was the release by the Prime Minister of his standards of ministerial ethics three days after being sworn into office.

What these standards meant is very significant. Let’s not beat around the bush about this. It means no more fundraisers for political parties at Prime Ministerial residences, no more fundraisers at Kirribilli House, no ministers going straight from being the defence minister to working for a major defence contractor like former Minister Reith, no signing off a grant to the Royal Australian College of General Practitioners a week before the election and going off to work for them as a paid consultant after the election like former Minister Wooldridge did or going direct from being the minister responsible for childcare and going to join the board of ABC Learning Centres—that probably was not a really good move on Larry Anthony’s part. We made clear that for a period of at least 18 months it is not appropriate for ministers to transition straight from working in an area to having business dealings in that area.

Along with that reform, the government believes that information about lobbyists should be freely available to those who are lobbied and to the wider community. It is an important reform. In May of this year I tabled the Lobbying Code of Conduct, fulfilling an election commitment to adopt a code of conduct for lobbyists and establishing a Register of Lobbyists. Government advisers and senior public servants who leave their jobs cannot engage in third-party lobbying on issues they have worked on in the previous 12 months. There were very disappointing comments about ministerial staff. I know
that it is just politics. I know Senator Ronaldson does not really believe it—he just feels obligated to say it. But under the previous government we saw an unacceptable situation with ministers using their staff as a firewall against accountability. The government has introduced for the first time—it was never done; none of these codes of conduct were brought in when the Howard government was in office—a code of conduct for ministerial staff. In a groundbreaking move for government, this code provided for an unequivocal statement that executive decision making is the preserve of ministers and public servants because they can be held accountable, through committees and the parliament, for what they do, not ministerial staff operating in their own right.

It was very disappointing to hear the issue of advertising raised. One of the starkest differences between the Rudd government’s commitment to transparency and accountability and that of the previous government is our action to end the abuse of government advertising for partisan political purposes. In July, I announced an introduction of our revised advertising arrangements, widely welcomed in the media, the community and by most in the parliament. It saw the processes of campaign advertising placed with agencies, with the public servants. In a major initiative, the guidelines established a requirement that no advertising campaign that cost more than a quarter of a million dollars could proceed without a report from the Auditor-General.

These advertising guidelines were designed to take politics out of government advertising. I think the opposition should acknowledge that this government has delivered in relation to these matters. They have been introduced and they are working effectively, and most people acknowledge that is the case.

Senator Abetz—No, they don’t!

Senator Faulkner—Yes, they do, Senator. We put an end to spin in government advertising. We abolished the Ministerial Council on Government Communication. We abolished the GCU.

Opposition senators interjecting—

The DEPUTY PRESIDENT—Order!

Senator Faulkner listened in silence to Senator Ronaldson’s contribution and I think the same courtesy should be extended to Senator Faulkner.

Senator Faulkner—No wonder the Liberal senators laugh. That committee politicised government advertising campaigns. Now there are no staff, no ministers and no backbenchers, no-one involved in partisan politics, involved at all in our advertising guidelines and advertising processes. What the opposition should do is say, ‘Job well done on this,’ to the Rudd government. It is a way of doing business very different to what we saw under the Howard government.

Modesty prevents me speaking about our reforms in the freedom of information area and in relation to electoral reforms. I will respond to the issue that Senator Ronaldson raised about coordination comments, when he showed his absolute lack of understanding of how government in this country works. These are departmental coordination comments, Senator Ronaldson—through you, Mr Deputy President. They are not prime ministerial coordination comments; they are departmental coordination comments. Any decision for them not to proceed is a departmental decision. It happened in one department—that is true; we know that—the Department of the Prime Minister and Cabinet. Those processes have been restored stronger, tougher and with a great deal more rigour than they had previously, and most senators would and should acknowledge that this is the case.
In conclusion, and I do not want to take up a lot of the chamber’s time, I note that, as the only political party in this country that is older than the nation itself, the Australian Labor Party has had a great tradition of support and respect for the institutions, the conventions and the values that underpin Australian democracy. Unlike the previous government, we are not in the business of rorting the advantages of incumbency. We have made good strides in this area. Of course there is more to be done, but a ministerial statement has been tabled today that I ask people to judge objectively. I ask them to look at what has been achieved over the past year. I ask them to compare that with what occurred during the 11½ bleak years of the Howard government. We will continue to make strides in this area. We care about transparency; we have acted upon it. We care about accountability; we have acted upon it. We care about integrity; we have acted upon it. We intend to do more.

Question agreed to.

National Security

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (3.26 pm)—I table a ministerial statement on the government’s national security policy.

Senator ABETZ (Tasmania) (3.26 pm)—by leave—In relation to the second ministerial statement, on national security, I move:

That the Senate take note of the document.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Rural and Regional Affairs and Transport Committee

Report: Government Response

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (3.27 pm)—I present the government’s response to the report of the Rural and Regional Affairs and Transport Committee on its inquiry into options for additional water supplies for South-East Queensland, and seek leave to have the document incorporated in Hansard.

Leave granted.

Australian Government response to the Senate Standing Committee Report—Options for additional water supplies for South-East Queensland

Preamble

The Terms of Reference of the referral by the Senate dated 26 February 2007 to the Standing Committee on Rural and Regional Affairs and Transport required it to inquire into and report on:

The examination of all reasonable options, including increased dam capacity, for additional water supplies for South East Queensland, including:

• the merits of all options, including the Queensland Government’s proposed Traveston Crossing Dam as well as raising Borumba Dam; and
• the social, environmental, economic and engineering impacts of the various proposals.

Improving water security for our towns and cities is a high priority for the Australian Government. The Australian Government’s new national plan, ‘Water for the Future’ provides a single, coherent national framework that integrates rural and urban water issues and secures the long term water supply of all Australians.

‘Water for the Future’ is built on four key priorities, namely taking action on climate change, using water wisely, securing water supplies and supporting healthy rivers.

In delivering ‘Water for the Future’ the Australian Government will be seeking to set a new standard in national leadership and co-operative relations with all levels of government. Commonwealth funding will be tied to reform.

To help secure water supplies for the current and future needs of our towns and cities, the Australian Government has committed $1.5 billion in new urban water investment to deliver on the key

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priorities of using water wisely and securing new water supplies.

- The National Urban Water and Desalination Plan will provide funding and tax offsets for innovative water supply projects in desalination, water recycling and major stormwater capture.

- The National Water Security Plan for Cities and Towns will target infrastructure refurbishment, new infrastructure and practical projects that save water and reduce water losses.

- The National Rainwater and Greywater Initiative will provide incentives for household and surf life saving club rainwater and greywater use.

Across Australia, there is significant investment in infrastructure occurring to meet the needs of a growing population while dealing with the uncertainties associated with climate change. New approaches need to evolve so that markets can operate more effectively to allocate water between competing uses, improve water use efficiency and deliver water to its highest value uses. Economic settings should promote affordable and timely investment in secure water supplies and water-efficient technologies that reward customers for their water conservation efforts. Improved water security in remote communities, including remote indigenous communities, will confirm Australia’s basic rights to drinking water. Finally, by ensuring water planners have the best available information on available water resources and the likely impacts of climate change, problems of poor planning, over-allocation and under-investment are avoided and the likelihood of costly water shortages into the future is minimised.

These issues are being progressed through the Council of Australian Governments (COAG) who agreed to a renewed approach to water reform. A comprehensive new work program to enhance the effectiveness of water markets, address over-allocation, improve environmental outcomes and address the key challenges in urban water has been commissioned. This work will provide new impetus to the National Water Initiative, strengthening its role as the blueprint for continuing water reform.

This response deals with the two recommendations of the Senate Committee, as well as the additional comments by Senators Macdonald, Trood, Joyce and Boswell and the recommendations arising from the additional comments by Senators Siewert and Bartlett.

**Recommendation 1**

The committee recommends that the Commonwealth Minister for Environment and Water Resources, when exercising authority under the EPBC Act, considers the evidence received on the potential environmental impact of the Traveston Dam on the Mary River and the species of the river. The committee also recommends that the Minister reviews the results of the audit on the Paradise Dam approval conditions to mitigate any potential effect on threatened species.

The Australian Government agrees with Recommendation 1 to the extent that the Commonwealth Minister for the Environment, Heritage and the Arts (the Minister) can consider, under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), all relevant information that relates to matters of National Environmental Significance (NES).

The Australian Government’s responsibilities under the EPBC Act focus on the protection of certain defined matters of NES. These include:

- World Heritage places;
- National Heritage properties;
- Wetlands of international importance;
- Nationally threatened species and ecological communities;
- Migratory species listed under international agreements;
- Nuclear actions; and
- Commonwealth marine areas.

The objectives of the EPBC Act include the protection of the environment, especially matters of NES, and to promote ecologically sustainable development. In order to achieve these objectives the EPBC Act provides an efficient and effective national environmental assessment and approvals process.
Under the EPBC Act an action will require approval if the action has, will have, or is likely to have, a significant impact on a matter of NES. This applies to a number of Queensland Government water supply initiatives that were discussed as part of the Senate Inquiry, including the proposed dams at Traveston Crossing and Wyaralong.

Decisions on whether or not to approve actions under the EPBC Act, such as the proposed Traveston Crossing Dam and the Wyaralong Dam, are made by the Minister. Before making a decision on whether or not to approve the proposal nominated by the proponent, the Minister must consider the relevant information on the potential impacts of the proposed dams on matters of NES and economic and social matters.

On 29 November 2006, it was determined that the proposal to build the Traveston Crossing Dam would require assessment and approval under the EPBC Act. The matters of NES that will be the focus of this assessment include World Heritage places, wetlands of international importance, nationally threatened species and ecological communities, and migratory species listed under international agreements.

The assessment of the Traveston Crossing Dam under the EPBC Act is being undertaken in accordance with the bilateral agreement between the Australian and Queensland Governments. This bilateral agreement requires that the assessment undertaken by the Queensland Government consider the impacts of the action on matters of NES. The Draft Environmental Impact Statement (EIS) for the proposed Traveston Crossing Dam was released on 18 October 2007, and was made available for public comment until 14 January 2008. As part of the Bilateral assessment process the company proposing to take the action, Queensland Water Infrastructure Pty Ltd (QWI), is required to address relevant issues raised in public submissions on the Draft EIS. The public comment period provides an opportunity for all members of the community to contribute their opinion, expertise or advice to the assessment of the proposal nominated by the proponent.

Following a rigorous assessment process the Minister will make his decision on whether or not to approve the Traveston Crossing Dam under the EPBC Act. As required by the Act, the Minister will consider both environmental matters associated with the relevant matters of NES as well as economic and social matters. The information to be considered by the Minister in making his decision will include, but not be limited to, that contained within the EIS, the public submissions made on the EIS, the proponent’s response to those submissions, and relevant findings of the Senate Inquiry. If the Minister is not satisfied that he has enough information to make an informed decision, he can seek further information before making a decision.

The results of the compliance audit of the Paradise Dam approval conditions will be taken into account, as relevant, to assess mitigation options and inform relevant approval conditions for Traveston Crossing Dam, should the Minister decide to approve the proposed Traveston Crossing Dam under the EPBC Act.

On 13 December 2006, it was determined that the proposal to build Wyaralong Dam would similarly require assessment and approval under the EPBC Act in accordance with the bilateral agreement between the Australian and Queensland Governments. The relevant matters of NES for this proposal include wetlands of international importance, nationally threatened species and ecological communities, and migratory species listed under international agreements. The Draft EIS for the proposed Wyaralong Dam was released on 7 November 2007, and was made available for public comment until 12 December 2007. On 24 November 2008, the construction of the Wyaralong Dam was approved with conditions attached. It was determined that with the approval conditions in place, the proposal could proceed while still ensuring the protection of the relevant matters of national environmental significance in accordance with the requirements of the EPBC Act.

Recommendation 2
The committee recommends that the Queensland Government continues to:

- Instigate strategies that will inform, engage and consult with members of the affected communities;
• Ensure that businesses affected by the proposed dams are adequately compensated and offered appropriate assistance; and

• Where possible, facilitate the timely release of copies of reports and information to members of the community to achieve a transparent and open process.

Recommendation 2 is a matter for the Queensland Government. Nonetheless, the Australian Government would encourage the Queensland Government to implement the recommendation.

Additional comments by Senators Ian Macdonald, Russell Trood, Barnaby Joyce and Ron Boswell

Comment 1.1

The evidence given to the Inquiry by so many witnesses from a wide range of professional, community, social and economic backgrounds leaves us with very strong doubt that, either the Traveston Crossing Dam, or the Wyaralong Dam will be particularly useful exercises in contributing to the solution of the long term water needs for the growing south-east region of Queensland. The proposal to construct these dams suggests to us that the decision to build them was politically motivated and reached without sufficient scientific, social or economic analysis.

Improving water security for our towns and cities is a high priority for the Australian Government. The Government supports initiatives that will drive investment in diverse water supply options and encourage industry and the community to save and use water more efficiently. While the Australian Government is working cooperatively with the states and territories to address water issues, such issues are planning matters for the state, subject to certain approvals required under the EPBC Act.

The Queensland Government has identified Traveston Crossing and Wyaralong as preferred locations for surface water supply dams. QWI referred both the proposed Traveston Crossing Dam and Wyaralong Dam to the Minister for the Environment, Heritage and the Arts for assessment under the EPBC Act. As noted in response to Recommendation 1 above, in deciding whether or not to approve an action the Minister for the Environment, Heritage and the Arts must consider the relevant information on the potential impacts of the proposal nominated by the proponent on matters of National Environmental Significance, and economic and social matters.

Comment 1.2

We thank the Queensland public servants for their assistance and willingness to give evidence to the Inquiry. They have found themselves in a difficult position having had to justify publicly and before a parliamentary committee, elements of a policy with which they were plainly uncomfortable. In all they acted responsibly and professionally and were a credit to the public service system they serve. Yet none of this overcomes what appeared to us an exercise in trying to defend the indefensible.

It is not appropriate that the Australian Government respond to this comment.

Comment 1.3

The report of the Committee highlights the many discrepancies in and challenges to the information of the Queensland Government, much of which seems to have been prepared ex post-facto the decision to construct the two dams.

It is not appropriate that the Australian Government respond to this comment.

Comment 1.4

With regard to the Traveston Crossing Dam, the cost in financial, economic, environmental and social terms of stages one and two of the dam will dwarf any intended benefit to residents of South-east Queensland. The overall negative impact of the dam on the people of the Mary River Valley will be in many cases grievous.

All decisions on whether to approve an action made under the EPBC Act require consideration of economic and social matters in addition to matters of national environmental significance. This is to ensure these important matters are taken into consideration before making a final decision.

Comment 1.5

Considering the evidence provided to the Committee we have a very real concern that Australian native fauna which is unique to the Mary River system will be in serious danger of extinction if the dam proceeds. The evidence along these lines appears to be overwhelming and very persuasive.
As noted above, in considering whether to approve the proposed Traveston Dam the Minister for the Environment, Heritage and the Arts will consider impacts on matter of NES. These include nationally-listed threatened species such as the Australian Lungfish, Mary River Cod and the Mary River Turtle; listed migratory species including migratory shorebirds, the Green Turtle, and the Dugong; the Great Sandy Strait Ramsar wetland; and the World Heritage values of Fraser Island.

Comment 1.6
Our conclusions on the Traveston Crossing Dam are reinforced by the actions of the Queensland Government. In dealing with the people of the Mary River Valley, the experts engaged by them and the volunteers supporting them, the government has been frequently evasive and inattentive to their desire for information on the dam.

It is not appropriate that the Australian Government respond to this comment.

Comment 1.7
At the completion of the Inquiry we have been left with the very firm conclusion that the Traveston Crossing Dam in particular, is a political response to a serious problem, but is not one which will solve the problem.

It is not appropriate that the Australian Government respond to this comment.

Comment 1.8
We believe there are many other possible solutions to Southeast Queensland’s obvious needs for a more reliable long term supply of water that would be more cost effective and would have infinitely less economic and social impact on those affected by the proposed Traveston Crossing Dam.

The choice of water supply options is a matter for the Queensland Government.

Where, as with the proposed Traveston Crossing Dam, a proposal is likely to have a significant impact on a matter of NES, it is then assessed by the Minister for the Environment, Heritage and the Arts under the EPBC Act as described above.

Comment 1.9
We believe that no work should be undertaken on the construction of the Traveston Crossing Dam without these alternatives being properly and fully investigated.

Works can only commence on Traveston Crossing Dam if and when all required State and Commonwealth approvals have been granted, including approval under the EPBC Act. The Minister for the Environment, Heritage and the Arts will take into account all relevant information when deciding whether or not to approve the proposed Traveston Crossing Dam under the EPBC Act.

Comment 1.10
We believe that the Queensland Government should further pursue:

- their already initiated water saving measures, including rain water tanks and demand reduction;
- further work on increasing the capacity of the Borumba and other dams;
- a serious assessment of additional desalination projects;
- with greater vigour, their existing proposals on water recycling; and
- the possible advantages of the new technology in increasing use of grey water for non-potable purposes.

It is not appropriate that the Australian Government respond to this comment.

Comment 1.11
While the federal Minister for the Environment and Water Resources is required to follow strict processes in assessing the Traveston Crossing Dam under the Environmental Protection and Biodiversity Conservation Act, we urge the Minister to:

- require the Queensland Government to apply for EPBC Act approval for both stages one and two. The two stages of the project are so integrally entwined that we see very little logic in the two stages being separated for environmental assessment, especially when the proposed dam wall is intended to be constructed to stage two height at the outset. We consider it highly unlikely that stage one will have much benefit without proceeding to stage two, and even then the proposal is deeply flawed as a way of meeting southeast Queensland’s future water needs;
• pay close attention in his determination of the social and economic impact of the dam’s construction as required by the EPBC Act;
• very seriously consider the overwhelming evidence on the danger to unique fauna species in the river system which the imposition of conditions will not overcome; and
• very seriously investigate the allegations of the failure by the Queensland Government to comply with conditions imposed on the Paradise Dam.

The process by which the Traveston Crossing Dam will be assessed under the EPBC Act is described above in the response to Recommendation 1 of the Senate Committee report.

The action that has been referred by the proponent (Queensland Water Infrastructure Pty Ltd) and that is currently being assessed under the EPBC Act, includes building of the Traveston Crossing Dam wall to ‘stage two’ height, with inundation and operation of the dam at ‘stage one’ level only.

The Queensland Government has confirmed that no decision has been made on whether or not to progress operation of the dam at stage two capacity and that such a decision is not anticipated until closer to 2035. The Queensland Government has also advised that the potential consequential impacts of inundation and operation of the dam at stage two capacity will be considered, to the extent that is possible, during the current assessment process.

The Queensland Government have been notified that if stage two is pursued in the future, it will also need to be referred to determine if assessment and approval under the EPBC Act is necessary before it can proceed.

Comment 1.12

Although the proposal to build the Wyaralong Dam received less attention during the inquiry, we consider the evidence tended to the Committee regarding its shortcomings to have been compelling. The Queensland government’s case for constructing Wyaralong is far from convincing, especially in the light of the many apparently superior proposals for supply in the area. Before committing any further resources to this project, we would urge the Queensland government to examine the alternatives more closely and reconsider its decision.

It is not appropriate that the Australian Government respond to this comment.

Comment 1.13

Many of the concerns we have expressed with regard to procedures and dealing with affected residents in relation to the Traveston Crossing Dam apply equally to the management of the Wyaralong proposal.

It is not appropriate that the Australian Government respond to this comment.

Additional comments by Senator Rachel Siewert on behalf of the Australian Greens

Recommendation 1

The Traveston Dam should not go ahead.

The proposed Traveston Crossing Dam will be assessed in accordance with the requirements of the EPBC Act, as outlined in the response to Recommendation 1 above of the Committee report.

Recommendation 2

The Queensland Government should pursue alternative water supplies such as demand and supply management, rainwater tanks and recycling.

It is not appropriate that the Australian Government respond to this comment.

Recommendation 3

The Queensland Government needs to ensure that population growth in the south east region of Queensland is sustainable. It should not be granting planning and development approvals unless proponents can demonstrate the necessary water is available and that planning processes address sustainable water supplies.

It is not appropriate that the Australian Government respond to this comment.

Additional comments by Senator Andrew Bartlett

Recommendation 1

All political parties, and particularly the two major parties who are competing to form the next government, should give an unequivocal statement that they will use the powers in the EPBC Act to stop either or both of the Traveston and Wyaralong Dams if the evidence clearly shows
there will be a significant impact on a matter of national environmental significance. The Australian Government is committed to proper and transparent administration of the EPBC Act. As set out above, it has been determined that the proposal to construct the Traveston Crossing Dam requires assessment and approval under the EPBC Act.

As outlined in the response to Recommendation 1 above of the Committee report, the construction of the Wyaralong Dam has been assessed under the EPBC Act and was approved with conditions attached on 24 November 2008. It was determined that with the approval conditions in place the proposal could proceed while still ensuring the protection of the relevant matters of national environmental significance in accordance with the requirements of the EPBC Act.

Recommendation 2

Whilst there have been some positive projects developed by the Queensland government in recent times encouraging water tanks and other rainwater harvesting, there is far more that can be done and can be achieved in this area. Should the Queensland government continue in its refusal to adopt a comprehensive evidence based, best practice approach to delivering sustainable and secure long-term water supplies for south-east Queensland, the federal government should use its powers and responsibilities under the National Water Initiative to ensure the large amounts of money being splashed around are properly applied.

All Australian Governments have committed, in the National Water Initiative, to provide advice on infrastructure needs and priorities. It will provide advice on infrastructure gaps and bottlenecks that hinder national economic growth and prosperity, including in the water sector. It will also identify investment priorities, and examine policy and regulatory reforms to improve the efficient utilisation of existing infrastructure. As a result of discussions at the October COAG meeting, the Commonwealth has asked Infrastructure Australia to bring forward by the end of 2008, an interim report on infrastructure priorities across the nation.

Reports: Government Responses

The DEPUTY PRESIDENT—In accordance with the usual practice, I table a report on parliamentary committee reports to which the government has not responded within the prescribed period. The report has been circulated to honourable senators. With the concurrence of the Senate, the report will be incorporated in Hansard.

The report read as follows—

PRESIDENT’S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS—AS AT 4 DECEMBER 2008

PREFACE

This document continues the practice of presenting to the Senate twice each year a list of government responses to Senate and joint committee reports as well as responses which remain outstanding.

The practice of presenting this list to the Senate is in accordance with the resolution of the Senate of 14 March 1973 and the undertaking by successive governments to respond to parliamentary committee reports in timely fashion. On 26 May 1978 the Minister for Administrative Services (Senator Withers) informed the Senate that within six months of the tabling of a committee report, the responsible minister would make a statement in the Parliament outlining the action the government proposed to take in relation to the report. The period for responses was reduced from six months to three months in 1983 by the incoming government. The Leader of the Government in the Senate announced this change on 24 August 1983. The method of response continued to be by way of statement. Subsequently, on 16 October 1991 [tabled 5 Nov 1991] the government advised that responses to committee reports would
be made by letter to a committee chair, with the letter being tabled in the Senate at the earliest opportunity. The previous government affirmed its commitment in June 1996 to respond to relevant parliamentary committee reports within three months of their presentation.

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Selection of Bills, Privileges, Procedure, Publications, Regulations and Ordinances, Senators’ Interests and Scrutiny of Bills. However, such reports will be included if they require a response. Government responses to reports of the Public Works Committee are normally reflected in motions in the House of Representatives for the approval of works after the relevant report has been presented and considered.

Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and subsequently tabled by, the committee. Agencies responding to administrative recommendations are required to provide an executive minute within six months of the tabling of a report. The committee monitors the provision of such responses.

An entry on this list for a report of the JCPAA containing only administrative recommendations is annotated to indicate that the response is to be provided in the form of an executive minute. Consequently, any other government response is not required. However, any reports containing policy recommendations are included in this report as requiring a government response. Committees report on bills and the provisions of bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the bill, and therefore require a response, are listed. The list also does not include reports by committees on estimates or scrutiny of annual reports, unless recommendations are made that require a response.

### A guide to the legend used in the ‘Date response presented/made to the Senate’ column

* See document tabled in the Senate on 21 June 2007, entitled Government Responses to Parliamentary Committee Reports—Response to the schedule tabled by the President of the Senate on 7 December 2006, for Government interim/final response.

** Report contains administrative recommendations – any response to those recommendations is to be provided direct to the JCPAA committee in the form of an executive minute.

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AUDITOR-GENERAL’S REPORTS

Report No. 11 of 2008-09

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Audit report No. 11 of 2008-09: Performance audit: disability employment services: Department of Families, Housing, Community Services and Indigenous Affairs and the Department of Education, Employment and Workplace Relations.

DOCUMENTS

Tabling

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (3.28 pm)—I table four documents:

- Former parliamentarians’ travel paid by the Department of Finance and Deregulation for the period January to June 2008
- Former parliamentarians’ travel paid by the Department of Finance and Deregulation for the period January to June 2008
- Former parliamentarians’ overseas study travel reports for the period January to June 2008
- Schedule of special purpose flights paid by the Department of Defence for the period 1 January to 30 June 2008

COMMITTEES

Treaties Committee

Report

Senator McGAURAN (Victoria) (3.28 pm)—On behalf of the Joint Standing Committee on Treaties, I present report No. 97 of the committee, Treaties tabled on 16 September 2008.

Senator McGAURAN—by leave—I move:

That the Senate take note of the report.
I seek leave to incorporate a tabling statement.
Leave granted.

*The statement read as follows*—
Report 97 contains the committee’s findings on one treaty tabled in Parliament on 16 September 2008. The committee found the treaty, a social security agreement with the Republic of Finland, to be in Australia’s national interest.

This agreement is one of 23 social security agreements that Australia has concluded or is in the process of concluding with a range of countries. The agreement is designed to overcome barriers to pension payments arising from the domestic legislation of Australia and Finland. These barriers include requirements on citizenship, minimum contributions record, past residence record and current country of residence.

The agreement will provide enhanced access to retirement benefits in both countries and increased portability of these benefits. It will address gaps in social security coverage for people who have moved between Australia and Finland, help people to maximise their income and allow greater choice in where to live in their retirement years. Most of the approximately 2,000 people who will benefit from this agreement are aged pensioners.

The agreement also addresses ‘double coverage’ of superannuation. Employers in one country who send their employees to work in another country will be exempt from paying superannuation in the other country provided that they continue to make contributions in their home country.

It is expected that around 400 Australian pensions will be paid into Finland as a result of the agreement and that some 1,800 people will receive a pension from Finland. These are pensions that would not be paid without this agreement being in place.

The committee has noted that the agreement will result in department costs of $2.6 million in the period to 2011-2012, but that is also expected to save the department $4 million in administered outlays.

The committee considers that the agreement will provide economic and political benefits to Australia as well as benefiting Australia and Finnish retirees and has recommended that binding treaty action be taken.

Question agreed to.

**DELEGATION REPORTS**

Parliamentary Delegation to Papua New Guinea and East Timor

**Senator CASH** (Western Australia) (3.29 pm)—by leave—I present the report of the Australian parliamentary delegation to Papua New Guinea and East Timor, which took place from 26 October to 5 November 2008. I seek leave to move a motion to take note of the document.

Leave granted.

**Senator CASH**—I move:

That the Senate take note of the document.

I seek leave to incorporate a statement.

Leave granted.

*The statement read as follows*—
In presenting this report may I observe that this particular delegation was led by the Member for Wills and the report has been tabled by him in the other place.

The delegation members also included me, Ms Louise Marcus, the Member for Greenway and Mr Brett Raguse, the Member for Forde.

The delegation visited Papua New Guinea and Timor Leste from 26 October to 5 November 2008.

The delegation attended a series of meetings in both Papua New Guinea and Timor Leste to discuss issues of bilateral, regional and international significance, and inspected sites of social, political and economic importance to both delegation members and the Australian parliament more broadly.

As set out in the delegation report, the delegation adopted the following aims and objectives in relation to both countries for their visit:

- Renew links with the National Parliament and discuss means by which they can be strengthened;
• Gain an appreciation of contemporary political, economic and social issues;
• Review the bilateral relationship including further growth in trade and investment;
• To gain an insight into AusAID’s activities in both PNG and Timor Leste and;
• Specifically in relation to Timor Leste to gain an insight into the roles and activities of the Australian-led International Stabilisation Force and the UN Integrated Mission to Timor-Leste and to gain an appreciation of the Australian Government’s activities including its support for East Timor’s security sector reform through the Defence Cooperation Program and the Timor-Leste Police Development Program.

The delegation was grateful for the opportunity that was provided to us to visit Australian war sites in both Papua New Guinea and Timor Leste. I would like to make special mention of the role that the Australian troops play in Timor Leste in assisting to ensure that stability is maintained and the country is able to develop and I record my gratitude to them.

The delegation is grateful for the assistance, hospitality and courtesy provided to us by our respective missions. In Papua New Guinea, Mr Chris Moraitis, Australian High Commissioner to Papua New Guinea and Mr John Feakes, Deputy High Commissioner to Papua New Guinea and in Timor Leste, Mr Peter Heyward, Australian Ambassador to East Timor.

The delegation leader in tabling the report expressed on behalf of the delegation our appreciation and gratitude to Ms Fiona Way in the Parliamentary Relations Office for her efforts in organising the delegation and to Ms Roberta Molsen the delegation secretary for her outstanding assistance throughout the delegation. I concur with his comments.

Question agreed to.

COMMITTEES

Membership

The DEPUTY PRESIDENT—The President has received letters from party leaders seeking to vary the membership of committees.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (3.30 pm)—by leave—I move:

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

Education, Employment and Workplace Relations—Standing Committee—

Appointed—Participating member: Senator Boyce

Environment, Communications and the Arts—Standing Committee—

Appointed—

Substitute member: Senator Siewert to replace Senator Ludlam for the committee’s inquiry into the Water Amendment (Saving the Goulburn and Murray Rivers) Bill 2008

Participating member: Senator Ludlam

Foreign Affairs, Defence and Trade—Joint Standing Committee—

Appointed—Senator Hanson-Young

Legal and Constitutional Affairs—Standing Committee—

Appointed—

Substitute members:

Senator Siewert to replace Senator Hanson-Young for the committee’s inquiry into the provisions of the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008

Senator Ludlam to replace Senator Hanson-Young for the committee’s inquiry into the provisions of the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008
Senator Ludlam to replace Senator Hanson-Young for the committee’s inquiry into the provisions of the Federal Justice System Amendment (Efficiency Measures) Bill (No. 1) 2008

Participating member: Senator Hanson-Young.

Question agreed to.

**NATION-BUILDING FUNDS BILL 2008**

**NATION-BUILDING FUNDS (CONSEQUENTIAL AMENDMENTS) BILL 2008**

**COAG REFORM FUND BILL 2008**

In Committee

Consideration resumed.

The **CHAIRMAN**—The committee is considering the Nation-building Funds Bill 2008 and Senator Milne’s amendment (1) on sheet 5645. The question is that Senator Milne’s amendments be agreed to.

**Senator SHERRY** (Tasmania—Minister for Superannuation and Corporate Law) (3.31 pm)—The existing evaluation principles for the funds provide an appropriate framework for expenditure. They require projects to address national infrastructure priorities, demonstrate high benefits and effective use of resources, efficiently address infrastructure needs and demonstrate that they achieved established standards in the implementation of management. The principles enable environmental considerations to be assessed as appropriate, such as evaluating benefits and the costs of the projects. The bill provides for appropriate parliamentary scrutiny of the evaluation criteria for each fund, which will be tabled in parliament as disallowable legislative instruments. Therefore, on balance, we will not be supporting the Greens amendments.

**Senator XENOPHON** (South Australia) (3.32 pm)—I am quite sympathetic to the Greens amendments. I understand what Senator Milne and the Greens are trying to achieve. I cannot support it, because I believe it is too prescriptive. But I urge the government to give a commitment that, when considering these nation-building funds and these projects, there will be clear criteria to achieve the goals of reducing greenhouse gases and to take climate change into account. If those criteria are not taken into account then these funds could be used for projects that are contrary to the goals that the government has espoused for dealing with carbon pollution.

**Senator SHERRY** (Tasmania—Minister for Superannuation and Corporate Law) (3.33 pm)—Obviously, the evaluation of projects under the nation-building funds will conform to broader government policy. I think the most obvious area is the area of climate change. For example, we have seen the introduction of the carbon trading scheme. Obviously, the assessment of projects will conform to that. But, again, I do not want to put that cart before the horse. They are issues on climate change that will be addressed on another occasion with another debate before the Senate when that policy response is concluded.

**Senator MILNE** (Tasmania) (3.34 pm)—I am not going to delay the Senate by speaking on this again except to say that the evaluation criteria in our amendment would require Infrastructure Australia to include assessments of greenhouse gas emissions and oil consumption implications in any matter of advice prepared under the section. That requires that filter to be put across every project. Frankly, if you have a whole-of-government approach to climate change and you are serious about greenhouse gas emissions then you would be accepting this. Though you say, ‘Of course it is going to be taken into account,’ I know it is not the case. If you did take it into account in relation to a
coal port, for example, you would be required under this amendment to identify the likely greenhouse gas impact and to give some appraisal of that. You might still decide against it, but at least you would be forced to look at it. The same applies in relation to new freeways and so on. You would be forced to look at the likely ramifications of the increased number of vehicles and so on. That gives you a better criterion by which to compare that to, say, a public transport investment.

I accept that the government and Senator Xenophon are not going to support this. I did not hear from the coalition but, consistent with what they said before about the principles, I am assuming that they also do not support it. I am disappointed about that because I have an inherent feeling that we are going to end up with the case that, when it suits the government, they will take greenhouse gases into account; when it does not, they will not. We are going to end up investing in infrastructure which is 20th century, hugely emissions-intensive and which undermines our effort to move to a low-carbon economy, a much more efficient transport and freight system and a much more efficient way of living in terms of energy and emissions. However, nobody can say that the parliament did not have the opportunity at this time of climate emergency to actually put into legislation the priorities that they say they espouse. I think this is another signal to the community that the government is on a go-slow on climate change.

Senator MINCHIN (South Australia) (3.36 pm)—Just to clarify for Senator Milne: your supposition is correct that the arguments I put earlier in relation to your previous amendment apply to this one and, on balance, the opposition is not in a position to support your amendment.

Question negatived.
This amendment adds a schedule which gives effect to the amendment that was passed earlier in relation to the joint house committee and the requirement for advice to be tabled.

Senator MINCHIN (South Australia) (3.38 pm)—I indicate the opposition’s support for this amendment. This is an amendment to the Infrastructure Australia Act 2008, which, as Senator Milne has indicated, is in a sense consequential to ensure the tabling of relevant documents prepared by Infrastructure Australia. I commend the amendment to the Senate.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (3.39 pm)—The government will not be supporting the amendment, but we have well canvassed the issues in earlier discussion.

Senator XENOPHON (South Australia) (3.39 pm)—Support.

The CHAIRMAN—I am told that there are also amendments to amendment (9), which are included in the same grouping, you might say: Australian Greens amendment (4) on sheet 5645 and opposition amendment (70) on 5684, which both amend Greens and opposition amendment (9). I hope we are singing from the same song sheet. If you intend to move those amendments, they need to be moved so that amendment (9) becomes amended before I put it. Senator Milne, do you understand where we are?

Senator MILNE (Tasmania) (3.40 pm)—Yes, I do. If I could just seek your advice, Chair: the Australian Greens will be opposing the opposition’s amendment on the Productivity Commission. The Australian Greens are seeking to amend the previously moved amendment in relation to the appointment of members of Infrastructure Australia, so we are amending the previous amendment in relation to that. And then we put the schedule? Is that right?

The CHAIRMAN—Yes. What I am saying, Senator Milne, is that we must put your amendments to amendment (9) so that then it becomes an amended amendment.

Senator MILNE—In that case, I move Australian Greens amendment (4) on sheet 5645:

(4) At the end of Schedule 1, add:

2 At the end of subsection 8(2)

Add:

; and (f) 2 members are people with specific expertise and experience in one or more of the following fields:

(i) climate change mitigation and adaptation;

(ii) the global oil production peak and expected decline in oil production.

This amendment is in relation to the appointment of members of Infrastructure Australia. Essentially, this amendment is adding two members to it, those being people with specific expertise and experience in one or more of the following fields: climate change mitigation and adaptation; and global oil production peak and expected decline in oil production.

Perhaps, Senator Minchin, this may explain it for you. The opposition and the Greens have agreed to a joint house committee, membership of the joint house committee and so on, but this is where we may well disagree. I am just moving now that the two members—not of the joint house committee but in relation to the advisory body—are to be people with specific expertise. Basically, it is two members of the Infrastructure Australia evaluation board who have climate change and global experience.

Senator MINCHIN (South Australia) (3.43 pm)—As I indicated, we support the
first part, in relation to amendment (9), but we do not support the proposition in amendment (4)—that is, to add two members with specific expertise, as indicated. I think that is consistent with our previous remarks in relation to these issues of climate change and global oil production peak. I will not prolong the discussion. I indicate that we do not support that particular amendment.

The CHAIRMAN—The question is that Greens amendment (4), which is an amendment to Australian Greens and opposition amendment (9), be agreed to.

Question negatived.

The CHAIRMAN—We will now move to opposition amendment (70), amending Australian Greens and opposition amendment (9).

Senator MINCHIN (South Australia) (3.44 pm)—I move opposition amendment (70) on sheet 5684:

(70) At the end of Schedule 1, add:

Productivity Commission Act 1998

2 At the end of Part 4

Add:

Division 3—Nation-building Funds projects

(1) The Commission must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the projects approved during that financial year under the Nation-building Funds Act 2008.

(2) A report under subsection (1) must include but is not limited to:

(a) the productivity benefits expected to result from the projects; and

(b) any cost-shifting by a State or Territory that is expected to result from the projects; and

(c) any other matter connected with the projects to which, in the opinion of the Productivity Commission, attention should be directed

(3) The Minister must cause a copy of a report prepared under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Amendment (9) relates to schedule 1, amendments of other acts, so our amendment seeks in that context to provide for an amendment to the Productivity Commission Act 1998, as set out in our particular amendment. That amendment is very important and I hope will be supported because it seeks to address those two critical issues I talked about earlier: how we ensure that we are objectively measuring the productivity benefits of the infrastructure investments proposed from these funds and how we ensure that we minimise and expose to the light of day the potential for cost shifting to the Commonwealth by a state or territory.

We believe the best way to do that is to, as in this amendment, amend the Productivity Commission Act to require the Productivity Commission at the end of every financial year to prepare a report on the projects approved during that financial year under these nation-building funds acts. That report would include, but not be limited to, the productivity benefits expected to result from the projects, any cost shifting by a state or territory expected to result from the projects and other matters connected with the projects to which, in the opinion of the commission, attention should be directed. We think the Productivity Commission is the best placed independent and objective analytical body to undertake what we think are necessary public interest functions with respect to expenditures from these funds.

We have heard much from the Rudd Labor government about the importance of their infrastructure spending for enhancing productivity in this country. We take them at their word. We support those objectives. It
was always an objective of our government to enhance productivity in this country, and there is no denying that good infrastructure projects can enhance the productivity of this country. But we do believe that that needs to be measured, not asserted. The best way to measure the outcome of projects that are approved and acted upon by the government under these nation-building funds is to have the, appropriately named, Productivity Commission assess the productivity benefits, which the government asserts are its priority, its whole objective, in these infrastructure investments. But the government has not indicated to us how it is going to have objective, publicly reportable measures of the productivity benefits to be gained from these multibillion-dollar investments. Here is the perfect way to do it. We think this is a very important part of this whole approach to infrastructure investment.

The other critical factor, which we have talked about before, is how we go about ensuring that we avoid a situation where there is, in effect, no net new investment in this country. Australia will gain nought from any outcome which involves the Commonwealth simply replacing state and territory investment. We have already seen the New South Wales government indicating that it is going to withdraw some of the projects that it had in its infrastructure forward plan because now it is going to submit them to the Commonwealth and get the Commonwealth to pay for them. That means there will be no net new investment in Australia if that were to occur.

We have to do all we can to identify that risk, and the best way, again, for that to be done is by the federal government body best equipped to identify, through economic analysis, the risk of that sort of thing occurring. There is no other proposition before the Senate or the parliament to identify cost shifting, a risk that could well result from the advent of these nation-building funds. So I do commend this amendment to the Senate because I think it will be a very important part of the transparency and accountability of the public funds involved.

Senator MILNE (Tasmania) (3.48 pm)—I am just indicating the Greens will not be supporting this amendment. The Productivity Commission is notoriously conservative and actually wrong when it comes to climate policy. As I indicated before, my fear is that there will be a complete contradiction in the government’s policy here in terms of on the one hand having a climate objective and on the other hand wanting infrastructure projects. My fear is that the infrastructure projects will undermine climate policy unless they are aligned. If this were referred to the Productivity Commission, that would be absolutely guaranteed to be the outcome.

The Productivity Commission do not understand climate change. They have got it notoriously wrong up until now. In climate circles they are best remembered for their 2005 paper on energy efficiency where they deemed that there were no opportunities in energy efficiency on the basis that, if there were, people would have taken them up. They have not—therefore they do not exist. It is completely in contradiction with everything. Everyone knows that the lowest hanging fruit in terms of climate policy is energy efficiency.

In their response to the critique of climate policy, in their Garnaut submission and so on they have been absolutely outrageous. In the Stern review, Stern concluded that, because a life today is equivalent to a life tomorrow, there should be a zero discount rate applied. The Productivity Commission obviously decided that that was not the case and determined that the value of a human life in 50 years time is a tiny fraction of its current worth. That is a complete nonsense. Their
submission to the Garnaut report can only be said to be offbeat—they suggest, in looking at the analysis of emissions trajectories, that global emissions could peak as late as 2030. That demonstrates to me that they have absolutely no idea about, and have completely failed to come to terms with, climate policy.

The Productivity Commission are also actively undermining the government’s own mandatory renewable energy target policy. While the government’s policy is 20 per cent by 2020, they recommend that it not exist at all, that we get rid of the mandatory renewable energy target. If it was left up to the Productivity Commission, I can guarantee that the infrastructure projects would not take into account either peak oil or climate change and would seriously undermine any effort the government made to make progress on climate.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (3.51 pm)—The Labor government is not supporting the amendment, although not for the same reasons as Senator Milne has outlined. Frankly, what are we doing here? Do we want some infrastructure investment in this country? I am just looking through these amendments. We have ensured that we will have an independent assessment panel for these projects. We are adding a ministerial reporting regime on projects. We are adding joint committee oversight. We are adding a competitive neutrality examination. I mean, frankly, we will make a decision to build a bridge and the river will have dried up by the time we have finished all of these examinations! I mean, let’s get a bit real here. And now we are adding the Productivity Commission! This is the most extraordinary set of processes being added to an otherwise robust independent assessment process. This is far more than we ever saw under the previous government. In fact, if this stuff ever sees the light of day it would be fascinating to do a comparative study in red tape on infrastructure investment in this country.

Senator Minchin interjecting—

Senator Conroy interjecting—

Senator SHERRY—It would be fascinating to do a comparative international study about the level of red tape being added to infrastructure investment—very necessary infrastructure investment—in this country, and do a comparison with what is going on in other countries. I mean, really! The now Liberal opposition are insisting on the most wide-ranging set of criteria, assessments and oversights that I have ever seen—and, I can say pretty confidently, that I would ever have seen outside of any Stalinist state on the face of the globe. This sort of stuff that we are adding to the infrastructure assessment here would make Korea and China look happy; it really would! In fact, it probably exceeds that. So, if these amendments ever see the light of day, in terms of this bill, it will indeed be a fascinating examination of the development of infrastructure. And do not forget: there is a whole range of project evaluations, local zoning, planning requirements and environmental requirements—it would be fascinating to see whether even Korea or China would exceed us in a project assessment.

Senator Minchin—What’s Korea got to do with it?

Senator Conroy—North Korea.

Senator SHERRY—Yes, North Korea, sorry—or Cuba. I think we have just got to get a bit real here, frankly. Anyway, we oppose this amendment. That will do. Let’s get on with the vote.

Senator XENOPHON (South Australia) (3.54 pm)—I think Senator Minchin has been called many things in his career; I do not know if ‘Stalinist’ has been one of them! One of the Rudd government’s mantras has
been to have an evidence based approach to their decision making, and I think that is to be commended. What this amendment seeks to do is to ensure that the Productivity Commission ticks off on the productivity benefits expected from projects, after they have been approved—this is not going to slow down the project; it is a separate exercise—and also examines whether there has been any cost-shifting from any state or territory government. In the New South Wales minibudget, not so long ago, there were some state projects which I think the state of New South Wales is now hoping that the Commonwealth will fund through this infrastructure fund. I think it is important that the issue of cost-shifting be assessed. I understand the government’s concerns about red tape, but I would have thought that this is a necessary check and balance, and I support the amendment.

Senator MINCHIN (South Australia) (3.56 pm)—Just briefly, Mr Temporary Chairman: I was not sure what Senator Sherry’s tour around the world was about—what relevance that had to this discussion—except that he cites some of what I would assume he means are undemocratic regimes. The point of the amendments that we have previously discussed is to bring some democratic oversight to expenditures by the central government. Perhaps in undemocratic regimes they do not have parliamentary oversight of expenditure. What we are saying is: in the great democracy of Australia, with a strong parliament, we should have parliamentary oversight of these expenditures. But, of course, that has nothing to do with the amendment that we are considering. The amendment that we are considering relates to the Productivity Commission’s role, and I do not think Senator Sherry has actually read the amendment. This is a report on the projects already approved. This is not introducing any sort of pre-approval red tape. This is about what happens after you have approved projects. This does not delay any project. This just says, ‘Once the government has exercised its authority, approved projects and approved the spending, then’—as Senator Xenophon rightly said—‘we have an evidence based approach conducted by the expert body, the Productivity Commission, to see whether in fact the objectives are being achieved in relation to productivity and whether in fact there has been any cost-shifting by state or territory governments.’ Senator Sherry’s arguments had nothing to do with the amendment before us.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (3.57 pm)—With due respect, there is another assessment being added into this process. I am very well aware that it is after the project has been approved. But the important point to make is that it is very likely that, in many cases, if not most, this assessment will be carried out and completed before the project construction commences. So we will have a finding, then there will be a debate around that finding and then, inevitably, there will be calls for a reassessment of the project, even if it has been given the—

Senator Minchin—!t might be a good idea.

Senator SHERRY—Senator Minchin interjects, ‘It might be a good idea.’

Senator Minchin—Well, it’s better than wasting the money, isn’t it?

Senator SHERRY—Then, on your logic, why wouldn’t you carry out this process at the beginning of the assessment rather than after the approval of the project? You didn’t think about that one.

Senator Minchin—Because then you’d accuse us of red tape.

Senator SHERRY—Well, I have accused you of red tape, and we are right, Senator
Minchin: you have added the most Byzantine, complex set of new requirements, over-sights, committee examinations—

Senator Conroy—Too like the South Australian Liberal Party.

The CHAIRMAN—Senator Conroy, you are not helping the debate.

Senator SHERRY—A Stalinist regime would struggle to come up with the web of compliance that you have constructed in this legislation via your amendments.

Senator Minchin—They didn’t have compliance in Stalin’s regime; Stalin just used to do it.

Senator SHERRY—They had a lot of red tape as well as doing it. You tended to get an authorised approval for construction of something in the Soviet Union and it took a long time, even once Stalin had approved it. But, anyway, I have made the point: we do not support this amendment, which is yet another amendment to another process.

The CHAIRMAN—The question is that Senator Minchin’s amendment to opposition and Greens amendment (9) be agreed to.

The committee divided. [4.03 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes…………… 32
Noes…………… 33
Majority……… 1

AYES

Nash, F. Payne, M.A. Troeth, J.M. Williams, J.R. *

NOES


The question now is that amendment (9) moved by Senator Milne be agreed to.

Question agreed to.

Bill, as amended, agreed to.

NATION-BUILDING FUNDS (CONSEQUENTIAL AMENDMENTS) BILL 2008

Bill—by leave—taken as a whole.

Senator MINCHIN (South Australia) (4.08 pm)—I have two separate amendments to move, consequential upon the decision of the Senate, by virtue of this debate, not to abolish the Communications Fund. As a result, there is a consequential amendment to
omit the Telstra Corporation Act 1991 in relation to schedule 2, page 16, line 11. Then there is a separate amendment, amendment (2), in relation to the bill standing as printed. Can I ask that they be dealt with separately?

The TEMPORARY CHAIRMAN (Senator Parry)—Yes.

Senator MINCHIN—I move opposition amendment (1) on sheet 5687:

(1) Schedule 2, page 16 (line 11), omit “Telstra Corporation Act 1991”.

The opposition also opposes schedule 2 in the following terms:

(2) Schedule 2, page 16 (lines 12 to 26), items 51 to 56 TO BE OPPOSED.

Senator MINCHIN—As I said, these are consequential upon the debate and outcome we had in relation to the Communications Fund.

The TEMPORARY CHAIRMAN—The question is that amendment (1) on sheet 5687 moved by Senator Minchin be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that schedule 2 stand as printed.

Question negatived.

Bill, as amended, agreed to.

COAG REFORM FUND BILL 2008

Bill—by leave—taken as a whole.

Senator MILNE (Tasmania) (4.11 pm)—I move Greens amendment (1) on sheet 5679:

(1) Clause 7, page 4 (line 21), at the end of subclause (2), add “and should ensure that, where relevant, grants require:

(a) national infrastructure priorities to be addressed;
(b) high benefits to be demonstrated and effective use of resources;
(c) climate change mitigation and adaptation and biodiversity conservation;
(d) preparation for the global oil production peak and subsequent decline in oil production;
(e) infrastructure needs to be efficiently addressed;
(f) demonstrable achievement of established standards in implementation and management.”.

This amendment relates to insisting on climate change mitigation and peak oil being included in assessments of the grants. We have already had this debate and I do not think I need to argue for it anymore. What I am intending to do is clear. It is similar to what I have done before.

Senator MINCHIN (South Australia) (4.12 pm)—Just briefly, can I indicate that, on balance, the opposition is not in a position to support the Greens amendment for the reasons outlined earlier.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (4.12 pm)—Likewise, we have had a debate about this amendment and the government will not be supporting it.

Question negatived.

Bill agreed to.

Nation-building Funds Bill 2008 and Nation-building Funds (Consequential Amendments) Bill 2008 reported with amendments; COAG Reform Fund Bill 2008 reported without amendment; report adopted.

Third Reading

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (4.13 pm)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.
SAFE WORK AUSTRALIA BILL 2008
Consideration of House of Representatives
Message

Consideration resumed from 12 November.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (4.14 pm)—I move:

That the committee does not further insist on its amendments to which the House of Representatives has insisted on disagreeing.

Senator ABETZ (Tasmania) (4.14 pm)—I just want to give a very quick potted version of the history of the Safe Work Australia Bill 2008 thus far. I think everybody in this chamber supports the concept of a national OH&S system. This legislation was put forward to the Senate, and the Senate made some amendments to that legislation. Those amendments have now been to the House, and the Labor government is arrogantly refusing to consider even one of the amendments that were carried by the Senate. The legislation is based on an intergovernmental agreement between the Commonwealth, the states and the territories. Therefore, I think the government can quite reasonably assert that amendments that may run counter to that intergovernmental agreement are causing them some difficulty. I think that is a reasonable proposition for them to put. However, there are a lot of other amendments that in no way, shape or form impact on the intergovernmental agreement, yet each one of those amendments has also been arrogantly rejected by the government.

I can indicate to the Senate that in a spirit of cooperation, and in acknowledgment that there is an intergovernmental agreement at stake here, my friend and colleague the Shadow Minister for Employment and Workplace Relations, Michael Keenan, the member for Stirling, wrote to Ms Gillard, the minister, on 12 November 2008. He said in his letter: ‘I am writing to inform you that I am very happy to sit down with you and discuss a way forward through this impasse.’ That letter was on 12 November—some three weeks ago. Mr Keenan’s office received a very arrogant phone call indicating that the minister was not interested in any discussions whatsoever.

It is interesting to note that the overwhelming majority, if not all, of the amendments that the Senate carried had the support of a majority of senators, including the coalition and also the Greens, Senator Xenophon and Senator Fielding. On top of that, they had the support of the ACTU and the ACCI. So we had a coalition—beyond the normal coalition that we refer to in this place—between the Liberal and National parties, the Greens, Senator Xenophon and Family First, and then we had a marriage, even, between the ACTU and ACCI. Yet Minister Gillard so very arrogantly says that they have got all of it wrong. ‘They have absolutely all of it wrong,’ she says, ‘and we will not consider even one of their amendments as being worthy.’ And, what is more, this came after we put out the palm branch to them and said, ‘Let’s have a discussion to see if we can compromise’—which we did three weeks ago. The minister has simply replied that the government is not interested in even having a sensible discussion to see if there is a way forward.

In these circumstances we, as an opposition, will be voting against the motion that is before the Senate. In circumstances where the minister is arrogantly unwilling to engage in any sensible discussion in relation to a way forward without those reasons, proposals, suggestions and rationale being put forward to us, there is no reason, I believe, why this Senate should back down on its proposals. Where some of the Senate’s amendments did, in fact, offend against the intergovernmental agreement, they might
possibly be areas that could be revisited. But all those other amendments that did not so offend should continue to be pursued. That is a personal point of view. But the problem is that we cannot even have that discussion with Minister Gillard because she is so arrogant, so full of her own self-importance and so unwilling to discuss with anybody—

**Senator Jacinta Collins**—Not like you, Eric!

**Senator ABETZ**—Senator Collins foolishly interjects. Might I remind her that this is not just the Liberal-National Party position we are talking about. This is the ACTU position. This is the ACCI position. This is the Greens position. This is Senator Xenophon’s position. This is Family First’s position. You have everybody, basically, in coalition against the Labor government, and Minister Gillard still arrogantly asserts: ‘I don’t have to talk to anybody. I just want to force it through the Senate.’ This is, of course, in complete contradistinction to the Labor Party’s assertions before the last federal election about the importance of listening to the Senate and compromising in the Senate, and about understanding that the Senate does have a contribution to make in relation to the formulation of legislation.

Here we have a situation where the Senate, with a huge amount of community and crossbench support, has put forward proposals. The ACTU and ACCI, who are the social partners—they are going to be the two groups at the coalface of this occupational health and safety scheme that would be run nationally—are also supporting these amendments. We write to the minister asking if we can sit down and discuss this, and we are just being ignored. In such circumstances, I am indicating that the coalition is minded to continue its support for all the amendments until such time as the minister is willing to come to the table and engage in some sensible discussions to see this matter move forward.

Occupational health and safety is a hugely important issue. The intergovernmental agreement that has now been reached is in fact building on that which was evolving under the previous coalition government. Everyone is in heated agreement about the need for a national system, so let us not have any blast from those opposite as to how we are not in favour of a good occupational health and safety system in this country—we are. We support it but we believe it could be enhanced by these amendments. That is why we support them. Given the time constraints we labour under, I will complete my remarks there.

**Senator LUDWIG** (Queensland—Minister for Human Services) (4.22 pm)—I do understand that there are time constraints, but I will say this: Labor went to the last election with a workplace relations plan that got the balance right between prosperity and fairness.

**Senator Abetz** interjecting—

**Senator LUDWIG**—And I will get there clearly. Our policy agenda also provided certainty and simplicity to those businesses, large and small, that operate across state borders. Under Labor’s plan, whether an employer operates in Townsville, Tamworth or Torquay, the same workplace laws should apply.

**Senator Abetz**—What about Tasmania?

**Senator LUDWIG**—Including Tasmania. Uniform national workplace laws for the private sector will end the cost and confusion for businesses, particularly when they are dealing with separate and sometimes conflicting laws. Our plan is good for business, good for the economy and good for national productivity. Business understands that the harmonisation of Australia’s occupational health and safety system into one national
system is a critical component of the seamless economy that the government is committed to.

The opposition say they agree, but they are not agreeing. This is their final opportunity to make a difference. The opposition can join with the government and ensure that we have a national system. They can make a difference by supporting the government in this endeavour. The practical effect of this bill will be that states and territories will enter into an agreement and then finalise, through their various processes, uniform occupational health and safety laws across Australia. The practical effect of the position taken by those opposite is the continuation of the OH&S arrangements that have plagued business during the 11 years of the Howard government. They thought that yelling from the rooftop in Canberra was the way to get things done. After almost 12 years they achieved nothing in OH&S harmonisation.

What we have put forward is an end to the 11 years of confusion. More importantly, what we have put forward will ensure that we do have harmonised OH&S laws across the states and territories. The opposition constantly talk about the need to support Australian businesses during these difficult times. Well, here is their opportunity to support uniform occupational health and safety laws by agreeing to pass this bill, which will get those laws up and running. The IGA seems to be the sticking point for the opposition.

It has been left to the Rudd Labor government to deliver on these important reforms—and we are delivering. As I mentioned earlier in the debate, COAG has agreed to the intergovernmental agreement for regulatory and operational reform in occupational health and safety, and for the first time governments from each state and territory in the Commonwealth have formally committed to the harmonisation of OH&S laws. The amendments proposed by the opposition in the Senate to the Safe Work Australia Bill are an opportunist effort to prevent the harmonisation of national OH&S legislation. To this end, the opposition should not continue to insist on their own occupational health and safety laws. The opposition should see the writing on the wall and agree that we should have, once and for all, uniform occupational health and safety laws. I will not continue to argue this. The opposition seem wedded to the position of undermining harmonisation across OH&S laws.

Senator SIEWERT (Western Australia) (4.27 pm)—We have a peculiar situation here where we are all in heated agreement about the need to reform OH&S laws and we all support the Safe Work Australia Bill. The Senate, with fairly historic cooperation between all the opposition parties—

Senator Xenophon—And Independents.

Senator SIEWERT—And Independents, Senator Xenophon.

Senator Abetz—Non-government.

Senator SIEWERT—Yes, I should say ‘non-government’. All the non-government senators agree with these amendments. We consider them to be very sensible amendments that enhance the legislation. Again I find myself in the peculiar situation where I am agreeing with Senator Abetz—

Senator Conroy—Then you know you must be wrong.

Senator Jacinta Collins—Aren’t you naturally suspicious?

Senator SIEWERT—Yes, I was, and that is why I re-examined this issue—to make sure that I had it right. I have re-examined and re-examined again and I still believe that these amendments enhance the bill. I have not heard any arguments as to why these amendments do not enhance the bill. Like the opposition, we have not had any en-
engagement with the minister’s office to talk about these amendments and to see if in fact we got it wrong. Maybe we did have it wrong.

As I said, we have given this matter very careful consideration. We have consulted people on a number of occasions about these amendments. Let me remind people what these amendments are about. They insert an objects clause, which seems to me pretty sensible. They increase the number of employer and employee representatives—again, sensible and in fact the way it used to be. They remove some ministerial discretion in appointing employer and employee representatives—that has probably got right up the government’s nose. They remove the ability of the ministerial council to amend Safe Work’s operational strategic plans. They remove additional voting rights for government representatives on Safe Work Australia—because, remember, they were double-dipping. They remove the power of the minister to direct a CEO contrary to strategic operational plans and the power of the minister to terminate the CEO for unsatisfactory performance. And they include an audit committee. These were all very sensible amendments that enhanced an independent, tripartite body.

So we believe these amendments should still proceed. Like the coalition, we are not of a mind to change our minds and we wish to stand by these amendments because, as I said, we believe they are sensible amendments. One would have thought the government would have taken the opportunity of the ministerial council to have a serious discussion about these amendments, instead of taking the approach of: ‘We entered into an agreement with the states and therefore you can’t change this.’ Again we are seeing an example of the government undermining and thumbing their noses at the democratic process and the Senate’s ability to properly review legislation and make amendments where, we believe, they enhance the legislation. The government have decided that they are not going to engage in any discussion with anybody about this.

I also remind the chamber that the ACTU today again came out publicly and said, ‘We think these amendments improve this piece of legislation,’ and that they want and support these amendments.

Where we have collectively consulted stakeholders, reviewed the legislation and tried to improve it, the government apparently are not of a mind to do that. They have not bothered to talk to us; they have not bothered to explain other than to say, ‘We’ve reached an agreement with the states and therefore you can’t do this; you’re slowing up the legislation and therefore we don’t want them.’ That is not meaningful engagement. That is not actually trying to find real outcomes. So the Greens are also of a mind not to change our minds and will continue to support these amendments, which we believe will enhance this bill and the subsequent act and provide a much better and stronger Safe Work Australia.

**Senator XENOPHON** (South Australia) (4.32 pm)—I say ‘ditto’ to the remarks of Senator Siewert. It is a rare and beautiful thing to see Senator Abetz arm in arm, shoulder to shoulder with the ACTU. I may be wrong, but there appears to have been unwillingness on the part of the government to sit down and negotiate with the non-government senators who have put up these amendments. I believe that there is room for some consensus and compromise in relation to this and I would urge the government actually to sit down and talk to us—I think they will find us quite reasonable to deal with—because these are important amendments that will, I believe, enhance the operation of this legislation.
Thursday, 4 December 2008

[Text of the document]

Question put:
That the motion (Senator Conroy’s) be agreed to.

The committee divided. [4.37 pm]
(The Chairman—Senator the Hon. AB Ferguson)

Ayes............ 25
Noes............ 38
Majority........ 13

AYES
Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, C.L.
Cameron, D.N. Collins, J.
Conroy, S.M. Crossin, P.M.
Farrell, D.E. Forshaw, M.G.
Furner, M.L. Hogg, J.J.
Hurley, A. Hutchins, S.P.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A. *
McLucas, J.E. Moore, C.
Pratt, L.C. Sherry, N.J.
Stephens, U. Sterle, G.
Wortley, D.

NOES
Abetz, E. Barnett, G.
Bernardi, C. Birmingham, S.
Boswell, R.L.D. Brown, B.J.
Bushby, D.C. Cash, M.C.
Colbeck, R. Cooman, H.L.
Cormann, M.H.P. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
Fielding, S. Fieravanti-Wells, C.
Fifield, M.P. Fisher, M.J.
Hanson-Young, S.C. Humphries, G.
Joyce, B. Ludlam, S.
Macdonald, I. Mason, B.J.
McGauran, J.J. Milne, C.
Minchin, N.H. Nash, F.
Parry, S. Payne, M.A.
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Siewert, R.
Troeth, J.M. Trood, R.B.
Williams, J.R. * Xenophon, N.

* denotes teller

Question negatived.
Resolution reported; report adopted.

BUSINESS

Rearrangement
Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (4.41 pm)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 5, (Interstate Road Transport Charge Amendment Bill (No. 2) 2008 and a related bill).

Question agreed to.

INTERSTATE ROAD TRANSPORT CHARGE AMENDMENT BILL (No. 2) 2008

ROAD CHARGES LEGISLATION REPEAL AND AMENDMENT BILL 2008

Consideration resumed from 3 December.

In Committee

ROAD CHARGES LEGISLATION REPEAL AND AMENDMENT BILL 2008

Senator IAN MACDONALD (Queensland) (4.41 pm)—Mr Temporary Chairman, the running sheet shows that Family First will be moving the first amendment. But Senator Fielding has just left the chamber to get some notes so, while he is doing that, can I briefly explain where the opposition is at. We are delighted that the government has seen the sense of the amendments which both the opposition and Family First, in different ways, have proposed. We were very concerned with the bill, as it came to us, about the indexation of the fuel tax. Senators will remember that Prime Minister Keating
introduced a provision for the automatic indexation of fuel tax. Fuel tax used to go up every half-year and it was a great impost on Australians. The Howard government, to its great credit, got rid of that indexation. We wanted to make sure that the Labor Party did not reintroduce it, by stealth, in the bill before the chamber. As I said, both the opposition and Family First have proposed amendments in relation to indexation and in relation to it being a disallowable instrument. We wanted to make sure that, if the road user charge were to be increased in the years ahead, it would have to come before this parliament and would be subject to disallowance. It was not in the original bill but, again, the government has picked up the amendments of both the opposition and Family First and has made it a ministerial determination—and the ministerial determination is said to be a disallowable instrument.

I have just distributed a revised amendment sheet on behalf of the opposition. This follows some discussion between me and Family First and government officials. In this second set of amendments we have simply taken our amendments that will not be required off the piece of paper because we are going to be agreeing, first of all, with Senator Fielding’s first amendment and then with all of the government amendments, which pick up the issue of indexation by ensuring it is not indexed and the other issue of a disallowable instrument. The new opposition amendments are simply the old ones put differently.

For explanation, particularly for Family First and Senator Xenophon, we are proceeding with our amendment which on the original sheet was shown as opposition amendment (2) but on the new sheet is shown as opposition amendment (4). We have removed amendments (1), (2) and (3) and now only have opposition amendment (4). We have done that in the hope that either the government or the crossbenchers will agree with us on one or all of those provisions, whereas they may not agree on other positions. I see that Senator Fielding is now here and I assume the Senate will be happy if we now move according to the running sheet.

Senator FIELDING (Victoria—Leader of the Family First Party) (4.46 pm)—I thank Senator Macdonald for allowing me to get to the chamber. I move Family First request for amendment (1) on sheet 5680 revised:

That the House of Representatives be requested to make the following amendment:

(1) Page 2 (after line 11), after clause 3, insert:

4 Review of Heavy Vehicle Safety and Productivity Program

(1) The Minister must cause a review of the Heavy Vehicle Safety and Productivity Program to be conducted.

(2) The review must:

(a) start on the third anniversary of the commencement of this section; and

(b) be completed within 6 months.

(3) The Minister must cause a written report about the review to be prepared.

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

Statement pursuant to the order of the Senate of 26 June 2000—

These amendments are framed as requests because they are to a bill which imposes taxation within the meaning of section 53 of the Constitution. The Senate may not amend a bill imposing taxation

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000—

As this is a bill imposing taxation within the meaning of section 53 of the Constitution, any Senate amendment to the bill must be moved as a request. This is in accordance with the precedents of the Senate.
This is about a review of the heavy vehicle safety and productivity program which the government has announced and has allocated $70 million for additional truck stops, which is good news. The amendment is pretty straightforward. It says that the minister must cause a review of the heavy vehicle safety and productivity program to be conducted and says when the review should start. It says that there must be a written report prepared and that a copy of that report must be laid before each house of parliament. That is very important so that we can ascertain how this productivity program has progressed and also have a review of it. It is a very important program and I am hoping that all senators will support this amendment as this review is important to make sure that we look at what else needs to be done in the future.

Senator XENOPHON (South Australia) (4.48 pm)—I indicate my support for this amendment and commend Senator Fielding for moving it. I think having a review of the heavy vehicle safety and productivity program is worth while. In relation to this issue I am grateful for the briefings from the minister’s office, and I have put the case that I think it is important with respect to the monies being raised in part for a safety program for truck stops. It is important that this be rolled out as soon as possible. I put it very clearly to the minister and the minister’s office that I am concerned that in my home state of South Australia, which has about 8½ per cent of the population but takes up about 15 per cent of the national freight travelling through, it is important that this program be rolled out and that South Australia get a fair share of that in terms of appropriate truck stops.

In the lead-up to Christmas last year I went to Bordertown to visit a number of local community groups that were running a voluntary truck stop or rest stop. A lot of them were ex-truck drivers and operators and they were quite despondent about the lack of truck stops in their neck of the woods. I commend the government for ensuring that there will be significant funds to deal with this issue on a national level and I commend Senator Fielding for moving this particular amendment.

Senator MILNE (Tasmania) (4.49 pm)—I rise to say that the Australian Greens will support this amendment.

Senator IAN MACDONALD (Queensland) (4.50 pm)—As I mentioned before, the opposition appreciates the reason for this amendment and will be supporting it.

Question agreed to.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (4.50 pm)—by leave—I move government amendments (1) and (3) to (7) on sheet PD357 together:

That the House of Representatives be requested to make the following amendments:

(1) Schedule 3, item 1, page 5 (lines 6 to 8), omit the item, substitute:

1 Subsection 43-10(3)

Omit “, determined by the "Transport Minister", substitute “for the fuel”.

(3) Schedule 3, item 4, page 5 (line 15), omit the heading to subsection 43-10(7), substitute:

Determining the rate of road user charge

(4) Schedule 3, item 4, page 5 (lines 16 to 18), omit “The road user charge for taxable fuel means the following rate (as indexed in accordance with regulations made for the purposes of subsection (8))”, substitute “The amount of road user charge for taxable fuel is worked out using the following rate”.

(5) Schedule 3, item 4, page 5 (lines 19 and 20), omit “prescribed by the regulations for the purposes of this definition”, substitute “determined by the "Transport Minister".

CHAMBER
(6) Schedule 3, item 4, page 5 (lines 22 and 23),
omit “prescribed by the regulations for the 
purposes of this definition”, substitute “de-
termined by the Transport Minister”.

(7) Schedule 3, item 4, page 5 (lines 24 and 25),
omit subsection 43-10(8), substitute:

(8) For the purposes of subsection (7), the 
Transport Minister may determine, by 
legislative instrument, the rate of the 
road user charge.

(9) Before the Transport Minister deter-
mines an increased rate of road user 
charge, the Transport Minister must:

(a) make the following publicly avail-
able for at least 60 days:

(i) the proposed increased rate of 
road user charge;

(ii) any information that was relied 
on in determining the proposed 
increased rate; and

(b) consider any comments received, 
within the period specified by the 
Transport Minister, from the public 
in relation to the proposed increased 
rate.

(10) However, the Transport Minister may, 
as a result of considering any com-
ments received from the public in ac-
cordance with subsection (9), deter-
mine a rate of road user charge that is 
different from the proposed rate that 
was made publicly available without 
making that different rate publicly 
available in accordance with that sub-
section.

I also indicate that the government opposes 
schedule 3 in the following terms:

(2) Schedule 3, item 3, page 5 (lines 11 and 12), 
schedule 3 in the following terms:

(8) Schedule 3, items 5 to 8, page 5 (line 26) to 
page 6 (line 8), to be opposed.

Statement by the Clerk of the Senate pur-
suant to the order of the Senate of 26 June 
2000—

This is a bill imposing taxation within the mean-
ing of section 53 of the Constitution. The Senate 
may not amend a bill imposing taxation and 
therefore, any amendments to the bill must be 
moved as requests. This is in accordance with the 
precedents of the Senate.

The first one is a minor drafting amendment 
describing how fuel tax credit is removed by 
the transport minister after the road user 
charge. The second one is a minor amend-
ment that opposes item 3 of the bill, which 
would have formerly defined a road user 
charge. This reference is no longer needed 
given the definition that will be found in 
government amendment (4).

The third one changes the heading and is a 
consequence of reverting the adjustment of 
the rate of the road user charge back for min-
isterial determination. The fourth one is a 
consequence of removing the ability to 
automatically index the rate of the charge by 
regulation to a determination by the transport 
minister. The fifth one removes the ability to 
automatically index the rate of charge by 
regulation to a determination by the transport 
minister.

The sixth one reverts the setting of a road 
user charge to that of a determination by the 
transport minister rather than by regulation, 
in response to concerns by industry and by 
senators about indexation by regulation. The 
effect of the amendment is to ensure that any 
variations to the rate of the road user charge 
must be brought back to parliament for scru-
tiny through a disallowable instrument.

The seventh one, subsection 8, replaces 
the ability to make regulations that may in-
dex the rate of the road user charge with a 
 provision that allows the transport minister 
to determine a rate by disallowable legisla-
tive instrument. The effect of this subclause
is to ensure that any variation to the rate of the road user charge must be brought back to parliament for scrutiny through a disallowable instrument. It also provides a new subsection 9, which establishes two conditions that must be met by the transport minister in making a determination to vary the rate.

The eighth is a 60-day consultation period where the minister must make the proposed rates and any information used in this calculation publicly available for a period of public consultation and must consider any comments received from the public. It provides a new subsection 10, which provides that the minister may at the conclusion of the consultation period vary the rate of the charge from that originally proposed without needing to reconvene another 60-day consultation process. The clause reinserts definitions of ‘transport minister’, ‘transport secretary’ and ‘transport department’. The bill proposed to repeal them because they were no longer necessary. This amendment reinserts them because the determination to vary the rate of road user charges is to be made by the transport minister and this needs to be defined.

Senator IAN MACDONALD (Queensland) (4.53 pm)—As I indicated before, the opposition will be supporting the government’s amendments because they have picked up amendments that had been flagged by the opposition. We will not now be proceeding with our amendments because the government’s amendments to its amendment bill pick up those things. Can I just make it clear to the chamber, though, that what we are doing today is agreeing to a legislative increase of the road user charge from 19-odd cents a litre to 21c a litre. The opposition is totally opposed to any increases in taxes and we did a bit of soul searching before coming to the decision that we would support what is effectively an increase in tax by the Labor government. We have recognised that a lot of work needs to be done on the roads insofar as the transport industry is concerned. We have particularly recognised that a lot of money needs to be spent on rest areas, or truck stops—call them what you will. So, on the basis that this increase in tax will be spent appropriately to help the trucking industry, we have—as I say, somewhat reluctantly—agreed to the increase. The bill and the amendments moved by the government provide that the rate will, I think on the bill receiving royal assent, go up to 21c a litre from the 19-odd cents that it now is.

In the other amendments that the opposition will continue to press, we want to make sure that, in the future, any increases in the road user charge are spent on these rest stops. I do not want to go through our amendments now, except to flag that the reason we are agreeing with the 21c is that we want the bill to say that any future increases must be spent on rest areas. We also want to provide that the road user charges do ensure a degree of harmonisation between the various state regimes, which currently are all over shop. There are some stupid examples that have been mentioned in this chamber by many senators over a long period of time. We want to make sure that that harmonisation stands. So our amendments again ensure that the government are only going to get this extra money if they help the trucking industry with some of the difficulties they have encountered.

We have also agreed with this on the basis that indexation is never, ever to be used. The government’s amendments, which we support, just say that there is ministerial discretion. We have an amendment coming up later that puts it beyond doubt that, in looking at future increases, the minister must not use any reference to indexation. We are also going to move an amendment later that reflects that, in giving support for this, we want it confirmed that the transport minister will not make more than one determination a year.
Hopefully he will not make any determinations—so it will not go up—but, if he does make a determination to increase it, there cannot be more than one increase a year. I think the minister will tell us later that that is the intention. My argument will be: if that is the intention, let us put it in the act so that it is clear to everyone.

The third amendment we are putting forward—and I will explain it now because it is relevant to the whole thing—is an amendment that says, because this is now a disallowable instrument, we do not want the situation where the government brings in an instrument that says the road user charge is increased by 1c to 22c and the Senate and the House of Representatives have 15 sitting days to disallow that increase. The 15 sitting days, as we all know, may take two, three or four months to reach. We want to make sure that the government do not start collecting the additional 1c from day one, which they are entitled to do under the ministerial determination, and then find two months later that the Senate has knocked it off and they have to give back the 1c a litre to anyone who has paid it over that period of time. This is similar to the alcopops issue, as senators might recall: ‘If the Senate knocks these off, what do the government do with the money they have collected?’ With our third amendment we want to say, ‘If you put it up, fine, but let’s leave the collection until after the 15 days allowed for the Senate to disallow it have expired.’ Again, that seems sensible and appropriate.

I have mentioned those opposition amendments because it is on the basis of those amendments that the opposition has agreed to this increase in the road user charge at the present time.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.00 pm)—The government’s amendments do pick up similar things to Family First’s amendments on sheet 5680 revised—amendments (2), (3), (4) and (5). So we will be withdrawing those requests when we get there.

Question agreed to.

Senator IAN MACDONALD (Queensland) (5.00 pm)—I seek leave to move opposition amendments on sheet 5671 revised together.

The TEMPORARY CHAIRMAN (Senator Hutchins)—Is leave granted?

Senator Xenophon—Mr Temporary Chairman, I wonder whether I can seek your guidance. I am minded to support two of the three amendments that Senator Macdonald has referred to. I wonder whether it would be possible to split those amendments. The nub of my question is: can we still vote on them separately?

The TEMPORARY CHAIRMAN—Yes, we can vote on them separately. I can put two separate questions.

Senator IAN MACDONALD—In fact, Senator Xenophon, I did actually check the same thing with the clerks before I started. We can discuss them together but vote separately.

Leave granted.

Senator IAN MACDONALD—I move:

That the House of Representatives be requested to make the following amendments:

1. Schedule 3, item 4, page 5 (after line 25), at the end of section 43-10, add:

11. In determining the *road user charge, the *Transport Minister must not apply a method for indexing the charge.

2. Schedule 3, item 4, page 5 (after line 25), at the end of section 43-10, add:

12. The *Transport Minister must not make more than one determination in a financial year if the effect of the determination would be to increase the
*road user charge more than once in that financial year.

(3) Schedule 3, item 4, page 5 (after line 25), at the end of section 43-10, add:

(13) A determination made under this section must not take effect earlier than the first day after the end of the period in which the determination may be disallowed under Part 5 of the Legislative Instruments Act 2003.

(4) Schedule 3, page 5 (after line 25), after item 4, insert:

4A After section 43-10

Insert:

43-15 Determining the road user charge

(1) The *road user charge must be based on the figure (the net figure) that is the difference between:

(a) the amount of government expenditure on construction and maintenance of public roads that is allocated to heavy vehicles; and

(b) the amount of government revenue raised through registration of heavy vehicles and other charges imposed as a direct result of heavy vehicle use.

Note: Government revenue, government expenditure and heavy vehicle are defined in subsection (8).

(2) The rate of the *road user charge must not be increased unless:

(a) the net figure has increased since the date the existing road user charge became effective; and

(b) an average of at least 50 additional heavy vehicle rest areas have been constructed each year on the National Land Transport Network, as defined in the AusLink (National Land Transport) Act 2005, since the date the existing road user charge became effective; and

(c) the type of rest areas constructed, their spacing and amenities are consistent with the goal that rest areas in the National Land Transport Network will comply by 2019 with the recommendations in the National Guidelines for the Provision of Rest Area Facilities Final Report, Revised November 2005, prepared by the National Transport Commission; and

(d) substantial harmonisation has been achieved in State and Territory transport regulations, including heavy vehicle fatigue reform measures; and

(e) Infrastructure Australia has advised the *Transport Minister in writing that:

(i) the matters referred to in paragraphs (b), (c) and (d) have occurred, or will have occurred, at the date the proposed increase in the road user charge is to become effective; and

(ii) the construction of heavy vehicle rest areas makes reasonably adequate provision for current and future use by high-productivity vehicles; and

Note: Infrastructure Australia’s functions include functions conferred by laws other than its enabling Act—see paragraph 5(2)(k) of the Infrastructure Australia Act 2008.

(f) the Transport Minister has released publicly, at least 60 days before making a determination under this section (the public consultation period), the net figure mentioned in subsection (3), all the expenditure figures and revenue estimates, statistics, formulas, methods, models, and inputs used to calculate the net figure, the advice of Infrastructure
Australia referred to in paragraph (e) and a statement explaining the reasons for the proposed rate increase, and has called for submissions; and

(g) the Transport Minister has had regard to submissions received within the public consultation period.

(3) The arterial road and other expenditure figures provided by the Commonwealth, States and Territories and released in accordance with paragraph (4)(f) must contain a statement of verification by the Auditor-General in the jurisdiction to which the figures relate.

(4) In this section:

- **government expenditure** means the amounts of expenditure by the Commonwealth, States, Territories and local governments for a financial year calculated in real terms as averages over a seven-year period using the latest:
  (a) available arterial road expenditure figures provided by each of the States and Territories; and
  (b) local road expenditure information based on Australian Bureau of Statistics figures.

- **government revenue** means the total of the amount of revenue expected to be raised by each of the Commonwealth, States, Territories and local governments in the financial year immediately following the date the determination made under this section is to commence.

- **heavy vehicle** means a vehicle with a gross vehicle mass of more than 4.5 tonnes.

**Statement pursuant to the order of the Senate of 26 June 2000—**

These amendments are framed as requests because they are to a bill which imposes taxation within the meaning of section 53 of the Constitution. The Senate may not amend a bill imposing taxation.

**Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000—**

As this is a bill imposing taxation within the meaning of section 53 of the Constitution, any Senate amendment to the bill must be moved as a request. This is in accordance with the precedents of the Senate.

**Senator IAN MACDONALD—** I have briefly mentioned what are now amendments (1), (2) and (3). I have explained them but, if the government has an opposition to them and indicates that opposition, I will perhaps take the argument further. Suffice to say, we just want it made absolutely clear that indexation will not be used. In the second amendment, we want to make it absolutely clear that the government cannot do more than one determination in a financial year. In amendment (3)—and I think we are doing this more or less to help the government in the administration of this whole scheme—we want to make sure that if the charge does go up it is not actually collected until after the 15-day disallowance period. That just seems to make good common sense and will not leave us in the situation where we would have been with the increased excise on alcopops. I hope those three amendments are relatively simple to understand, and I will not take the time of the Senate by arguing them further at this stage.

I will move on to amendment (4) and explain it particularly to the crossbenchers. This amendment accepts that, at the moment, the road user charge has gone up to 21c. This amendment talks about the rate of the road user charge in the future. The amendment says the rate of the road user charge must not be increased unless certain things happen. Paragraph (a) lists one of those things—that we call the net figure—and says: ‘the net figure has increased since the date the existing road user charge became effective’. I refer senators to the first paragraph of our
amendment (4), which defines what the net figure is. Effectively, without going into a very technical description, the net figure is the figure that represents the difference between what has been collected from the trucking industry by federal, state and local governments over the relevant period minus what has been spent on roads by all levels of government in that same period. We are saying that we have to show that the governments are spending more on roads, fixing them up, than they are collecting in revenue from the trucking industry. It is one way—quite a clever way, I might say to those who drafted this for the shadow minister in the other house—of making sure that these funds do go to help the trucking industry.

Paragraph (b) of amendment (4) says:

(4) The rate of the *road user charge must not be increased unless:

(b) an average of at least 50 additional heavy vehicle rest areas have been constructed each year on the National Land Transport Network, as defined in the AusLink (National Land Transport) Act 2005, since the date the existing road user charge became effective; and

I know other senators and other parties are very keen about heavy vehicle safety—the minister has made speeches about this—and the provision of rest areas. I think all senators understand that the national guidelines for the provision of rest areas, facilitated by the National Transport Commission in 2005, require a major rest area every 100 kilometres, with sufficient parking for 20 trucks. They also provide that there must be a minor rest area every 50 kilometres, with parking for up to 10 trucks, and a truck parking bay every 30 kilometres with enough space for four or five trucks so that their drivers can do safety checks.

Senators would know that independent government research agency Austroads recently audited Australia’s major highways against those guidelines. The report released in March this year showed that none of the audited routes met the national guidelines and 60 per cent of the audited routes had substantial deficiencies. There were particular problems in my home state of Queensland and in the Northern Territory.

The highways named as having the worst deficiencies included the New England, Mitchell, Great Western, Barrier and Princes highways in New South Wales; the Calder, Princes and Sturt highways in Victoria; the Bruce, Cunningham, New England and Gore highways in Queensland; the Barrier, Dukes, Eyre and Sturt highways in South Australia; the Great Eastern, Coolgardie-Esperance and Eyre highways in Western Australia; the Bass Highway in Tasmania; and the Stuart Highway in the Northern Territory. Only about half of the major rest areas on the Hume and Pacific highways met the spacing requirements of the guidelines. Because we are pressed for time, I will not elaborate on that. I am sure that all senators taking part in this debate understand how awful the position is on rest areas and how difficult it is for truck drivers to get the proper rest and proper facilities that they need.

Our proposed section 43-15(2)(b) requires that an average of at least 50 additional heavy vehicle rest areas be constructed each year. Some may say, ‘How do you prove that?’ If you look down to proposed subsection (2)(e), you will see that we are requiring Infrastructure Australia—the body that has just been set up by the government and which is completely and absolutely independent, or so we have been told—to be the judge of whether 50 additional heavy vehicle rest areas have been constructed each year. It is a workable way of ensuring that the heavy vehicle rest areas, which I know all senators support, are actually built. Too often over history we have seen governments putting up
taxes and charges, saying, ‘We are going to use those for good purposes,’ and the moneys just getting lost in general revenue, just becoming another revenue source, and not going to where the problem is. We want to make sure through these requests—and I do not think that the government could argue with them—that the promise to construct these rest areas is actually carried out and provided for in the act.

In proposed subsection (2)(c) of request (4) we talk about the type of rest areas being ‘consistent with the goal that rest areas in the National Land Transport Network comply with the recommendations’ in the national guidelines for the provision of rest areas that I mentioned previously. In this way, we can make sure that happens. In proposed subsection (2)(d), we are saying that road user charges cannot increase unless ‘substantial harmonisation has been achieved in state and territory transport regulations, including heavy vehicle fatigue reform measures’. All state governments and the federal government have agreed that there must be harmonisation. I think that the government will say to us, ‘Look, substantial harmonisation is already happening.’ We concede that there have been some moves towards it. But what we want to ensure by this legislation is not just a state government saying, ‘Yes, we’re gonna do it; we’re gonna do it.’ We want to have some control over the fact that they actually do it, so we are putting in this provision about substantial harmonisation. You may well ask, ‘How are you going to judge that?’ Again, we are asking Infrastructure Australia to make the assessment of whether there has been substantial harmonisation. If the government are telling us that there is substantial harmonisation then they will not in any way object to this clause going in—because, as they say, it is happening anyhow. This will just give us the confidence that it is there.

The next provision of request (4) is about Infrastructure Australia having to look at the previous three things I mentioned. I will not spend any more time on that. It seems to me that that is a reasonable and practical way of ensuring that any increase in the tax is properly spent. Proposed subsections (2)(f) and (2)(g) relate not to the road user charge as such but back to proposed subsection (1)—that net figure. Putting it in shorthand, that is the difference between what all governments collect from the trucking industry less what all governments pay in construction of facilities for the trucking industry. Proposed subsections (f) and (g) are just saying that to get to that figure you have to do some calculations. We are just saying that the minister must release the details of how he came to the net figure. That seems quite reasonable.

Proposed subsection (3) of request (4) says that the details of what the Commonwealth, states and territories spend on roads have to be verified by the Auditor-General. That is a reasonable request. We take the states’ words for it, providing it is confirmed by the Auditor-General. That seems to be a reasonable request. Proposed subsection (4) is simply definitions of ‘government expenditure’ and ‘government revenue’ in relation to that net figure I spoke about. It can be read by senators, but ‘government expenditure’:

… means the amounts of expenditure by the Commonwealth, States, Territories and local governments for a financial year calculated in real terms as averages over a seven-year period using the latest:

(a) available arterial road expenditure figures provided by each of the States and Territories—it is not terribly onerous to get that, and—
(b) local road expenditure information based on Australian Bureau of Statistics figures.

Again, it is a doable and practical way of getting to that figure. ‘Government revenue’ is defined as:
… the total of the amount of revenue expected to be raised by each of the Commonwealth, States, Territories and local governments in the financial year immediately following the date the determination made under this section is to commence.

‘Heavy vehicle’ is defined in the ordinary way.

I think requests (1), (2) and (3) are uncontroversial, and I would urge all other senators to support them. Request (4) is really just making sure that the extra moneys charged do not get lost in consolidated revenue but are actually spent on the highways. We also, by the same provision, want to make sure that we move towards harmonisation. The government will say, ‘We are only going to spend any increase on these things anyhow and we are going to have harmonisation.’ My urging to them is this: you are going to do it anyway, so why not put it in the bill so that we can all be assured that that will happen?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (5.14 pm)—I indicate on behalf of the government that we will not be supporting request (1), we are happy to support (2) and we will not be supporting (3) or (4). I will briefly speak to our position on those as a collective. Request (4) has ambiguous terminology and lacks detail. For example, ‘other charges’ could be interpreted to include tolls and environmental charges that are not related to road construction costs. The NTC uses a seven-year averaging of road expenditure to soften the impact of spikes in road funding, strongly supported by industry. This amendment jeopardises that. It is unnecessary: all information associated with the charges, including precise definitions, will be defined in the determination and consultation process.

The government has identified rest stops as an important issue for the industry and moved to act. The government has already committed, with the passage of this bill, to a $70 million heavy vehicle safety and productivity package which will provide heavy vehicle rest stops. The minister has already written to industry and the states seeking their views as to where the rest stops should be. Those submissions have been provided. It is bad policy to link adjustment of the charge in the future to the construction of an arbitrary number of rest stops. The road user charge is determined based on all road expenditure attributable to heavy vehicles, not just rest stops. Also, putting in an arbitrary quantitative target such as 50 only encourages expenditure on smaller projects to meet the target. There is no logic or transparency to why 50 a year has been chosen.

Claiming that this bill can force the states to harmonise inconsistent transport law is an absolute furphy. There is no logical reason to link road user charge adjustment to harmonisation of transport law. This process has absolutely no impact on the states and will place no pressure on states at all. All the revenue from this bill comes to the Commonwealth. The Rudd government is pursuing national transport law in the heavy vehicle area through the ministerial council process.

It is not the role of Infrastructure Australia to audit the construction of heavy vehicle rest stops or the extent of harmonisation of transport law. IA is a very small body whose purpose is to give high-level strategic advice to the government on its infrastructure agenda. It is currently preparing the priority list for infrastructure projects of national significance. It is made up of eminent business leaders with significant strategic policy experience. Can senators seriously envisage Rod Eddington, Heather Ridout, Mark Birrell and Gary Weaven measuring up rest stops with tape measures on the nation’s highways to see if they comply with the NTC guidelines?
Senator Ian Macdonald—I assume they would have staff to do that.

Senator CONROY—Unfortunately you do not seem to understand the role and nature of IA. It is almost completely wrong. This is a ludicrous amendment, and there are other bodies better placed to undertake the task.

On request (3), determinations so made have effect until they are disallowed. The minister will propose the date of effect with each determination. It is better to have the flexibility to determine date of effect. Finally, it is unnecessary. The consultation process would contain the relevant information, including road expenditure. The act already defines application of the road user charge.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.18 pm)—Request (4) has got something that is fairly important in regard to additional truck rest stops or rest areas. I wonder whether the minister could give us a bit of a feel on the $70 million for the government’s heavy vehicle safety and productivity package. It may also help some listeners listening in on this. Roughly how many truck stops would that be on an average? I know some take a lot and some take a little. Can you give us a bit of a feel for that $70 million? I know it is split over the forward forecast of $10 million in 2008-09, $20 million in 2009-10, $20 million in 2010-11 and another $20 million in 2011-12. Can you outline it for us?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (5.19 pm)—I am advised that a large truck stop can cost around $5 million and a small one around $500,000. It does vary depending on each individual site that is chosen.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.19 pm)—I understand that the $70 million was allocated and that in the budget papers it was linked to the 21c increase. Is that correct?

Senator Conroy—Yes.

Senator FIELDING—Was the $70 million that was allocated as part of the heavy vehicle safety and productivity package conditional on further increases above the 21c charge?

Senator Conroy—No, I do not believe so.

Senator FIELDING—I am trying to think ahead. This is where I have some sympathy with the opposition’s request because it is talking about additional heavy vehicle rest areas to be done before the next increase. What I am worried about is that if another increase comes no more money is being spent on rest stops other than the $70 million. The $70 million is tied to the 21c increase. If you actually increase the charge again, I would have expected the government to have some commitment to additional funding on rest areas above the $70 million. The issue is a fairly significant one, given that the Transport Commission, as highlighted before, issued a set of national guidelines about the provision of rest areas, and an audit of major highways found that none of the highways met the guidelines—none. What I am concerned about is that the $70 million probably falls very short. Even though it is welcomed and definitely the industry welcomes the $70 million, I am worried about future road charge increases and then no corresponding commitment to additional funds above the $70 million for rest stops and truck stops. This is a safety issue for all Australians who use the roads. We all get concerned about it. It is an issue that I have had people come to me about in relation to extra rest stops and truck stops. I would like to know whether the minister is going to reassure us. This is what the coalit-
tion have picked up here, the additional rest areas, and that is why they have gone for, say, an additional 50 not just for the first part of the increase but if there are ongoing increases.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (5.22 pm)—We have specifically amended the AusLink guidelines to include rest stop funding. I understand the point you are making, Senator Fielding—I think I have got it—and I would probably say that, because of other amendments, it is not just automatically indexed; it is now going to be voted on by the Senate. At this stage there isn’t a proposal on the table to increase it. It is a little hard for us to allocate money to a future increase when we have not got a future increase.

I think the point you are trying to make is that if there were to be an increase in the future there should be an increase in funding. I think that is the point you are trying to get to. What I would probably say is that, given that it is a disallowable instrument, I am sure the Senate would take a view about the level of funding for road stops into consideration when deciding how to vote on the increase in the charge. But it is a little hard for us to talk about future increases in money for roadside stops when we do not have a proposal for a future increase at this stage. I am not sure that there is much more that I can suggest.

Senator IAN MACDONALD (Queensland) (5.23 pm)—I will give you a different explanation to the one the minister has given you. What this is saying is that we are increasing it today from 19-odd cents to 21c, so they are getting a lot of extra money. They have promised to use that on rest stops. What our amendment is saying is, ‘When you come back to us in a couple of years and want to increase that, we’re telling you now that we’re not going to increase that beyond the 21c unless you can show us that, for this year and for next year and for however many years it is until you come back to us, you have actually done what you have been talking about.’

You have been talking about 50 truck stops or $70 million—which we calculate to be 50. That is what you are promising to do today, and we take you at your word. But just because we are a little bit suspicious we are actually giving you notice in today’s bill not to come back to us in three years time looking for an increase unless you can prove to us that you have put in, on average, 50 truck stops a year. I say to the government: you are telling us that you are going to do that and we believe you, so why would you not agree to this being in there?

While I am on that, perhaps Senator Conroy is right when he says that Infrastructure Australia is not the appropriate body. Senator Conroy said to the Senate that there are more appropriate bodies. You are the government, so you have a team of advisers, whereas we have practically none, so you tell us what the body should be that assesses it and I will make the amendment on my feet as we go. We picked Infrastructure Australia because it was supposedly absolutely independent. We did not expect Rod Eddington to go out with his tape measure and measure up these truck stops, but we assumed that it would have some staff and a budget and it could employ contractors to go out and measure them up. But, if it is not the appropriate body, tell me which one is and I will seek the leave of the Senate to delete Infrastructure Australia and put in its place Senator Conroy’s suggestion as to who is right for it. That would overcome that.

I do not want to take it any further except to say that we are giving them an extra 2c a litre today on the basis that they have promised us they are going to build 50 truck stops
every year for the next several years. We are just giving them notice with this amendment, which says, ‘Look, brother, don’t come back to us for an increase in four years time unless you can demonstrate to us that you have done the 50 truck stops a year and you have harmonised the state regulations.’ If you come back in four years and want to increase it to 23c a litre and you do your disallowable instrument for it, we could knock it off, as Senator Conroy said, but putting it in the bill in this way today makes it indelibly clear. The minister will not even be able to put in a determination in four years time unless Infrastructure Australia, or some other body, has said to the parliament: ‘These guys were true to their word. They have done the 50 a year. They have substantially harmonised with the states and territories, so you can therefore put in your determination.’ We can then knock it off for other reasons, but what we are saying is: don’t even bother with the determination unless Infrastructure Australia has told us that you have honoured your pledge to give us 50 truck stops a year and you have substantially harmonised.

Senator XENOPHON (South Australia) (5.27 pm)—I will state in less than two minutes my position in relation to the four requests moved by the opposition. In relation to request (1), I see no harm in that; I see it as further clarifying what the position is in terms of definitional matters. In relation to request (2), which concerns there being not more than one determination in a financial year, I think that is fair enough and it gives, in a sense, some certainty to the industry that there will only be one determination per year. I support that measure. In relation to request (3), the amendment concerns the disallowable instrument. The difference is between not being able to raise the funds until 15 days, the time under the Legislative Instruments Act, has passed, or raising it now—the alcopops situation that Senator Macdonald has referred to. My question to the minister in relation to that is: what happens if, with respect to the government’s position, for some reason the Senate disallows that amount? Will there be a refund with respect to that? What actually happens with the funds that were already collected if, 15 days later, the Senate disallows it?

Senator CONROY (Victoria—Deputy Leader of the Government in the Senate) (5.29 pm)—Just to help Senator Macdonald, the state RTAs are the relevant bodies to deal with that. There seems to be a little bit of confusion that the 2c is directly linked to the road stops or the harmonisation. This is not the case. They are not directly linked. The government has made the commitment that it will build these road stops in an ongoing manner. They are not tied together in the way that Senator Macdonald is trying to tie them together. As I have already mentioned, the funding for these comes from AusLink.

For Senator Xenophon, a disallowable instrument is a legal instrument until it is disallowed. I have done this myself. I disallowed an accounting standard, as funny as you may find that. In the 14-odd days that it took to disallow it, one company in particular, who was a major beneficiary of the change in the accounting standard, was able to conduct its business. This actually then went to court and the judge ruled that a disallowable instrument stands until it is disallowed by the Senate. So it has full force of law until it is disallowed.

Senator XENOPHON (South Australia) (5.30 pm)—I still have one other amendment to refer to. Whilst I am quite sympathetic to the opposition’s amendments moved by Senator Macdonald in relation to subclause 3, my concern is that there could be some administrative complexity with respect to that. I have discussed that privately with Senator Macdonald. We still have the
mechanism of disallowing it. I am just worried about what would occur in the context of the consultation and all the steps that are required by having that 15-day period. I just think that is unduly onerous. If the Senate are minded to knock this out, they can do so well within that 15-day period. The flip side of it is that we can deal with it earlier. Presumably, if the new charges are so obnoxious, the majority of the Senate will get its act together and get onto it. So I cannot support that.

In relation to subclause 4, I understand the intent of what is being moved by the coalition. My concern is that the conditions, the trip-wires, that have been set up here are simply too prescriptive. I think that the government will be judged by what it does with this money and by the commitments that are made. I think the danger is that if we are simply too prescriptive about, for example, the meaning of ‘substantial harmonisation’—this is the sort of stuff that we lawyers salivate about; it is judicial review—it will not be a lawyers picnic but a lawyers smorgasbord. I am concerned, but I commend Senator Macdonald for raising this. There are some legitimate concerns. I think, simply by raising them, it really sets on the agenda the sorts of things that need to be considered. But making it that prescriptive is something that concerns me. I can just see it fraught with a number of legal minefields. In summary, my position is that I support the first and second amendments of the coalition, but I cannot support the third and fourth.

Senator IAN MACDONALD (Queensland) (5.33 pm)—I refer back to Senator Xenophon’s last question to the minister. I think we all knew that legislative instruments take effect from the day they are signed. But I thought Senator Xenophon asked you: what happens to all the money you collect if, within the 15 days, the Senate knocks that off? Once you increase the price of the fuel, every truckie, as he goes into the servo, will pay the increase. If it is knocked off in 15 working days of the Senate, which could well be two or three months down the track, what happens to that money? Are you going to give it back to every truckie? What are you going to do? That is what I thought Senator Xenophon’s question was.

Senator CONROY (Victoria—Deputy Leader of the Government in the Senate) (5.34 pm)—Thank you on behalf of Senator Xenophon! You are probably just misunderstanding how the process works. My understanding is that you do not pay any more at the bowser. The bowser price is the bowser price. You actually claim it when you do your BAS, whether it is on a monthly, quarterly or annual basis. It is about the rebate that you get back. I think that probably mitigates on two fronts: firstly, I thought Senator Xenophon was answering his own question, to be honest, when he said that the Senate can get its act together fairly quickly; and, secondly, because of the way the BAS system works, the combination of the Senate getting its act together and the BAS rebate actually mitigates that fairly substantially, I would have thought.

Senator IAN MACDONALD (Queensland) (5.35 pm)—Just on that, if the quarterly BAS statement has occurred in that time, are you saying that the government will have sufficient records, if it is knocked off, to actually refund the money?

Senator FIELDING (Victoria—Leader of the Family First Party) (5.35 pm)—I will just try to bring a bit of clarity here. You could get the situation that the government of
the day lowers the rebate, effectively increasing what I call a tax but what you would call a charge, but I do not want to go there. The price immediately goes up through the rebate going down. Some days, weeks or months later—it could be months—it is disallowed in this chamber. All of a sudden, there is this money that has been collected unfairly because the parliament has not actually agreed to it. You are saying it is not going to be refunded—that it must go into a generous Christmas fund somewhere. This is the problem that I think the opposition is trying to address here. We are not trying to muck around. We are trying to work out what actually happens. Whose fund does it go into? Santa Claus’s?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (5.37 pm)—The government’s intention is to try to align the tax situation with the introduction, so there are three steps to minimise the impact. But a disallowable instrument works on the basis that it is legal. That is the way the parliament works. As I described before, one company chose to use the new accounting standard while I had a notice of motion on about disallowing it, and the court upheld that the process undertaken by the company was completely legal and the accounts did not have to be restated. The company were making a fairly major amount of money for themselves along that process. The alignment of the rebate process and the timing of it will see this potential danger become fairly minimal, in the government’s view. I am not suggesting for a moment that it will be zero. I am not trying to mislead any senator. I am not suggesting it will be a zero issue, but we believe that, with all these other measures, the likelihood of it happening will be minimal.

Senator IAN MACDONALD (Queensland) (5.38 pm)—I will not make any further comment on requests (1), (2) and (3). I do not intend to call a division. I am clear about what Senator Xenophon is doing, unless I have changed his mind in the last little while.

Senator Xenophon—No.

Senator IAN MACDONALD—I am not absolutely sure of what Senator Fielding is going to do with all the requested amendments, but he will no doubt tell us so that we do not have to have a division. I will just have one more go at request (4). I am repeating myself, but I just want to make this absolutely clear to Senator Xenophon. The tax is going up to 21c today and we are unhappy about that. We are unhappy about any additional charges on the road transport industry. But we have conceded it because the government have said, ‘We’re going to spend $70 million on it.’ You would not be surprised if I said that we do not always treat everything the government promise to do as accurate. I could give you about 10 examples of that in 10 seconds if it were relevant. We do not always accept that everything they promise is true.

This does not apply today. It applies in four years time. We are just saying to them that the minister cannot issue a determination: ‘Do not even think about it; do not bother about it unless you can demonstrate that you have these 50 additional rest areas a year.’ If we put that in the bill, it will make sure that it happens. The government will know that, if they ever want to get more money out of the trucking industry through the fuel excise, they will have to have done this. It will not come to a vote in the Senate. It will not be an issue. The minister will just know that they should not even try it unless they can demonstrate through some independent authority that the additional rest areas have been provided. I suspect it will be done through Infrastructure Australia. I
would not go for the state road transport authority, Senator Conroy. That is like Caesar appealing to Caesar. That is why I think they are good amendments. They will just keep the government to their word. If the government are going to do it, why would they possibly object? We just want to make sure that we are keeping the Bs honest, and this is an easy way of doing it.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.41 pm)—I will sum up a little bit. Family First will support request (1), which is to make sure that there are not any formulas going with the indexation. We will support request (2), which says that there should not be more than one increase in the financial year. Regarding request (3), I have listened to both arguments. I am a bit nervous about the idea that it can be disallowed. You might come back and say that it is tough to give it back. I think I will support request (3).

I am still not sure about request (4). This is about safety. That is the core of it for me. Rest areas are something that I think most Victorians and Australians would be fairly concerned about. Were you saying that the $70 million is not tied to the transport charge? I thought it was linked to this bill. I am a little bit uncertain there. The $70 million covers 14 big truck stops or 140 small ones or somewhere in that range. I think quite a number still need to be done across Australia, so the funding certainly needs to be increased. I am worried that having no set increase in truck stops is a real concern. The situation is basically: ‘Trust me. There’ll be more coming.’ At the other extreme is the opposition putting in a little too much detail. I am probably erring on the side of saying that I would rather have more road stops than not.

Senator XENOPHON (South Australia) (5.43 pm)—I assure Senator Macdonald that I maintain my position. I am concerned that the requested amendments are simply too prescriptive. I admire the intent, but I believe they are simply too prescriptive. I will not go through all the matters that have been raised previously. But, for example, what does ‘substantial harmonisation’ mean? Request (2)(c), for instance, says:

(c) the type of rest areas constructed, their spacing and amenities are consistent with the goal …

That is too prescriptive. That is my concern. My favourite phrase for the day is: let’s cut to the chase. The fact is that what is going to happen here is that we are going to see a substantial increase in expenditure for truck stops in this country as a result, in part, of this road user charge. That has to be a good thing. I commend Senator Fielding for his work on this and for ensuring that there will be an assessment of it in three years time. I respect Senator Macdonald’s arguments but I cannot support request (4) moved in his name.

Senator MILNE (Tasmania) (5.44 pm)—The Australian Greens will not be supporting the opposition’s requested amendments.

The TEMPORARY CHAIRMAN (Senator Hutchins)—I propose to put opposition requests (1) and (2) separately and then opposition requests (3) and (4) together. The first question is that opposition request (1) be agreed to.

Question agreed to.

Senator Ian Macdonald—I would ask that opposition requests (3) and (4) be put separately.

The TEMPORARY CHAIRMAN—Okay; we will put them separately. The question is that opposition request (2) be agreed to.

Question agreed to.
The TEMPORARY CHAIRMAN—The question is that opposition request (3) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that opposition request (4) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—Senator Fielding, are you proceeding with your requests?

Senator FIELDING (Victoria—Leader of the Family First Party) (5.46 pm)—As I indicated earlier to the committee, the government’s amendments picked up the issues that we had, so Family First withdraws requests (2), (3), (4) and (5) on sheet 5680 revised.

Bill agreed to, subject to requests.

Senator IAN MACDONALD (Queensland) (5.46 pm)—Mr Chairman, I seek your guidance here. Is there a third reading of this Road Charges Legislation Repeal and Amendment Bill 2008?

The TEMPORARY CHAIRMAN—No, not of this one; but there is a third reading of the Interstate Road Transport Charge Amendment Bill (No. 2) 2008.

Senator IAN MACDONALD—On the last question you have raised, Mr Chairman, I wish to indicate to the committee that, in relation to the questions of the bill standing as printed and the report of the committee being adopted, my instructions are that the opposition will be voting in the negative. We will not, however, be calling a division, which is why I am indicating to the Senate that the coalition is taking this view. I am particularly grateful that at least two of the four amendments have been agreed to, and I hope that the government will accept them in the other place.

The coalition’s position is that we really did not want to have any increase in this road tax charge. We think the trucking industry already suffers heavy imposts. They do not get much for the road charges they pay. The roads around Australia are in a shocking condition, and the rest stops are not there. Regarding the question of harmonisation, we have heard time and again in this chamber about the stupidity of differences in regulations when driving from one state to the other. It has been agreed that they will be harmonised, but the question is when. For all these reasons, the coalition believes it should support the trucking industry and there should not be an increase without the guarantees that we have sought here. It is for this reason that my instructions are that the opposition will be voting against the whole bill. I wanted to put that on the record but, because of the inevitable time delay that would be involved, I will not be calling a division.

Interstate Road Transport Charge Amendment Bill (No. 2) 2008 Bill reported without requests; Road Charges Legislation Repeal and Amendment Bill 2008 reported with requests; report adopted.

Adoption of Report

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (5.49 pm)—I move:

That the report from the committee be adopted.

Senator IAN MACDONALD (Queensland) (5.49 pm)—Just for the record, we are supporting the original bill but, for the reasons I have just mentioned, we are not supporting the Road Charges Legislation Repeal and Amendment Bill 2008.

Question agreed to.
Third Reading

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (5.50 pm)—I move:

That the Interstate Road Transport Charge Amendment Bill (No. 2) 2008 be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.50 pm)—by leave—I move:

That the Senate continue to sit between 6.30 pm and 7.30 pm today.

Question agreed to.

TEMPORARY RESIDENTS' SUPERANNUATION LEGISLATION AMENDMENT BILL 2008

SUPERANNUATION (DEPARTING AUSTRALIA SUPERANNUATION PAYMENTS TAX) AMENDMENT BILL 2008

In Committee

Consideration resumed from 27 November.

The CHAIRMAN—The committee is considering amendment (1) on sheet 5644 revised, moved by Senator Xenophon.

Senator XENOPHON (South Australia) (5.51 pm)—by leave—I seek to withdraw my amendments, given that the government will be introducing an alternative amendment.

Leave granted.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.52 pm)—by leave—I table a further supplementary explanatory memorandum relating to the government amendments and requests for amendments to be moved to this bill. The memorandum was circulated in the chamber on 3 December. I move government amendments (1), (2), (6) and (7) on sheet RG297:

1. Schedule 1, item 4, page 4 (line 10), after “amount he or she has received”, insert “(and interest, in some cases)”.
2. Schedule 1, item 16, page 7 (line 10), after “claim the amount”, insert “(and interest, in some cases)”.
3. Schedule 1, item 35, page 24 (line 30) to page 25 (line 3), omit subsection 307-142(3), substitute:

(a) so much of the amounts paid to the Commissioner under subsection 17(1) or 20F(1) of that Act in respect of the person as would, if those amounts had instead been paid to the person as *superannuation benefits, have been the taxable components of those superannuation benefits;

(b) subsection 20H(2A) of that Act (which is about interest payable in certain circumstances).
4. Schedule 1, item 37, page 26 (lines 1 to 7), omit subsection 307-300(3), substitute:

(a) so much of the amounts paid to the Commissioner under subsection 17(1) or 20F(1) of that Act in respect of the person as would, if those amounts had instead been paid to the person as *superannuation benefits, have been the elements untaxed in the fund of the taxable components of those superannuation benefits;
That the House of Representatives be requested to make the following amendments—

(3) Schedule 1, item 16, page 13 (after line 36), after subsection 20H(2), insert:

(2A) The Commissioner must also pay to the person, fund or legal personal representative the amount (if any) of interest worked out under subsection (2B), if the Commissioner is satisfied that:

(a) the person is (or was just before dying) an Australian citizen or, under the Migration Act 1958, the holder of a permanent visa; and

(b) after 30 June 2007 either:

(i) the person left Australia; or

(ii) the person was, under the Migration Act 1958, the holder of a temporary visa.

(2B) Work out, in accordance with the regulations, the amount of interest:

(a) on so much (if any) of the excess as is attributable (directly or indirectly) to one or more amounts paid to the Commissioner under subsection 20F(1) and not to payments to or by the Commissioner under section 17; and

(b) at a rate equal to the annual yield on Treasury bonds with a 10-year term or, if another rate is prescribed by the regulations, that other rate.

Note: The regulations may provide for various matters relevant to working out the interest, such as working out the periods for which particular rates apply to particular amounts of principal (which will affect any compounding of the interest, among other things).

(2C) Regulations for the purposes of subsection (2B) may prescribe different rates for different periods over which the interest accrues, including a nil rate for any period starting when the person turns 65. This does not limit the ways in which the regulations may provide for working out the amount of interest under that subsection.

(4) Schedule 1, item 16, page 14 (line 9), omit "excess"; substitute "total of the excess and any interest that would be payable under subsection (2A) apart from this subsection".

(5) Schedule 1, item 16, page 14 (line 16), omit the formula, substitute:

\[
\text{Total of the excess and any interest that would be payable under subsection (2A) apart from subsection (3)}
\times
\frac{\text{Sum of the totals described in paragraph (3)(a) for all the death beneficiaries}}{\text{Total described in paragraph (3)(a) for the death beneficiary}}
\]

Statement of reasons: why certain amendments should be moved as requests—

Section 53 of the Constitution is as follows:

Powers of the Houses in respect of legislation

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.
Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

**Amendments (3), (4) and (5)**

The effect of these amendments is to make interest payable by the Commissioner of Taxation. They are covered by section 53 because they increase the amount payable under the standing appropriation in section 16 of the Taxation Administration Act 1953.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000—

**Amendments (3), (4) and (5)**

The Senate has long followed the practice that it should treat as requests amendments which would result in increased expenditure under a standing appropriation, although this interpretation is not consistent with other elements of the established interpretation of the third paragraph of section 53 of the Constitution. This has nothing to do with the introduction of bills under the first paragraph of section 53.

If it is correct that these amendments require the Commissioner of Taxation to make interest payments which will be payable from a standing appropriation, it is in accordance with the precedents of the Senate that the amendments be moved as requests.

I do not intend to speak for very long because the amendments are short and concise. Obviously I will have a few words to say about the amendments themselves.

Since we last debated this matter and were about to move to a vote on Senator Xenophon’s amendments, there has, fortunately, been a reflection and consideration of these matters. The calculated cost of Senator Xenophon’s amendments was up to $860 million, as advised by Treasury, over the forward estimates. However, we did accept and reflect on the contributions of Senators Bushby and Xenophon. As I indicated, I think the difficulty that Senator Bushby faced—and I accept that his in principle attitude raised some concerns—was that the bill we are now considering was Liberal Party policy. Senator Xenophon is of course a newly elected senator and he had not given a policy commitment on this particular piece of legislation. Senator Xenophon’s issues were similar to—though not exactly the same as—Senator Bushby’s. The government has considered the points that Senators Bushby and Xenophon have made and we have been able to accommodate at least some of those concerns.

The concerns expressed, particularly by Senator Xenophon, about issues going to retrospectivity and returning temporary residents was something that the government and I did think about following the debate. I acknowledge Senator Xenophon’s positive contribution. Following discussions with Senator Xenophon, we are able to accommodate in part—and I accept that it is only in part—the in principle concerns that he expressed relating to the issue of temporary residents who return to Australia. There is a category of people who leave the country, having been temporary residents, and then return as permanent residents. Many of those people who return as permanent residents ultimately take out Australian citizenship.

Given that one of the principles under discussion was that the Australian system should not confer a benefit on non-Australians, the government considered that it was reasonable that, where a temporary resident leaves Australia, effectively leaves their money here and that money is moved over into the ATO account, and then that temporary resident comes back to Australia as a permanent resident, they should not be penalised. The approach that we have come up with is that if a temporary resident returns to Australia, having elected to leave their money in the Australian system, they should not be penalised. Where a former temporary resident returns to Australia on a permanent visa, their money will be transferred back to
the fund of their choice. In addition, the government will pay accrued interest at the long-term government bond rate and there will be no administration charge. We think that having no additional charges and the payment of the long-term bond rate is a pretty reasonable accommodation for this group of people. The cost will be approximately $7.5 million over the forward estimates.

We considered this to be a positive recognition of, and an attempt to accommodate, the concerns that have been raised by senators while not fundamentally threatening revenue, which is obviously very important as well. With those remarks, I want to thank all the senators who have contributed to reaching this position. I want to thank the opposition and Senator Xenophon for the very positive discussions we have had on this matter since we last discussed it.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.59 pm)—This bill could be debated through 6.30. I am trying to work out why the other house can complain about the food in the canteen but I have not been consulted about having no dinner break. I have not had breakfast, I have not had lunch and I want a dinner break at 6.30, so I would like to know how the government can bring back the dinner break tonight so that we can debate this bill properly.

The TEMPORARY CHAIRMAN (Senator Trood)—Senator, I have some sympathy for your dietary needs, but the Senate has already voted on the matter of the dinner break and, as I understand it, has agreed that there will not be a dinner break and that we will continue through what was intended to be the dinner break.

Senator FIELDING—I was not asked about whether or not we would have a dinner break. I understood we would have a dinner break, and no-one came to see me to say that it had been agreed otherwise. I think it is a farce. With the hours that we work, a dinner break in this workplace is not too much to ask.

The TEMPORARY CHAIRMAN—As much as I may have sympathy for your position, Senator Fielding, I think at this juncture the desirable thing is for your remarks to be relevant to the bill before the Senate.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (6.01 pm)—In terms of relevance and dinner breaks for temporary entrants, which I think Senator Fielding was addressing, I apologise, Senator Fielding, that you were not consulted. I sincerely apologise. Unfortunately, it is due to the nature of the day and the long hours, and I accept your concern. The best I can suggest is that I will talk to the Leader of the Government in the Senate and ensure that this will not happen again. You should have been consulted; I accept that. I am not sure of the status of other crossbenchers but I will endeavour to ensure it does not happen again.

Senator FIELDING (Victoria—Leader of the Family First Party) (6.02 pm)—I understand that others have been consulted. The issue is that I do listen to the debates in the chamber as they help shape your views on how you will vote on things, and when people say, ‘We’re going to do this or that,’ it may work but it may not work. Frankly, I was really looking forward to my dinner break tonight and I do not think it is unreasonable to expect one.

The TEMPORARY CHAIRMAN—If we can move forward, Senator Fielding, you may eventually get one. The question before the Senate is that government amendments and requests (1) to (7) on sheet RG297 be agreed to.

Senator COONAN (New South Wales) (6.02 pm)—In respect of the amendment that Senator Xenophon has withdrawn, it did, on
the face of it, address an inequity that had been identified by the economics committee. The intention was that in certain circumstances a superannuant, if they so chose, should have been able to maintain their superannuation account despite having departed Australia. I have listened to the comments of the minister in support of the amendments and requests that the Senate is now considering and they do seem to me to be a fair and sensible accommodation whereby superannuants are going to be treated much more fairly. Accrued interest at the long-term bond rate and no admin charge is significantly better than what we faced when we were last looking at this. I want to commend Senator Xenophon and certainly Senator Sherry for looking carefully at this. This was entirely what we intended should happen. It is a very constructive way of dealing with it, and the coalition is very pleased to support it.

Senator XENOPHON (South Australia) (6.04 pm)—I will be brief. I echo the remarks of Senator Coonan. I also place on record my gratitude for the work that I did with Senator Bushby on this. It has been a good exercise. I do not want to give him the kiss of political death by saying what a good job I think he did, but I was very grateful for the constructive way in which we dealt with it. I am also grateful to Senator Sherry for listening to our concerns and being able to accommodate them, in part. I maintain my concerns about retrospectivity, but this goes a long way to dealing with the most anomalous aspect of it. I commend the government for their approach to this and I welcome and support these amendments.

Senator FIELDING (Victoria—Leader of the Family First Party) (6.04 pm)—The changes that the government has made on this bill do make sense and they do have the support of Family First.
Senator COONAN (New South Wales) (6.07 pm)—I will speak briefly on the Corporations Amendment (Short Selling) Bill 2008. At a time of uncertainty and volatility in global financial markets, it is well recognised that governments around the world need to reassess and improve the regulation of corporate and financial markets. It is important that the government’s response to the global financial crisis helps to improve the situation. It is important that the government gets it right. Unfortunately, we do not think the government has handled the financial crisis all that well. The Rudd Labor government is the only major Western government whose actions have actually made the impact of the financial crisis worse.

The coalition supports legislation that improves investor and business confidence in Australia’s regulatory framework for the financial markets. Elements of this bill, in our view, do not quite do this, and I will speak a little bit about that later. Whilst the coalition supports the intentions of this bill, it of course has some gaps, and I will refer to that shortly. The Corporations Amendment (Short Selling) Bill 2008 has three schedules. Schedule 1 of the bill clarifies ASIC’s powers in relation to short selling, and it has coalition support. Schedule 2 of the bill bans naked short selling, and it has coalition support. Schedule 3 of the bill deals with the disclosure of covered short sales and, whilst we have some concerns, which I will outline, we will be supporting schedule 3.

I will now address in a little more detail the individual schedules. According to the explanatory memorandum, the bill aims to clarifies ASIC’s powers in relation to short selling, prohibit naked short selling and provide better disclosure of covered short selling. Short selling is an equities trading technique whereby a trader aims to trade in a manner that will allow them to profit from a falling market. Effectively, a short sale, or ‘going short’, involves a trader selling a stock that he or she does not own with the hope of buying it back at a lower price. The profit comes from the difference between the proceeds of the sale at the higher price and the cost of the acquisition at the lower price.

Short selling can be described as being either naked or covered. Naked short selling occurs when a trader sells a share that he or she does not have in their possession. This can occur because there is a three-day settlement period between when the sale is made and when the share ownership has to be settled. Typically, a trader who engages in naked shorting would seek to sell a share that he or she does not own at a higher price and then use the three-day settlement period to acquire the same share, up to three days later, at a lower price. Effectively, naked short selling means that the trader is selling a share that he or she has not yet acquired.

Covered short selling occurs when a trader seeks to cover a short sale by first borrowing the stock, usually from a super fund or insurance company. When engaging in covered shorting, the trader actually has possession of the share that he or she wishes to short with because of the borrowing arrangement. The trader then sells the borrowed share, later purchasing it back at a lower price to return to the lender.

Why then is the Senate being asked to clarify ASIC’s powers, ban naked short selling and better disclose covered short selling? As short selling involves selling into a falling market, the effect of flooding the market with yet more shares for sale causes share prices to drop even lower. Short selling became somewhat of a bogey earlier this year during the share market decline in January and February. Whilst the merits of short selling is a topical argument among financial professionals, the issue for the government is
more about the effective regulation and disclosure of short selling.

Schedule 1 of this bill clarifies ASIC’s powers in relation to short selling. Previously, there have been questions as to whether ASIC or the ASX should regulate short selling. In these uncertain times there does need to be certainty and clarity as to the strength and effectiveness of our regulatory framework. Under schedule 1, ASIC is given the authority to regulate all aspects of short selling. Any confusion over which entity has regulatory oversight for short selling will now be removed, and we support this measure.

Schedule 2 of the bill bans naked short selling outright. However, under schedule 2, ASIC is left with a regulatory carve-out power to allow exemptions to this ban on naked short selling where it sees fit. As naked short selling represents less than two per cent of all sales conducted in Australia, this ban is unlikely to have a major effect on the operation of the financial markets. The first two schedules of this bill are clearly positive measures that will restore some confidence in our regulatory framework. Whilst ASIC and the ASX have already been able to ban and regulate short selling through issuing orders, this legislation will confirm ASIC’s authority.

Schedule 3, however, is a bit more problematic, and we think that is the case on a number of fronts. The coalition strongly supports the concept of an appropriate disclosure regime for short selling, which would lead to enhanced market integrity. We support measures that provide greater transparency and enhanced disclosure. The strength and integrity of the Australian financial markets are of great importance not only to so-called mum and dad investors but also to institutional investors and of course superannuation funds. It is of the utmost importance that there is in place a disclosure regime that provides the basis for a strong and honest marketplace. However, schedule 3 as it stands does not in our view provide certainty, nor does it remove ambiguity. I just want to outline some of our concerns. Although we do not seek to excise schedule 3 from this bill, we do believe that the minister and Treasury need to do some work to sort out what we perceive as the gaps. There are some primary questions which remain unanswered and gaps throughout the schedule which we believe we should bring to the attention of the Senate to look at in this debate. Perhaps the minister might address them in his remarks. We think that, without clarity, they will only provide distortion and uncertainty to an already volatile market.

There are some concerns, as I said, and I will just outline a few of them. We have no indication of whether covered short sales data will be released on a fortnightly basis or a daily basis, amongst other data release models. We know that most industry groups are in favour of the US model where institutional investment managers, super funds, hedge funds and the like report short sales, which are kept confidential for two weeks before being made public. Any such model allows for the protection of both strategic and proprietary trading positions involving short sales as positions are kept confidential for what might be regarded as an appropriate amount of time. The next-day release of data could encourage free riding and may leave stocks susceptible to predatory behaviour. The key point is that certainty is not provided here and we must know how regularly positions will be disclosed and what kind of time lag will exist for disclosure.

Key industry groups would prefer that all covered stock positions be disclosed to the ASX, as market operator, on a timely basis. The disclosure of covered short sales to other brokers—as proposed in option 2 of the gov-
ernment’s exposure draft—where positions are disclosed to the ASX and not to other brokers, could undermine commercial advantages and cause further market deterioration. There are many concerns that option 2 of the exposure draft, where brokers become aware of all short positions, would expose commercially sensitive and active investment research to other participants, and of course this could distort the market and, as I said, encourage free riding. It has been suggested to us that a system flag, formerly used in CHESS by the ASX for stamp duty, could be used to capture or stop lending transactions. This would move the reporting burden from the broker to the market operator who already appears to have an automated system. This system could be used to capture stock lending and therefore enhance the disclosure of short sales.

We know the government’s preferred option 2 of the exposure draft leaves disclosure to the broker. Schedule 3 of the bill suggests, although without certainty, that the financial services licensee, who could actually be an individual broker or a firm, is responsible for disclosing covered short sales. We think more certainty must be provided here. Who will the disclosure requirements actually fall to—the broker, the individual, the fund or the market operator? I would imagine that covered short sales positions would be disclosed on a stock by stock basis—that seems to be one of the few assumptions vested in what otherwise is, I think, an unclear schedule. But the significant question remains: what form of presentation would be required? Will stock tallies be presented on an aggregate total or will it be a daily total?

If stock lending becomes the chosen transaction measure instead of finalised covered short sales, will the total amount of stock lent be required to be disclosed or will it be a daily transaction balance of lending? The same questions apply to finalised covered short sales. Either way the implications for the market are considerable. The way in which these disclosure requirements will operate will change the behaviour of the Australian market permanently, and certainty is of the utmost importance, particularly in what it is no doubt agreed is a somewhat volatile environment.

The schedule also does not stipulate who exactly has to report and when. This would be problematic as there are no threshold indications. As many short sales are conducted by very small operators it is likely that undue administrative costs would eventuate for small market players if they were part of the regime. A substantial holding threshold has been argued to be required by industry and market participants. Industry participants argued that a disclosure exemption for positions accounting for, say, 0.25 per cent or less of the total percentage of the shares could be helpful in exempting small participants from undue administrative costs. Based on this assumption the establishment of an approved list of participants who are permitted to short sell and disclose their positions would create a further level of transparency and a seamless administrative regime.

As you can see, Mr Acting Deputy President, there are some unanswered questions as to how this schedule will operate in a technical and practical sense. Obviously the aim here is to provide certainty to the market. No doubt this will be something that will need to be addressed. Through our discussions with industry and other stakeholders, together with the Senate economics committee inquiry, it has been abundantly clear that there is a concern with the way in which schedule 3 has been drafted and a compelling need to fill in the gaps.

I will just make one more observation regarding the way in which this bill has been presented and the supposed urgency of it
being passed. It was looked at, of course, in the Scrutiny of Bills Committee and the latest Alert Digest pointed out that schedule 3 of the bill is to commence on proclamation. We do not know when that will be but, in any event, it will be within 12 months of assent. The explanatory memorandum gives no reason at all in explaining the period of delay of commencement being any longer than six months and the committee has sought advice as to the reason for the delay.

The minister has talked a lot about the need for urgency. We understand that there is a requirement that as much certainty as possible is provided to the market but it is difficult to see, with many gaps in schedule 3, where the case for urgency is when the schedule as it stands does not provide the very certainty being sought for it. So, whilst we are not moving to excise the schedule, we do think it is appropriate to watch closely to see how the government will work out the detail that we consider should have been available at the time we are considering the bill. Apart from those remarks the opposition will support the bill.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (6.20 pm)—The Australian Greens support the Corporations Amendment (Short Selling) Bill 2008. However, I flag an amendment, which I will deal with in the committee stage, to ensure shareholders have the ability to say yea or nay to severance payments of $1 million or more for CEOs. I want to put on the record that last Tuesday the Senate asked for a prime ministerial response to his commitment to deal with excessive executive salary pays which go into the tens of millions of dollars.

The Greens have moved a number of times in this place to put a decent and reasonable curb—that is, if you call $5 million reasonable and decent—on the annual pay of at least those executives who are gaining from the government’s and the parliament’s move to insure banks and financial houses in this country. But that has been turned down by both the Labor Party and the coalition parties on those occasions. The Senate, however, did last week call on the Prime Minister to put some meat on the bones of his commitment, but there is nothing there. I suspect he is going to do absolutely nothing, which shows again the power of the big end of town.

There will be the hope by the Rudd government that, over the Christmas break, it will all go away and that people will get on with doing other things. That is a wan hope, because we will be back to pull the government to account on dealing with these executive pays, which, when you look at them on the global scale, are an incentive to risk-taking—unnecessary risk-taking, at times—adventurism and some of the less prudent decisions which have got the world into the financial mess it is in. It is not the poor people of the world who have done that; it is the most extremely rich people on the planet. But everybody suffers when you get a global crisis like we are getting at the moment.

One of the things we need is better management. If we are going to have multimillion dollar payouts, let us have some equity brought into it and some regulation and some restriction. So I will be moving that amendment during the committee stage of the debate. I understand that there has been a change to the dinner arrangement—which I
know is going to come up soon—so I will keep further comment until we come back and go into committee.

Sitting suspended from 6.25 pm to 6.55 pm

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (6.55 pm)—I am concluding the debate on the Corporations Amendment (Short Selling) Bill 2008. In my conclusion to the debate, I will touch on a number of matters that have been raised by both Senator Coonan and Senator Xenophon. Many of them are the same issues and I believe they will address at least some of the concerns that have been expressed in the contributions to the second reading debate. I want to thank all senators for their contributions to the debate. I want to thank all senators who participated in the Senate Standing Committee on Economics hearings. I also want to thank all of the public servants in Treasury and ASIC and all of the officers of the ASX, who have worked, I have to say, under extraordinarily difficult circumstances in terms of the market to, hopefully, bring this matter to a legislative conclusion at least. It has been an extraordinarily difficult period in the markets in terms of volatility and the unique set of issues that that has confronted us all with. I think it is appropriate to note just how hard the public servants and ASIC officials have had to work in this environment over the last year.

The bill will improve the regulation of short selling while also enhancing the integrity, fairness and transparency of our markets, and it comes after an extensive period of public and industry consultation. The consultation included an initial consultation commencing back in February of this year, which was followed by a full exposure draft period consultation from September this year, and then the Senate Economics Committee inquiry into the bill. So we have had three consultations on the legislation.

I can report that all the non-confidential submissions made to the Treasury consultations are available on the Treasury website and have been since 27 November 2008. Senator Xenophon raised the matter with me. The submissions were also made available to the Senate Economics Committee to assist in their deliberations if submitters provided Treasury with permission to release the submissions to the committee. The public will be able to see that there was strong general support for transparency, but there were a wide range of views on how this disclosure should occur.

As I have mentioned, we face extraordinary times in Australian and global financial markets, in which certainty is much needed and must be supported wherever possible by sound and decisive public policy and legislation. That is what this government has been doing for the last 12 months, and this is exactly what this bill does for the Australian market. Importantly, the bill provides certainty about the powers of the Australian Securities and Investments Commission—commonly known as ASIC—to regulate short selling, and puts beyond doubt ASIC’s recent use of its power to make various class orders in relation to short selling.

The bill also bans naked short selling. There are concerns around increased settlement risk with naked short selling as there are no available securities earmarked for settlement and also around naked short sales causing increased price volatility and potentially facilitating market manipulation. There is also limited evidence of any significant market-wide benefits from naked short sale transactions.

Finally, the bill provides for the disclosure of covered short sales with regulations made under the bill to set the time and manner of
such disclosures. The fact that some of the details are set out in regulations will allow the regime to respond rapidly to changes in the market. Whilst these regulations will be developed by Treasury, the key player in the development of these regulations is ASIC. I want to make it clear to the Senate that the key player in the development and details of the regulations is ASIC. It is an independent, arms-length regulator. I think that is important to recognise.

This measure is primarily about certainty and transparency, which will enhance confidence in market integrity. The uncertainty surrounding the activity of covered short sellers in Australian securities is having a significant impact. We have seen significant price declines in some shares, which have caused speculation about the role of short selling. The speculation is affecting confidence in the market, particularly among retail investors. The disclosure of covered short sales will provide useful information to investors and regulators, contributing to price efficiency, and also promote market confidence and integrity.

I welcome the recent review undertaken on the bill by the Senate Standing Committee on Economics. I would like to thank the committee for its timely consideration.

All three elements of the bill that I have outlined are integral to each other and to the whole. The ban on naked short selling is almost universally supported. The decision to require the disclosure of covered short selling is equally widely supported, so there is no fundamental disagreement on those two aspects of the bill. The Australian Securities Exchange, in its submission stated:

ASX agrees that increased transparency, via the proposed legislative amendments, will enhance price discovery and should be enacted …

The Australian Financial Markets Association said, in its submission:

… short selling transparency can enhance market efficiency through the price formation process and enable more effective supervision of market activity.

The Australian Investor Relations Association submission stated:

AIRA is a strong believer in the principle of transparency of market—and corporate—information. All participants in the market (issuers, brokers, investors) should be able to see the true level of short selling that is occurring in the market.

The Chartered Secretaries Australia submission added:

CSA welcomed the release of the Bill by the government. We support the government’s proposal to legislate to increase transparency surrounding the activity of covered short sellers in Australian securities.

CSA believes that higher levels of information to the market concerning covered short sales will assist in keeping the market informed, which in turn may reduce the opportunities for market abuse, as well as enhance investor willingness to participate in the market by removing uncertainty surrounding the level of short selling.

Finally, the Australian Shareholders Association submission stated:

The ASA supports option two—contained in the bill—on the basis that transparency of covered short sales should provide:

• for a fairer market;
• the regulators with information to assist in identifying market manipulation;
• confidence to investors.

On the involvement of brokers in the disclosure process, I would direct the Senate to the following: whilst stakeholders indicated a diverse range of views in relation to the method—and I emphasise that it was in relation to the method—if disclosing covered short sale information, critical key stake-
holders supported the disclosure of covered short sales through brokers. These importantly included the independent regulator, ASIC, and the independent market supervisor, the Australian Securities Exchange, the ASX.

In terms of the method of disclosure, where there are differing views—and I acknowledge that—I think what is important is that both ASIC, the regulator, and the ASX, the supervisor, believed that this approach was the most appropriate. However, this method of disclosure was also supported in the submissions by the Association of Superannuation Funds of Australia, the Corporations Law Committee of the Business Law Section of the Law Council, Chartered Secretaries Australia, the Australian Shareholders Association, RiskMetrics, the Australian Investor Relations Association and the QBE Insurance Group. And many others have supported this approach directly to me as the minister.

I would like to offer some more detailed views from one of these organisations to illustrate the point. Chartered Secretaries Australia made this clear in their evidence to the Senate inquiry:

CSA agrees with the government that legislative reform should place an obligation on investors to disclose covered short sale transactions to their broker, with the broker in turn being responsible to report this information to the market operator. The regulatory impact statement for this bill noted that it is expected that the costs under the broker disclosure option would be less—let me emphasise that—than with direct reporting, given that some infrastructure already exists and given the smaller number of brokers. In adopting this option, one of the considerations was the existing infrastructure which can be adapted for broker reporting. One reason for taking this option was to minimise compliance costs around the disclosure in respect of short selling.

The ASX, in evidence to the Senate committee, noted that they are responsible for the conduct of something like 100 brokers but there are ‘tens of thousands of fund managers with investments in ASX stock’. The Business Law Section of the Law Council also raised concerns with investors’ knowledge of the regime and sanctions for non-compliance if direct investor disclosure occurred. This could be a particular problem where investors are located overseas. The prime example is overseas hedge funds. If disclosure by such offshore operators is not via an Australian broker, there is no nexus to our jurisdiction to require reporting and to enforce penalties for breach.

So I think it is important to emphasise that the method of disclosure through brokers has been determined on the basis, firstly, of the existing infrastructure, which can be adapted—so the compliance costs would be less—and, secondly, of ensuring the most robust and comprehensive regime that is possible in the circumstances. The view of the ASX and others is that by doing it any other way we would not obtain the comprehensive data, and I have given the example of overseas investors and hedge funds. So the conclusion is that the broker route will deliver the most comprehensive and cost-effective method of collecting the data.

It is important to point out that ASIC have already commenced gathering short-selling data using the broker method. They have put in place a temporary regime, which, in large part, does rely on goodwill. Of course, what is important is that there is certainty going forward. The bill builds on this with important penalty provisions for breaching the disclosure requirements. ASIC have introduced the broker disclosure requirement for the reasons I have outlined. Data is now being regularly published in the Australian Financial Review for those who want to examine it. This is the first time we have had such
data in Australia. As I have said, it depends, to some extent, on goodwill, and of course there are no penalty provisions. The introduction of penalty provisions, which are contained in the bill, for breaching a disclosure regime is one of the reasons this legislation is important, as well as certainty.

The passage of the bill will also constitute a binding decision by parliament that disclosure of covered short sales will be required. It will provide certainty for industry as to this principal point. Senator Coonan touched on some of the issues around the length of time. It is referred to as T plus 1—the day after. This is why we bring this critical bill to the parliament today. It is urgent, because it establishes the framework, the certainty. Following on from this, the regulations and the discussions with industry about the regulations will be concluded, and I will come back to that in a short time. It is about delivering certainty to the regulator in current market circumstances in order to ensure that their current temporary regime has legal underpinning. The set of principal rules that guide the approach cover: (a) what is and what is not permitted; (b) with regard to what is permitted, how and by whom it has to be disclosed; and (c) what the penalties are for a breach.

This scheme is very clear and is appropriate for a piece of legislation. Sitting below this will be the regulations, which will contain regulatory details such as the frequency of public disclosure where the data is disclosed as net, gross or both and details of the timeliness of disclosure. The need for the market to be fed different angles of data does change over time. At present ASIC is requiring T plus 1, daily gross reporting and publication. The regulations may or may not replicate this, depending on the consultations. It is very appropriate that this sort of detail is contained in the regulations because over the coming years the regulator, ASIC, may need to change details of how the information is gathered and published. I emphasise the point: we cannot have regulations until we have the legal framework in the legislation. I know some have advocated removing section 3. If that were the approach—and I am pleased it is not—that was to be adopted, you would not have the legal framework in section 3 to prepare the regulations. That is why it is important to have that legal certainty, as well as ensuring that ASIC’s general powers and the penalty provisions are contained in the legislation, as I referred to earlier.

Importantly, circumstances may change and the independent market regulator and supervisor, the ASX, may advise of the need to shift the parameters of reporting, possibly quickly to ensure market transparency and integrity. Rightly, these are regulatory issues best determined by the regulator; hence, they should be in the regulations. Again, I turn to a submission from industry, in this case from the QBE Insurance Group, which states:

We agree that reporting mechanisms should be dealt with by regulation rather than the legislation itself so as to allow flexibility to respond to the market and other factors.

Finally, on the issue of the role of parliament, I would point out that if the Senate did support the amendment that was moved in the House of Representatives—and we have had indications from the opposition that this is not proceeding—to strike out the whole disclosure regime then what we would end up with would be the existing regime that ASIC, in the interim, have temporarily implemented. And if we were to allow that to continue there would be no role for parliament at all. ASIC do not need parliamentary approval for the regime that they have implemented. The regulations we propose will be fully disallowable by parliament. In addition to the data collected for publication, the regulator, ASIC, through this regime, will have access to a mine of new data to assist in
their work detecting market manipulation practices.

Finally, I want to comment on the timing of the bill coming into force, if it is passed today—and Senator Coonan has touched on this. It has been suggested that the bill will not come into force until as late as mid-2009. Apparently, this is an observation made in the Scrutiny of Bills Committee report. This may be a reason to delay its consideration and support. I can report to senators that this is incorrect.

Schedule 1, covering ASIC powers, is effective on royal assent of the bill, which will be, as I understand it, at the next Executive Council meeting as soon as it passes through the parliament. Schedule 2, banning naked short selling, is effective 28 days after royal assent. Schedule 3, establishing the disclosure regimes, is effective on proclamation, but if not proclaimed then it is effective 12 months after royal assent. I can assure senators that the bill will be quickly put before the Executive Council for consideration and that subsequent royal assent of schedule 3 will be progressed to the Executive Council for proclamation with the same urgency.

I can report that the ongoing discussions with various industry groups as to the development of the regulations have gone very well; I cannot say that there will be total agreement, but they have gone very well. Those regulations are expected to be finalised in the very early part of next year—probably February. I do not want to give an absolute commitment, but that is the indication that I have as of tonight. The bill is a critical and responsible part of the Rudd Labor government’s approach to dealing with the global financial crisis. It adds certainty and fills a gap in law that has been left open since 2001. That is not a criticism I make of the now opposition. I do not think that anyone could have anticipated that this gap would occur. *(Time expired)*

**Senator COONAN** (New South Wales) *(7.15 pm)—by leave—* Prior to the second reading vote, I wish to make a short statement. It was brought to my attention that I may have inadvertently mentioned a figure which is not correct. I do not think that I did, but just in case I did I will state the correct position. When I was addressing the question of thresholds, I said: ‘A substantial holding threshold has been argued to be required by industry and market participants. Industry participants argue that a disclosure exemption for positions accounting for, say’—at this point I thought I said ‘0.25 per cent’ but I may have inadvertently said ‘25 per cent’, which is not what I intended. I want to indicate that I meant to say, ‘0.25 per cent or less of the total percentage of the shares could be helpful in exempting small participants from undue administrative costs’.

Question agreed to.

Bill read a second time.

**In Committee**

Bill—by leave—taken as a whole.

**Senator SHERRY** (Tasmania—Minister for Superannuation and Corporate Law) *(7.17 pm)—* Senator Bob Brown, before you outline your amendment and the reasons for it, I indicate that the statement from the Prime Minister’s office will be here very shortly. It will certainly be here before we finish tonight. I just wanted to let you know that I followed it up in the dinner break—it was a very timely dinner break—and it will be here before we finish tonight. I absolutely commit to having it here.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) *(7.17 pm)—* I can assure the minister that I have seen that statement and there is nothing new in it at all. There are no specifics and there is
no movement and the Prime Minister has done nothing to move towards regulating excessive or greedy executive salaries. I move Greens amendment (1) on sheet 5676 as circulated:

(1) Schedule 1, page 3 (before line 6), before item 1, insert:

**1A Paragraph 200F(2)(b)**

Repeal the paragraph, substitute:

(b) the value of the benefit, when added to the value of all other payments (if any) already made or payable in connection with the person’s retirement from board or managerial offices in the company and related bodies corporate, does not exceed the amount worked out under subsection (4).

**1B Subsections 200F(3), (4) and (5)**

Repeal the subsections, substitute:

(3) For the purposes of paragraph (2)(b), other payments includes:

(a) payments of the market value of shares or share-based payments that become exercisable in connection with a person’s retirement from a board or managerial office in the company or in a related body corporate; and

(b) payments by way of pension or lump sum, including a superannuation, retiring allowance, superannuation gratuity or similar payment.

(4) The amount worked out under this subsection is:

(a) if the period or periods during which the person held a board or managerial office in the company or in a related body corporate total less than 12 months—the amount that is in the same proportion to $1,000,000 as that total period is to 12 months; or

(b) if the period or periods during which the person held a board or managerial office in the company or in a related body corporate totals 12 months or more—$1,000,000.

**1C Paragraph 200G(1)(c)**

Omit “subsection (2)”, substitute “subsection (3)”.

**1D Subsection 200G(1)**

Omit “In applying paragraph (c), disregard any pensions or lump sums that section 200F applies to.”, substitute “In applying paragraph (c), the value of the benefit includes any pensions or lump sums that section 200F applies to.”.

**1E Subsections 200G(2) and (3)**

Repeal the subsections, substitute:

(2) For the purposes of paragraph (1)(c), other payments includes:

(a) payments of the market value of shares or share-based payments that become exercisable in connection with a person’s retirement from a board or managerial office in the company or in a related body corporate; and

(b) payments by way of pension or lump sum, including a superannuation, retiring allowance, superannuation gratuity or similar payment.

(3) The payment limit is $1,000,000.

**1F Subsections 200G(5) and (6)**

Repeal the subsections.

This amendment would empower shareholders to decide termination payouts for executives. My reasoning is as circulated. I would ask that that reasoning be incorporated into Hansard. I add that Senator Xenophon supports this Greens amendment.

Leave granted.

*The document read as follows—*

This amendment to the Corporations Act gives shareholders the power to restrict excessive termination payments for executives.
It requires shareholder approval for any termination payment, including vesting of unvested equity incentives, above $1 million.

Currently, the Corporations Act does require shareholder approval for termination payments above a threshold of seven times the total remuneration. But the provisions are not sufficiently tight to prevent any decent lawyer finding loopholes.

According to recent research by RiskMetrics, boards of most companies surveyed flouted the law to pay departing executives extremely generous packages.

For example, the RiskMetrics survey found the average CEO of a top Australian received just over $3.4 million as a termination payment or 201 percent of their annual salary on termination.

23 of the 33 CEOs surveyed received termination payments greater than $1 million.

The largest termination payment in the survey was paid to former Santos CEO, John Ellice-Flint. He received $16.8 million, which included 2.313 million unvested options. The total package assumed that the options were vested at the time of termination. Mr Ellice-Flint’s base salary was $2,691,995. The payout was 625 percent of his annual salary. It also means that unvested incentives in the package (ie shares) if vested at that time were worth over $14 million. This payment was announced one day after the general annual meeting to avoid scrutiny, determined by the company directors at the board’s discretion.

The Greens amendment specifically closes the loophole which allows for the use of unvested incentives as part of the termination payment.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (7.18 pm)—I thank Senator Bob Brown for circulating his reasons. I will be very brief in reading mine. I am sorry; I am not as well prepared as you are, Senator Brown. We have debated this before. I note that the proposal put forward by the Greens is similar to a proposal recently identified by RiskMetrics, an advisory firm. Under this proposal, the Corporations Act would be amended to require that termination payments be capped at $1 million before shareholder approval is required.

I note that commentators have criticised this proposal, as setting a specific dollar threshold may sanction or even encourage termination payments that fall just below this level. They have also noted that a cap of $1 million would indicate that parliament considers this amount to be reasonable, as payments up to this amount would not require a company to seek shareholder approval. In cases of poor performance, however, I doubt that shareholders would consider payment of up to $1 million as justified. Finally, I note that the introduction of a $1 million threshold is arbitrary and does not take into consideration a director’s years of service or annual remuneration.

The government will undertake a review of the regulatory framework relating to director and executive remuneration, including strengthening the current requirements dealing with termination payments. For those reasons, we cannot support the amendment.

Senator COONAN (New South Wales) (7.20 pm)—I should place on record firstly that I acknowledge Senator Bob Brown’s interest in this matter. He has raised it in a number of places and in a number of ways. The Leader of the Opposition, Mr Turnbull, recently—I think at an address to the National Press Club—made a proposal that consideration be given to making some levels of executive pay, at least that of the CEO, if memory serves me correctly, subject potentially to a binding vote of shareholders. That is something that is of interest to the opposition.

I am not in a position to indicate that the opposition supports Senator Brown’s amendment, but it is a matter that will continue to come up and be of interest as we debate various bills to which it may be relevant. The opposition certainly has it under
close consideration—the issue but not specifically Senator Brown’s amendment.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (7.22 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

AGED CARE AMENDMENT (2008 MEASURES No. 2) BILL 2008

Second Reading

Debate resumed from 26 November, on motion by Senator Sherry:

That this bill be now read a second time.

Senator CORMANN (Western Australia) (7.22 pm)—I rise to put forward the opposition’s position on the Aged Care Amendment (2008 Measures No. 2) Bill 2008. The bill amends the Aged Care Act 1977 and the Aged Care (Bond Security) Act 2006, to strengthen the aged-care regulatory framework so that it reflects the current structure and nature of the aged-care industry. This bill is largely uncontroversial, and the opposition support it. However, at the outset I would like to put on record our concerns about certain aspects of the bill.

As a nation we have always placed significant importance on ensuring our frail and elderly have access to good-quality aged care. Significant pressure is building up in the aged-care system, and it is building up exponentially. Our capacity as a nation to ensure access to appropriate levels and appropriate quality of care for our frail and elderly will erode unless the correct policy settings are put in place, and put in place urgently. And it is the Commonwealth government that is responsible for both the regulation and the funding arrangements for aged care, including the regulation of the fees and charges providers can pass on to residents.

Australia’s ageing population is one of the biggest social challenges we face as a nation. There are currently about 2.8 million Australians aged 65 and over. In 40 years time there will be a staggering 7.2 million Australians aged 65 and over. The Australian Institute of Health and Welfare, in its latest report, Projection of Australian health care expenditure by disease, 2003 to 2033, projects:

Between 2003 and 2033, health and high-care residential aged care expenditure overall is projected to increase by 189%, whereas the high-care portion of residential aged care is projected to increase by 295%. Residential aged care is dominated by dementia, which is projected to have a large increase due to the ageing of the population.

Expenditure on high-level residential aged care is projected to increase by 519% for type 2 diabetes, 457% for other neurological conditions, 408% for sense disorders and 363% for dementia. …

The cost of increases over the period are projected to be greatest for dementia—an increase of $10.5 billion, from $2.9 billion in 2003 to $13.4 billion in 2033 …

These are staggering figures. Demand for quality aged-care services will continue to increase dramatically. That growth in demand will only accelerate in years to come and, as these figures indicate, so will the cost of providing that care.

Are we ready for what is coming our way? Is the Rudd government making today the decisions that are needed to ensure Australia is well placed to meet the current and emerging challenges faced by the aged-care sector? Is the Minister for Ageing ensuring that her government is making the decisions that need to be made for the future? At present it is the view of the opposition that there is serious doubt about that. The government
needs to act more decisively and with a greater sense of urgency.

Right now, the aged-care system is in freefall and unravelling at the seams. This is due largely to the underfunding of the aged-care sector. Right now, the industry is in crisis; I do not know how to put it more clearly. Evidence of this can be seen in the number of nursing homes that are closing down across Australia. Only a few days ago it was reported that Blue Care in Queensland was handing back 210 bed licences, and Blue Care’s decision follows a similar announcement by Western Australian provider Bethanie, which handed back 110 bed licences last month. Two of Victoria’s largest providers, Uniting Aged Care and Benetas, have also announced that they will not apply for standard high-care beds in the current aged-care approvals round. Undersubscription of places, licences being handed back, liquidations, banks not lending to providers—what will it take for the government to do something? The Rudd government needs to start taking notice and do something.

No business can exist on wafer-thin margins. The net exodus of providers from the aged-care industry is evidence that the industry is in freefall. Aged-care providers are very clear: there is no business case for setting up new facilities because banks will not lend on the small margins in aged care—on average, a 1.1 per cent rate of return for a high-care bed. Last year, for the first time in my home state of Western Australia, only 67 per cent of available beds were allocated, leaving a shortfall of 362 places.

Insiders in the aged-care sector in Western Australia believe that this current round of licences, which is due to close on 19 December, will again be significantly undersubscribed. I doubt whether many not-for-profit providers will be able to take on additional bed licences in the current environment and in the current policy context. Overall, expectations in Western Australia are that, at best, only half of the available licences will be taken up. As we have heard, large and well-respected providers are already handing back bed licences. There used to be a time when applying for additional bed licences was extremely competitive; providers would chase every single available bed as soon as they became available—not anymore. In the context of significant increases in demand for aged-care services around the corner, with both a growing and an ageing population, this is of great concern. The competitive strength and attractiveness of the sector have been replaced by too great an exodus of operators and insufficient incentives for new providers to enter the industry.

Last week I was contacted by a constituent who works at a senior level within the aged-care sector in Western Australia. He asked the question: ‘Is aged care going to be the next ABC Learning?’ Given the small margins in the aged-care sector, given the impact of the global financial crisis on the aged-care sector—an impact that can be expected to continue for some time, when the sector is already facing a funding crisis—and given the significant wage pressures faced by providers in Western Australia as a secondary effect of the resources boom, how are aged-care operators who are already cash strapped going to weather the storm, particularly those in Western Australia? How many providers are secured against the real estate their facilities are located on? How long will it be before a revaluation causes a provider to end up in serious financial difficulties? If that were to eventuate, the consequences could well be even worse than what we are experiencing with the collapse of ABC Learning. Where would the frail and elderly be able to access the quality care they need and deserve if their aged-care provider were to go broke? Where would somebody who is
too frail and too vulnerable to be cared for at home go?

I understand that there are at least two aged-care provider groups doing it very tough in Western Australia at present—good operators who are doing it tough—in the current policy settings and in the context of the global financial crisis. Things were already bleak but, with 362 unallocated bed licences in the last round—with the same scenario likely again in this round—and with providers handing back licences, you do not have to be Einstein to figure out that we are about to hit the wall given the increases in demand at a time when capacity is not keeping up. The Rudd government ought to make some decisions and take action. To date, that is just not happening.

I will speak about the specific provisions in this bill. The bill proposes amendments to streamline assessments by the aged-care assessment teams to allow for more timely and consistent assessments for aged care. The opposition urges the minister to ensure that more timely and consistent assessments do in fact take place. The delays experienced in the reassessment of a resident’s care needs is a serious issue that is continually raised with us by aged-care providers.

Since the introduction of the Aged Care Funding Instrument in March 2008, aged-care providers have found too often that the aged-care assessment team’s assessment of a resident’s care needs do not reflect the resident’s true care needs. This is having an impact on subsidies that providers receive and, given the funding constraints that the industry is under, can only erode the ability of aged-care facilities to provide the level of care that we expect older Australians to receive. We urge the minister to make some quick and sound decisions following the review of the Aged Care Funding Instrument when it takes place. There are numerous concerns and shortfalls with the funding instrument as it currently operates that urgently need to be addressed.

The minister needs to start working with the aged-care industry to work through many of the issues that have been highlighted. The care of older Australians is too important for us not to address the shortcomings in the system. As I said at the outset, the reality is that the aged-care industry is regulated and funded by the Commonwealth, and the obligation falls with the Commonwealth to meet its full obligations. Older Australians will feel the brunt of the government’s inaction when they are unable to find themselves a bed or when services are stretched so thin that they are not able to receive the level and quality of care they need.

The opposition does not oppose the bill, as it strengthens the aged-care regulatory framework. It will provide for greater consistency between the regulatory framework and contemporary business practices, recognising the change in business models over the last 10 years. However, the bill will also increase the compliance obligations and red tape for providers. Those approved providers will face additional financial burdens as a result of having to comply with these new and amended obligations under the act. The increased obligations proposed by the bill will have an impact on investor confidence in the aged-care industry—investor confidence which is already at an all-time low.

Today, the future facing the industry is dire. If the government does not start making decisions soon about how best to ensure that the aged-care sector can get through this difficult period and be positioned well for the long term, it will be older Australians who will suffer. We on this side of the chamber say to the government: ‘Let’s take action; let’s ensure that our older Australians have
access to the level and the quality of aged care services that they need and deserve.’

Senator McEWEN (South Australia) (7.33 pm)—by leave—I table a government response to a motion agreed to by the Senate on 25 November 2008.

Senator SIEWERT (Western Australia) (7.33 pm)—As Australia’s population ages, we face an increasing responsibility to ensure that older generations are provided with quality, accessible aged-care services. The Australian Greens firmly believe that the provision of these services should be designed to ensure that people of all ages are an integral part of our communities, that they are able to live their lives in safety and comfort and that they can maintain strong links with their family, friends and broader community.

The government must play a central role in coordinating and regulating the delivery of aged-care services. This regulation should give us confidence that residents will be treated respectfully and will be able to live fulfilling lives. Regulation should give us confidence in the standard of aged-care services infrastructure, both now and in the future. Regulation should also contribute towards a good working environment for staff and a viable financial framework for providers of services. However, the regulatory environment is only just keeping pace with the current model of aged-care services. It is not facilitating the essential restructuring required to assist the sector to provide for a changing demographic, and many older Australians are faced with a lack of choice about where they will live in their older age and they are forced to leave their communities.

Being a Western Australian, I have heard the same stories that Senator Cormann has. In fact, I have heard of people having to live up to 20 kilometres away from their loved ones. Whereas they had been living quite close to their loved ones, the only place they could find in care was, in some cases, up to 20 kilometres away. I heard another story of someone having to wait nine months before they found suitable aged-care accommodation. That is just a small example of some of the stories that I have been told. This is not an acceptable outcome; yet it is the one facing many people at the moment, and it is a situation that is very likely to worsen over the coming decades if more urgent action is not taken. About 15 per cent of Australia’s population is currently aged 65 and over. That proportion will be almost 30 per cent by 2050.

Many submissions to the Senate inquiry into this bill, the Aged Care Amendment (2008 Measures No. 2) Bill 2008, raised the issue of the need for broader reform and stated that the amendments to this bill were not sufficient to help the aged-care sector to move forward and provide the types of residential services that ageing people should be able to access. As acknowledged earlier, we believe there must be a role for government in regulation and compliance in aged care. Unfortunately, at present, the government seems more focused on sanctions and a punitive approach which seems to be missing the real crisis that is affecting the aged-care sector. Beds are being handed back, beds are not being taken up and there is a lack of choice for older Australians. There are very significant viability issues amongst providers. We have seen a number of reports recently raising those viability issues. I will just mention as an aside that, when we raised these issues in estimates, the department seemed to be in denial about, for example, beds being handed back and not being taken up. There are problems in recruiting, retaining and training staff. There are problems with the staff pay levels. The impact of negative publicity around residential homes has also had an effect on staff who are already struggling
with low morale in the face of these very significant viability issues.

This bill introduces changes in the regulation of the residential aged-care sector by amending the Aged Care Act 1997 and the Aged Care (Bond Security) Act 2006. These amendments are designed to address, as the minister stated, current inadequacies in the legislation and to enhance protection for residents. They amend a number of areas, which I will go through. We acknowledge that some of these areas do need to be fixed but in other areas, while we acknowledge they do need some reform, we are concerned about the amendments in relation to them. The provisions on bonds have been extended to provide better protection of the payments made by residents when they enter aged care. They now cover a wider range of payments that were previously not protected. This move was supported by consumer groups. The Australian Greens welcome this move to improve the protection of bonds and other types of admission payments. For many older Australians, the bond they have paid is equivalent to their life savings. It is only right that the legislation should seek to protect this money. So we support that.

This bill also widens the area around police checks. The detail of some of the issues concerning police checks will come with the amendments to the legislative instruments. These were not available for providers, consumers or the Senate committee inquiry to view and, therefore, are not available for the Senate to look at during its review of this legislation. This has caused some concern amongst aged-care providers because, without the detail, they face some uncertainty as to how the provisions will impact on them and the care they provide to residents.

Police checks cost the industry a lot of money. While the Greens are not saying that they are not needed, we are highlighting it as an issue and saying that anything that is put in place needs to be cost-effective. Considerable administrative effort is taken to meet the requirements for police checks. We hold the government to its statement in the inquiry that service providers will be given very clear guidelines as to who must provide police checks. We also call on the government to ensure that the most cost-effective administrative requirements are put in place, including the use of electronic communications wherever feasible. Concerns were expressed to the committee inquiry about the extended coverage of the checks, particularly for contractors in emergency situations. But the department assured the committee that existing requirements for emergency contractors would remain the same, and we are also seeking the government’s assurance on this.

The issue of reporting missing residents also became a very contentious point in the submissions and in the inquiry process. This was raised by both aged-care providers and consumer representatives. Aged-care providers will now be required to report missing residents to the department. This is in addition to the current requirement where the police are notified once, when it becomes clear that a resident is actually missing and not just visiting family or friends. When initially giving this evidence to the inquiry, the department was unsure about what action would be taken by departmental staff should a resident be reported missing. This has since been clarified, but only partially. The department states that in some cases they might take no action at all, yet in other cases they might apply sanctions. However, the sanctions themselves are dealt with in legislative instruments that we are yet to see. This was also of concern to providers.

While everyone agrees that the safety of residents must be assured, the fear expressed by both providers and consumer groups is that the threat of sanctions that will result
should a resident go missing will place pres-
Sure on providers to restrict the freedom of
residents. This goes against the very basic
right that residents have to be treated as
adults and to have freedom of movement.
Residents are as entitled as any other adult to
visit family, to go shopping and to visit li-
braries, parks or restaurants. Being aged and
in need of residential care should not mean
being locked up. We urge the government,
when drafting the principles that will contain
the detail of the sanctions, to be aware of the
potential for sanctions to pressure providers
into restricting the freedom of residents.
We seek clarification about what types of sanc-
tions the government is talking about and in
what circumstances they would be applied.
This is clearly an example where the threat
of sanctions does not lead to better models of
service delivery. In fact, the impact on resi-
dents may be completely the opposite, with
the risk of residents being further marginal-
ised and isolated from their communities.

I now turn to the amendments to the Aged
Care Act that have been described by the
minister as necessary in capturing the more
complex financial and management struc-
tures of owners and operators of residential
care facilities. As part of these amendments,
the definition of ‘key personnel’ has been
broadened in an attempt to include all those
who might have decision-making responsi-
bilities. Key personnel are judged on their
financial and managerial performance and
that they do not have criminal records when
seeking to be approved as a provider. We
definitely understand the need for expanding
this definition to assist in regulating aged-
care providers with complex corporate struc-
tures. But the approach taken risks an in-
creased burden on the majority of aged-care
providers who are in fact not-for-profit or-
ganisations.

Many not-for-profit aged-care providers
are religious organisations. Their manage-
ment structures are often made up of volun-
tary boards of management. In one case de-
scribed to the inquiry, the board had about
300 members. It is highly unlikely that each
of these persons would be actively involved
in the operations of the aged-care facility.
This might also be the case for other reli-
gious persons who have a senior role in the
church but who do not have a decision-
making role in the provision of aged-care
services. The minister has stated that, under
the new arrangements, church leaders who
do not involve themselves in the executive
decisions of the aged-care service will not be
included. Yet the amendment has created
uncertainty about whether these people are
required to be identified as key personnel.
This broadened definition of ‘key personnel’
represents a considerable administrative load
on both the provider and the department. We
therefore seek to amend the bill so that it
specifies that membership of a voluntary
management board does not necessarily im-
ply that such members should be considered
key personnel.

Overall, this bill concerns the Greens be-
cause the current regulatory environment is
increasingly reliant on punitive measures and
sanctions rather than adopting a consultative
approach that would assist providers to meet
the complex nature of the changing demand
for aged-care services. As I articulated ear-
erier, we do understand the need for regulation
and support that, but we sometimes think it
may go too far. Better models of service pro-
vision are not going to emerge from an in-
creasingly punitive approach being adopted
by government, given the crisis that is
emerging in the provision of aged care. It is a
mistake to believe that punishment and sanc-
tions alone will lead to best practice in the
delivery of aged-care services. Even where
they are necessary, particularly in the case of
harm to residents, it is incumbent upon the
department to work consultatively with the
care providers for the benefit of the residents and their families. In particular, the additional provisions for sanctions in this bill have caused a number of concerns amongst providers. Items 115 to 118 seek to amend the act so that the secretary, when making a decision to impose sanctions, must consider, in the case of 116, whether the noncompliance would threaten the health, welfare or interests of future care recipients; and, in the case of 117, the desirability of deterring future non-compliance. In the case of 118, the new subsection provides that the secretary’s paramount consideration must be whether the noncompliance threatens or would threaten the health, welfare or interests of current and future care recipients.

In evidence to the inquiry, providers found it difficult to accept how the future needs of residents would be assessed and stated that taking into account future acts placed them in a situation of having sanctions imposed in response to events that had not yet occurred. The Australian Greens remain concerned about the provisions relating to these possible future compliance issues. We believe they remain vague and ambiguous and are thus open to subjective interpretation and likely to result in uneven application. It is not at all clear how the secretary can make decisions and impose sanctions based on an event that has not yet occurred. We do not consider that an emphasis on this approach can be productive, and in those situations we believe a better approach would be a cooperative approach with the providers involved. The example that was raised during the committee inquiry was on the need for collection of bonds, for example, and where providers had failed to return bonds. The other amendments that are being made in a more direct approach to the system of bonds would be a more appropriate way rather than these rather vague and ambiguous amendments.

As their submissions to the Senate inquiry indicated, many of the providers and consumer groups giving evidence objected to various aspects of this bill. But by far the most consistently expressed concern was that the bill did not provide a way forward to address the serious long-term concerns of the aged-care sector. These issues are clearly described by the recent Productivity Commission report into trends in aged-care services. According to the Productivity Commission:

Over the coming decades, pressures on the demand-side of the aged care market are expected to accentuate a number of weaknesses in the current policy framework … There are concerns that the system is overly fragmented and difficult to access and navigate … The ability of older Australians to exercise choice is limited by regulatory and financing arrangements …

The Grant Thornton report also put it very clearly: ‘The regulatory and pricing framework now threatens the viability of the aged care sector.’ At the moment, the sector is experiencing low rates of return added to a shortfall of capital available to redevelop and update existing facilities and to construct new facilities. This limits the choices of the aged when they are seeking care. The situation will only get worse as our population ages and also as the baby boomers come down the track and start moving into aged care and expecting different aged-care services and a different way of accessing aged-care services.

We believe there is a need for a new model of service delivery for the aged in Australia. The Greens would like to work with providers, consumers and the community and the government to build this new model. But the preparation for this model must start now because we are dealing with a significant crisis threatening the future of aged-care delivery in Australia, and the sooner we start dealing with that the sooner
we can start delivering better outcomes for the ageing community of Australia.

Senator XENOPHON (South Australia) (7.50 pm)—I rise to indicate my support for the Aged Care Amendment (2008 Measures No. 2) Bill 2008, but wish to note my concerns about the handling of aged care by both this and previous governments. This bill seeks to strengthen the aged-care regulatory framework and, in the words of the explanatory memorandum, ‘to address current legislative inadequacies and maintain effective regulatory safeguards for ensuring high quality care for older Australians’. Caring for our elderly is one of the most important responsibilities for Australian society and in turn for Australian governments.

As a senator for South Australia, which has a population that is relatively older than that of Australia as a whole, I know that we feel the pinch of these responsibilities, perhaps earlier and more so than in other states. Many South Australians have found their encounters with aged care to be confusing, stressful, emotional and at times painful experiences. There is the highly emotional tearing of ties, where an elderly relative is forced due to poor health, and often against their will, to leave their home of many years. Due to a shortage of places, many of these relatives have to take whatever placement can be found, often a long distance from their home, and there is the confusion and disorientation that results from relocation to a new place later in life. Added to this is the stress that is felt by families as they seek to find not only any place, but the best place, for their loved ones. No-one wants to have to explain to their children why their grandpa or grandma is so miserable in their later years of life. And having as children shared their home with their elderly grandparents, many adult children now feel extreme guilt as they place their parents into care. Times have changed, more people work and people are living longer, meaning that staying home to care for your parents is not a viable option—something an elderly parent may often not understand.

Then there is the heartbreaking separation of life-long partners being forced to live apart because there are not enough high-care places provided with nearby low- to medium-level care. When a partner most wants to be near their loved one—as their health declines—they are forced to be apart. As people who ourselves are not yet in care, we cannot help but wonder what sort of care will be available to us in not too many years time—or in my case not too many years time! These are real concerns and are only reinforced by the regular media reports that portray the current aged-care situation as being stretched to the limit—and they reflect the reality.

In the Sydney Morning Herald on 10 November Mark Metherell reported:
The Government’s failure to deal with the financial woes hitting nursing homes will result in a drought in places for frail elderly people on low incomes …

In short, those who can afford it will have to outlay bonds ‘of more than $180,000’. Those who cannot will miss out.

Martin Laverty, the CEO of Catholic Health Australia, which represents the biggest not-for-profit aged-care provider in Australia, explained in the same article that government regulations prevent aged-care operators from charging a consumer the actual cost of care, yet government funding is insufficient to cover operating and capital costs. He warned that the result is a real risk that the 37,000 new beds that were recently announced by the government will not be taken up as providers cannot take the financial risk.

Similarly, Jim Toohey reported in the Courier Mail on 6 October that there is an aged-care crisis looming. His article reported
how older Australians are increasingly finding themselves in hospital beds when aged care is not available. That, clearly, is just not good enough. Mr Toohey also highlighted the findings of the Productivity Commission report into the future of aged care, namely, that, without significant changes to aged-care funding, service standards will struggle to match current levels. This crisis will not be fixed by the repeated tightening of regulations; it requires real investment—tens of thousands of new places at a cost of hundreds of thousands each.

As my office has consulted representatives of the aged-care sector over the last few months, these reports have proved indicative of the experiences of aged-care providers. These providers report that the cost of inflation is hitting the sector hard and it is making it ever harder for aged-care providers to remain viable.

There is a shortage of high-level care places and, while there has been some investment in medium- and low-level care in recent years, this shortage is worsening. Exacerbating the situation is the inability of aged-care providers to use bonds to help fund the provision of more infrastructure and high-level care places, thus making it less financially feasible for both for-profit and not-for-profit providers.

Adding to this is the growing pressure to get nurses and carers into the profession. With low pay, demanding conditions and limited long-term career prospects, it is hard to attract and keep quality people. Estimates put the cost to aged care of matching the wages and conditions of hospital staff at around $450 million a year. Further, as Australia’s baby boomer generation becomes older and requires more intensive aged care, there will be an explosion in demand for places.

Australia’s aged-care sector is heading for tough times. My concern is that this government, along with the one before it, have been far too focussed on tightening regulations and have not paid enough attention to adequate funding. Building new aged-care facilities costs about $200,000 per bed but the government provides only $76,000.

While proper regulation of this industry is vital for the safety of those in care, repeatedly stricter regulation should not be used as a catch 22. Providers who are pushed to meet ever stricter standards and secure ever more stretched funds are, in so doing, undermining their capacity to highlight the system’s inadequacies. Should sector representatives claim that there are problems, a minister can reply, ‘What problem? The sector is becoming more efficient and you are still meeting standards,’ or words along those lines. This is not long-term vision; this is short-term cynicism, and this is my broad concern in relation to this bill.

I am aware that the numbers are in favour of the swift passage of the bill, and I do not, in principle, oppose a stronger accountability framework, but more needs to be done. I wish to put on record that I will be watching with great interest the government’s future initiatives in relation to the looming aged-care crisis, particularly as it has significant implications for my home state of South Australia.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (7.57 pm)—I am pleased today to have the opportunity to sum up the debate on the Aged Care Amendment (2008 Measures No. 2) Bill 2008. At the outset I say ‘thank you’ to the senators who have made a contribution to the debate. I thank Senator Siewert for her thoughtful contribution, particularly about the difficulties that are faced by the sector. And I heard your
comments, Senator Xenophon, as I am sure Minister Elliott’s staff have as well, and we would be happy to continue a discussion about that. But to Senator Cormann I say that it was evident from your contribution that you are very new to this sector—

Senator Cormann—Twelve years.

Senator McLUCAS—Twelve years, you are saying. You have experience of 12 years and you had the gall, can I say, to stand up and say what you did in the early part of your contribution this evening.

Senator Cormann—What have you done for the last 12 months?

Senator McLUCAS—What have we done for the last 12 months? We have tried to fix up the 11½ years of neglect that occurred under your government. You must know that, and you know that 11½ years of patch-up has got to be turned around. We have been dealt a very difficult situation in this portfolio. There have been 11½ years of neglect by the previous government and you are demanding that in 12 months the mess of the past, in such a complex area of regulation, has to be fixed up.

Senator Cormann interjecting—

The ACTING DEPUTY PRESIDENT (Senator Hurley)—Order! Senator Cormann, I cannot hear Senator McLucas. Can we have some order.

Senator McLUCAS—I say to Senator Cormann and his colleague that it is very easy to play to an audience in aged care. These people are very vulnerable. It is easy to play to an audience. It is much harder to do the complex work that is required to resolve those complex issues in the mix between community care and residential care. I want to take this opportunity to commend the minister for the work that she is doing in difficult circumstances.

This bill seeks to amend the Aged Care Act 1997 and the Aged Care (Bond Security) Act 2006 to address current legislative inadequacies and to maintain effective regulatory safeguards to ensure high-quality care for older Australians. Essentially, the bill makes changes to the aged-care regulation in three key areas: the regulation of approved providers, the framework for aged care assessment and the protection of residents’ accommodation bonds. In addition, the bill contains a range of other more minor operational changes to clarify and improve the administration of the legislation so that it operates more efficiently and more effectively.

The bill, as the Senate is aware, has been the subject of an inquiry by the Senate Standing Committee on Community Affairs. I thank Senator Moore and her committee for the work that they did through that inquiry. Sixteen submissions were received and a public hearing was held. The committee recommended, as we all know, that the bill be passed. The committee found that, as the aged-care services sector grows and evolves, this legislation is a valuable step to ensuring that legislation and regulation designed to protect residents will keep pace with that evolution.

There was strong support for the bill, though some concerns were raised about some of the measures that it contained. The committee, however, is of the view that some of the concerns raised by industry were based on misunderstandings about the new arrangements. For example, when it comes to the requirements associated with the notification of missing residents, we have to agree that the rights and freedoms of aged-care residents should never be curtailed. That is simply not the purpose of this measure. A notification to the department would be required only when the approved provider has decided that a person is unaccountably miss-
and is sufficiently concerned to notify police. This will allow the department to determine whether appropriate action has been taken by the service in respect of the missing resident and whether there are adequate systems and processes in place to ensure other residents’ safety. The department’s response to the notification will be proportionate to the risk posed to the residents of the service. With this measure, frail older Australians will have increased protection. It will not restrict the basic human rights of older Australians and was never intended to do so. Nor will it restrict the freedom of movement of those residents.

Caring for our ageing population is one of the major challenges facing our nation this century. It requires careful planning, adequate funding and comprehensive safeguards to ensure the protection of older Australians. Debate on this bill has highlighted the importance of achieving a balance between protecting the needs and rights of individual frail aged persons entering residential aged care and the long-term viability of the aged care sector. These changes will better protect residents, will promote public confidence in the aged-care sector and will complement the government’s funding of more than $41.6 billion over four years to support aged and community care for older Australians. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator SIEWERT (Western Australia) (8.04 pm)—by leave—I move amendments (1) and (2) on sheet 5652 (revised) together.

That amendments (1) and (2) on sheet 5652 be taken together.

(1) Schedule 1, item 7, page 5 (lines 21 and 22), omit paragraph 8-3A(1)(a), substitute:

(aa) if the entity is a non-profit organisation with voluntary board members—a person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the entity at the time;

(a) for any other entity—a member of the group of persons who is responsible for the executive decisions of the entity at that time;

(2) Schedule 1, item 7, page 6 (after line 5), after subsection 8-3A(1), insert:

(1A) To avoid doubt, a person is not one of the key personnel of a non-profit organisation merely because that person is a voluntary board member of the organisation.

I want to comment on the amendments which are about the definition of key personnel but, as indicated in my speech in the second reading debate, I have a couple of questions that I seek clarification about from the minister. The first is on the issue of police checks for emergency contractors that are brought in in emergencies—for example, a plumber who is brought in at night to fix a water leak. We need to ensure that the existing supervision conditions will remain and that aged-care providers will still be able to use those existing provisions. This is an issue that was raised during the committee inquiry. This, amongst other things, was of specific concern.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.05 pm)—Senator Siewert, I am not sure of the question you are asking. Could you please make that a bit clearer?

Senator SIEWERT (Western Australia) (8.06 pm)—As I said, the legislation widens the provisions around police checks. The
concerns that were raised during the committee inquiry centred on the ability of outsiders to be called in to a facility in the event of an emergency without a police check being required and how that would occur. As I understand it, under the existing provisions, that person must be supervised at all times when they are in the facility. Again, as I understand it, the aged-care providers correctly said that they thought they might not be able to do that anymore and they sought assurance that that provision would still be enabled.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.06 pm)—I understand that the emergency circumstances are not changed. So if it is the middle of the night and the toilet cistern breaks and the plumber needs to come in, those circumstances have not changed. Does that answer your question?

Senator SIEWERT (Western Australia) (8.07 pm)—Yes, thank you. I thought it important to clarify the position. As I said, it has been causing some angst. The other issue—and, again, I specifically referred to it in my comments earlier—is that of missing residents and sanctions. This is causing a lot of concern for both the aged-care sector and its customers. They are concerned that the issues around sanctions are not actually provided for in the legislation but that they will be in a regulatory instrument. The concern is that that will have a negative effect—that providers will, in fact, start shutting down facilities. So we are seeking an understanding of what those sanctions are and how they will be used.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.08 pm)—I am advised that the question of missing residents is not actually part of the bill, but that it will be part of the principles. So it is not part of the current debate, if I can put it that way. We are happy to provide you with further information but, for the purpose of understanding this debate, I am advised that it is not part of this legislation.

Senator SIEWERT (Western Australia) (8.08 pm)—The problem with that answer is that the question has come up as part of this debate. It also came up quite strongly during the committee inquiry because people are aware that that is what has been provided for in the principles. The deep concern for a lot of the providers—and, I must admit, for the Greens—is that there is a very strong punitive and compliance approach being taken by this government. We can understand why and, as I have stated before, we understand the need for government regulation. However, once again we are seeing legislation through regulation—in this case, the principles. These issues were raised during the debate. There are serious concerns about the issues around missing residents, the implication that sanctions would be applied and, further, how those sanctions would be applied.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.09 pm)—I understand that is a reasonable question and I am happy to provide the information that I can. As I said in my second reading speech, the change to the principles that goes to the question of missing persons is not, in any way, intended to infringe the rights of residents. The principles of residential age care are designed to encourage independence and free movement of older people. As you would know, Senator Siewert, the protection of the rights of those people, ensuring their rights of independence and movement, needs to be balanced with their protection.

So the purpose of this particular piece of legislation is to address the question of what
would occur after a person was found missing. Unfortunately, there have been events where a person has been found missing and the department has not been advised that that has occurred. Why should it be a requirement that a residential age-care provider tell the department? So as to ensure the safety of other residents and that this does not lead us to further uncover inappropriate care. So the requirement that will be in the principles will be that the residential age care facility must advise the department as soon as they are concerned—in the long term—for the resident in the sense that they cannot locate them. For example, if they have contacted the police, one would expect that they would have advised the department. The reason for that is so the department can make a judgement about whether or not other residents are safe. To be frank, in most cases the person who has gone missing probably has some form of dementia, but we have to make sure, in those circumstances, that the security provisions of the facility are good enough to make sure that all the other residents are also appropriately cared for.

Senator SIEWERT (Western Australia) (8.12 pm)—I thank the parliamentary secretary for her answer. I do appreciate why the government is making those changes. The specific concern is what the department does when it is informed. I understand—both from question and answer sessions during the committee inquiry and from further information provided on notice—that sanctions may be applied. The sector wants to know if it is true that such sanctions may—and I am not saying ‘will’, but ‘may’—be applied; that it may be one of the responses. What will those sanctions be and under what circumstances would they be applied? If sanctions are not going to be applied, we will be satisfied, sit down and let the matter rest.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.13 pm)—I am trying to be helpful here. From the advice that has been provided to me, the changes that are proposed by the government simply alleviate confusion and reflect past and current practice, rather than expanding the range of matters that will be taken into account. Sanctions will be applied based on what has occurred not what might occur in the future. I think that that, possibly, answers your question.

Senator SIEWERT (Western Australia) (8.14 pm)—I will try to get this over with. I am not trying to be difficult; I just want to clarify the issue around the sanctions. If a person goes missing and it results in a breach, will that be the circumstance under which a sanction will be applied, and will there be new sanctions associated with these new provisions?

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.14 pm)—I think that I can now be of assistance. I think, Senator Siewert, that you have connected the missing person question and the sanctions question. Senator Siewert interjecting—Senator McLUCAS—No? From your question, I am reading that you are asking whether, if a person goes missing, there will be a sanction imposed. The legislation does not connect those two issues, but I have obviously got your question wrong. Please try again.

Senator SIEWERT (Western Australia) (8.15 pm)—I think your advisor was nodding and I think they understood where I was coming from. I am not linking the new sanctions. With the reporting that is going on, it was implied in a departmental paper—and I do not have that with me—that there could be sanctions specifically resulting from the reporting to the department of a person going missing once the department investigates. My question therefore is: are the sanctions
that are likely to be applied going to be new ones under the new principles, or will they merely be for when a breach occurs as a result of a person going missing—in other words, due to poor performance or whatever? That is what I am seeking clarification on.

**Senator McLucas** (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.16 pm)—I think I follow your question. The point I think you are asking about is: if a residential aged-care facility has a missing person, the residential aged-care facility contacts the police—that is correct—and then the next thing the RCF has to do is contact the department. That is what we are requiring through the principles. You are suggesting that, following that, sanctions may be applied. I think there is a big jump between the point at which there is contact with the department and what might happen after that. The purpose of contacting the department is so that the department can be assured—and there will be a range of ways that that assurance can be achieved—that the residents in the facility are not at risk. Most of the time when a person goes missing it is because of a form of dementia. On the odd occasion—and it is a very unusual occasion—there are unsafe practices occurring. If that is the case, the government is of the view that we need to be assured that the residents in the facility are safe. To extrapolate from that event to sanctions being applied is a huge jump. If the department were concerned that the facility was not safe, if there was an honest fear, then I think you would ask for the accreditation agency to come in and have a look at the facility. If there were a concern, then that process would be started. But to go from reporting a missing resident to the imposition of a sanction is a massive jump.

**Senator Siewert** (Western Australia) (8.18 pm)—I thank Senator McLucas for her answer. I think that she has clarified that and I am clear on what the process will be. I raise this because aged-care providers and consumers are raising it. They are saying that they have concerns that it will, as I explained earlier, lead to a lockdown. It is mainly the threat of sanctions—then they will take a much more precautionary approach. The fine balance that exists at the moment between making sure people have their liberty while living in a locked situation may go the wrong way. I understand now, I hope, where the government is coming from on that. There will not necessarily be sanctions imposed without an investigation process. I thank the minister for her answers.

I have one more short question and then I promise to move my first set of amendments. My question is around ACAT versus ACFE. I will not go into detail here between ACAT and ACFE, but as I understand it there are ongoing issues about reassessments and I am pleased that there is now more provision for the assessment process being speeded up. I understand that when the government are carrying out their review next year they will be looking at how they can deal with that assessment between ACAT and ACFE. I appreciate that that is a very difficult situation, which is why, I must admit, we have not attempted to move an amendment on this—because it is an ongoing issue. I am just seeking the government’s reassurance that this issue will be taken into consideration during that process.

**Senator McLucas** (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.20 pm)—Yes.

**Senator Siewert** (Western Australia) (8.20 pm)—I promised it would be short! These amendments specifically relate to the definition of key personnel. As I indicated in my speech in the second reading debate, there is a deal of concern in the not-for-profit
aged-care sector about the amendments the government is making to the definition of key personnel. As I said earlier, we understand why those amendments are being made, but we do think that they will place an onerous burden on not-for-profits. When you consider that the not-for-profit organisations provide around 65 per cent of aged care, you are talking about impacting on a large number of our aged-care providers. What we have sought to do—and this is our second go at this amendment so that we can tie this down and hopefully still maintain the intent of the government’s amendments—is to more clearly define when a not-for-profit voluntary board member is counted as key personnel and when they are not.

As I said in my speech in the second reading debate, many of the not-for-profit organisations have voluntary boards, there are a large number of boards, and some of those people will not have any hands-on involvement in the running of the aged-care facility. So we are moving this amendment to give some more assurance to not-for-profit providers that the burden of administration on them will not be so wide as to become crippling. I urge the government to consider these amendments to provide greater certainty for not-for-profit organisations.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.22 pm)—I understand the motivation of Senator Siewert and the Greens and recognise their desire, but can I suggest that, though the amendments are well-intentioned, the way in which the amendments are framed means the outcome potentially will be, through a blanket exclusion, to miss people who are key personnel. The policy intention of the amendments is to provide certainty, as you said, for approved people who will not be considered key personnel and to ensure voluntary board members are not unintentionally captured by the provision. However, it is important to note that voluntary and paid board members of an approved provider are already, and will continue to be, key personnel. Where an entity is related, such as a parent company, board members, whether voluntary or not, will only be considered key personnel if they are making financial or management decisions. That is the key difference. We are talking about a parent company where there may be—particularly if it is a not-for-profit company or entity—volunteers. They will only be captured if they are making financial or management decisions. But under your proposal they are excluded.

The reality is that there are people who sit on parent bodies who do make financial and management decisions, and this amendment bill is intended to ensure that those people are identified as key personnel. If they are making financial and management decisions about the operation of a residential aged-care facility, we need to know who they are so that other people do not get picked up and have to carry the burden if they make mistakes.

So I think your intent is well founded, but there are relationships between parent companies and their subsidiaries, not only in the voluntary sector but also in the for-profit sector, where there are people at that higher level who are making financial and management decisions that affect the operation of the service and who need to be identified as key personnel. As you know, Senator Siewert, being ‘key personnel’ under the act does provide a fairly important set of responsibilities, for good reason. We are caring for very vulnerable people. If people are making decisions that affect the operation of a facility, even at that somewhat extended level, they need also to be responsible for their decisions in the operation of the facility. I hope that explains the intent of our position and
why we will not be supporting your amendments.

Senator CORMANN (Western Australia) (8.26 pm)—I put on record that the opposition also understands the motivation of the Greens in moving this amendment. However, we agree with the government that the bill’s provision reflects the change in modern business practices and provides better protection for aged-care residents. As we understand it, while the provision allows for an examination of all relevant people, only those who are accountable are caught under the provision, and the minister has just confirmed that. For example, as we understand it, church leaders who do not involve themselves in the executive decisions of an aged-care service will not be included. On that basis, we will not support the amendment.

Senator SIEWERT (Western Australia) (8.27 pm)—As I said, I do understand the intent of the government’s amendments. We were very specifically trying to focus our revised amendment on not-for-profit organisations. We understood that the previous amendment was a little bit confusing in terms of who it would apply to. We totally understand the issues around the for-profits, but for the not-for-profits we were trying to ensure that those personnel who are involved in the financial arrangements and have significant influence over planning, financial arrangements et cetera were covered. I must admit that I am not entirely satisfied by the government’s answer. I will not belabour the point, but I seek the minister’s advice as to whether the government would be of a mind to have a look, in 12 months time, at whether this legislation is unduly impacting on not-for-profit organisations, to ensure that they are not suffering.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.28 pm)—There is nothing planned at the moment, but I am sure the minister will take on board your concerns. As always, we will be monitoring the operation of these amendments and the act in general and if, through the passing of these amendments, we have identified people who should not be captured then of course there will be a response. But that group of people is quite small. The reality is that even in the non-profit sector there are financial arrangements and financial structures where the current act does not capture people who are acting as key personnel without being identified to the department as such.

Question negatived.

Senator SIEWERT (Western Australia) (8.30 pm)—The Greens oppose schedule 1 in the following terms:

(3) Schedule 1, page 34 (lines 10 to 23), items 115, 116, 117 and 118 TO BE OPPOSED.

This is about the imposition of sanctions that relate to the future care of residents and future noncompliance. I will not reiterate the Greens’ concerns because I have been through them.

Senator CORMANN (Western Australia) (8.30 pm)—I will put on record again, in very few sentences, the position of the opposition. We agree with the government that the secretary of the department must consider a number of matters in deciding whether to impose sanctions for noncompliance. The factors the secretary must take into consideration are: whether the noncompliance is of a minor or serious nature; whether an aged-care facility has a history of non-compliance; and whether the noncompliance threatens the health, welfare or interests of care recipients. In that context, we think that the government has got the balance right. On that basis, we will not be supporting this amendment either.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.31 pm)—I thank
Senator Cormann and Senator Siewert. Sanctions will be applied based on what has occurred and not on what might occur in the future. I think that encapsulates the response to your amendment, Senator Siewert. I think that, once again, you are trying to identify a problem and fix it, but the amendments that have been moved in this bill are actually fixing the problem that we all identify. So sanctions will be applied based on what has occurred, not on what might occur. In fact, you would run the risk of being sent to the AAT if you were to do something like that. I think the intentions of all of us in the chamber are the same; it is about how we do it. I think that the amendments in the government’s bill will in fact achieve that outcome.

**Senator SIEWERT** (Western Australia) (8.32 pm)—I thank the parliamentary secretary for that response. This is an issue of concern to the providers, and I think even that degree of clarification will be of benefit.

**The TEMPORARY CHAIRMAN** (Senator Parry)—The question is that schedule 1 stand as printed.

Question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

**Third Reading**

**Senator McLUCAS** (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (8.33 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**DOCUMENTS**

**Responses to Senate Resolutions**

**Senator McEWEN** (South Australia) (3.34 pm)—At the request of the Minister for Superannuation and Corporate Law, Senator Sherry, I table the government response to the resolution of the Senate of 25 November 2008 relating to executive salaries.

**BUSINESS**

**Rearrangement**

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy) (8.34 pm)—I move:

That intervening business be postponed till after consideration of government business order of the day No. 11 (Tax Laws Amendment (Luxury Car Tax—Minor Amendments) Bill 2008).

Question agreed to.

**TAX LAWS AMENDMENT (LUXURY CAR TAX—MINOR AMENDMENTS) BILL 2008**

**Second Reading**

Debate resumed from 1 December, on motion by **Senator Faulkner**: That this bill be now read a second time.

**Senator ABETZ** (Tasmania) (8.34 pm)—The fact that we are back in here this evening to debate the Tax Laws Amendment (Luxury Car Tax—Minor Amendments) Bill 2008 is indicative of the fact that the Labor government got it badly wrong in relation to the luxury car tax surcharge legislation, which was part of its ill-considered budget measures in May of this year. Honourable senators may well recall the defeat of the luxury car tax legislation first up and then the government cobbling together a deal with the minor parties to ensure that it was passed. It was that cobbling together of a deal that has now caused them further problems which have required them to come back with amending legislation.

The luxury car tax surcharge legislation was in fact one of the first bits of legislation that was all Labor’s own work. As with everything that is all Labor’s own work, they could not get it right. Why did they not get it right? Firstly, they were more concerned about doing a deal than getting it right. Sec-
ondly, they thought they knew it all and that they did not have to consult with industry or departmental officials. That became blatantly obvious as a result of questions asked at Senate estimates as to consultations with the various departments. Indeed, during the committee stage of the legislation, I asked a number of questions as to with whom the government had consulted. When I asked whether such and such had been consulted, be it the union, the manufacturers, the tourism sector, Treasury or Tax, the answer was, ‘No, no, no.’ There was never any consultation.

The government supported those amendments, the majority of which we opposed. In their second reading speech, the government told us that the changes were needed as a result of a number of amendments from non-government senators. Talk about passing the buck! If Labor had not voted for those amendments, we would not be in the position tonight of having to re-amend the legislation. Of course, when we went through the committee stages discussing the technical details—and I wanted answers but the Senate was treated with a great degree of contempt and no answers were provided—we got this final smart alec comment from the minister sitting opposite, Senator Conroy.

Senator Bernardi—That’s a surprise!

Senator ABETZ—It is a surprise, isn’t it, Senator Bernardi. When I was asking questions, Senator Conroy interjected in the most sarcastic manner possible: ‘Could we put you on the High Court?’ The simple fact is that we are back in here tonight because Senator Conroy could not deal with the technical issues. So, when technical and detailed questions are asked in the future, do not worry about the smart alec responses to try to sidestep the need to answer the details; just answer the detail, drill into the detail, consider the detail and give us answers on the detail—and then you might not have the humiliation and the humble pie that you will be eating for supper this evening.

Another aspect of this luxury car tax was our prediction that sales would plummet and that this would have a very real impact on the motor vehicle sector. Senator Carr—funny that I should mention his name by accident. You see, the opposition are treating this as an industry bill but Labor see it as a money-raising bill. That is why they have Treasury represented here, rather than industry, and Senator Carr has been missing in action. I made the prediction that this tax would see a huge reduction in the sale of motor vehicles, and of course I was ridiculed. Indeed, Treasury were willing to tell us that they were of the view that the tax increase would not change consumer behaviour. This is the same Treasury that have modelled the emissions trading scheme and are telling us to believe them in relation to everything. But we now have the graphs in relation to the luxury car tax. I have a graph in front of me that shows that, as of May-June this year, the sale of these vehicles has absolutely plummeted—it has literally been in freefall. In very rough terms, we have seen a 30-plus per cent reduction in sales. We can completely throw out the budget predictions that were around in May and also the MYEFO predictions that we got just last month. When we asked about those predictions, the government said they were standing firm by their predictions.

I say this about the Labor government: they cannot even get their predictions right on a very small area of the economy—the luxury car tax on the motor vehicle industry—within six months of its introduction. Yet they say, ‘Believe us in relation to our modelling on the emissions trading scheme 50 years into the future’! I have got to say that the track record of Labor ain’t that flash that it would give me confidence that the
modelling and predictions that they are putting to us are so robust as to warrant support and belief. We have a classic case here this evening with the luxury car tax.

If it is the Labor government’s view that a tax surcharge will not change consumer behaviour, why did they see it as necessary to reduce the taxation burden in relation to 25 imported models that directly compete with Australian-made cars? The government are saying that the tax increase will not change the number of car sales and it will not impact on the Australian car industry, yet they introduce a measure to reduce taxation to try to encourage so-called green cars. How does that work? It seems that only tax decreases seem to change consumer behaviour and tax increases do not!

This is the same government that gave us the mastery of the bank guarantee legislation, which is now causing problems right round the country. Not only have 250,000 people had their savings locked away courtesy of the ill-thought-out guarantee, but the state governments are now getting in on the act and complaining about this rushed and flawed legislation. This is now becoming a hallmark of this government. We saw it with the rushed bank guarantee legislation having problems. We then had Fuelwatch—a disaster. We had GROCERYchoice—a disaster. We had the luxury car tax—a disaster. The government are having to bring legislation back into the parliament to amend it. This is now becoming a hallmark of this government. All they are ever concerned about is the 24-hour news cycle. They are concerned about the spin, not the substance. It was a great victory for them to get the luxury car tax through, and they saw themselves as being very smart and clever. Well, here we are tonight finding out that they were not that smart and not that clever.

The fact that we are here tonight is indicative of the fact that being in government is clearly beyond those opposite. They are causing themselves and the economy all sorts of problems—in the macro area with the bank guarantee legislation and in the micro area with the luxury car tax. As they have made such a monumental muck-up of this legislation, we may well have been minded, but for the Christmas season, to cause them some more pain and anguish. But I think 10 minutes is sufficient time in which to put on record the opposition’s concern as to the government’s economic management capacities—or, should I say, incapacities—and, given that it is the season of goodwill, I can indicate that the opposition will be supporting this amendment bill.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.45 pm)—In September Family First successfully negotiated an exemption for farmers and tourism operators from the extra luxury car tax, which is worth $40 million over four years. But some weeks ago it was pointed out to me by the industry that a technical problem meant that farmers and tourism operators who leased a car would not get a refund of the extra tax. Family First immediately contacted the government to negotiate a way to fix the problem. The Tax Laws Amendment (Luxury Car Tax—Minor Amendments) Bill 2008 is the result of those negotiations.

The new laws will mean primary producers such as farmers and fishermen, as well as tourism operators, will be able to lease a car and still be refunded the extra car tax because their four-wheel drives are a tool of trade. Vehicles purchased by farmers and tourism operators are tools of trade. Other businesses get full exemptions for their vehicles from the car tax so farmers and tourism operators should not be slugged with that extra car tax. Farmers and tourism operators can only claim depreciation and GST input
tax credits up to the $57,180 car tax threshold so these tax breaks do not cover the extra car tax.

The tourism industry is heavily dependent on the eight-seater diesel Toyota LandCruiser and similar vehicles. The extra car tax would have unfairly hit small tourism operators in regional Australia that need four-wheel drive vehicles. Farmers are also dependent on heavy duty four-wheel drive vehicles like the LandCruiser which offer reliability and safety in regional and remote areas, especially on poorly maintained roads. This bill will enable primary producers and tourism operators to claim back the extra eight per cent car tax from the Australian Taxation Office once they have purchased their four-wheel-drive vehicle.

These are people whose small businesses have already been hard hit by difficult economic times. They depend on their vehicles as a core element of their business. This tax would cripple many of them and it is unfair for them to be singled out when their vehicles are key tools of trade. The amendments Family First has achieved allow claims of up to $3,000 per year for primary producers and $3,000 per year for tourism operators. Family First supports this bill as a way of achieving the original intent of amendments passed by the Senate in September.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (8.48 pm)—I thank all senators who have made a contribution to the debate on the Tax Laws Amendment (Luxury Car Tax—Minor Amendments) Bill 2008. The technical amendments debated in the Senate today ensure that the amendments to the luxury car tax moved by the non-government senators and passed by the Senate in September operate as intended. The technical issues addressed in this bill were not raised in that Senate debate. The debate raised a large number of issues but not those addressed in these amendments.

Subsequent to the passage through the Senate of the luxury car tax, the motor vehicle industry and the finance industry approached the government and raised some anomalies that existed due to the interaction of previous amendments with vehicle financing arrangements. The government has listened to those concerns and has acted quickly to clarify the operation of the law for car buyers, finance companies and dealers. These amendments make it clear that luxury car tax refunds are payable to eligible businesses regardless of the arrangement used to finance the vehicle. The amendments also ensure that vehicles contracted before budget night are not subject to the higher rate of luxury car tax regardless of how the purchase is financed.

In conclusion, I would like to respond to points that have been raised in the context of these amendments. The opposition referred to 60 per cent of luxury car buyers being affected by this amendment. I am advised that figure applies to all vehicles that are financed, not just those that are leased—that is, it includes vehicles purchased under an ordinary car loan which do not need to be covered by these amendments. Finally, I note that the opposition has recorded its support for the bill. I urge all senators to support the bill and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.
Debate resumed from 25 November, on motion by Senator Ludwig:

That this bill be now read a second time.

Senator BERNARDI (South Australia) (8.50 pm)—In rising to speak about the Social Security Legislation Amendment (Employment Services Reform) Bill 2008 I reflect on the comments made by Senator Abetz in his contribution, which I thought was quite outstanding. He mentioned the rushed and flawed legislation that has come to characterise this government. There is no greater exposition of this than with respect to the tough economic times that Australia now finds itself in. It exposes policy weakness and it exposes the weakness of depth in the line-up of the Rudd government. Indeed, this bill goes some way to adding to that infamy that they are already developing quite a reputation for.

There is an old saying in investment markets that when the tide goes out, meaning when the investment markets start to fall, you can always tell who has been swimming naked. I can tell you that the economic tide is going out on this government and on the Australian economy. The tide is going out on unemployment. It exposes policy weakness and it exposes the weakness of depth in the line-up of the Rudd government. Indeed, this bill goes some way to adding to that infamy that they are already developing quite a reputation for.

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There is an old saying in investment markets that when the tide goes out, meaning when the investment markets start to fall, you can always tell who has been swimming naked. I can tell you that the economic tide is going out on this government and on the Australian economy. The tide is going out on the record low levels of unemployment that were achieved under the Howard government and inherited by the Rudd government administration.

This bill exposes the fact that this government has given up on the accountability associated with getting people off unemployment benefits and into actual jobs. But that should come as no surprise. Labor are no virgins in this regard. They have form on this. Previous Labor administrations have always seen unemployment rise and they have delivered economic woe to the Australian people. And, unfortunately, we are seeing more of the same today. This bill, among a number of changes, proposes to change the compliance regime. There are changes for unemployment benefits and job obligations. They are changes that would significantly roll back the mutual obligation requirements that currently exist, that have provided enormous benefits to so many people, enabling them to go out and get a job. In the last 10 years or so, unemployment in this country, under the coalition government, has fallen—from around eight per cent in May 1998 to under four per cent in February this year. But it is now rising. It is rising as the economic tide is going out.

Let me for the benefit of the Senate explain the current system. Currently, job seekers who do not attend a job interview, who miss an appointment with their provider or who fail to participate in their Work for the Dole or mutual obligation activity without a valid reason have what is called a ‘failure to attend’ recorded. If a job seeker has three recorded failures without a valid reason in a 12-month period, they undergo an eight-week non-payment period. This system was introduced to reduce welfare dependency by reiterating the concepts of mutual obligation and personal responsibility. They are concepts that every parent tries to teach their children and that every country in the world that has maintained a modest welfare system has sought to implement, because it goes to the very nature of our human spirit. We understand that we have obligations not only to ourselves but also to our communities and that we also have responsibility for the choices that we make. For any job seekers experiencing severe financial hardship, an opportunity for financial case management was always available. But, under these proposed changes, financial case management will no longer be available. So, whilst the previous system brought down unemploy-
ment from eight per cent in May 1998 to 3.97 per cent in February this year, it is now being tossed out by this government—a government with a very poor employment track record.

The proposed changes in this bill weaken mutual obligation quite significantly and allow for an enormous amount of discretion that will, in all probability, fail to encourage job seekers to look for work and get off welfare. There is a system in this bill called ‘no show, no pay’. The new system proposed by the government is based on ‘if you don’t show up you lose a day of pay’. This is a contradictory approach by this government, who has based its entire premise on an ‘all show and no substance’ approach to legislation—and it has succeeded in this regard. So, for each day that a job seeker fails to attend Work for the Dole, a mutual obligation activity or a job interview, they lose one-tenth of their fortnightly welfare payment. It was suggested in the minister’s second reading speech that this was more work-like in its contribution and people would be in a more work-like environment. Let me say for those who have not employed people: when people do not front up to work, you do not just dock their pay; if they do it repeatedly, they actually lose their job—as is appropriate to any fair-minded person. Under this principle in the bill, the Labor government is saying, ‘We’re just going to dock you $44.93—a day’s pay for an unemployed person—because you didn’t front and you didn’t have an excuse.’ How is this a powerful incentive for job seekers to do their bit to find a job?

Further, under this bill, if a job seeker gets six failures within six months, they are referred for what is called a ‘comprehensive compliance assessment’—long words that sound very impressive but unfortunately do not have much substance to them. The comprehensive compliance assessment will result in one of five outcomes. They will have a new job seeker classification instrument, a job capacity assessment, a review of their employment pathway plan or an eight-week non-payment period—or no action at all could be taken. And, once you have been through the comprehensive compliance assessment, no matter what the outcome, the slate is wiped clean—you start again. So, even if no action was taken or if they just made a decision to let you off the hook for absolutely rejecting any notion of personal responsibility, they let you go and you can start again. The financial penalty of $44.93 a day may not actually deter job seekers from not turning up for the job interview that they possibly had a chance of winning. In fact, it may encourage an increase in the number of people who forego this amount of money to undertake other activities that are outside of the regular employment markets.

I would like to take you back through a bit of history. Since 1945, when the unemployment benefit was introduced, firm compliance measures have always been a part of it. The Chifley government introduced sanctions for not taking reasonable steps to find employment—you lost between two and 12 weeks of benefit. The Keating government penalised people for not attending a job interview by withholding their payment for a period of between two and six weeks. What we are looking at here is such a watering down of the existing obligations that one could say that they are the softest sanctions since the unemployment benefit was introduced in 1945. The measures that have served us so well—most expressly demonstrated in the 11 years of the Howard government—are now being watered down to unprecedented levels.

Let me touch again on the matter of mutual obligation. People out in the community accept that, when the taxpayers are supporting you, you have an obligation to the tax-
payers. In the case of receiving welfare or unemployment benefits, one of the obligations is that you actually need to go out there and actively seek work. This is about breaking the cycle of welfare dependency. The government’s proposed changes water down this mutual obligation to such an extent that they provide very little incentive for people to do their part and actively look for work. This may indeed herald a return of and a re-use of that old phrase—and I say ‘old phrase’ because it has not been necessary to use it for so many years in this country—the ‘dole bludger’. Do we really want to see a return of the dole bludger, where people are actively opting in for unemployment because the penalties are so slight?

It is also worth noting that this bill offers a contradictory approach by the Rudd Labor government to that of another bill that will be under consideration later on. Whilst on one hand the Rudd Labor government are weakening mutual obligations for job seekers, they are actually planning a tougher regime for parents who are in receipt of welfare payments when their children miss school. There are a number of flaws in that legislation, but I will not touch on them now. It just goes to show that there is an inconsistency in the approach by this government.

Another concern about this bill is that it allows the minister or the secretary to use legislative instruments to classify job seekers and determine whether a job seeker is actually in breach of their mutual obligations. This includes what is a ‘reasonable excuse’ for a serious breach and penalty amounts—and there can be some interpretation as to what the penalty should be for the ‘no show, no pay’ failures. The coalition, quite rightly, believes that these parameters should not be determined by the minister or the secretary but should be set out within the legislation. This provides a consistency to legislation.

I understand that the government may say that the coalition has supported legislative instruments. Indeed, we have when times have demanded it, such as the time before the introduction of a bill and the final detail can be completed, if it was necessary. This is not such a case, quite frankly. The people of Australia like to know that there is a definitive approach and what the sanctions are going to be, rather than leaving it up to ministerial discretion. Allowing so much discretion to reside with the minister or the secretary through legislative instruments may result in job seekers believing that there is no need for them to engage in mutual obligation—and this of course could have a detrimental impact on unemployment levels.

The coalition also notes the concerns raised by Jobs Australia chief executive David Thompson about this new model—concerns that were shared by the minister in the other place, albeit he expressed them in slightly different terms, but the concern is exactly the same. The concern is that this new model only works when unemployment is low and lots of jobs are available. I regret to say that unemployment is now rising in this country. The economic stewardship of the Rudd government has been extraordinarily poor. As unemployment rises and the economic environment sours, there are not that many jobs available. We need to make sure that every job is being hunted down and filled by those who are looking for a job.

It is also interesting to note that in the second reading speech on this bill the Labor Party talked about statistics. There are many phrases about the use of statistics, but there are a couple of things that we need to get very, very clear. I think the government has been toying with statistics regarding the long-term unemployed. The simple fact is that there was a 30 per cent decrease in long-term unemployment between June 2006 and June 2008. There are fewer long-term unem-
ployed because more people have been getting jobs, and part of that has been due to the mutual obligation responsibilities.

It will come as no surprise that the coalition has a number of amendments to this bill because, in its current form, this bill will only see unemployment rise—and that is something we do not want to inflict upon the people of Australia. We want to help develop a culture where people want to, and should be required to, actively seek a job. I am mindful that the Greens have also foreshadowed many amendments, and I understand that the Independent senators also have some concerns. This is an important piece of legislation that has been rushed and it is currently flawed. Quite frankly, a number of people in this place want to work for the betterment of Australia, and we want to get this legislation right. My concern is that we will not be able to have a considered view of this bill because of the lack of time that has been afforded to the Independent senators and others to consider what is wrong with it and how it can be best fixed—if at all. Currently, it is the opposition's position that, unless our amendments are carried, we will not be able to support the bill. We would like to amend it to see these watered down mutual obligation commitments removed.

I know that the Greens have circulated a number of amendments. We would like a little more time to consider them and to see if we can come to an appropriate arrangement. Most importantly, the coalition recognise the incredible workload that has been placed upon the Independent senators. I say that because, for quite some time in this parliamentary session, there has been a lot of filibustering going on by the Labor Party to eat up time, as they have been disorganised and a bit of a rabble. Now they are trying to push through as much legislation as they possibly can in the last week or so. This puts an enormous amount of pressure on key people in the chamber who do not have the resources available to them. I would like to let the Senate know that—because we are a compassionate party and a party that wants to get this right—we are not interested in rushed and flawed legislation. We will be opposing the move into the committee stage and we will be voting no at the second reading stage, because we want to make sure that the Australian public and the Australian community do not suffer unnecessarily due to this rushed and flawed legislation.

Senator SIEWERT (Western Australia) (9.07 pm)—The Welfare to Work regime introduced by the previous government was unfair, punitive and ineffective in providing an adequate safety net and genuinely engaging job seekers in securing appropriate work. The Australian Greens opposed that legislation vehemently, and we continue to oppose that punitive approach. The Australian Greens believe that, for the majority of those on welfare, the best outcome is for them to find meaningful employment. It is the best outcome for their families, their self-esteem and their standard of living, and it is the best outcome for our society and the productivity of our economy. We do not believe the Welfare to Work approach was the right way of achieving these outcomes.

As I said at the time of the debate on the Welfare to Work legislation:

We are concerned that the measures contained in the Welfare to Work proposals are unnecessarily harsh, badly targeted and ultimately ineffective. They focus on reducing income support and rely on coercive measures and unduly harsh penalties to force people into the work force, rather than providing incentives and support. There are no carrots, only sticks. The proposals do not address the very real barriers people face in finding employment, including lack of education, skills, experience and confidence.

The biggest stick—and that has proved right, by the way—and the most harmful aspect of
Welfare to Work is the arbitrary and mandatory eight-week non-payment penalty. As many in this chamber know, I have taken a particular interest in looking at the number of eight-week non-payment penalties and the affect of these penalties on some of the most vulnerable members of our community. In April this year, I discovered shocking data through Senate estimates that between July 2007 and February 2008 there were more than double the number of eight-week non-payment penalties applied in the 2006-07 financial year.

The data also revealed that the eight-week non-payment penalties were hitting the Aboriginal community hard, with 29 per cent of those breached in Western Australia and 68 per cent of those breached in Northern Australia being Indigenous job seekers. The data I received in April also showed an appalling rate of financial case management, with only 3,012 people out of the 31,789 people breached receiving financial case management. The government’s own data on the impact of non-payment periods reinforces our position.

The government’s survey of people who had received an eight-week non-payment penalty found that 64.6 per cent had borrowed money from someone else; over half had failed to pay rent or board on time; around 15 per cent of those who had failed to pay rent were evicted, putting them at high risk of homelessness; 37.6 per cent could not pay their electricity, gas or phone bills on time; 31.8 per cent had reduced expenditure on food; and 12.4 per cent went without medication they would normally take. There are also the social impacts of non-payment penalties with marriages and relationships coming under stress and people being unable to take their children on outings.

Of particular significance is the finding that the eight-week non-payment penalty actually makes it harder for people to find work because of a lack of money for job search activities—for example, transport is more difficult and making telephone calls is more difficult. This is completely contrary to the stated objective of the legislation—to assist people into work. These figures demonstrate that the system is not working and that it is completely contrary to the government’s social inclusion agenda.

The Social Security Legislation Amendment (Employment Services Reform) Bill 2008 goes some way to addressing the harmful affects of the current system. But, in our opinion, it does not go far enough. In particular, the Australian Greens are dismayed that the ALP government has decided to keep the eight-week non-payment penalty. We appreciate the provisions in the bill that are designed to minimise the number of these penalties, particularly in relation to participation failures. But we see no place in the welfare system for such punitive penalties. We note that around half of the eight-week non-payment penalties are for ‘serious failures’, not participation failures. Serious failures under the bill will still attract an eight-week non-payment penalty for a first offence. We believe that the bill is not going far enough in assisting these people.

We have particular concern about the ‘preclusion period’ of eight weeks for people who become unemployed from a voluntary act or misconduct. There is no provision in the bill for people on this eight-week penalty to mitigate the penalty through re-engagement. This is inconsistent with the stated objective of the government to focus on re-engagement. We note the call from Mission Australia before the Senate inquiry: ... that the legislation be amended to allow all job seekers that have an eight-week non-payment period applied to them have the opportunity to engage in a ‘serious failure requirement’ in order
to access income support payments irrespective of the reason for unemployment—

A willingness by job seekers to engage in periods of intensive activity, even when due to the application of a serious failure requirement, we believe, is to be encouraged and recognised. It serves to maintain continuity of engagement with an employment services provider and of participation in activities that are intended to support the achievement of sustainable employment outcomes.

The National Employment Services Association also makes a very important point in relation to people losing their job through misconduct:

... lots of job seekers we see have been sacked because of misconduct, but it becomes fairly evident that the misconduct was a result of mental health issues or other personal circumstances that interfered, not that they were intentionally sabotaging work to go back to welfare. The ability to distinguish between some of those factors and better protect the people who are in those positions would be welcomed.

The Greens will be moving amendments to address these concerns. We also repudiate the idea that this level of punishment is somehow necessary as a deterrent. We agree with Catholic Social Services Australia when they argue:

It is not acceptable to use financial hardship, or the threat of financial hardship, as a tool to promote compliance. Nor is it acceptable to place already vulnerable individuals and their families under severe added stress. Individuals who are unable to support themselves through paid work should be entitled to an adequate level of support and to lives where dignity is maintained.

We are moving into a period of time when unemployment is expected to rise. We need an income support system that respects the dignity of individuals who need to rely on income support. While the Australian Greens acknowledge this bill as a step in the right direction, we do have a number of concerns about it and suggestions for its improvement.

I would like to address the issue of complexity in this legislation. A key issue to emerge from the committee inquiry into this bill relates to the complexity of the new system. The complexity comes from having five different types of ‘failures’ each with its own particular criteria, different levels of discretion, different consequences and different access to hardship provisions. We acknowledge that the intention of the structure of the new system is to provide penalties that more appropriately reflect the relevant breach and to shift from the current one size fits all approach. We support this intention but suggest that greater consistency between the categories of failure in relation to matters such as when discretion is allowed, when hardship provisions will apply and when penalties are to be ‘worked off’ would result in a simpler system which would be easier to understand and implement. National Welfare Rights Network has indicated that it is:

... concerned that job seekers will struggle to understand just how the new system will work, their obligations under it and, second, how they can avoid penalties and if an error occurs how it can be remedied. This is of great concern, given NWRN members’ current experience that job-seekers’ lack of understanding of how the existing compliance regime operates in practice has led to the imposition of penalties.

The Australian Greens will be moving amendments to create greater consistency in the application of reasonable excuse and hardship provisions and the ability of job seekers to ‘work off’ their penalties.

I would now like to touch on the issue of discretion. An important area where the Greens believe there should be greater consistency is the ability of Centrelink to exercise discretion in applying a penalty. Centrelink has discretion in applying an eight-week penalty for wilful or persistent noncompli-
ance but, as the bill stands, it does not have discretion for the other penalties, apart from whether a reasonable excuse exists. We understand that the intention is for employment service providers to have discretion in reporting participation breaches. But we note that, in evidence to the Senate inquiry, Mr Carters from the department made the point that Centrelink are the final determiner. As the final determiner, we strongly believe Centrelink should have the discretion to evaluate the report from the service providers and make their own judgement on whether a penalty should be applied. We will be moving amendments to provide Centrelink with this discretion. We also believe that the discretion employment service providers are to have in reporting participation failures should be in the legislation and not left to contractual arrangements, as is currently the case. This is an important aspect of the new regime and, we believe, should be reflected in the bill. We also understand that it is there because of the way the former government chose to make some of its decisions and implement Welfare to Work.

No show, no pay and connection and reconnection breaches are part of a new process under this bill—no show, no pay in particular. One of the key elements of the reforms introduced by the bill is the no show, no pay regime for certain activity related breaches. We appreciate that the government is intending to create penalties for noncompliance that more accurately reflect the breach. We believe this approach is a better approach than the current system, although we still have concerns about how it in fact may operate in practice. We are worried that even a one- or two-day deduction may make it more difficult for people to comply, leading to people breaching more often. We believe that to address this problem the bill should be amended to include hardship provisions for no show, no pay and reconnection failure penalties. This would allow the penalty to not be applied where a person is in severe financial hardship. We can not see the purpose of causing people in severe financial hardship even more difficulties.

We also support the ability of job seekers who have a no show, no pay penalty or reconnection failure penalty applied to be able to ‘work off’ the penalty, similar to the provisions for eight-week non-payment penalties. We are particularly concerned about the impact this system may have on Indigenous income support recipients. Under the current system we have seen a very significant increase in breaching, with a disproportionate increase in breaching in Aboriginal communities. There is also anecdotal evidence of significant rolling breaches in Aboriginal communities resulting in complete disengagement from the system. We believe there are real risks that the no show, no pay system could result in disengagement for particularly vulnerable job seekers. The Greens will be moving amendments to introduce hardship and reconnection provisions into the no show, no pay regime. We will also be moving amendments to ensure that penalties can only be applied to the instalment period after the first instalment period following notification of the failure. This will allow people to prepare to have less money and also provide time for Centrelink to ensure that correct decisions are being made.

Similarly, we strongly believe that the bill should provide for comprehensive compliance assessment. This process is an integral part of making the compliance regime fairer and more responsive to individual circumstances. We understand that the intention is that before a serious failure is determined and an eight-week non-payment penalty applied a person must undertake a comprehensive compliance assessment which will consider whether the person’s employment pathway plan is appropriate, and what barriers a
person may face to employment. The government has also indicated that the trigger for a comprehensive compliance assessment will be three connection failures and six no show, no pay failures. As this is such an important part of the new process, we believe it must be contained in the legislation, and we will be moving amendments to that effect.

Strong arguments were made during the Senate committee inquiry by Homelessness Australia about the need for the compliance system to take into account the particular vulnerabilities of homeless job seekers and also the potential for the compliance system to place people at risk of homelessness. Homelessness Australia argued that a consistent definition of homelessness based on the ABS census definition should be used in the social security legislation and legislative instruments. They noted that the definition of homelessness currently used in the reasonable excuse legislative instrument is very narrow and only applies when an individual is sleeping in a non-permanent location on the streets or in a refuge. This is a completely inadequate definition of homelessness and we support Homelessness Australia’s recommendation that the government define homelessness to reflect the cultural definition of homelessness used in the census.

We believe that this legislation will have positive impacts, particularly if it is amended along the lines the Greens are proposing. We think it is important that there should be a review and we want to see a review conducted after 12 months of the new system. In particular we would like to see the government pay specific attention to the impacts of the new system on Indigenous job seekers. It is vital that the new system meets the needs of Indigenous communities and that breaching rates are minimised. Welfare to Work had a disproportionate impact on Indigenous Australians and we must ensure that that disproportionate impact is not continued.

The reform of the compliance regime is an important measure, but there are other measures of Welfare to Work that we believe the government also needs to reform. One of the most contentious aspects of Welfare to Work reform was the change directed at single parents. The majority of parents on income support are single mothers. We urge the government to revisit the policy of putting single parents onto Newstart, with all the attached participation requirements, including in particular the downgraded educational opportunities provided to single parents.

This new legislation does provide a fairer approach to helping people find work, particularly by working with them to meet their individual needs through the employment pathway plan. I believe it will provide a much better approach, particularly for those people with mental illness and for others who also face great barriers to employment.

The Greens note that there is broad support from stakeholders in the community services sector for this legislation. I was a little dismayed, I must admit, to hear Senator Bernardi use David Thompson’s evidence to try to justify the coalition’s position. That is certainly not the impression that Mr Thompson gave to the committee of inquiry. I understood him to be supportive of this legislation, although he had some concerns about some of the provisions and he recommended a number of amendments. But, as I said, I understand that the community services sector broadly supports this legislation but does want some amendments.

The bill goes some way to removing some of the harshest impacts of the Welfare to Work regime. We do not wholeheartedly support the bill and I have outlined our concerns. As I mentioned at the beginning of this contribution, we believe Australia’s welfare system should be focused on assisting people in need, including through encouraging and
supporting people back into work and then acknowledging people’s individual circumstances and difficulties. This bill does go some way to recognising those individual difficulties and circumstances. As I said, we do not believe it goes far enough but it does go a substantial way and we look forward to seeing the government bringing in another bill that addresses the other punitive approaches of Welfare to Work, and then Australia can finally celebrate the death of Welfare to Work.

Senator XENOPHON (South Australia) (9.24 pm)—I will be brief. I can indicate that I will not be supporting the second reading of the Social Security Legislation Amendment (Employment Services Reform) Bill 2008, not because I am not sympathetic to a number of the measures that the government is proposing but because it is not reasonable for me to consider amendments at this stage for several reasons. Firstly, I think it is well known that all of my staff have been working around the clock on other legislation. We simply have not had the time to consult with the stakeholders—both with the welfare groups and employment services organisations that want to speak to us about their concerns and with a number of constituents who have expressed concerns about the current legislation or the existing regime in respect of Welfare to Work.

As Senator Siewert indicated, this is a complex piece of legislation. It is quite nuanced in parts and I note that the Greens will be moving a number of amendments, as will the coalition. I do not think it is satisfactory to be dealing with such an important piece of legislation on what is meant to be the last day—or second- or third-last day—of this sitting session before the Christmas break.

I need to emphasise that the minister’s office has been extraordinarily cooperative and has provided us with briefings and information in relation to this bill. I had a meeting with the minister last week and that was useful. But it does not deal with the issue of consulting with a number of key stakeholders—and I can assure you that it is not reasonable for my staff to spend any more time, because they are doing 16 to 18 hours a day. We have been working around the clock on a number of bills and I believe that in order to do justice to this legislation I cannot in good conscience support this matter going into committee at this stage. I hope honourable senators can understand my position in relation to this. But if this matter does not proceed further tonight, I look forward to this bill being dealt with comprehensively in the first sitting week in the new year.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.27 pm)—The aim of Welfare to Work laws like this one is twofold: to find jobs for unemployed people and to save taxpayers’ hard earned money. While someone is receiving income support from the government it is fair enough that the public be satisfied that they are doing their best to find a job. But I think we should be clear about one thing: this law should not be just about improving work participation rates so that we can help the economy. This law should also be about helping people improve their lives. This is about steering them to a better life, helping them avoid poverty, giving them the satisfaction of decent employment and giving their kids a chance to have a good life.

The bill sets out a new compliance framework for job seekers on income support to try to keep them focused on searching for work. It introduces a new one-day pay penalty and keeps the current eight-week non-payment period as a penalty for people who persistently refuse to seek or stay at work. Ultimately, Family First thinks that employment services should concentrate on ensuring that at least one parent in every
family is in paid work so that the children have a role model and are less likely to be living in poverty.

Part of helping people lead better lives is to focus on what is important to them, and what is important to most people is relationships. We are defined by our relationships with other people, such as husbands and wives, mums and dads, brothers and sisters and sons and daughters. So parliament’s actions should be focused on strengthening families, not weakening them. We must promote stable families that are focused on the needs and best interests of their children. Giving kids the best opportunity means making sure that at least one parent is employed, but it also means keeping marriages and relationships intact.

Catholic Social Service Australia, in their submission on this bill, pointed to a report from the Social Policy Research Centre which said that the current Welfare to Work system increased the risk of family breakdown. The report said that the system of penalties for breaching the rules meant that 26.2 per cent of respondents reported that their ‘marriage or relationship came under stress’ and 21.3 per cent reported that they were ‘involved in a serious household argument’. The report said breaching put further strain on already difficult family relationships.

When I spoke to the Australian Institute of Family Studies earlier this year, Professor Hayes nominated:

... communication, family conflict and violence, financial management, differences in values and differences in expectation of and satisfaction with relationships

as the top five drivers of relationship breakdown. A survey by the department also found that:

Over 50 per cent of job seekers serving eight week penalties had failed to pay rent or board on time during the penalty period and around 15 per cent of this group were evicted.

So we should be careful to make sure there are sufficient safeguards so that such rules do not cause homelessness or marriage and relationship breakdown. That is particularly important because we know that relationship breakdown can lead to further risk of joblessness and poverty.

OECD figures show that the number of jobless families in Australia is at 13 per cent, which is relatively high among the OECD countries. The reason Australia continues to have a relatively high number of jobless families is that there has been an increase in the number of single parent families which are less likely to have an employed parent than couple families. In 2007, Australia had a low rate of employment for single parents of 50 per cent compared to the 70 per cent OECD average.

The Australian Institute of Family Studies has identified key risk factors that restrict the life chances of children, including parents being unemployed and a child’s dad not being around. Family breakdown causes great hurt and suffering on an emotional level, but it also can lead to poverty and a lifetime of disadvantage for children. So family breakdown is a very important factor in Welfare to Work laws because, when families breakdown, it increases the number of families without employment and it puts children at risk of living in poverty.

So are the current arrangements successful in getting people into work? The department told the Senate Standing Committee on Education, Employment and Workplace Relations during its inquiry into this bill that ‘job seekers are less likely to meet their requirements than they were five years ago’. That is despite the department reporting that, in 2007-08, there were 32,000 eight-week non-payment penalties, which had doubled from
the previous year. The department also gave
evidence that the proportion of the job seeker
population who are very long-term unem-
ployment benefit recipients or who are dis-
advantaged has increased significantly.

Australia has had some success with get-
ing people into work, halving the number of
people in long-term unemployment from
128,000 just five years ago to 66,000 today.
Over that time, the general unemployment
rate has fallen from 5.9 per cent to 4.2 per
cent or by just over 120,000 people. But the
task will get more difficult with the world
financial crisis and with people who are
more easily employed coming off the unem-
ployment lists first. The people on income
support are already characterised in many
cases by very difficult lives. The department
noted:

... 32 per cent of job seekers on Newstart and
Youth Allowance have a reported mental illness.
Other barriers to participation include drug and
alcohol problems (18 per cent) and unstable ac-
commodation (five per cent). Almost 13 per cent
of job seekers are ex-offenders.

So the task of helping people get jobs in an
economic downturn will be difficult, but it is
crucial for the futures of so many people and
so many children. Work is vital for the
physical and mental health and wellbeing of
people. The government’s proposal has a
strong focus on employment, but it should
also have a focus on supporting people after
they get a job and not just before. First jobs
can be menial and uninteresting and may not
last, so employment services need to help
people stay in employment and move on to
the next step up the ladder. In 2005, speaking
about the Welfare to Work bills, I said the
issue was about:

... trying to get the balance between personal re-
sponsibility and community obligations right.
That still remains the case.

I also stated that I can only imagine how diffi-
cult it must be to be a sole parent. For sole
parents, there is often no-one to help on
those long nights with a sick child or with
just trying to get through the daily routine of
keeping children bathed, dressed, read to and
settled to sleep. I was pleased then, when
speaking with the minister this week, to be
assured that single mums and dads have done
relatively well under the system and, to date,
only about 20 single parents have been
breached.

Family First has had some concerns about
the eight-week non-payment period as a way
of changing behaviour but has been assured
by the government that this penalty is a last
resort for people who persistently refuse to
look for work. The minister told me that con-
cerns over the risk of homelessness and the
risk of punishing people with a mental illness
or parents who have children to support
should be taken care of by what the depart-
ment calls, in bureaucratic language, a ‘com-
prehensive compliance assessment’. The as-
sessment is designed to find the particular
problems of job seekers so they get the help
they need rather than an unnecessary pun-
ishment. Family First believes that, on bal-
ance, the government’s changes appear to be
a reasonable response to the skyrocketing
rate of eight-week non-payment periods, the
fall in the number of job seekers meeting
requirements and the increase in very long-
term unemployment.

Senator LUDWIG (Queensland—
Minister for Human Services) (9.36 pm)—I
thank all senators who contributed to the
second reading debate on the Social Security
Legislation Amendment (Employment Ser-
vices Reform) Bill 2008. The bill proposes
compliance arrangements that provide a two-
way nexus between participation and pay-
ment that is a genuine mutual obligation, not
the ham-fisted mutual obligation of those
opposite. The new compliance system does
not seek to punish job seekers unnecessarily. Rather, it is a tool to maximise job seekers’ participation in activities that will assist them to obtain employment. This bill introduces a more work-like no show, no pay penalty that will apply when a job seeker fails to comply with training or work experience without a reasonable excuse. It retains, as a deterrent, eight-week non-payment penalties for persistent and wilful noncompliance. It predicates payment on the job seeker’s participation. In short, it will be a more effective compliance system than which it is replacing. Submissions and representations to the Senate committee strongly supported the move to the new compliance system. This is to be compared with the level of public approval reflected in the 62 submissions made in respect of the current compliance system, with most strongly rejecting it.

The current compliance system has not improved compliance. If the current system were working, it would result in declining breaches because it encouraged job seekers to meet their requirements and ultimately supported them in getting them off income support and into employment. Yet the number of eight-week non-payment penalties applied has doubled over the course of just one year: from around 16,000 in 2006-07 to around 32,000 in 2007-08. An effective compliance system should result in improved participation. However, since the introduction of the present compliance system there has been no improvement in attendance at Job Search training, no improvement in attendance at Job Network interviews and no improvement in attendance at Customised Assistance. An effective compliance system should clearly link the receipt of income support and the obligation to look for work. Again, the current compliance system falls well short. The job seeker can miss up to two weeks of Work for the Dole before any action is taken. The job seeker then has a chance to reconnect and, if they do so, they incur no penalty at all. An effective compliance system should provide a timely and proportionate response. Presently there is no real or immediate consequence for deliberately failing to attend activities or for failing to attend initial job interviews.

Under the new system, job seekers will receive a clear message that their actions are unacceptable approximate to when the breach occurs, resulting in more work-like conduct in the future. The eight-week non-payment penalty will continue to deter a persistent and wilful noncompliance. In addition, job seekers who fail to comply with activity requirements will incur a no show, no pay penalty. To discourage job seekers from leaving employment voluntarily without finding another job, the government will also retain an eight-week preclusion period. The current compliance system makes it harder for people to find employment. A departmental survey of job seekers who received eight-week non-payment penalties found that around three-quarters of job seekers reported that having no income support made it harder to look for work. Some 75 per cent of job seekers who received an eight-week non-payment penalty were back on to benefits within a fortnight—in most cases—of finishing their non-payment period.

We are replacing a limited financial case management scheme with financial hardship provisions. The new provisions apply to all job seekers who incur serious failures but who do not have the capacity to participate in compliance activity, and to vulnerable job seekers who are subject to the eight-week preclusion period. The new financial hardship provisions of the bill will oblige job seekers to continue to look for work or to engage in activities that will improve their prospects of finding employment. A job seeker who received an eight-week non-payment penalty for persistent and wilful
noncompliance will have the opportunity to demonstrate a renewed commitment to finding employment by participating in intensive compliance activity. A job seeker who agrees to participate in an intensive compliance activity will continue to receive income support while they work off their penalty through full-time Work for the Dole, or a similar activity for 25 hours per week.

This bill is designed to instil the job seeker with greater personal responsibility. Therefore the job seeker may suspend a no show, no pay, or reconnection penalty at any time by resuming their activity requirements or attending their reconnection appointments. Mental illness, drug and alcohol problems and unstable accommodation are among the vulnerabilities to which a substantial number of job seekers are subject. Even with the supposed protections in the current system, the lack of discretion available means inevitably harsh outcomes. More than one in 10 job seekers who have received an irreversible eight-week non-payment penalty had a reported mental illness. This figure is likely to understate the scale of the problem because of the difficult issue of job seekers not wanting to disclose personal issues. The current compliance system takes vulnerable people and makes them more so. The departmental survey of eight-week non-payment penalty recipients found that over half of those job seekers had failed to pay rent or board on time and around 15 per cent of this group were evicted as a result. It is difficult to see how anyone could think that this tackles poverty, let alone helps people find work.

The compliance system proposed by this bill allows us to distinguish between someone who does not want to meet their obligations and someone who cannot meet their obligations. Unlike the present automatic three-strikes rule, a job seeker will trigger a comprehensive compliance assessment when they miss three appointments or six days of activity in a rolling six-month period. An eight-week non-payment penalty will apply only if the prior failures were not beyond the control of the jobseeker and were committed intentionally, recklessly or negligently. This, of course, means that a serious failure will not apply based on a prior incident of noncompliance for which the job seeker had a reasonable excuse. Centrelink will use the comprehensive compliance assessment to consider a job seeker’s circumstance in order to determine whether there is a reason for noncompliance, such as episodic mental illness, before applying any penalty.

Providers will be able to exercise their professional judgement about whether to report behaviour as a no show, no pay or reconnection penalty. A provider can use alternative means of maintaining participation if they reasonably believe that there is a better way to ensure a particular job seeker is moving towards employment. Furthermore, no failure will apply if the job seeker has a reasonable excuse for their noncompliance. The impact of the job seeker’s personal circumstances on their capacity to comply will be considered in determining whether the job seeker had a reasonable excuse. This would, of course, include homelessness—as defined by the Australian Bureau of Statistics—mental illness or caring responsibilities. In response to the Senate committee’s recommendations, the government will review the effectiveness of vulnerability indicators and associated guidelines to ensure that they protect the most troubled job seekers.

The Senate committee also emphasised the importance of job seekers understanding their obligations under the new compliance system. The government will ensure appropriate levels of training for Centrelink and employment services providers and adopt a strategy targeted at communicating changes to all job seekers. The government believes
strongly in an evidence based approach to policy and agrees with the Senate committee recommendation that we collect comprehensive data to monitor and report on the effectiveness of the new compliance system. The government also appreciates the broad community interest in the effects of the compliance policy. For these reasons we will conduct a review of the impact of the new compliance system after 12 months of operation, particularly in relation to how the system improves job seekers’ participation in employment services. The review will pay particular attention to vulnerable and Indigenous job seekers.

In conclusion, the new employment services will provide job seekers with the right mix of training, work experience and other support they need to find and keep work. The new compliance arrangements and other measures proposed by this bill will form an important part of the new system. This bill is a key component of the government’s employment participation agenda. To retain the status quo is not a benign alternative. To retain the status quo is to condemn a large number of vulnerable Australians to harsh, irreversible penalties. I ask senators to support the bill.

Question put:
That this bill be now read a second time.

The Senate divided. [9.50 pm]
(The President—Senator the Hon. JJ Hogg)

Ayes…………… 33
Noes…………… 33
Majority………. 0

AYES
Arbib, M.V.
Bishop, T.M.
Brown, C.L.
Collins, J.
Evans, C.V.
Fielding, S.
Forshaw, M.G.
Hanson-Young, S.C.
Hurley, A.
Ladlam, S.
Lundy, K.A.
McEwen, A.
Milne, C.
Pratt, L.C.
Siewert, R.
Sterle, G.
Wortley, D.

NOES
Abetz, E.
Bernardi, C.
Boswell, R.L.D.
Bushby, D.C.
Colbeck, R.
Cormann, M.H.P.
Ferguson, A.B.
Fifield, M.P.
Humphries, G.
Joyce, B.
Macdonald, I.
McGauran, J.J.
Nash, F.
Payne, M.A.
Scullion, N.G.
Trood, R.B.
Xenophon, N.
Barnett, G.
Birmingham, S.
Brandis, G.H.
Cash, M.C.
Coonan, H.L.
Eggleston, A.
Fierravanti-Wells, C.
Fisher, M.J.
Johnston, D.
Kroger, H.
Mason, B.J.
Minchin, N.H.
Parry, S.
Ronaldson, M.
Troeth, J.M.
Williams, J.R. *

PAIRS
Carr, K.J.
Conroy, S.M.
Faulkner, J.P.
O’Brien, K.W.K.
Polley, H.

* denotes teller

Question negatived.
Senator SCULLION (Northern Territory) (9.53 pm)—I rise to make a second reading contribution to the Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Bill 2008. This bill seems to go a lot further than the legislation introduced by the previous government. We legislated for welfare payments to be quarantined in the event of the bad behaviour of welfare recipients—such as not sending children to school and neglecting children to the extent that they were brought to the attention of the child protection agencies—and where there appeared to be no amelioration of that behaviour. But this legislation provides for the actual suspension and potentially the cancellation of welfare payments.

This is where things really start to divide. This is where the rubber hits the road. This is a very sophisticated and complicated social policy environment. The government is now introducing legislation where the compliance penalty will be to take money from families—simply to take money from families and ensure that that is sufficient leverage. But, as we know, taking money from a family has a direct impact on a range of people who perhaps were not the perpetrators in the matter. The previous government, of course, said welfare quarantining would ensure that at least the children who were supposed to be going to school still had food on the table. We ensured that the basic commodities needed at what was sometimes a very difficult time for these individuals were there. Perhaps those on the other side did not have enough time. Perhaps they were a bit busy and had only a few moments to cobble the legislation together. But it is an extremely unsophisticated and clumsy approach to policy to have the sort of compliance that is going to make the circumstances of these individuals and families worse.

Of course we all want kids to go to school so that they receive the best possible education. I understand that at the moment some 20,000 children of school age are not enrolled, and some of the reports indicate that, on any given day, around 200,000 children are not attending school. There is no doubt that this legislation, which we will be supporting, clumsy though it is, is an attempt to ameliorate the parlous circumstances that these children find themselves in.

Like most of us in this place—or perhaps not—I was certainly a child who needed all the assistance he could in getting to school. Had it not been for the size 12 boot of the local constabulary, I would not have attended at all. I understand why some children do not find the school environment particularly attractive. But it is the responsibility of the states and territories, and for someone of my generation it beggars belief that they would have 200,000 kids on any given day not attending school. We used to wag every now and again, but someone was on our case all the time. Think about the future of those 200,000 kids. In this place we talk very glibly about rights. The word rolls off the tongue. Rights seem to be something you can pull out of anywhere. But I would think nobody would disagree with the fundamental right of access to education.

The states and territories have let us down dreadfully. It is surprising to see such truancy, which is effectively what it is. The fundamentally Labor states and territories have failed this country so badly that they are now calling on the Commonwealth government to act to make sure the kids go to school. That is the sort of abject failure we are seeing around the country. I am not sure what they will be asking us to do next—rates? Rubbish? I am not really sure. Maybe we are going to be asked to provide Commonwealth bus drivers to go and get the kids. This is a monumental failure of the state and territory governments.
We support the federal action, but the states have to be involved. The government talks about ending the blame game; there is a lot of rhetoric in that area. Ending the blame game does not mean saying to the states and territories: ‘Sorry about that. You’ve forgotten to do your job, so we’ll just take it over.’

The states and territories have to be involved in lifting capacity in the medium term to ensure they can get back to doing the job they should be doing.

The situation will be that schools and principals will have to report attendance figures to Centrelink if they are not currently providing this information to their own state education departments. So often the state education departments, when you say, ‘How is it going—what is your attendance like?’ find it very difficult to provide that information. But now a principal will have to make the decision. He might say, ‘We know that Johnny is a bit like Nigel and he is down the creek, fishing every day. There may be a bit of a difficulty with Johnny and his family and, as the principal of the school, I have to ring up Centrelink and tell them that they have to cut off their dole.’ I think that is a pretty tough call for a schoolteacher, or any person who is caring for children, to make. They are going to have to make that call. I think it would have been a lot better and a much more sophisticated approach to say to these principals: ‘You have to make a decision so that there is some leverage and they will still be able to feed their kids. They might even be able to afford the bus fare, to make sure the kids can go to school, now they have decided to do it.’ But in this unsophisticated approach they will be taking the money away again. Our approach was a much better system, which was simply to quarantine the welfare.

Mr Rudd has been very big on demanding benchmarks and critical performance indicators for all the legislation. He talked about closing the gap. He said we would get specific benchmarks and we would know when we had reached them and when the policies were absolutely successful. But if you read this legislation there is nothing like that in it. What are we attempting to get? Is it 100 per cent attendance? Is it 95 per cent? Is it 90 per cent? We are not really sure, but we are going to implement this legislation and just hope for the best. It is very clumsy. It seems to be inconsistent with the rhetoric from those on the other side about putting in specific targets. It is going to be very hard to judge whether there is success or failure. This is a bit of a stunt. You read on the front pages of the newspapers that government is being hard and decisive and taking tough action. We will speak about the tough action in a moment. I wonder about the stunt aspect of that.

We have raised concerns through the Senate committee process about Centrelink resources. Is Centrelink going to be able to process all the attendance reports from every school around the country and isolate individual parents who may not be sending their kids to school? It is unfortunate that the minister is not here because then I would have had the opportunity to bail him up personally about this. I am sure he is listening. At the moment there is a bit of a crisis in Centrelink. Most people in business understand that when you make a change in a $100 billion business you have a look at the reactions to that. We have made a number of changes here. The government said, ‘We’re going to remove the liaison officers.’ So what changed? There was an eight per cent increase in complaints. Every single indicator to do with Centrelink shows that it is under-resourced and the staff are overworked. I pay huge credit to the wonderful Centrelink staff, who work their hearts out in an ever-changing and difficult environment. This is going to be another impost, a new area. The
message is: ‘Centrelink, by the way, you are now going to be responsible for truancy.’ And we do not seem to be providing any additional resources for that.

You can imagine the difficulty in contacting and counselling parents and in breaching them so that their payments are stopped. This is an entirely new area and quite a difficult area to deal with. It is certainly something that the states and territories have put in the too-hard basket. It is an enormous job. It is going to be resource intensive. But the real point is that this entire thing will be a complete stunt. We will support it, but it is going to be a complete stunt and a complete waste of time. It is another half-baked idea. Remember the old pie that is still frozen in the middle? It is going to be one of those, because they have not resourced Centrelink sufficiently to be able to perform this new task.

There are also a couple of legal issues—again, I am not sure whether this was done in a rush—to do with providing information to Centrelink. Most state and territory governments do not appear to have reliable attendance data. That has been a problem for some time. Even if they had the data, I do not know whether they would be prepared to provide it to the Rudd government. In 2006 COAG agreed to provide attendance data, but here we are today, in 2008, and there is no attendance data. In fact, after agreeing to it, Tasmania said, ‘I think we’ve got a terrible problem under the Privacy Act and that’s the reason we can’t do it.’

How is this going to work, given that the states and territories said they were going to provide the data and two years later they still have not been able to do it? The fundamental process of identification in this matter is through the attendance data. I cannot see anything in the legislation about how this is going to be addressed. If the minister has an opportunity to address that issue, I would certainly appreciate it. So the real question is: are the state and territory governments on board? It has been their responsibility. We have been letting them off the hook. But are they now on board to provide the vital data to Centrelink which, under this legislation, this entire process hinges on? If they are not capable of providing that then this is just a tough bill stunt to try to make the PM look like he has a bit of spine that, in effect, does absolutely nothing. This is spin over substance. Really, the only outcome being sought is a newspaper headline. That is why it is absolutely essential that we ensure that the resources are there so that Centrelink has the appropriate support. We need really strong action in that regard. Otherwise, this legislation will have absolutely no effect.

What are the states and territories going to do to support truancy officers? They have to make a commitment. I will be supporting this legislation in the short term because, hopefully, it will get kids to school and support the states and territories up to a point. But there has to be a point where they take responsibility for their task. That has to be a part of these negotiations. There has to be a commitment from government, through COAG, that the states and territories will start playing their part. Perhaps I am a bit naive, but I think that the Commonwealth and the states should be working together to ensure that we enrol all children. Surely we as a nation have the capacity to find out where the 20,000 children who are not enrolled live. We should have compliance services to ensure that they remain at school. You can imagine that, with all kids at school enjoying a full and well-rounded education, the outcome would be that all Australian children would have much brighter future prospects. That is something that I would call an education revolution. It would be a revo-
ution that this side would be prepared to support.

Senator SIEWERT (Western Australia) (10.06 pm)—The Australian Greens believe that the best educational and social outcomes for Australian families and their children will be achieved if the children are enrolled in and regularly attending school and actively participating in an education that is relevant to their lives, their culture and their aspirations. However, we do not believe that this is what the Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Bill 2008 is all about. This bill is not a genuine attempt to deliver educational engagement. It is nothing more than an exercise in crass populism, with no evidence base whatsoever, from a government that should know better.

The vast majority of witnesses and nearly all of the submissions to this inquiry—29 out of 31—were highly critical of the rationale for this initiative. They pointed to the failure of overseas trials of punitive measures and argued that these measures were likely to succeed for the same reasons. They also pointed to the success of positive initiatives such as those based on a social inclusion framework, using strengths-based teaching measures or improving educational engagement and outcomes. They also questioned why, if this was really meant to be a trial to gather evidence, it only focuses on punitive measures and only targets families on income support when there is no evidence or reason to believe that their children are the only ones skipping school or that parental responsibility is the primary reason for low attendance rates. The evidence points to other factors.

From the Australian Greens’ point of view, the most disappointing aspect of this legislation is its inconsistency with government policy commitments. We welcomed the ALP’s election promise of an education revolution, as we saw a real need to address the failure of our education system to engage with some of our children, particularly those from disadvantaged and socially excluded backgrounds. We believe that more needs to be done to address the educational needs of Indigenous students; of children from migrant and refugee backgrounds, for whom English is often a second or third language; and of children growing up in households experiencing complex and multifactorial disadvantage, as described by Tony Vinson in his work on ‘poverty postcodes’. Senator Stephens will know full well what I am referring to. However, we do not believe that this approach is, or ever could be, part of a genuine education revolution. We are concerned that these measures will actively undermine efforts at progressive education reform by unfairly targeting one group of disadvantaged students, a group whom the current system is failing, and making them directly responsible for the ill fortune of their families, rather than addressing the educational barriers they face. What the government is doing here is extending the concept of mutual obligation to third parties who are children. I cannot think of a measure more likely to further alienate disadvantaged families from schools, with which we badly need them to engage; to incite and inflame family conflict; and to increase the social isolation and exclusion of children from a disadvantaged background from their schools, the education system and their peers.

The government’s social inclusion agenda, according to the Parliamentary Secretary for Social Inclusion and the Voluntary Sector, is a very ambitious agenda in which every one of us has a part to play. We have to identify the systems, attitudes, programs and processes that prevent everyone having a fair go in our society. We have to understand why people are not able to engage in work and
education or make connections with family, friends and their local community. Please tell me how this approach could possibly be consistent with what everybody accepts as the definition of ‘social inclusion’. How does it identify the systems, attitudes and processes that lead to the exclusion of children from disadvantaged families? How does it initiate and promote social inclusion? How does it bring about a revolution in education?

The Australian Greens do not believe that the proposed legislation reflects a commitment to a social inclusion agenda or is part of a genuine effort to engage with the causes of social inclusion rather than the symptoms. There is no evidence of a concerted effort by the government to understand the reasons why children are not engaging with the education system or to address the systemic barriers that prevent them from having a fair go. According to the explanatory memorandum, the purpose of the bill is to engender behavioural change in parents who are receiving income support, with the aim being to improve the school enrolment and attendance of the children. The entire approach taken in this bill is built upon the premise that parental encouragement and a lack of parental responsibility among parents on income support is the key factor and the primary cause of poor attendance and that a punitive, sanctions based approach is the most efficient and effective way to improve school attendance. The Greens believe that this approach and these assumptions are fatally flawed and that the system is not only unlikely to lead to better school attendance and improved educational outcomes but likely to lead to an increase in family stress and social exclusion for those affected.

The logic and assumptions underlying this policy approach are not based on the wealth of international and domestic research concerning school attendance, improved educational outcomes and social inclusion. They do not reflect best-practice models or the findings of successful programs. While we have heard a lot lately about the importance of consultation with the community sector and the idea of a compact, we note that all of the charities and crisis support groups who gave evidence to the inquiry complained that there had been no consultation with them about these measures, no consultation about their capacity to support likely increases in demand for the service and no extra resources provided to the already overstretched service providers in the affected areas.

WACOSS, the Western Australian Council of Social Service, told the committee about the already high level of unmet need in the Cannington trial region in WA and the number of people who have already been turned away from crisis centres. There were 9,750 people turned away from overloaded services in 2006-07. The Greens are deeply concerned that no additional resources are being provided for case management or financial counselling of the families affected and that no resources or services are being provided to the schools, who will have an obligation under this bill to engage with these families and offer them support programs to help re-engage their children in school. ACOSS warned that the trials would impose serious implementation and resource challenges and noted that there was potential for the policy to be applied unevenly across the trial sites, depending on the schools’ capacity to work with families to address underlying issues.

For a trial that is limited to eight communities and does not put any resources into education or social support, this is an expensive exercise. The administration budget is $17 million. We also know that 80 per cent of the $12.6 million cost of administering the schooling requirements bill has been allocated to IT staffing alone. As welfare quarantining and the NT intervention have also shown, this kind of punitive approach to us-
The Australian Greens believe that this money would be better spent on addressing the underlying causes of poor attendance and education outcomes, on building on successful programs like those that engage Aboriginal families and communities in the life of the school, to build on kids’ strengths, interests, knowledge, skills and culture; to excite and inspire them; and to build their confidence in themselves and in their capacity as learners and contributors and as the workers and leaders of the future. The reasons for poor school attendance and engagement and for poor education outcomes are complex and multifaceted and those relating to Aboriginal students are doubly so.

A simplistic approach that reduces the problem to an issue of bottoms on seats and forces children to attend school is unlikely to produce any long-term improvement in educational outcomes for marginalised kids. If they do not want to be there and resent the way they have been forced to attend, how is that going to improve their learning opportunities? Unless the approach taken to school truancy addresses the complex barriers to educational engagement and tackles the underlying causes of nonattendance it will not deliver results. There is a huge body of evidence out there about the underlying causes of poor attendance and poor outcomes and about which programs and interventions have been shown to work and make a difference.

The findings of the Western Australian Aboriginal Child Health Survey and the work of Professor Fiona Stanley and Colleen Hayward indicate that low school attendance was most likely to result from student disengagement arising from frustration and lowered self-esteem as a result of poor school performance. It suggested part of the problem was a lack of understanding and identification with the values, expectations and ethos of the school and the failure of the school to be culturally relevant in ways that respect and validate the student’s identity, culture and life experience. It also suggested the failure to provide educational experiences that were relevant to the child’s life circumstances was a much greater factor than parental responsibility and was highly dismissive of the stereotypes presented by the media which sought to blame lazy and neglectful parents for the truancy of their kids—the same stereotypes that now seem to be informing the approach being taken by this government.

The factors the WA Aboriginal Child Health Survey found to be associated with attendance at school by Aboriginal students in particular included Aboriginality and poverty. Students in schools with a high proportion of Aboriginal students, schools that had Aboriginal and Islander Education Officers and government schools in the highest quartile of socioeconomic index for schools were more likely to have poor school attendance. Other causes included: trouble getting enough sleep at home, often due to overcrowded and inappropriate housing and a rise in family conflict; the education experience and achievement of the carers; the presence of clinically significant emotional or behavioural difficulties; the number of recent significant family life stress events; the lack of access to early childhood education; and nonattendance at day care. Students were more likely to have missed 26 days or more of school a year if their main language...
spoken in the playground was Aboriginal English or an Aboriginal language.

One significant finding of this research is a direct empirical link between intergenerational trauma and poor school attendance. Children whose primary carer had been forcibly removed from their family as a result of policies which produced the stolen generation were much more likely to be absent from school, and I quote:

The survey found that the proportion of students who has missed at least 26 days of school was significantly higher among students whose primary carer was forcibly separated from their natural family than among those whose primary carer had not been separated.

This is why I find it particularly disturbing that the same Rudd Labor government that commenced its term by delivering a historic apology to the stolen generations could be so blind to the impacts of the trauma of that removal that it would continue to implement and expand policies that exacerbate the ongoing problems of those Aboriginal families. It is entirely understandable that parents and carers whose experience of education was being brought up in institutions that brutalised them and denied their humanity, their worth and their culture would have a low opinion of the worth of schooling and a distrust of educational authorities. Of course these values have been passed on within families. It is little wonder that parents and carers who were removed from their families and brought up in institutions subsequently struggled with child rearing when they had families of their own. For this group in particular, who represent a significant proportion of the Nyoongar community concentrated in the Cannington trial area, a punitive approach to schooling engagement is particularly inappropriate.

In evidence to the committee, Professor Larissa Behrendt summarised the results of a number of studies which showed that poor school attendance by Aboriginal children was associated with low socioeconomic status, low parental achievement, domestic violence, child abuse and drug and alcohol abuse. Others, including WACOSS and the ALS in WA, highlighted the link between poor health and school attendance. For instance, the NACCHO Ear Trial and School Attendance Project found that children with chronic ear infections missed more days of school and had much worse educational outcomes.

The 1999 NT Learning lessons report also found that children with low attendance rates were more likely to have hearing loss resulting from chronic ear disease. If these kids were unable to hear what the teacher was saying it is little wonder that they were doing poorly at school. Poor nutrition, together with hunger from not having breakfast or not being able to bring lunch, have been found to impact on both school attendance and school outcomes. So too have inadequate housing, homelessness and a lack of sufficient sleep. I could go on and on. These are all significant issues which create real barriers to school attendance and educational outcomes, and they should be addressed by the Commonwealth, state and territory governments as a priority.

I mentioned earlier the NT Learning lessons report from 1999. This major report also found that there was: ‘A widespread desire amongst Indigenous people for improvements in the education of their children.’ It blamed long-term systemic failures within NT education and described poor attendance rates as ‘an educational crisis’, recommending major changes to the Northern Territory education system and a significant commitment of resources to address underlying issues in health and housing as well as to provide more teachers, classrooms and education resources. It also pointed to the need to
collaborate and engage with Aboriginal families and communities, saying that there was:

... a need to establish partnerships between Indigenous parents, communities, and peak bodies, the service providers and both the NT and Commonwealth Governments ... to honestly acknowledge the gravity and causes of declining outcomes, its destructiveness to future Indigenous aspirations ... and to assume the joint responsibility of immediately reversing the downward trend.

That was in 1999, and the NT government has yet to implement the recommendations of this report. It has not even developed an attendance strategy, as was recommended in that report.

We need to build on what we know works. We should be fixing health and housing, addressing poverty and making sure kids are not starving and can hear and understand what is going on in their classroom. We should be encouraging families to get more involved with the school and making school more relevant to the interests, experiences and culture of the kids—not wasting money on these ill-founded, wrongheaded, punitive regimes. Focusing on addressing these underlying causal factors and building on existing successful programs is a more sensible, evidence-based approach which is more likely to produce worthwhile outcomes and deliver value for money.

We know the NT government currently lacks the capacity to cater for all of its eligible students. If all of those students who should be at school turned up tomorrow, there would simply not be enough desks, classrooms or teachers to cope. The Commonwealth government has a four-year plan to address capacity and resource constraints within the NT school system and has committed $98.8 million in the 2008-09 budget to provide for 200 new teachers. Perhaps it would make more sense to roll out these positive programs to engage Indigenous students in the NT as teachers, schools and desks become available. The Australian Education Union doubts if enough experienced teachers can be found to fill these places. The NTER review report thought that much more needed to be spent to close the gap in education and said an extra $1.7 billion was needed over five years to provide more teachers, more staff and more infrastructure.

One might ask: is it really a trial when the legislation is not limited to eight trial sites? The legislation could be rolled out across Australia. If in fact it is only a trial, we believe the government should accept the amendments the Greens are seeking to move—amendments that really limit this trial to the eight sites the government says it is going to be applied to. There is no sufficient detail on how this is going to be evaluated. This is a punitive approach. There is nothing to say that it is a positive approach, an incentives-based approach, and at this stage there is no time limit. I have many, many questions to ask during the committee stage of this debate. Many questions arose during the committee inquiry that remain unanswered and many questions have arisen since then.

Why are we not looking at the positive approaches that can be taken, rather than the punitive approaches? There are examples of best practice programs in education which focus on increasing student engagement by making educational materials and programs more relevant and accessible and by engaging families and communities in the cultural life of the school. That is where we should be investing our resources. Has the government thought about how it is going to deal with the many issues that are going to arise out of this trial? What happens to vulnerable children and their families? What happens to the young carers who, during the committee inquiry in Perth, we found were a particularly at-risk group? Young carers are a not properly identified group that are going to be ad-
versely impacted by these so-called trials. We believe this will have a disproportionate impact on young carers who are already struggling to care for a parent or a family member with a disability or chronic illness. Many of these young carers are embarrassed or ashamed of their caring arrangements and are known to be reluctant to acknowledge issues and come forward for health. This issue may become particularly fraught where they are caring for parent who has an intermittent mental health problem—which would be likely to be exacerbated by contact from Centrelink and the threat of income suspension. We are particularly concerned about this group.

We are deeply, deeply concerned about this legislation. We oppose it to the hilt—in case anybody has not got that clear message. It is not the appropriate way to deal with these significant issues of disadvantage in the year 2008. I urge the opposition, with all their concerns about this legislation, to stand with us and oppose this and push the government into taking a truly socially inclusive agenda. I cannot believe a Rudd government would bring this in. (Time expired)

Senator McEwen (South Australia)
(10.27 pm)—I seek leave to incorporate a second reading speech on behalf of Senator Xenophon.

Leave granted.

Senator Xenophon (South Australia)
(10.27 pm)—The incorporated speech read as follows—

I rise to indicate that while I support the second reading of these bills, I will be monitoring the bill’s implementation and trial closely.

The Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Bill 2008 will allow the suspension or cancellation of income support payments to a parent whose child is either not enrolled in school or has unsatisfactory attendance at school. It also provides for a trial in a number of sites before its future implementation nationally.

From the outset, I want to make it unequivocally clear, I support any measure that will get and keep students in school.

The evidence is clear that the more and the longer a student is at school, the better it is for lifelong employment, health and socio-economic prospects.

It results in better quality lives for the individual and ultimately less demand on the taxpayer.

However, my concern with these bills is that they do not go far enough.

It is my view that the Government could be doing much more than what is contained in these bills.

What concerns me further is that the Coalition, by indicating it will support these bills, may be taking an easier option with truancy.

Mr Acting Deputy President, truancy and student disengagement are serious issues in our schools.

According to the Minister, currently up to 20,000 children are not enrolled in school.

School attendance rates vary, but in my home state of South Australia, the latest official estimate of overall non-attendance was around 7% of students. Of these, over 17% were indigenous.

In a specific study in Term Two 2004, over 10% of students were absent for more than 20% of the term.

The highest rates of unexplained absences in my state are in Year 10 - when one in ten students give no reason for not being at school.

School retention rates are also a problem and while State Governments are loath to release this data, official estimates are that one in four students who start Year 8 do not complete Year 12.

The Government rightly points out that the challenges of enrolment, attendance and retention are greater in urban fringe schools and socially disadvantaged areas.

However, what is the Government’s solution?

To take away welfare payments to parents for up to 13 weeks if their child is not enrolled in or attending school.

I see a number of challenges with this strategy.
Firstly, there is the assumption that people receiving welfare are the problem. It is not just the unemployed or those in need of income support that may not ensure their children attend school regularly.

There are also the underemployed, the single parents, those with mental health issues or parents with drug problems, all of whom may not receive pensions, but some of whom may condone truancy.

And what of those parents who are more affluent but still turn a blind eye to truancy, is their child’s lack of attendance any less important?

I would have liked the Government to have brought a more comprehensive approach using other incentives, perhaps tax penalties, for all parents who do not insist on their children attending school.

Truancy comes at a cost to the individual and the taxpayer, both now and in the future.

Yet some could interpret this bill to be less like an education revolution and more like an education devolution of responsibility.

Where is the evidence that parents on pensions value the education of their children less than other parents?

Why does support for one’s income imply less support for education?

Surely a case could be made that it is those without work who are most keenly aware of the value of education for work.

The risk with this bill is that it obscures the multiple and complex influences on truancy, which demand serious and sophisticated response.

Many other things can influence truancy beyond just the actions of the parent. For instance, there is lack of transport, bullying, having to care for family members, poor health and poverty, just to name a few.

And what about the responsibility of schools?

School culture, irrelevant curriculum, poor quality teaching and lack of time for individual attention can all contribute to truancy.

When one reads the research in relation to the middle years of schooling, it becomes quite clear that the transition between primary and secondary school can also be a major contributing factor to student disengagement and truancy.

Research on South Australian schools confirms that unexplained absence rates increase significantly as students enter the high school years.

As students shift from a form of schooling that focuses on the individual and the interdisciplinary, to a form that emphasises the competitive and the disciplinary, many students struggle to cope.

The longitudinal surveys of youth, conducted by the Australian Council of Educational Research, highlight that many of the students who are deciding to leave school early, in fact do so in the first years of high school.

This involves planning and funding, not just pension cuts.

More funding to attract better quality teachers.

More funding to develop innovative and relevant curriculum.

More funding for smaller class sizes and more attention to individual student needs.

Governments need to consider ways to invest, rather than ways to divest.

In the light of research that shows that punitive measures have little impact on serious cases of truancy, why focus solely on taking away parents’ pensions?

What are the possible negative consequences for cancelling payments to the child through things further social exclusion?

Will this provision act as a disincentive to foster carers or others who would otherwise seek to help children in need, but do not want to risk their welfare payments?

Amongst lower socio-economic areas and amongst consistent truants there are issues of students shifting between schools, due to shifting between parents, or school suspension, or behaviour issues. How will this issue of student churn be addressed so that those most likely not to be enrolled are not overlooked?

Different states have different policies and procedures, so potentially a parent could lose their pension in one state, while another parent keeps theirs. How is this fair?
This equally applies to schools. How will consistency be maintained to avoid the risk that some schools penalise certain parents, but respond less harshly to others?

Will this bill result in an even greater administrative load on teachers, who are already stretched to find enough time in the day to meet their teaching responsibilities?

Government and non-government schools have different methods of recording attendance, how will consistency be maintained?

How will the department really know what is going on with such diverse reporting methods?

In his submission to the Senate Inquiry into this bill, Mr Graham Carters, Deputy Secretary for Employment and Policy with the department admitted that the Government does not know if the approach will be effective.

I believe there is merit in the Government trialling this measure, to see if it makes a difference and to see if my concerns are validated in the real world.

And the case can be made that despite all these challenges, any measure to curb truancy is better than none.

That is why I support these bills.

But my most serious concern is not so much about the trial, but more about the nature of trial’s review.

In short, there is limited detail about how the trial will be handled.

No report to parliament.

No role for an Ombudsman or auditor.

Doubt about an independent review.

Not even clarity about if and how the department will release the results.

I have concerns about a bill that provides for a trial to be extended nationwide without independent review, parliamentary scrutiny or even the publication of its outcomes.

I wonder how representative this is?

It is a bit like asking three people with debt problems how much they owe on their credit card and without consultation setting a nationwide limit on credit.

I urge the Government, in coming weeks to clearly addresses this issue of proper, public and independent review of the trial, prior to its broader implementation.

Not because it will win my vote and not because it will change the Senate’s vote – but because it is the responsible thing to do.

That said, I indicate that I will support this bill and will be seeking information from the Minister in coming months to monitor the outcomes of this trial.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.27 pm)—In summing up the debate, I thank senators for their contribution on the Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Bill 2008, and I will seek to put the government’s position. Senator Siewert has expressed her views on the matter very strongly. I think that it is important to set the record straight. The fundamental position that the government argues is that it is absolutely critical that all children attend school. We cannot have educational attainment if people do not go to school.

Senator Siewert interjecting—

Senator CARR—It is a fundamental proposition.

Senator Williams—There’s no argument here.

Senator CARR—I appreciate that there is no argument there, but I think it needs to be emphasised that this bill is aimed at ensuring that all children in Australia go to school.

Senator Siewert—No, it’s not.

Senator CARR—I acknowledge Senator Siewert’s points and the deeply held view that she has and that there are concerns being expressed in the community at large about this matter, but it is important to emphasise that this simple proposition involves a trial in selected locations around the country. It is a trial to establish whether the strategies pro-
posed here will have a positive impact on school enrolment and attendance rates. This is an opportunity to demonstrate whether or not these strategies actually work.

There have of course been sincere concerns raised by community organisations who have made submissions to the Senate inquiry on these questions—which were reflected in some of the passion with which Senator Siewert has approached this matter tonight. However, it is important to get the facts on the table in this regard. The proposed trial phase of the measure and the evaluation will be considered carefully by the government before any extension of this program is approved. This is a measure that is aimed at ensuring that parents in the trial areas do all that they can to ensure that their children go to school.

There are measures in this bill which do involve possible temporary suspension of Centrelink payments. Such sanction will be used as a last resort and only after multiple opportunities have been provided for parents to engage with their children’s schools and with Centrelink. Whatever one says about the merits of such an approach, you cannot deny the fact that this is not unique with regard to the application and the operations of Centrelink. Centrelink suspending payments and restoring payments is not a new practice; in fact, it is normal operating procedure for Centrelink. This, however, has to be seen in the context of this particular measure, which is aimed at encouraging people to do all they can to make sure their children go to school.

With respect to the overall package, it would be wrong to address these issues merely in terms of the discussion around sanctions, because this is a bill that provides some $17.6 million in federal funding to support these measures. That involves support under the Northern Territory emergency response funding. Eighteen new classrooms are expected to be completed by the end of the year at remote schools—14 in government-run schools and four for Our Lady of the Sacred Heart School at Wadeye. Funding was also provided through the 2008-09 federal budget for a further six remote area classrooms. The Australian government is also contributing $16 million towards the construction of the Tiwi College and almost $100 million over five years to place 200 extra teachers in remote area schools.

The Australian government is also providing $8.4 million in 2008 for a quality teacher package and an accelerated literacy measure. The package will assist in reducing teacher turnover in remote schools by strengthening the skills of the existing educational workforce with a particular emphasis on local Indigenous staff. It will provide assistance to 45 remote government and non-government schools, including those at Wadeye, at Hermannsburg and on the Tiwi Islands. A further $5 million will also be provided to build 10 new teacher houses at Wadeye. This is part of the Australian government’s commitment to help recruit quality teachers and improve learning opportunities for Indigenous children.

So I would suggest to the Greens in terms of their critique of this particular program that they look at the full program and actually take a balanced view on these questions. In essence, the government is saying that, if you want to ensure that every child is able to attain the maximum of their ability within our education system, a fundamental requirement is that they go to school. We will do all we can in terms of the Commonwealth providing resources to ensure the quality of the education experience for children who do go to school. But it is also up to parents to ensure that their children attend school and take advantage of those facilities.
This is an additional tool, and the government is prepared to evaluate it and, after careful consideration, assess how it works. The truth of the matter is: for too long in this country we have had attainment rates that have meant that significant proportions of the Australian population have missed out. They have missed out in many respects. All the indicators suggest to me that, in terms of the equity measures, we are falling behind. It is the government’s view that further additional measures need to be taken to evaluate whether or not we can improve our performance. This is one such measure. I commend the bill to the chamber.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator SIEWERT (Western Australia) (10.34 pm)—I move Greens amendment (1) on sheet 5656:

(1) Schedule 1, item 6, page 5 (after line 26), after the heading to division 1, insert:

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(1) This Part applies only in respect of attendance at a school in a declared community.

(2) The Minister may, by legislative instrument, determine that a community is a declared community for the purposes of this section.

(3) For the purposes of this section, a community may be:

(a) a named rural or urban population centre with no more than 15 schools in the affected area; or

(b) a region defined by geographical boundaries with a population not exceeding 10 000 people.

(4) The Minister may determine no more than eight communities to be declared communities for the purposes of this section.

(5) A determination made under subsection (2) ceases to have effect 12 months after it commences, at which time this Part ceases to apply in respect of that community.

This amendment relates to the trials as part of this legislation. I also have some questions that I would like to ask the government. Firstly, could the minister tell me if the Social Inclusion Board was consulted about this legislation. If they were, what were their comments and recommendations and did they in fact support the bill?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.35 pm)—The Social Inclusion Board has been consulted about this measure and is not supportive.

Senator SIEWERT (Western Australia) (10.35 pm)—So they agree with the opinion of the Greens that this is not part of delivering the government’s social inclusion agenda?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.35 pm)—I cannot expand on my answer any more than I have provided.

Senator SIEWERT (Western Australia) (10.35 pm)—Although the minister said this was simple legislation to ensure that all Australian children go to school, and that these were trials—and I will get to the issue of the trials shortly—this is in fact only about children of families on income support. So it is incorrect to say that it is about all Australian children.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.36 pm)—Within the trial areas, this program applies to all citizens who are on income support.

Senator SIEWERT (Western Australia) (10.36 pm)—Minister, what you said about this program applying to all Australian chil-
children was incorrect, because it only applies to the children of families on income support. I go to the issue of it being simple; in fact, it is very complex, and I need to ask a series of questions to try and work my way through some of the complex issues this legislation throws up. One of those many issues concerns families who have their income suspended. I understand from answers that DEWR have previously given during the committee inquiry that, in most cases when people are suspended, they will get their payments restored if they comply within days. Can the minister assure the Senate that, when families do have their income suspended and they then comply within days, they will have their payments reinstated by Centrelink and receive the moneys owed to them within days?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.38 pm)—I am advised that assurance can be given.

Senator SIEWERT (Western Australia) (10.38 pm)—If a parent who is grandfathered under DSP has their payments suspended or cancelled and they then comply, so they reconnect with Centrelink and their payments are restored, will they still be eligible for DSP or will they be moved onto Newstart?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.38 pm)—DSP, if it is within 13 weeks.

Senator SIEWERT (Western Australia) (10.38 pm)—Thank you for the answer. If their payments are suspended and they do not reconnect, they will no longer be considered as part of the grandfathered group. Is that correct?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.38 pm)—Centrelink will make repeated efforts within the 13-week period to ensure that people are actually attending school and that they are brought back into the system forthwith. If it is beyond the 13-week period, their payments will cease.

Senator SIEWERT (Western Australia) (10.39 pm)—When you talk about Centrelink making efforts to address the truancy issue, my understanding from the committee inquiry is that Centrelink’s job is basically to comply with the information that is passed to them from the education department in either the NT or Western Australia. This is a tool to help the states implement a truancy program or a school re-engagement program. Do the state, the education department and the school continue the engagement with the family or is that passed over to Centrelink?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.40 pm)—It will be both.

Senator SIEWERT (Western Australia) (10.40 pm)—What requirements are there on the schools to ensure that they contact families and offer them help to tackle truancy problems?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.40 pm)—It is the intention of the Commonwealth Department of Education to have bilateral arrangements with each of the school systems in Australia to ensure that these arrangements are understood and that the obligations of the system are actually understood in terms of the trial.

Senator SIEWERT (Western Australia) (10.40 pm)—I am not trying to verbal you here, Minister, but you just said ‘all the states of Australia’. Do you mean the states in which this program is being applied or all the states of Australia?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.41 pm)—I think I referred to the systems that are affected by the trial areas. That
means the states of Western Australia and the Northern Territory and the independent Catholic systems that operate within those particular districts in which the trials are operating.

Senator SIEWERT (Western Australia) (10.41 pm)—When is it intended to develop these bilaterals? Presumably, they will be in place before the trial starts.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.41 pm)—I am advised that these bilaterals are already well developed and that the department is looking to finalise them in the near future.

Senator SIEWERT (Western Australia) (10.41 pm)—I would like to look at the issues around the development of attendance strategies. Is the Commonwealth requiring the development of these attendance strategies before the trial starts? We know that the NT does not have an attendance strategy. I found that out during the committee inquiry. Is that the intention?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.42 pm)—You are probably already aware that Western Australia, in particular, has a highly developed attendance strategy. I am sure you would be aware of the details of that so I will not labour the point. The intention of the Commonwealth is to work cooperatively with the state and with the Northern Territory on similar terms and to be able to intercede at the appropriate points within their strategies as they are already in existence.

Senator SIEWERT (Western Australia) (10.42 pm)—With all due respect, Minister, you did not answer all of my question. You answered part of it on Western Australia but you did not answer it in terms of the Northern Territory or the other state or territory in which the eighth trial is to take place.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.43 pm)—The officials advise me that the other state that you referred to is yet to be determined. In the case of the Northern Territory, there is advanced work on the development of their strategy, and the principles I outlined in my previous answer will also apply.

Senator SIEWERT (Western Australia) (10.43 pm)—So will you be requiring that to be completed before the trial starts?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.43 pm)—Yes.

Senator SIEWERT (Western Australia) (10.44 pm)—If the eighth site is not in Western Australia or in the Northern Territory but in another state, will that be a requirement on that particular system as well?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.44 pm)—Yes.

Senator SIEWERT (Western Australia) (10.44 pm)—Is assistance going to be offered to the schools that are affected by this program to engage in implementing the state attendance strategy?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.44 pm)—The respective state authorities or territory authorities will be working with the schools to ensure the appropriate support is provided.

Senator SIEWERT (Western Australia) (10.44 pm)—Does that mean that the schools will have in place their own attendance strategies before the trial starts?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.44 pm)—It would be expected that that would be the case.
Senator SIEWERT (Western Australia) (10.45 pm)—A lot of the evidence we received during the inquiry indicated that there was a lot of thought that the schools in fact had insufficient resources to adequately implement an attendance strategy. It was suggested that that is why they do not have adequate attendance strategies, because they do not have the resources. What is the government’s intended approach if in fact that is the case and schools do not have adequate resources to implement an attendance strategy?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.45 pm)—The advice that I have is that it is primarily a matter of responsibility for the state, or the territory in this case. However, if it can be demonstrated that the parents and the school are doing all they can within the existing resources, there would be no penalty applied.

Senator SIEWERT (Western Australia) (10.46 pm)—Once Centrelink is notified of nonattendance of a particular child, will Centrelink be obliged to determine if the school does have an appropriate attendance strategy before they take any further action?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.46 pm)—Those principles are already identified in the bilateral agreement.

Senator SIEWERT (Western Australia) (10.46 pm)—The principles that they in fact do have to take that into account?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.46 pm)—Yes.

Senator SIEWERT (Western Australia) (10.46 pm)—How is Centrelink going to confirm with state and territory education authorities whether a particular notification of an individual complies with the actual state or territory attendance rules?
doing the reasonableness steps, not Centrelink.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.49 pm)—I am advised that once a notification has been made by the education authorities—that is the primary action that is required—Centrelink can make a determination as to whether or not there is a reasonable explanation for the child’s absence from school. If the parent is unhappy with that explanation, the normal appeal provisions of the Social Security Act apply.

Senator SIEWERT (Western Australia) (10.50 pm)—If I have got this right, what happens is that if it is to address issues like bullying et cetera it will get to the point where their income is suspended before they get to appeal.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.50 pm)—No, I am advised that is not the case. The payment is not suspended pending an appeal. In fact, there is an opportunity to intervene prior to the suspension of payments.

Senator SIEWERT (Western Australia) (10.50 pm)—I appreciate the answers. This is about trying to help make sure parents are exercising their responsibilities to try and get their kids to school. In an answer to a question of DEEWR during the committee inquiry about parents getting help to address some of these issues, because in many of these cases the parents will be aware that their kids are not getting to school and want to start dealing with that, DEEWR indicated that a person can seek support from Centrelink social workers at any time to help them with attendance issues. What is meant by ‘any time’? Does it have to apply to parents once notification has been made? Or, if parents are recognising it as an issue that they need help with, can they go to Centrelink at any time and not have to wait for notification?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.52 pm)—I am advised that parents in the particular trial area will be provided with full information on the services that are available through Centrelink and the availability of such services within that trial area.

Senator SIEWERT (Western Australia) (10.52 pm)—With all due respect, Minister, that did not quite answer my question. You said that there would be a leaflet sent out to people in the trial area, but can people then at any time, if they recognise that there is a pending problem, go into Centrelink and seek help?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.52 pm)—The answer is yes.

Senator SIEWERT (Western Australia) (10.52 pm)—Thank you. DEEWR answered another question—No. 25—about individual learning plans. Will students be offered this as part of this process?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.53 pm)—The senator referred to a previously answered question, No. 25, and the answer has not changed.

Senator SIEWERT (Western Australia) (10.53 pm)—I thank the minister for the answer. I have asked this question before but we have not received a totally satisfactory answer. It is the issue about how the transfer of information from the school to Centrelink is going to be done. I have expressed concern previously that we are being asked to vote on a piece of legislation that has quite serious privacy issues that have not been resolved. We have not to date had an adequate answer about how this is going to happen. Is the school going to be given a list of the people on income support in the area or the students...
who are at the school whose parents are on income support, or do they provide to Centrelink the names of every child in their school who is playing truant?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.54 pm)—I will try to answer your question. It is the decision of the education authority to notify that a student has not attended school. It is then the responsibility of Centrelink to determine whether or not that particular student’s parents receive income support. There should be no question of privacy involved because there is not actually a list provided to the school of students whose families are receiving income support through Centrelink.

Senator SIEWERT (Western Australia) (10.55 pm)—I very much appreciate the clarification of the fact that the schools will not have a list of the children on income support. But that raises another issue: does that mean that the education authorities will then be providing the name of every student who plays truant to Centrelink, whether they are on income support or not?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.55 pm)—The decision to report a student as being absent will of course be in the hands of the education authority—the school. It is Centrelink that makes the decision as to whether or not that person’s family is actually in receipt of income support. I am advised that if the student’s parents do not receive income support the records on that matter will be destroyed. It is up to Centrelink to make a determination as to whether or not the explanation for the student’s absence is satisfactory.

Senator SIEWERT (Western Australia) (10.56 pm)—That is presumably after the school has already engaged in the process with the parents about whether they have taken reasonable steps and there is a reasonable excuse for the absence.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.56 pm)—The answer is yes.

Senator SIEWERT (Western Australia) (10.56 pm)—I promise that I am trying to make this as quick as possible. I understand that there will be policy guidelines developed that include examples of special circumstances and reasonable excuses and what count as reasonable efforts by parents and carers to encourage attendance at school. I am wondering if those guidelines are available.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.57 pm)—I am advised that the guidelines are still being finalised.

Senator SIEWERT (Western Australia) (10.57 pm)—Is it safe to assume that these guidelines are going through a consultation process, and will they be in place before the trial starts?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.57 pm)—These guidelines are being prepared as part of a consultation process. They will be published and they will be disallowable instruments.

Senator SIEWERT (Western Australia) (10.57 pm)—Thank you. I appreciate your answer, Minister. I would like to ask a couple of specific questions about the trials and the nature of the trials. Have you determined the eighth community yet?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.58 pm)—That is a decision of government and that has yet to be made.

Senator SIEWERT (Western Australia) (10.58 pm)—Could you confirm how long the trial will continue?
Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.58 pm)—It is intended that the trials will continue for 12 months.

Senator SIEWERT (Western Australia) (10.58 pm)—What evaluation process has been put in place for these trials?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.58 pm)—The normal evaluation processes would apply and of course the particular details are still in the process of development.

Senator SIEWERT (Western Australia) (10.58 pm)—Will there be a consultation process with academics with the relevant expertise around the trials? I understand that the concept of the trials was in fact not developed with academics with relevant expertise.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (10.59 pm)—It is anticipated that elements of the evaluation will be undertaken by expert academic opinion. The number of persons consulted and their involvement are yet to be determined, but it is expected that there will be an opportunity.

Senator SIEWERT (Western Australia) (10.59 pm)—What will you define as a success?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.00 pm)—I am advised that the intention is to evaluate the trials against the attendance records—the baseline as it appears now and how it will appear in 12 months time. Attempts will also be made to evaluate attitudinal change and behavioural change within the trial area.

Senator SIEWERT (Western Australia) (11.00 pm)—What will be considered a successful increase in attendance?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.00 pm)—The intention here is to increase the level of attendance at school. That is how we will measure success.

Senator SIEWERT (Western Australia) (11.01 pm)—What measures will be put in place to measure any negative impacts? What will be considered a negative impact? For example, you may get, say, a one per cent increase in attendance rates but there may also be a significant increase in domestic violence, in family conflict or in a number of other social issues I could mention. Are you measuring those issues? What degree will you consider acceptable?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.01 pm)—The intention here is to ensure that a full range of evaluative measures are undertaken, including the take-up of service provision by other agencies within the trial area and the effect on behaviour within the family. I am advised to go to such questions as domestic violence and other antisocial activity that might occur within the trial areas, as much as that can be done.

Senator SIEWERT (Western Australia) (11.02 pm)—Will that include assessment and working with emergency relief providers, for example, to measure the increase in access to emergency relief? I know they are certainly expecting that in the Cannington area.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.02 pm)—Where Centrelink is aware of a referral, that will, of course, be part of the evaluation.

Senator SIEWERT (Western Australia) (11.02 pm)—Does that mean you will not be going to those emergency relief organisations and asking them if there has been an increase in people seeking emergency relief?
Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.02 pm)—Senator Siewert, I think you would appreciate that these social questions are quite complex. While it will be difficult to ascertain that this particular trial will be predominantly effective in measuring changes in that area, it is an intention of the program that there be discussions around these issues.

Senator SIEWERT (Western Australia) (11.03 pm)—I promise I will finish very shortly. These are trials of a particular technique intending to encourage increased school attendance. It is a punitive approach, a sanctions-based approach. Where are you comparing this approach to a positive approach? Are you, in fact, carrying out the same sorts of trials to measure the positive impacts, which we know actually work? We already know from looking at overseas examples that the punitive approach does not work. Where are you comparing like against like to measure what works best?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.04 pm)—This would be described, I am sure, as more of a carrot-and-stick approach than a punitive approach. The comparative data will be sought from schools across the trial areas. That means measuring schools that have poor attendance records against schools that have good attendance records and looking at the reasons why that is the case.

Senator SIEWERT (Western Australia) (11.04 pm)—So you are not, in fact, carrying out trials of any of the more positive, incentive based approaches that have more carrots than sticks. You are not carrying out that form of assessment. You have chosen to trial and assess only one particular approach.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.05 pm)—The government does not see that the approaches are mutually exclusive.

Senator SIEWERT (Western Australia) (11.05 pm)—Minister, this would go a lot more quickly if you answered my question. I asked: are you conducting trials of a similar nature, taking a carrot approach? Are you comparing like with like?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.05 pm)—It is the government’s belief that it is.

Senator SIEWERT (Western Australia) (11.05 pm)—Could you please point me towards the eight areas where you are, in fact, trialling an alternative, incentive based approach rather than the carrot-and-stick approach?

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.05 pm)—I think I have been through this as best as I can. I do not know that I can add anything further to what I have already said.

Senator SIEWERT (Western Australia) (11.05 pm)—You cannot tell me that, because you are not doing that. That is the answer. You are not actually comparing this approach to a positive, incentives based approach, which a lot of Australian and overseas evidence shows actually increases school attendance more effectively. I still have a lot of questions but I think I have taken up a great deal of the Senate’s time asking these questions. I note that there are still many unanswered questions around how this trial is going to operate and how it is going to be evaluated. You cannot possibly consider these trials adequate if you are not trialling them against something else, particularly something which we know, from overseas evidence, works better.

Greens amendment (1) seeks to actually do what the government says it is doing. The government said that this is a trial in eight
communities—we are being asked to pass the legislation before we know the eighth community—and that it is a trial for 12 months. What this amendment seeks to do is ensure that that is in fact the case, because the legislation at the moment is not based around a trial. It is legislation that can be rolled out across Australia to any community. It could be coming to you anytime. So Greens amendment (1) seeks to actually do what the government says it is doing, which is making this a trial for 12 months.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.07 pm)—I will save the chamber’s time by saying that the government is not able to support any of the amendments being proposed by the Greens. This is for the reasons outlined in my summing up speech and in the answers to the questions that have been posed today.

Senator SIEWERT (Western Australia) (11.08 pm)—I am wondering why the government is so insistent on saying these are trials for 12 months when the legislation is not based around a trial approach and can go across Australia. I find it hard to understand why the government is bringing in a piece of legislation that is so expansive when it says it is only really doing trials and that they will then be evaluating those trials.

Question negatived.

Senator SIEWERT (Western Australia) (11.09 pm)—I move Greens amendment (2) on sheet 5656:

(2) Schedule 1, item 6, page 5 (after line 26), after the heading to division 1, insert:

124AB Review of operation of Part

(1) The Minister must cause an independent review of the operation of this Part to be conducted as soon as possible after the first anniversary of the commencement of this Part and completed within 4 months of that anniversary.

(2) The review must report on:

(a) changes in truancy rates against baseline data and against comparable populations outside the trial areas;
(b) changes in truancy rates for families within affected communities based on income source and family type;
(c) comparison to outcomes of incentive-based initiatives;
(d) number of notifications given, how quickly families responded and number of families breached;
(e) impacts on the circumstances and well-being of those families involved including financial hardship, use of emergency support services, loss of housing or utilities, impacts on other children, family conflict;
(f) impacts on social services within the region including level of demand, level of services delivered, changes in the types of services delivered and level of unmet services;
(g) impacts on schools including concerns of teachers and principals, level of demand on school services, and changes in relationships between schools and families;
(h) impact on and level of service delivered by State or Territory education departments to support children at risk, teachers and families to tackle truancy;
(i) relative impacts on Indigenous and non-Indigenous families;
(j) relative impacts on migrant families, particularly humanitarian migrants within the Cannington region;
(k) the level of awareness and understanding of the measures of affected families;
(l) factors relating to the interaction with welfare quarantining and child protection measures;
any other matters considered relevant.

(3) The review must be conducted by a panel which must comprise not less than 5 persons, including:

(a) a person with expertise in child development;
(b) a person with expertise in primary and secondary education;
(c) a person with expertise in child protection;
(d) a person with expertise in community services;
(e) a person with expertise in Indigenous communities;
(f) a person with expertise in humanitarian migrant communities.

(4) The panel must give the Minister a written report of the review, and the Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of receiving the report.

This amendment seeks to put in place a review of the operation of this act. The Greens are not satisfied that the government will carry out an adequate evaluation of these so-called trials, and the information we have received—both today, through this process, and through the committee inquiry and answers to questions on notice—does not satisfy us that there will be an adequate and proper evaluation of these so-called trials. So this amendment is to put in place a review of the operation of this act to ensure that there is, in fact, a legislative base for a proper review so that we can be assured that any review will be effective.

Question put:

That the amendment (Senator Siewert’s) be agreed to.

The committee divided. [11.14 pm] (The Chairman—Senator the Hon. AB Ferguson)
(a) any notice given by the Secretary to a schooling requirement person in accordance with this Part must be in plain English or in the language of the person;

(b) where a period of time is determined under this Part by reference to the giving of a notice to a person, the period of time does not commence until:

(i) the notice is received by the person; and

(ii) the person has had an opportunity to meet with Centrelink staff.

This amendment is about notice requirements and interpretations of notice requirements. The amendment will ensure that a notice given by the secretory is in plain English or in the language of the person. Quite a lot of this legislation is based on ensuring that parents and the people involved know exactly what is going on. This amendment is about ensuring that notices are given in plain, easy to understand English or, where more appropriate, in the language of that particular person. When you consider that this legislation is largely targeted at Aboriginal communities—in particular, six communities in the Northern Territory as well as Aboriginal communities in Cannington, where there are also large culturally and linguistically diverse communities as a result of there being a lot of refugees living there—it is appropriate that the notices be given to people in a language that is appropriate.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.21 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Senator SIEWERT (Western Australia) (11.21 pm)—by leave—I ask that the Greens’ objection to the third reading of the bill be recorded.

ROAD CHARGES LEGISLATION REPEAL AND AMENDMENT BILL 2008

Returned from the House of Representatives

Message received from the House of Representatives agreeing to the amendments made by the Senate to the bill.

Third Reading

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (11.22 pm)—I move:

That this bill be now read a third time.

Question agreed to.

NATION-BUILDING FUNDS BILL 2008

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Nation-building Funds Bill 2008 and informing the Senate that the House has disagreed to the amendments made by the Senate, and desiring the reconsideration of the amendments.

Ordered that the message be considered in Committee of the Whole immediately.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (11.24 pm)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (11.24 pm)—I ask that the question be put separately on the amendments relating to the transfer of the Communications Fund; namely, amendments (3), (4), (5), (8), (10), (11), (12) and (13).
This goes to one of the most contentious and divisive times that I and the Nationals have been part of in this parliament. When I entered this parliament in 2005, the Telstra debate was front and centre. The Nationals went to the people of Australia and asked for their trust that, on the sale of Telstra, their interests would be protected. Through that process, funds were negotiated. There was the $1.1 billion Connect Australia fund and a $2 billion trust fund. I can remember every part of that debate. I can remember negotiating for the lifting of the Natural Heritage Trust of Australia Act for the assessment of how those funds would be delivered. I remember negotiations where they wanted it to be in shares and we made sure that we got it in cash at the 30-day bank bill rate. It was something that was fought up hill and down dale. The Australian people, especially the people of regional Australia, were extremely sceptical about whether or not they could trust us. This issue was one of trust, and we entered into a contract with the Australian people that we could be trusted.

The Labor Party pilloried us, especially the National Party, and said that we could not be trusted and that Telstra should remain a publicly owned entity. It is therefore surprising that tonight the Labor Party are moving to take away any semblance of protection of regional Australia, to move the funds that were there to protect those who want some form of parity. The funds were a life vest for people in regional Australia who had said, ‘We take on board that you have put aside the money, the returns on which can deal with the issues that come before us.’ We had quite substantial amounts, in the hundreds of millions, that were going to drop down for everything from mobile phone towers to broadband that would go out to the regions and deal with the issues that these people had so vehemently and rightly put forward to us.

These issues brought about a contract not just with the National Party but with the coalition, and the coalition have reflected that trust in the way they voted in the Senate only a matter of hours ago and in the lower house only a matter of an hour ago. And now this issue comes back to us. I believe the same trust, the same purpose and the same philosophy that were behind the earlier votes should stand now; that there is nothing to differentiate what happened at 10.22 from what will happen at around half past 11. It is the same issue and it raises the same concerns. The people of Australia, particularly people of regional Australia, would rightly pillory us, especially those of us in the National Party, if we were to have a different view. We would prove ourselves untrustworthy, and that is the decimation of any political force. This issue comes into a clearer light when we hear Telstra talk about providing a service some time way into the future to 80 per cent of Australia. That means the regional areas plus some and plus some again get left out.

It is unfortunate if at times there is a division. No-one wants a division. Everybody wants the capacity to go forward in a constructive way. But when the issue arises you cannot run away from it. You cannot say, ‘This is too close to another issue of the same concern; therefore it must be ignored.’ The honour that you have of sitting in this chamber means that you must call it the way you see it. I do not think for one moment that anybody reading a paper tomorrow—and this will be a big issue; this will be a monstrous issue—will expect anything less from this chamber, as part of this parliament, than to represent the people of Australia on the issues that you went into a contract with them on at the last election. You entered into a contract. You said that you would stand by your words. I know absolutely that, should a different opinion be reflected, people will
pull out every speech that everyone has made and say, ‘This is what you said then and this is what you say now. How do you explain to us that there has been some sort of epiphany, a change of mood?’ There is no explanation.

I know that the Labor Party will say, ‘If the $2 billion is to be removed from this fund and remain quarantined for regional telecommunications, the infrastructure fund will fall over.’ That is a load of rubbish. We have checked this out. We have had it from the Clerk of the Senate that this bill can go forward without that $2 billion in it and they can start spending the money as soon as they like. So there is not one reason why this $2 billion should not be quarantined and why the contract between the people of Australia and the people of this chamber should not be honoured.

The National Party stand here tonight to make sure that that contract is honoured and that that position is maintained. We say to the Australian people in all states that our intention tonight is not to play politics but to play the card of trust and to ensure that those funds remain in the capacity for which they were originally designed. We understand the circumspection that people had when they initially gave us that trust to go forward with this issue. We felt that. We saw the emails and the correspondence that came in. I hope that this in some way says that you could trust us then and you can still trust us now. We will stand by you and we will make sure that this thing is quarantined. We will make sure that people, no matter where they live in this great nation, have some sense of parity on the issue of communications. We will make sure that that parity is spread throughout our nation and not tucked up in little corners here and there.

The moment we start dividing our nation into the haves and the have-nots, into corners where the services are not, and as soon as we start making excuses for that, then the only people we fool are ourselves. And we do something worse than that: we take away the respect that the Australian people have for this chamber. So it is absolutely crucial tonight that the vote that we passed here earlier on today be respected, that the vote that the lower house passed only an hour ago is respected and that there is consistency. What underpins trust is consistency of purpose and consistency of actions.

The Labor Party have moved away from consistency and have completely denigrated the debate. We are seeing all the rhetoric and rubbish that we saw in the Telstra debate. They are doing that tonight in the way they vote. Without a shadow of a doubt, everything that they espoused about looking after regional Australia is rubbish. They are saying that clearly in the way they act tonight. They are moving that money away. They are going to use it for another purpose. They are cutting the people of regional Australia loose. We are not going to cut the people of regional Australia loose. I hope that there will be consistency and trust involved in the way that this chamber delivers an outcome.

To all those who had concerns about the sale of Telstra: you must vote to make sure that this $2 billion remains quarantined. To all those who believe the message that they sent to regional Australia through their papers and their speeches: it is important that that remains consistent and that you vote to make sure that this $2 billion is quarantined. You can only vote for the things you can actually deliver. You cannot vote for the delivery of a promise on the never-never—a promise that at some time in the future things will be better. People will say, ‘When you had the power and the capacity to make a difference, you did not act according to the contract and the warrant that we gave you, so
Chair, this is a crucial issue. I believe strongly that a coalition is the best form of government this nation has. I believe absolutely that the only way that a coalition can win an election—and that is what I will be aiming for—is to make sure that that warrant, that trust, those articles in the paper, those speeches, those telephone conversations and those public meetings are all honoured on such an absolutely iconic matter.

The CHAIRMAN—I just need to clarify your original position, Senator Joyce. I need to know whether, in requesting that clauses 3, 4, 5, 8, 10, 11, 12 and 13 be dealt with separately, you intended each clause to be dealt with on an individual basis or as a group.

Senator JOYCE—I see them as contemporaneous and to be dealt with as a single group.

The CHAIRMAN—So we will be dealing with all of those clauses as a group.

Senator JOYCE—Yes.

Senator BOSWELL (Queensland) (11.36 pm)—Labor’s attack on the telecommunications future of the regions has been further confirmed this week with this legislation, which scraps the $2 billion Communications Fund set up by the coalition to future-proof services in country Australia. The government’s Nation-building Funds Bill 2008 was successfully amended earlier today in the Senate to prevent the transfer of the Communications Fund to the Building Australia Fund.

The Communications Fund was pivotal to the Nationals’ support for the final sale of Telstra. When we passed the legislation to give this commitment life, the then Deputy Prime Minister, Mark Vaile, said:

What we are delivering today emanated from a resolution of the Queensland National Party’s conference in 2005, when they decided to support the sale of the final tranche of Telstra. There were a range of recommendations there and one of them was to create the perpetual Communications Fund with $2 billion, and it is done.

To understand how crucial this fund is to the Nationals and to the bush, I want to trace the history of the Telstra sales and canvass the issues that were front and centre for us. When I was first a senator, in the 1980s, it was not easy to contact a grazier in western Queensland unless you chartered a flight out there. Party lines meant that several families shared a single and often unreliable telephone line. STD call rates commonly applied between a homestead and a cottage on the same property. School of the Air services were also inadequate. New phone connections took months, and the onset of the wet could mean long outages of communication lines. Meanwhile, the rest of the world was improving its productivity, and cities were making leaps and bounds in communications based service delivery.

At that time, the Labor government owned Telecom. It was obvious that rural services would have to be greatly improved if primary industry were to be competitive and if rural families were to be treated the same as other Australians. The infrastructure upgrade required would be substantial. Labor had three choices: to fund the upgrade through its budget, to fund the upgrade through the sale of its shares in Telecom or to just leave Australia as it was. Labor chose the third option: they did nothing. The complaints about Telecom grew progressively worse.

Three years ago I tried to ring the same grazier out west whom I could not reach years ago because of the party line system. He took the call, on his mobile phone, out at the windmill on his property. Ten years had made a big difference to communications on
the land, thanks to a coalition government that was prepared to back rural Australia with cold, hard cash—cash which has bought hundreds of mobile phone towers, abolished the pastoral call rates so that that everyone is now on untimed local calls, put the internet into remote homesteads for the cost of a local call and enabled the rolling out of high-bandwidth services. Who had ever heard of 'bandwidth' 13 years ago?

Where did the cash come from for this revolution? Remember the harsh decisions that had to be made by the coalition’s expenditure review committee in the first few years of government to cope with the Beazley black hole? There was definitely no room in the budget for major capital investment in bush telephones and there were many competing demands from city MPs, who greatly outweighed rural MPs. So rural telecommunications was in dire straits.

Then came the sale of the first part of Telstra, in 1997. The T1 sale saw the establishment of Networking the Nation, a general fund for regional telecommunications infrastructure, which served to highlight how thirsty the bush was for telecommunications infrastructure. The budget bottom line meant that we could not apply for help. So the Nationals eyed off the sale of T2 as a momentous opportunity to fill the gaps identified by the NFF and the Networking the Nation fund. The T2 sale only went ahead once the Nationals had secured a landmark billion-dollar social bonus package for regional Australia. This suite of programs effectively brought rural Australia online, abolished the inequitable timed local calls and saw the installation of hundreds of mobile phone towers across rural and remote Australia. Local government, education, health and even legal services were enthusiastic participants in the great hook-up that occurred as a result of the social bonus package from T2. This partial sale of Telstra, owned by all Australians, funded the infrastructure needed by the bush. There was no other way to do it.

The new millennium found rural Australia very communicative. So many options and new technologies left everyone with a taste for more—more mobile coverage, faster speeds, fewer wires, fewer faults and shorter connection times. Service, service, service! The coalition government responded with two inquiries—the Besley inquiry, in 2001, which led primarily to $163 million for mobile phone towers in smaller and smaller towns, and the Estens inquiry, in 2003, which identified broadband issues and even more mobile phone towers to be funded by the government at a cost of over $180 million. While all this money was being spent, the coalition government also moved to tighten up the regulations governing telephone companies to improve competition and enforce a customer service guarantee. All of these measures were collectively responsible for the great leap forward in the bush. This would not have been possible if the sale of Telstra had not provided the cold, hard cash to reinvest in rural infrastructure.

Then we were faced with the sale of the balance of Telstra shares. There was $1.1 million reinvested in broadband and mobile connections in rural areas. This could not be funded from the budget. There was also a $2 billion perpetual communications fund to deliver rural communications into the future where it is not otherwise commercially viable to do so. This was no time to hang up on a telephone company out of nostalgia for the times when you could never get a line. If rural Australia wanted the technology, the competitiveness, the connectedness and the education, health and other services deliverable by modern communications then there was no going back to Telstra. Telstra had to be sold to finance the major, ongoing reinvestment required. Such was the thinking of
the Nationals and the people in rural, remote and regional Australia.

On 5 August 2005, state Nationals leaders from New South Wales, Queensland, Victoria, South Australia and Western Australia welcomed a unanimous resolution from a special joint conference of state National MPs on Telstra. This resolution mirrored the resolution that was passed by the Queensland Nationals conference the previous week and subsequently endorsed by federal Nationals MPs. It stated:

This meeting of state Nationals MPs from across Australia resolved to oppose the further sale of Telstra unless all Australians in metropolitan, regional, rural and remote areas are protected from telecommunications market failure which may prevent the provision of parity of technology, services and price into the future between metropolitan and regional areas.

Towards this goal, this meeting of National Party members of parliament called for the following implementation of this resolution:

The establishment of a permanent and significant trust fund with the earnings used to provide future technology and infrastructure upgrades at parity price and service with metropolitan services in case of market failure (utilising a competitive tender process that considers providers with a permanent presence in regional Australia).

Today the Senate is faced with a decision of whether to recant on this first pillar of the covenant we made with the bush. On the day we introduced legislation to live up to our commitment and had shaken hands with the people of the bush, the then minister for communications, Senator Helen Coonan, said that the telecommunications legislation amendment bill would ensure that regional Australia’s perpetual $2 billion Communications Fund could not be pillaged. She said the bill protected in legislation the $2 billion principal of the Communications Fund so that only the interest earned from the fund’s investment, up to $400 million every three years, would be spent. It would also provide certainty for the people in regional and remote Australia that the improvements in their telecommunications service would keep pace with the rest of the nation.

Labor had committed to draining the entire $2 billion from the Communications Fund, to rob the bush of its ongoing funding and to squander it on a commercially viable network estimated to reach around 75 per cent of the population. The passage of this bill through the parliament will protect rural and regional Australia from the gross economic irresponsibility of the Labor Party.

The Communications Fund was established by the Howard government in 2005 and provides a guaranteed income stream to fund hard infrastructure for regional communities such as additional mobile towers, broadband provision and even backhaul fibre capabilities. Interest earned from the Communications Fund is used to implement the government’s responses to recommendations made by the triennial independent regional telecommunications reviews.

In speaking on that bill I said that it seeks to lock up $2 billion that the National Party won in exchange for the sale of Telstra. In the party room or forums we said that, if Telstra is sold, then we want to ensure that rural and regional Australia never gets left behind as it was at the end of the Labor administration. I told the Senate that this bill seeks to lock in that $2 billion under the legislation and it can never be removed unless Labor has a majority in the Senate. I look around and I do not see a Labor majority in the Senate and we will see that when it comes to the vote.

I know that the Nationals do not walk away from a handshake with the people of the bush. We promised them this fund for their telecommunication future. They said: ‘On the basis of our trust in you to keep to
that, we say, “go ahead and finish the sale of Telstra”. I will walk across the floor before I will walk away from that trust. I note that the opposition in the other place has just voted to insist on the Senate’s amendments. When I vote that way too, who will be really crossing the floor?

Senator MINCHIN (South Australia) (11.47 pm)—What we are seeing tonight is really quite a disgraceful performance by the government. In my view the government is treating the Senate with utter contempt. Today we saw in one form or another all non-government senators combine to pass the government’s legislation but with amendments which substantially and considerably improve these government bills. Variously with the Greens, Senator Xenophon and Senator Fielding, the coalition has passed amendments to these bills which radically improve the transparency attached to the government’s dealings with the taxpayers’ billions of dollars and radically improve the accountability of the government to the parliament and to the people of Australia for the expenditure of those funds.

I point in particular to the proposed joint committee of oversight of these three particular funds and the reporting mechanisms that these amendments imposed on the government in relation to expenditure from these funds. They are all very sensible and very common sense amendments to ensure transparency by this government in its dealings with billions and billions of dollars of taxpayers’ funds.

One of the most significant amendments that has been carried by the Senate was to prevent the Labor Party raiding the Communications Fund established by this parliament. The Communications Fund was agreed by this parliament, with the support of the Labor Party, as a mechanism to set aside from the sale of Telstra—a sale which the Labor Party opposed to the bitter end—some $2 billion in perpetuity to ensure that the earnings of that fund, some $100 million a year, would be available in perpetuity to ensure that the telecommunications of rural and regional Australians were constantly capable of being improved in response to the reviews of the Glasson inquiry. That now, as proposed by the Labor Party, is all to be swept away.

The $2 billion would not be there if the Labor Party had had their way. If the Labor Party had had their way Telstra would never have been sold and there would have been no $2 billion. As a result of the compact, as Senator Boswell quite rightly said, that our government reached between rural Australia and the government, we sold Telstra and to ensure that rural and regional telecommunications would be constantly improved, we took $2 billion of the sale proceeds, put it in the Communications Fund and we locked it away from the ravages of future governments by guaranteeing in perpetuity that fund with the earnings available, as I said, to ensure the improvement of telecommunications.

The Labor Party has hypocritically and cynically taken that $2 billion and then they are going to destroy the Communications Fund and put the $2 billion towards their national broadband network. The whole country knows what a farce and a joke and a cruel hoax this national broadband network is. Today we have already seen just the administration costs of it blow out by 100 per cent. The government set aside in the budget $10 million to pay for all the legal fees and the consultants and everything else to administer this project. Today in the additional estimates they provided another $10 million to do that; a 100 per cent increase to $20 million to administer this. Where is that going to go? To the lawyers and the accountants on this mythical national broadband network,
the construction of which was meant to commence by the end of this year, in 27 days. What a joke!

That is what is going to happen to the $2 billion set aside for rural and regional Australia. It is to be blown on this national broadband network. I can guarantee rural and regional Australians are not going to see anything from the national broadband network. Not only that but the government has cancelled the OPEL contract, which was a guarantee by our government to put $1 billion towards providing high-speed broadband to rural and regional Australians. One of the first acts of this government was to abolish that OPEL contract. It was an outrageous act and a complete slur, a complete contempt on rural and regional Australians by this Labor government. So country Australians should be absolutely disgusted with this Labor government in its actions so far on telecommunications.

The fact is that the Senate has passed the government’s bills. We are not blocking these bills. We have passed these bills with amendments. And what has this arrogant government done? Tonight it has simply rejected all the amendments. I do not think there is one amendment that this government has been prepared to accept—‘No, we don’t want any of that; who cares about the Senate?’ For 60 years the Labor Party wanted to get rid of the Senate, and I think most of the Labor Party still want to get rid of the Senate. They have treated it with utter contempt tonight.

I regret to say that, on balance, it is the coalition’s position that we will not insist on these amendments. We know very well what the government will do if we vote here tonight to insist on these amendments. The government are so obsessed with spin. They do not actually make decisions; they just do the spin. They will assert, falsely and contemptuously—through the media machine that the government run—that the coalition has blocked these infrastructure bills. The government will spend the next two months falsely asserting all over the country that we are responsible for denying infrastructure funding to every road, bridge and port in the country, simply because we have sought to improve these flawed bills of the government.

We are not going to let the government get away with that. We are not prepared to let the government run that fallacious argument. It is utterly fallacious. We are not going to be cornered by the Labor Party on this issue. I guarantee to the Labor Party that the coalition will attack this Labor Party all over the country for the next two years for the contempt with which it is treating rural and regional Australia in relation to telecommunications. It is utterly disgraceful. I want to confirm tonight that a re-elected coalition government will guarantee in perpetuity $100 million each and every year to be taken from the budget and invested in rural and regional telecommunications. That is a commitment that I have authority to make on behalf of the coalition. When we are re-elected in some 18- to 20-months time, every year, in perpetuity, $100 million will be set aside in the budget to be invested in improvements in rural and regional telecommunications.

So it is with considerable sadness and regret that I confirm that we will not be insisting on what I think is a very good package of amendments which would have substantially improved this bill. What we are seeing tonight is the government treating rural and regional Australia with utter contempt, which everyone living outside metropolitan Australia should never forget—and not forget at the time of the next election.
Senator WILLIAMS (New South Wales) (11.54 pm)—I will be very brief. What a disgusting act this is! Everyone in this place and in the other place knows exactly why that $2 billion was put away in the fund. We know it is for those people out there in the bush—working hard, delivering the food, driving on the dirt roads and the rough roads—just to get a bit of a fair go when it comes to their telecommunications. I wish to express my disgust about what is happening. Minister Sherry used the word ‘outrageous’. I will use the word again: it is outrageous what they are doing. They are treating rural Australia with absolute contempt. It is a disgraceful act. The people of rural Australia will see this and they will let the government know come next election exactly what they think. That is all I have to say.

Senator NASH (New South Wales) (11.55 pm)—I rise tonight because I believe we absolutely should be insisting on these amendments. We stood here in this Senate this afternoon and we agreed to these amendments because they were right, they were proper and they were good for rural and regional Australia. I have not changed my mind in the last few hours. The same reasons that I agreed with those amendments a few hours ago still exist. Absolutely nothing has changed—not one single thing.

Let us have a little look at why the Communications Fund was set up. The Communications Fund was set up because we need to protect rural and regional Australia—it is as simple as that. We went through a whole process of looking at the sale of Telstra, and we here in the Nationals made sure that rural and regional Australia would be protected. There is absolutely no moving away from that. We did it because it was the right and proper thing to do. We knew back then, in 2005, when the Communications Fund was set up, that if we did not move to put that protection in place, rural and regional Australians would miss out on equity in telecommunications.

Why did we do it? We did it because of the sale of Telstra. We had to be absolutely sure that there was a mechanism in place to provide funding in perpetuity to future proof rural and regional Australia, and that is what we did. And we did it in good faith and we did it with the trust of people in rural Australia. As Senator Joyce, my good colleague, said earlier, it is about trust. They trusted us and they said, ‘You go and proceed with the sale of Telstra but we know that the Communications Fund is in place to look after us.’ And why now, just a few years down the track, should we be moving away from that position? We should not be. We should not be moving one step away from that position. Communications in rural and regional Australia is absolutely a priority for us—absolutely. To sit here now, a few hours after we have agreed to the amendment not to move the Communications Fund funding to the Building Australia Fund—

Senator Boswell—And after they voted for it in the House of Representatives.

Senator NASH—I will take that interjection, Senator Boswell: yes, after they voted for it in the Reps.

Senator Xenophon—An hour ago.

Senator NASH—Thank you, Senator Xenophon: an hour ago. Why is it that we are standing here now in this chamber potentially changing our minds? It is just completely wrong. That funding that was set up is there to ensure that we deliver those services. My advice is that in the House of Representatives this evening one of the reasons given by Labor for rejecting the amendment was that the national broadband network is expected to deliver significantly improved telecommunications services to rural and remote areas. Quite frankly, that is just a blatant lie—because, guess what? Those of you
in the chamber who do not know: Labor has absolutely no requirement that that $4.7 billion gets spent in regional Australia—not one bit of a requirement. And they are talking about taking this $2 billion and putting it towards that $4.7 billion. That $2 billion was set aside to future-proof rural and regional Australia, and there is absolutely no requirement from Labor to ensure that that goes to bush—not a single bit.

So what are we going to see? We are potentially going to see this $2 billion fund go into the $4.7 billion for the national broadband network and potentially see it rolled out in the cities. That is just wrong. We are going to uphold the trust that has been placed in us by the people of the bush. We are not going to step away from that for one second. It was okay three hours ago; it was okay an hour ago; and, to the Nationals sitting in this chamber, it is still okay—it is still right.

My good colleague sitting behind me, Senator Boswell, just said that he would walk across the floor before he would walk away from the people of the bush. That is exactly what we will do. We will not sit in this chamber and agree to hiving off that fund, taking it away from rural and regional Australia, the very people in this country who are probably doing it the toughest at the moment. I think that is the second time I have said that in this chamber this week. These are the very people who are doing it the toughest in this country, the very people who we ask to provide sustainability to this nation, the very people who we ask to provide food and fibre to this nation, and we say, ‘Oh, by the way—don’t worry about it—as for your telecommunications, we’ll let Labor just take off that $400 million every three years and throw it in the cities, because we don’t really care about you out there in the bush.’ That is not going to happen. That is absolutely not going to happen, because those people out in rural and regional Australia need our support. They trust us. As Senator Joyce said in his remarks earlier, they gave us their trust. We will not walk away from it. Our view in the Nationals is exactly the same as it was a few hours ago. It has not changed for any reason whatsoever and we will not be walking away from the people of rural and regional Australia.

Friday, 5 December 2008

Senator XENOPHON (South Australia) (12.01 am)—Earlier today I supported the amendments moved by the coalition in relation to accountability, transparency, scrutiny of how these taxpayers’ funds would be spent. I also supported very strongly the amendment that dealt with the Communications Fund. That fund will not be hived off and merged into the Building Australia Fund, dissipating the promises that were made for people of regional Australia. When you look at the history of this, when you look at what Senator Joyce achieved for the people of rural and regional Australia during the privatisation process of Telstra, you see he did the right thing in ensuring that there would be a $2 billion fund in perpetuity. That is what the Communications Fund was about. That was the covenant; that was a trust with the people of the bush to make sure that that money was there in perpetuity. The government’s assurances do not comfort me. The opposition did the right thing by moving those amendments.

I have a lot of regard for Senator Minchin but I cannot understand the logic of what the coalition has done, what the Liberal Party has done by saying, ‘All these measures of transparency and accountability—we’re not going to go ahead with them, we’re not going to insist on those amendments, for the simple reason that Labor’s spin machine will say we are holding it up.’ Let the government justify that having a greater degree of scrutiny and accountability with this fund is doing the wrong thing and is somehow under-
mining this fund. In fact, it enhances it. I do not get this. I do not get how something as fundamental and as basic as this could simply be abandoned.

Ten years ago, Hugh Mackay the social commentator wrote something that I have kept close to me. It was an article about the culture of broken promises and its cost—the acidic, corrosive effect it has on our faith in politicians and in our institutions of democracy. Mackay said that with trust in the political process being eroded with every bent principle, every broken promise and every policy backflip, the level of cynicism has reached breaking point for many Australians. He went on to say that once trust has gone we lose interest in the question of whether or not the truth is being told. We assume it is not most of the time, but we no longer find ourselves outraged. We lower our expectations and invite the politicians to live down to them. That downward spiral of expectation traps both of us. I am not going to be part of that downward spiral. I believe these amendments ought to be adhered to, that we ought to support them, and that is what I will be doing tonight.

**Senator McGauran** (Victoria) (12.04 am)—I, too, would like to register my condemnation of the Labor Party for dismantling the $2 billion Communications Fund established by the former coalition government under the T3 sale of Telstra for the purpose of improving rural and regional telecommunications. It was an agreement, as many of the speakers have mentioned tonight, with the rural and regional people, with their representatives at the time. Anyway who knows about T1, T2 and T3 knows that one of the hardest jobs we had in government was to sell any part of Telstra. We not only had the Labor Party standing against us at every level, but in the rural and regional areas, rightly, it was a tough sell. We established two independent inquiries, the Besley inquiry and the Estens inquiry—I do not know in what order; I have forgotten now—to advise the government on the state of telecommunications in rural and regional areas, and they both came up with inadequacies. There were gaps, there did need to be modernising and there did need to be specific funding. We took that recommendation of those two reports.

Under the sale of T3, we set up the $2 billion Communications Fund. Any rural and regional representative in this Senate and in the House knows just how hard it was—be it at branch meetings or community meetings—to convince the people that we should sell the final part of Telstra. It was one of the toughest sells in government, but people took us on trust because, firstly, it was the final down payment on Labor’s debt. It would bring the government debt to zero, which was an enormous achievement. We needed the final sale of Telstra to do that. Secondly, the safeguards would be in place—and strengthened, for that matter. For example, the universal service obligation would be strengthened. Many of the senators here tonight played a part in that. And, thirdly, of course, there would be a dedicated fund in perpetuity, the Communications Fund, to ensure and to future-proof the telecommunications of the rural and regional areas. That was, in parlance, a deal. A deal was done and for that reason the T3 sale went through. It was a sale that did, in fact, achieve every end that we sought, in particular reducing Labor’s debt to zero—quite an achievement in itself.

Tonight we see the dismantling of that fund and we see the dismantling of that deal. It reminds me very much of a former senator here, the legendary numbers man Senator Richardson, who blew the whistle on Labor—it was probably one of the more honest moments of his life—when he said, in his memoirs, *Whatever it takes*, that the Labor
Party had long worked out long ago that only about one per cent of the farmers will ever vote for Labor and, therefore, their cabinet decisions were undertaken accordingly. That is exactly what we are seeing here tonight—that the rural and regional people are being cheated by Labor because they do not see any purpose or any use in the rural and regional people because they just do not vote for them. That analysis has been carried out by the Rudd government, because to date, within 12 months—and I will not take the time to list the achievements of bush bashing, of farmer hating—the Rudd government has outdone the Hawke-Keating government when it comes to running down the rural and regional areas. This is a prime example. Tonight I was pleased to hear the Leader of the Opposition in the Senate, Senator Minchin, say that, on the re-election of a coalition government, this fund would be re-established. The rural and regional people will remember that.

Senator LUDLAM (Western Australia) (12.09 am)—I rise briefly to summarise the Greens’ position on this—in particular, our deep disappointment to see the Liberal Party backing down on the amendments about the joint committee to assess the expenditure of these funds. That was really something that we could have put through tonight.

I will speak just briefly about the Communications Fund. I have a great deal of sympathy for the position that the Nationals have found themselves in. A commitment was made as a consequence of the third stage of the privatisation of Telstra to put aside a fund that would essentially be paying for rural and regional telecommunications in perpetuity. They are quite correct to point out that nothing that is in the current request for proposals guarantees any kind of quarantining of the $4.7 billion worth of funding for the communities that we are all very concerned about, where telecommunications are extremely patchy. In some places, you cannot even get dial-up, let alone broadband. There is nothing in the request for proposals that says that all Australians will be getting this kind of coverage. In fact, the bid that Telstra has put in has not even got to the 98 per cent benchmark that the government set in the RFP. They have said, ‘Maybe 80 or 90 per cent—take it or leave it.’ We all know who would be left out of that proposal.

What we are left with, essentially, are the consequences of the privatisation of an essential service. It was extraordinary to hear Senator McGauran standing up and celebrating having achieved all their goals, because we took a national carrier with a universal service obligation, a public utility regulated by parliament, and we turned it into an aggressive, vertically integrated corporation that is looking after the interests of its shareholders before it is looking after the public interest. Telstra has said to the Australian community, ‘We will not be making these investments into rural and regional communities, because the investment does not stack up.’ A public utility does not necessarily have to do that. So we are stuck with the consequences of this privatisation.

I want to talk briefly about the Communications Fund and where that would be leaving us were it to be left where it is. There is a Communications Fund of $2 billion in perpetuity, of which we would be taking off about $100 million a year, for rural and regional telecommunications. It has been estimated that to roll out the national broadband network on any decent scale will cost about $10 billion—half from the federal government and half from somewhere else. At the rate of $100 million per year—which, pro rata for my state of Western Australia, would be the equivalent of about $10 million a year—it will take about 100 years to reach the scale of the investment that has been proposed to roll out the national broadband network on
any reasonable scale. That is why we are not supporting the amendment to quarantine the $2 billion and to keep the Communications Fund as it is. Essentially, that blows 50 per cent out of the Commonwealth funding for the national broadband network as it currently stands, and the Communications Fund as it is does not achieve the function that the Nationals are trying to achieve. A hundred million dollars a year at that rate is quite simply not going to provide us with the services that we are looking for.

The Greens believe that the national broadband network should be rolled in from the edges, not rolled out from the metropolitan markets where people are already well served. That is, I think, going to be the main game: watching where the request for proposals goes and making absolutely certain that the government holds the line and does not accept any weakening of the minimum target of 98 per cent, making sure that broadband really is for all Australians. I am afraid that I do not believe at this late stage that cutting the national broadband network Commonwealth funding in half is a way of achieving that.

**Senator FIELDING** (Victoria—Leader of the Family First Party) (12.13 am)—I suppose what tonight reinforces is this statement: when they agreed to Telstra being sold, the Nationals sold out the bush. They were sold a pup of some fund by the Liberal Party. All of a sudden now, it is gone. I will be voting, as I voted today, to support and look after the bush through the Communications Fund, but it was faulty to start with. Family First opposed the full sale of Telstra. Family First said at the time that the Nationals sold out the bush when they agreed to sell the rest of Telstra. There are no guarantees once you let it go like that, and tonight has proved it for sure. They have got themselves to blame for the mess they have ended up with. To be frank, they sold out the bush when they sold the rest of Telstra.

Telstra and telecommunications is not just a business; it is also an essential service. It made sense to keep some of it in the public hands. That would have provided the protection for those people who live out in the bush and in the regional areas, where there is no or little competition. In the city, I get people knocking on my door all the time offering competition. They are not out there with the farmers. The Nationals sold those people out when they sold the rest of Telstra. They have themselves to blame. I will not be changing my vote. I am very surprised that the Liberals have changed theirs—very surprised.

**Senator SHERRY** (Tasmania—Minister for Superannuation and Corporate Law) (12.14 am)—I will just make a few remarks in response. I think it is appropriate to start with Senator Xenophon’s quote from Hugh Mackay when he referred to the culture of broken promises. The position of this Labor government is that we are voting tonight to maintain our election promise. We went to the Australian people committing ourselves to transferring $2 billion from the Communications Fund in order to provide up to $4.7 billion for a national broadband network. We made that promise at the last election, and if there is anything that senators should remember it is this: we have a Prime Minister who is determined to uphold every election promise that we took the Australian people. I challenge you to name one election commitment that the leader of the Labor Party, Kevin Rudd, gave that he has not delivered. This was an election promise.

*Opposition senators interjecting—*

**Senator SHERRY**—I did not interject on your contribution; I listened with respect. The reality is that your policy as presented at the last election failed the test of the Australian people. Our policy passed the test. When
you talk about breach of trust and your disgust, remember this: the Australian people voted for this policy, the Australian people voted for the Australian Labor Party and the Australian people voted for a Prime Minister who was expected to deliver on every promise he made on behalf of the Labor Party, and he is going to do that.

The TEMPORARY CHAIRMAN (Senator Crossin)—Senator Heffernan, are you seeking the call? Do you have a point of order?

Senator Heffernan—I would like to make a contribution, and if it has to be by way of a point of order I will. The point that the government—

The TEMPORARY CHAIRMAN—

Senator Heffernan—I will make the point of order. The point of order is that more people live in the Western Suburbs of Sydney than in all of rural Australia. This is completely ignoring the needs of rural Australia because they do not count politically to this government.

The TEMPORARY CHAIRMAN—

Senator Heffernan, that is not a point of order.

Senator SHERRY—I think it is important to remind the chamber of Senator Xenophon’s quote from Hugh Mackay, because I utterly agree with him. If there is one thing that the Prime Minister of this country, Kevin Rudd, is determined to do it is to change that culture of broken promises. That is why we are here tonight fighting for our election commitment—the promise we made at the last election. I want to congratulate Senator Ludlam in particular. I think his observations about the outcome of the current Communications Fund—the $100 million a year—were spot on. I think his observations about the dribbling out of $100 million a year and its relative ineffectiveness at dealing with the issues that confront the bush and regional Australia were spot on. I congratulate you, Senator, because you are right.

When you hear the Nationals, you would think that they were the only people who live in rural and regional Australia. Well, I live in regional Australia. I live in a little community which only had mobile phones connected two years ago. I live in a little community of 500 where our broadband speeds are a disgrace. You put yourselves up as the martyrs of the bush, but you are not the only people in this chamber who care about these issues. It is because we care about these issues that we made a commitment at the last election for a national broadband network. We made a commitment to fund it using $2 billion plus with the $2 billion from the Communications Fund. We made that election commitment because of our determination to deliver for all Australians, but in particular for people who live in rural and regional Australia.

Senator Joyce interjecting—

Senator SHERRY—I disagree with your analysis. It suits your critique, but it is too early to be condemning the outcome of the NBN process, which has only just begun. As I pointed out earlier today, we will have another debate on another occasion with legislation around the establishment of the NBN.

Senator Coonan—This century?

Senator SHERRY—I listened in silence to you and I realise that the hour is late, but I do intend to respond in a considered way to the points that are made.

Senator Bob Brown—Madam Temporary Chairman, I rise on a point of order. The honourable minister should respond through the chair.

Senator SHERRY—Thank you. I will respond through the chair. There are three broad criticisms that have been put forward
by a range of senators. The first set of criticisms is in respect of the transfer of the $2 billion from the Communications Fund, and the allegations about breach of trust, breach of promise et cetera are discussed. As I have pointed out, this Labor government is determined to deliver on this election promise. We gave that commitment to the Australian people, and they trust us to deliver on it. That is our perspective. You are entitled to your perspective. I think the National Party is entitled to feel a little bit miffed about what happened with the privatisation of Telstra those years ago. They cannot say they were not warned at the time. I can remember the debates about the difficulties the National Party would confront down the track by agreeing to the privatisation of Telstra and about minimising the difficulties and the outcomes that we are debating tonight. Senator Fielding is spot-on in his critique of the National Party in this regard, but the National Party made a decision at the time to go along with it. That was the National Party’s call.

We are going to deliver on our election promise.

In terms of the NBN, it is too early to be condemning the outcome of a process that has only just begun. You can make your judgements and critiques about success or otherwise, but I believe it will be successful.

Senator Minchin—Unaffordable and undeliverable!

Senator SHERRY—Senator Minchin had some gall to mention tonight that the administration costs have doubled from $10 million to $20 million. That is his allegation; I have not checked it. But let us assume Senator Minchin is right. I can well remember the cost of privatising Telstra. It was in the hundreds of millions of dollars in consultancy fees and legal fees. The largess that was doled out on the privatisation of Telstra was amazing.

Senator Minchin interjecting—

The TEMPORARY CHAIRMAN (Senator Crossin)—Senator, the minister has the call.

Senator SHERRY—Through you, Chair: I listened to you with respect. I did not interject. I am entitled to respond in a considered way to at least some of the points that have been made. It is a touch hypocritical to talk about a $20 million administration process when we looked at the hundreds of millions of dollars in costs associated with your privatisation.

The third set of issues relates to the range of amendments that have been added to the oversight, transparency and accountability process. I want to make the fundamental point—and I made it earlier today—that we have set up a process of independent assessment for projects that will flow as a consequence of the Building Australia Fund. We have set up an independent, transparent assessment process far more ethical, far more accountable and far more transparent than anything the previous Liberal-National coalition did for any of the expenditure programs they oversaw in government. What we had tonight and earlier this afternoon—

Opposition senators interjecting—

The TEMPORARY CHAIRMAN—Order! Senators, we are trying to hear the debate here, so we would appreciate your discussion perhaps occurring outside.

Senator SHERRY—If they believe that a Labor minister or Labor government is going to sit back and not respond in a considered way to a whole raft of allegations, some of them false and some of them hypocritical, they have another think coming. I will respond in a considered way. I am just about to conclude my remarks.

We then saw passed this afternoon a whole raft of alleged accountability amend-
ments, which ranged between every individual minister reporting to parliament on the projects, a new joint parliamentary committee, and oversight and examination by the Productivity Commission. I was not jesting when I remarked that this process that was proposed by amendment—the bureaucracy and red tape assessment that was being proposed by the Liberal-National coalition and, to some extent, the Greens—was somewhat comparable to Soviet Russia. I stand by the comment that this Labor government will not accept that host of amendments, because we believe they are inappropriate and that the independent, transparent assessment process that we have set up is one of rigour. It is certainly superior to that which we had under the previous government with respect to any of their projects.

For the reasons I have outlined, I reject a whole range of the accusations, many of them false and many of them hypocritical. We got a lecture from Senator McGauran about trust on this issue, yet he jumped political parties. He did not resign from a political party when he decided to change. In switching to the Liberal Party he breached the fundamental trust he gave to the National Party. That is what I call a breach of trust. If you want to change parties, resign and put yourself before the Australian people. I will not accept a lecture from Senator McGauran about breach of trust on this issue. Unfortunately he is not here, but I still would have said it if he were. For those reasons, we do not support the amendments.

Senator MILNE (Tasmania) (12.26 am)—I rise to make a few remarks in addition to those of my colleague Senator Ludlam and to indicate to the Senate that I will be seeking to move clauses (1), (39), (44), (45), (49), (50), (70), (71) and (78) together. They are the clauses which cover the proposal which was jointly agreed by the coalition and the Greens to set up a joint parliamentary committee to oversee the spending of amounts of $50 million or more and which required the recommendations of the advisory bodies to be laid on the table of the parliament so that the parliament could scrutinise them and know what the recommendations of the advisory bodies were. The advantage of that is that then, if the government chose not to take that advice, the community would be able to see that it was a political decision. Government is absolutely able to make political decisions—that is what they are elected to do—but the community has a right to know what the advisory body has advised and why they advised it. If they make a different decision, the community has the ability to scrutinise that.

It was our grave concern that we heard that Minister Albanese wants more ministerial discretion, to have the power to make the decisions. I noticed in the reasons coming back from the House of Representatives that the argument is that the disclosure of advice from Infrastructure Australia and other advisory boards is not supported because there is already enough rigour and transparency. The reasons then go on and say:

... these amendments could result in commercial in confidence information being disclosed, which could affect how applicants participate.

That terrifies me because it simply says it will all be kept secret and you will not be able to get access to what the advisory committees recommend, the community will not be able to scrutinise it and, whereas before we had a system of public accounts committees so that the parliament could oversee the disbursement of large sums of public money, now we are not going to have that. The people who will know why and how this is to be done are not elected to the parliament. They will be appointed by the government and they will be people whom the government deems to be suitable. We all know what happens with government appointed advisory
committees: the government will appoint people to those and make sure they have a majority on those committees.

This is about all of the concerns we have about the issues that are important to Australia being taken into account, the issues we have about prioritising the recommendations and the issues about transparency. Senator Sherry said the Rudd government is not breaking any election promises, but the Prime Minister said that the Rudd government would be a government which improved transparency. Refusing to have a joint committee to oversee the disbursement of money where it is in excess of $50 million on any project is, to me, a refusal to have scrutiny and a refusal to have transparency. The Greens will be insisting on that set of amendments which pertains to the setting up of the joint committee and the requirement that the advisory bodies lay on the table the recommendations they made to the minister and the documentation on which they based those recommendations.

Senator HEFFERNAN (New South Wales) (12.30 am)—There are a few things that ought to be put on the record here tonight. For a start, this is a great act of treachery for rural Australia. I might point out that there is not a single, solitary soul in the government in this parliament who lives and/or makes a living in the bush. There is no-one. Senator Jacinta Collins—That’s rubbish. Senator HEFFERNAN—There is not a soul. Tell me who it is, if you think that is rubbish. Who lives and makes a living in the bush? No-one. There is no-one in this parliament who lives and makes a living in the bush. You wouldn’t know shit from clay, as they say in the bush.

The TEMPORARY CHAIRMAN (Senator Crossin)—Senator Heffernan, I need to ask you to withdraw that. It is very unparliamentary.

Senator HEFFERNAN—It is withdrawn. So that is the background of the government. There are more people that live in the western suburbs of Sydney than in all of rural Australia. All but 12½ per cent of the people in New South Wales live in Sydney, Wollongong and Newcastle. So politically they are important, and traditionally that is where this government gets its support in this parliament. So they, the bush, do not count politically. Tonight is a demonstration that they do not count.

We sold Telstra, and there was a lot of anguish in the bush about the sale of Telstra, but we sold it at the top of the market. The last sale was as the market was falling, and we got 50-odd billion dollars. If we were trying to sell it now, it would not sell. If we had not sold it and got the $50 billion—and I remind Senator Sherry about his bush credentials—this government would be in serious financial trouble. It has been a great assistance to the government in Australia to get that $50 billion at the top of the market. If you were selling it today, you might get $10 billion. So we picked the top of the market.

This government has taken $20 million out of the Northern Development Taskforce and put it away. This today says to me that not only are you fellows selling out the government but you would rob your mothers’ graves if you thought there was anything in the coffins to support the government. You are going to try and buy your way back into government, and that is what this is an exercise in. This money was ring-fenced and protected for all time as a sovereign fund to protect the integrity of the future development of the bush in terms of this sort of infrastructure. What you have done today is take the cheap, easy and lousy way out of that. There was absolutely no need to knock off this $2 billion, absolutely none. It was in cash in 30-day accounts in a bank somewhere. It is exactly the same as the New South Wales gov-
ernment the other day reprehensibly telling people that they have got to pay for donated blood, to save $8 million in their budget, at the same time as they are paying $34 million for water at Tandou that does not exist. This is the same crazy logic.

Can I say to the bush: you do not count if this goes through. You do not count. This government does not care. You blokes in the government can pretend all you like that you know what the bush is. All you know about the bush is the two trees in your backyard in town. That is about all you know about the bush. I think it is a disgrace. I think we ought to abandon this chamber as a symbol of our disgust at the way you have absolutely held the bush to ransom and ambushed this parliament with this proposition just to save your own skins. It is damn disgrace and, as I say, the next thing we know you will be digging up your mothers’ bloomin’ coffins to get anything that is left in them to keep you in government.

Senator Bob Brown (Tasmania—Leader of the Australian Greens) (12.34 am)—The big problem here tonight is that Telstra was sold. It should never have been sold—at the top of the market or the bottom of the market. It was a magnificent and important national asset which was under the direction and control of this parliament, and when the coalition sold it we lost that direction, that control and that opportunity, and we will not get it back.

The problem here tonight is not with the National Party; it is with the Liberal Party. The Liberal Party has decided to concede to the government for the third time this week. It did so on the water bill and the north-south pipeline. It did so on the education bill. And it is doing so tonight on this piece of legislation. There is a consistency to this, which is that, for some reason that is not quite spoken, the leaders in the Turnbull Liberal Party have decided not to create a difficulty in the run to the period between now and when we resume parliament next year. There is great aggression and aggrievement between the coalition partners here tonight, and that is something for the National Party and the Liberal Party to sort out, but the difficulty here tonight, if you want to pin it, is very much with the Liberal Party itself. It led the sale of Telstra and tonight it is leading the backdown on this defence of the Communications Fund, which the National Party wanted to protect so stoically but cannot do anything about. That is something that the National Party is going to have to think about.

The harm was done here when the Liberal Party and the National Party got the numbers to control the Senate. If that had not happened, we would not be in this position tonight. Whatever is going on in the Liberal Party, it has backed off to the Rudd government tonight. It has not stood its ground. That is the third time this week, and it is not a good look for an opposition. I have to feel sorry for the National Party, which finds itself left like a shag on a rock by its Liberal Party partners. If that is a coalition, the dictionary has a new definition. It is a tragedy that we are in this position, late at night, because the Howard government sold Telstra. It should never have done it. When it did so, it did great damage to Australia. We have to find real ways of ensuring that the bush gets a much better deal on telecommunications in the coming years.

The Chairman—The question is that the committee does not insist on amendments Nos (3), (4), (5), (8) and (10) to (13).
The committee divided. [12.42 am]
(The Chairman—Senator the Hon. AB Ferguson)

Ayes............ 35
Noes............. 8
Majority........ 27

AYES

NOES
Boswell, R.L.D. Ferguson, A.B. Joyce, B. Williams, J.R. *

* denotes teller

Question agreed to.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.47 am)—I would recognise that there are five Liberals here. From where I am, there are two on the left-hand side of the chamber and two on the right, three up the back and some 20 to 30 outside. There is a complete disarray here. This is an important oversight measure that the Greens are moving here, to keep an oversight, as Senator Milne explained, on the expenditure of this infrastructure fund. It is a gargantuan amount of public money and parliament should have particular scrutiny of it. I would call upon the Liberals to come back in here and support this oversight amendment. It was actually sponsored by them. It will not delay this legislation. There is no way the government will hold up this infrastructure legislation because some parliamentary oversight has been put to the chair. I have never ever seen such disarray from one of the major parties in this chamber as we are seeing right now. I cannot fathom what it is that has occurred with the Liberal Party here tonight, but it is enormously destructive. I say to the Liberal Party that they should come back in here and regain some ground by supporting this sensible oversight in the government’s legislation in the interests of this nation. Otherwise, the impression one gets is that in these last two weeks the Turnbull administration decided it would capitulate to everything that the government put forward. That is not healthy for democracy, it is not healthy for a bicameral system and it certainly is not healthy for the coalition.

I just say to the Liberals, the majority of whom are back in their rooms listening to this, those who have vacated the chamber, those who have vacated their responsibility to be voting in here: come back in here and vote for this oversight. That is my message
as to this Liberal disarray that we are seeing here tonight. They should at least come back in here and regain some of the authority, some of their responsibility and obligation to the voters, which we have just seen abandoned due to their absence from this chamber.

Senator FIELDING (Victoria—Leader of the Family First Party) (12.49 am)—Perhaps I can answer Senator Brown’s question: perhaps it is a bit late at night. Perhaps that is the reason why they are not here. It is important to have the oversight provided by this motion and Family First will be supporting it.

The CHAIRMAN—The question is that amendments (1), (39), (44), (45), (49), (50), (70), (71) and (78) not be insisted on. The committee divided. [12.54 am] (The Chairman—Senator the Hon. AB Ferguson)

Ayes…………. 34
Noes…………... 7
Majority………. 27

AYES

NOES

* denotes teller

Question agreed to.

The CHAIRMAN—The question now is that the remainder of the amendments not be insisted upon.

Question agreed to.

Resolution reported; report adopted.

NATION-BUILDING FUNDS (CONSEQUENTIAL AMENDMENTS) BILL 2008

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Nation-building Funds (Consequential Amendments) Bill 2008 informing the Senate that the House has disagreed to the amendments made by the Senate and desiring the reconsideration of the amendments.

Ordered that the message be considered in Committee of the Whole immediately.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (12.59 am)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Question agreed to.

Resolution reported; report adopted.

TEMPORARY RESIDENTS’ SUPERANNUATION LEGISLATION AMENDMENT BILL 2008

Returned from the House of Representatives

Message received from the House of Representatives acquainting the Senate that it
had agreed to the amendments requested by the Senate to the bill.

Third Reading

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.01 am)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

BROADCASTING LEGISLATION AMENDMENT (DIGITAL TELEVISION SWITCH-OVER) BILL 2008

Consideration of House of Representatives Message

Message received from the House of Representatives returning the bill informing the Senate that the House has agreed to the bill with amendments and requesting the concurrence of the Senate in the amendments.

Ordered that the message be considered in Committee of the Whole immediately.

House of Representatives message—

SCHEDULE OF THE AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES

(1) Schedule 2, item 3A, page 4 (lines 14 to 17), omit the item.
(2) Schedule 2, page 4 (before line 18), before item 4, insert:

3B Clause 2 of Schedule 4

Insert:

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October of a year.

(3) Schedule 2, item 4A, page 6 (line 1) to page 7 (line 12), omit the item.
(4) Schedule 2, item 4B, page 7 (lines 13 to 28), omit the item.
(5) Schedule 2, page 11 (after line 5), after item 12, insert:

12A After clause 11 of Schedule 4

Insert:

11A Quarterly reports

(1) The commercial television conversion scheme must require the ACMA to:

(a) prepare a report for each quarter about the following matters:

(i) the extent to which the objective in paragraph 6(3)(f) is being met for each licence area to which that paragraph applies;

(ii) if that objective is not being met for a particular licence area—the steps that holders of commercial television broadcasting licences are taking to ensure that the objective will be met; and

(b) publish the report on the ACMA's website.

(2) Subclause (1) does not apply to a quarter that begins after the end of the simulcast period for the licence area concerned.

(6) Schedule 2, page 11 (after line 30), after item 17, insert:

17A After clause 25 of Schedule 4

Insert:

25A Quarterly reports

(1) The national television conversion scheme must require the ACMA to:

(a) prepare a report for each quarter about the following matters:

(i) the extent to which the objective in paragraph 19(3)(f) is being met for each coverage area to which that paragraph applies;

(ii) if that objective is not being met for a particular coverage area—the steps that the national broadcasters are taking to ensure that the objective will be met; and

(b) publish the report on the ACMA's website.

(2) Subclause (1) does not apply to a quarter that begins after the end of the si-
mulpact period for the coverage area concerned.

(7) Schedule 2, page 12 (after line 8), after item 20, insert:

20A At the end of Schedule 4
Add:

PART 12—MINISTERIAL REPORTS
65 Ministerial reports—self-help re-transmission services and blackspots

(1) As soon as practicable after:
(a) the 6-month period ending on 30 June 2009; and
(b) each later 6-month period;
the Minister must cause to be prepared a report about:
(c) progress in converting self-help television re-transmission services from analog mode to digital mode; and
(d) the identification and rectification of blackspots in relation to the reception of:
(i) commercial television broadcasting services; and
(ii) national television broadcasting services;
in digital mode.

(2) The Minister must consult the ACMA in relation to the preparation of a report under subclause (1).

(3) The Minister must cause copies of a report under subclause (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

(4) In this clause:

self-help television re-transmission service means a television re-transmission service that:
(a) is covered by subsection 212(1); and
(b) is provided by a self-help provider (within the meaning of section 212A).

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (1.02 am)—I move:

That the committee agrees to the amendments made by the House of Representatives to the bill.

Senator MINCHIN (South Australia—Leader of the Opposition in the Senate) (1.02 am)—Mr Chairman, I might need some procedural assistance with this as it is getting on to five past one in the morning.

The CHAIRMAN—I might need some too!

Senator MINCHIN—What we are dealing with is a little complicated. I inform the committee that the coalition agrees to government amendments (1) and (3) as moved and adopted in the House but we reject amendments (2), (4), (5), (6) and (7). I suggest that we seek to deal with amendments (1) and (3) separately and deal with the rest as a block. I am in the committee’s hands.

The CHAIRMAN—Senator Minchin, you can request that that happen, that we deal separately with those amendments that you wish to deal with separately and that the others be dealt with as a remainder.

Senator MINCHIN—Thank you, Mr Chairman. I will speak on the coalition’s position on this bill. What the Senate did was agree to amendments to this bill which we believed did significantly improve the bill. They provided for a mechanism by which the minister would be required to establish readiness criteria before at any stage switching off the analog signal in any area of Australia and, as well, provided for a mechanism by which there would be regular reports to the people and the parliament on the efforts to ensure that ‘black spots’, as they are called, are kept to a minimum with respect to the transmission of the digital signal.

What the government has done in the lower house is reject the Senate’s amendments and then impose an alternative gov-
gernment amendment with respect to the Senate's position on the black spots matter. In our view, the government is entirely wrong in rejecting the Senate amendments with respect to digital readiness criteria. The government is seeking to preserve a position which gives the minister extraordinary authority to determine—on no established public criteria whatsoever—when he, as in this case, is ready to switch off any particular area he likes.

The bill does not set any timetable for particular regions or any schedule. It just says that the minister will have the freedom to determine to switch off the analog signal in any area at any time without any mechanism by which the readiness of that particular region can be assessed. We do not believe that that is good enough. We believe that that gives far too much power to the minister. That was an argument that the Senate accepted and adopted.

However, the government in the lower house has rejected that set of amendments—the ones described here as (1) and (3). We regret that very much. We think that these are amendments that the government should have accepted. We think that it is very disappointing that the government is not prepared to establish publicly the criteria that it will follow before it ever switches off any particular area. Nevertheless, in the circumstances that we are faced with, and not wanting to be accused of holding back the move to digital in Australia—a proposition that was initiated by our party in government; we are the ones who set Australia on the path to digital TV—we will not propose that those particular amendments be insisted upon.

However, I give notice that we will be paying very close attention to the minister's behaviour, particularly with respect to the first two areas targeted for switch-off—that is, Mildura and regional and rural South Australia, which is dear to the heart of me and the Chairman of this Committee. If it is in our view the case that either of those two regions—the two targeted for switch-off before the next election—are not ready for switch-off, then we will move disallowance of the legislative instrument upon which the minister must rely in endeavouring to switch off any particular region. So I give notice to the government.

I want to reassure tonight the people of Mildura and rural and regional South Australia that, despite this government washing its hands of any responsibility for publicly declaring criteria that it will follow in relation to the switch-off of the analog signal, we will be ensuring that those regions are ready. If we believe that they are not, we will be moving disallowance in this Senate of the legislative instrument upon which the minister relies to switch off their analog signal.

If I may, I wish to speak to all of the matters before us tonight—it is better that I do that at once. We reject government amendment (4) and will therefore need to make a consequential amendment as per sheet 5701, which I will deal with in due course. What the government has done in the lower house is delete our proposed amendment with respect to the reporting requirements that the Senate placed on the government with respect to infrastructure relating to the transmission of the digital signal and impose an alternative amendment of its own. We believe that our initial amendment is a much more satisfactory and appropriate amendment and we will be insisting that our amendment stand. We will be suggesting to the Senate that it reject the government alternative.

Our amendment provides for a much more regular report on digital black spots. It was an amendment that we devised in close consultation with the broadcasting industry and
with a view to the consumers of the television signal, who must at the end of the day be held supreme in this debate. It is their viewing that we are concerned about and their capacity to receive the digital signal that we want to preserve. We believe that our amendments are a much better way of ensuring that there is regular reporting to the parliament and to the people of Australia on the endeavours of the government to ensure that transmission infrastructure is upgraded to take the digital signal.

At the end of the day, what is fundamental in this transition to digital TV is that no-one in Australia who currently receives an analog signal will miss out on a digital signal. It is fundamental to this that we do not have a situation in which thousands of Australians are suddenly faced with a blank screen when the minister, of his own accord, decides to switch off the analog signal. That is unacceptable. What we have put in place through our amendment, which we do insist on, is a much better mechanism by which the government is held to account than what is proposed by the government in its alternative. So we reject the government’s amendment.

We maintain our initial amendment. We urge the Senate to vote on this matter in support of the amendment that the Senate passed originally and to reject the government’s very second-hand and very poor alternative.

Senator XENOPHON (South Australia) (1.10 am)—I indicate that, following discussions with the government and indeed Senator Minchin, my position in relation to these amendments is this: in relation to the first set of amendments that were passed yesterday—

Senator Siewert—It all melts into one.

Senator XENOPHON—It does all melt into one. In relation to the criteria as to whether analog could be switched off, I understand the concerns of the government. On reflection, I believe that they have merit. Therefore I will not be supporting the opposition on those amendments in relation to the criteria in respect of switch-off dates. However, my view is that the more important amendment was in relation to black spots. I prefer Senator Minchin’s amendment on the issue of black spots. I believe that it is much more comprehensive and makes more sense for consumers in terms of providing useful information. There is a vagueness in the government amendment. Therefore, I will be maintaining my support for the opposition’s amendment in relation to the monitoring of black spots.

Senator LUDLAM (Western Australia) (1.12 am)—I rise to confirm that the Greens—as we did yesterday, or whichever day it was—will be supporting the government amendments that have come back. I will probably leave it at that. We were not taken by the argument around the readiness criteria, so we will be supporting the government amendments.

Senator LUDWIG (Queensland—Minister for Human Services) (1.02 am)—I will address my comments to all of the amendments, as the Leader of the Opposition in the Senate did. I thank the opposition for not pushing the minor amendments (1) and (3). However, what has now transpired and seems to be clear is that the three remaining, which have the support of Senator Xenophon, may put the bill in jeopardy as we prefer our amendment, which deals with black spots in our terms. We urge Senator Xenophon to consider his position in respect of that.

More broadly, on the totality of the amendments that have been pursued here tonight, the government recognises that there are numerous television reception black spots in Australia and that there is some community concern as to how these black spots may be addressed in the lead-up to
switch-over. Under the government’s amendments, the ACMA will be required to report on transmission infrastructure issues. This will align reporting requirements to existing obligations for broadcasters under the commercial and national television conversion schemes and place the reporting responsibilities on the government entity required to formulate and oversee the conversion schemes. This will more effectively and efficiently achieve the apparent policy intentions of the Senate amendments to the bill.

The government amendments will also require the minister to report to parliament every six months on progress made in converting existing self-help retransmission facilities and on progress made in addressing digital transmission black spots. It is a position that the government is serious about progressing. If the amendments of the opposition on this matter are supported and get up, the bill will not be acceptable to the government and it will fail.

I will deal briefly with the opposition amendments that were passed by the Senate requiring that minimum analog switch-off readiness criteria be determined by the minister and that the switch-over readiness of local market areas be assessed against these criteria. These amendments have the potential to delay digital switch-over in Australia. This is because the switch-over readiness criteria would be likely to delay analog switch-off in a particular area unless the readiness criteria had been met. This would mean that the original switch-over date would not be perceived as a firm switch-over date by industry, and viewers, believing there was no firm switch-over date, would not prepare themselves for the switch to digital.

It seems clear that, where you do not provide that certainty, you will not get the switch-over. The community—the viewers—and the industry will not take that as a given and start to switch over from that date. The research in the UK indicates that 16 per cent of people will not make the switch to digital where there is no firm switch-over date. There is no impetus to do so. It seems quite clear, certainly from the government’s perspective, that a firm switch-over timetable is important to give certainty to industry and consumers. This has been the overwhelming experience in overseas countries that have already gone through or are in the process of switching to digital.

Australia is already substantially behind the Western developed world in switching to digital TV. Digital TV was introduced by the previous government in 2001, and after eight years it is in only 42 per cent of Australian homes. These amendments as they stand will adversely affect switch-over. Switch-over is an important communications issue. It will bring better quality TV and more channel choice to viewers and it will also free up spectrum for new communications services.

The CHAIRMAN—The question is that amendments (1) and (3) be agreed to.

Question agreed to.

The CHAIRMAN—I now put the question that amendments (2), (4), (5), (6) and (7) be agreed to.

Senator XENOPHON (South Australia) (1.17 am)—I indicated my support for the issue of the black spots. Is that what we are dealing with now?

The CHAIRMAN—Yes, it is.

Question put.

The committee divided. [1.22 am]
(The Chairman—Senator the Hon. AB Ferguson)

Ayes……….. 28
Noes……….. 29
Majority………. 1

AYES
Bilyk, C.L. Brown, B.J.
Brown, C.L. Cameron, D.N.
Carr, K.J. Collins, J.
Crossin, P.M. Farrell, D.E.
Faulkner, J.P. Feeney, D.
Forshaw, M.G. Furner, M.L.
Hanson-Young, S.C. Hurley, A.
Hutchins, S.P. Ludlam, S.
Ludwig, J.W. Lundy, K.A.
Marshall, G. Ludlow, J.A.
McLusks, J.E. Milne, C.
Moore, C. Pratt, L.C.
Siewert, R. Stephens, U.
Sterle, G. Wortley, D.

NOES
Barnett, G. Bernardi, C.
Birmingham, S. Brandis, G.H.
Bushby, D.C. Cash, M.C.
Coonan, H.L. Eggleston, A.
Ferguson, A.B. Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
Fisher, M.J. Heffernan, W.
Humphries, G. Johnston, D.
Kroger, H. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Nash, F. Parry, S. *
Payne, M.A. Ronaldson, M.
Ryan, S.M. Troeth, J.M.
Trood, R.B. Williams, J.R.
Xenophon, N.

PAIRS
Arbib, M.V. Macdonald, I.
Bishop, T.M. Abetz, E.
Conroy, S.M. Ellison, C.M.
Evans, C.V. Colbeck, R.
O’Brien, K.W.K. Adams, J.
Polley, H. Boyle, S.
Sherry, N.J. Scullion, N.G.
Wong, P. Cormann, M.H.P.

* denotes teller

Question negatived.

Senator MINCHIN (South Australia—Leader of the Opposition in the Senate) (1.25 am)—As a consequence of the actions of the Senate this evening, I move consequential amendment (1) on sheet 5701:

(1) Schedule 2, page 7 (lines 16 and 17), omit “after the making of the first determination under subclause 5G(1),”, substitute “from 1 April 2009”.

This amendment flows from our agreement to the government’s amendments, which effectively remove the trigger for the reporting that the Senate requires on transmission black spots. We need to substitute a new trigger date. Very simply, our amendment substitutes a trigger date of 1 April 2009 so that, every quarter after 1 April 2009, the government will be required to lay on the table of each house of the parliament quarterly reports as set out in our original amendment 5H, Reports on Transmission Black Spots. As I say, it is a technical but necessary consequential amendment to ensure that the legislation provides a start date for the quarterly reports which the Senate, in its wisdom, has deemed appropriate for the parliament to follow.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (1.27 am)—We will not oppose the amendment.

Question agreed to.

Resolution reported; report adopted.

Senator MINCHIN (South Australia—Leader of the Opposition in the Senate) (1.28 am)—I move:

That the Senate adopt the following statement of reasons for not agreeing to amendments made by the House:

Amendment no. 4 deletes a clause, inserted on the motion of the Opposition, which would require the Government to report to each House of the Parliament the action taken to identify and rectify digital transmission blackspots. The Senate con-
siders that this is a necessary accountability measure which will aid in ensuring that adequate levels of coverage and reception quality are achieved in the switch-over to digital television broadcasting.

The other government amendments seek to put in place alternative reporting arrangements. The regime inserted in the bill on the motion of the Coalition provides more accountability than the Government’s alternative. It provides for more regular reports on digital blackspots; specifically identifies the regions and the numbers of households affected; and reinforces the objective of achieving an equivalent level of coverage to households after the switch-over to digital television.

On this basis, the Senate does not accept these amendments.

Question agreed to.

COMMITTEES
Intelligence and Security Committee
Membership
The PRESIDENT—I have received a letter from a senator and a party leader seeking to vary the membership of a committee.

Senator LUDWIG (Queensland—Minister for Human Services) (1.29 am)—by leave—I move:

That Senator Nash be discharged from and Senator Coonan be appointed to the Parliamentary Joint Committee on Intelligence and Security.

Question agreed to.

FAIR WORK BILL 2008
First Reading
Bill received from the House of Representatives.

Senator LUDWIG (Queensland—Minister for Human Services) (1.30 am)—I move:

That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator LUDWIG (Queensland—Minister for Human Services) (1.30 am)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

FAIR WORK BILL 2008

I rise today one year on from the election of the Rudd Labor Government to deliver on a promise Labor made to the Australian people. Today we deliver the creation of a new workplace relations system, one that allows Australia to grasp the promise of the future without forgetting the values that made us who and what we are.

Over a century ago at Federation, Australians decided that we would be different to other nations. Democratic, yes. With parliamentary institutions, judicial independence and individual rights similar to those of other great democracies like the United Kingdom and the United States of America, but without their wide social inequalities.

And our Australian version of fairness began with industrial relations:

• with the concept of the living wage, determined first in the Harvester Judgement;
• with the idea that people’s democratic rights don’t cease when they step onto the factory, shop or office floor;
• with recognition of the need for time for family, relaxation and community; and
• with an end to divisive industrial conflict.

Before the November 2007 election, this set of values - which instill the essence of the Australian genius for fairness and enterprise - was attacked by the values contained in Work Choices.

The philosophy that underpinned Work Choices said, essentially: make your own way in the world; without the comfort of mateship; without the protections afforded by a compassionate society; against odds deliberately stacked against you.
No safety net. No rights at work. No cooperation in the workplace to take the nation forward.

More than anything else, the 2007 election was a contest between these two visions of what Australia should be. And in November 2007, the Australian people settled the matter for once and for all. They chose to be true to the Australian ideal of a fair go. Their decision cost a Prime Minister not only his Government but his seat in this Parliament.

They chose to reject Work Choices and all it stood for, and to put in its place the promises Labor made in its policy statement Forward with Fairness. They gave the Rudd Government the strongest possible popular mandate for the introduction of this bill.

One year on from our election, the Rudd Government now delivers in full on those promises. The bill being introduced today is based on the enduring principle of fairness while meeting the needs of the modern age. It balances the interests of employers and employees and balances the granting of rights with the imposition of responsibilities. The bill delivers:

- a fair and comprehensive safety net of minimum employment conditions that cannot be stripped away;
- a system that has at its heart bargaining in good faith at the enterprise level, as this essential to maximise workplace cooperation, improve economic productivity and create rising national prosperity;
- protections from unfair dismissal for all employees;
- protection and hope for a better future for the low-paid;
- a balance between work and family life; and
- the right to be represented in the workplace.

These rights are guaranteed by the legislation and overseen by a new industrial umpire, Fair Work Australia, that will operate with independence and balance.

Reflecting the Government’s commitment to cooperative workplace relations, this bill is the product of an unprecedented degree of consultation with employer and employee representatives and State and Territory governments.

One century on from Federation, and one year on from the election of the Rudd Labor Government, this bill takes the Australian value of the fair go and builds around it a new workplace relations system ready to meet the needs of the nation in the 21st Century.

It’s a good Bill for employees, for employers, for families and for the economy.

Only a Labor Government could have introduced this bill because only Labor believes that the ideal of fairness should lie at the centre of our national life.

This bill is simpler and shorter than Work Choices. It is easier to read and apply and is set out in six easy to follow parts.

**Objects of the bill**

The principal object of the bill expresses the Government’s intention to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians.

This bill guarantees a safety net of fair, relevant, and enforceable minimum terms and conditions for Australian workers that can no longer be undermined by the making of statutory individual employment agreements of any kind, given such agreements can never be part of a fair workplace relations system.

The bill aims to achieve productivity and fairness through enterprise-level collective bargaining underpinned by the guaranteed safety net, simple good faith bargaining obligations and clear rules governing industrial action.

This bill seeks to assist employees to balance their work and family responsibilities by providing for flexible arrangements.

The bill ensures freedom of association and recognises that employees have the right to be represented at work by a union. The bill contains protections against discrimination.

**Terms and Conditions of Employment**

**The safety net**

The bill provides for a comprehensive safety net of minimum wages and employment conditions that cannot be stripped away. The safety net is in two parts.
The National Employment Standards comprise the ten legislated employment conditions covering essential conditions such as weekly hours of work, leave, public holidays, notice and redundancy pay and the right to request flexible working arrangements.

Modern awards are currently being developed by the Australian Industrial Relations Commission. Modern awards will build on the National Employment Standards and will cover a further ten subject areas, including: minimum wages, arrangements for when work is performed, overtime and penalty rates, allowances, leave and leave loadings, superannuation and procedures for consultation, dispute resolution and the representation of employees.

**Individual flexibility arrangements**

The bill provides that each modern award must include a flexibility term to enable employers and employees to negotiate an individual flexibility arrangement to meet their needs that may vary the application of specified award terms. The bill provides strict protections to ensure that any such individual agreement is entirely voluntary and that an employee cannot be disadvantaged.

**Modern awards and employees on high incomes**

The Government recognises that awards have less relevance to employees earning high incomes. Under the bill, an employer and an employee who is guaranteed to earn more than the indexed high-earnings figure may enter a written guarantee that results in a modern award not applying. The bill includes a number of important protections to ensure employees enter such an arrangement voluntarily.

**Reviewing modern awards**

The bill requires Fair Work Australia to undertake four-yearly reviews of modern awards to ensure that they maintain a relevant and fair minimum safety net and continue to be relevant to the needs and expectations of the community.

The bill allows adjustments to modern awards between the four-yearly reviews in limited circumstances, such as to deal with changes in the work value of classifications or to deal with a pressing new circumstance affecting a particular award.

**Minimum wages**

The bill provides for minimum wages in modern awards to be reviewed every year by a specialist Minimum Wage Panel within Fair Work Australia. The minimum wages in modern awards will override any lower rates in an enterprise agreement made under the bill.

The bill also requires Fair Work Australia to make a national minimum wage order to provide minimum wages for all award free employees.

**Special provisions for outworkers**

The Government is aware that outworkers are an acutely vulnerable sector of the Australian workforce and require special protections, so the bill ensures that awards may include special provisions dealing with outworkers. I also flag the Government’s intention to carefully examine the provisions of the bill concerning right of entry to investigate breaches of entitlements to ensure the bill provides an effective compliance regime for vulnerable workers in the textile, clothing and footwear industry. The Government will seek necessary refinements to the bill concerning this matter through the Senate processes.

**Equal remuneration**

The bill strengthens the equal remuneration provisions to include the principle of equal remuneration for work of comparable value.

**Transfer of business**

The bill provides for a simpler and fairer scheme to deal with the transfer of employment rights and obligations if there is a ‘transfer of business’ and a new employer takes on employees of the old employer.

**Enterprise Agreements**

The bill provides a new framework for enterprise bargaining which does not use any concept of union or non-union agreements. Instead, an agreement is made when approved by a valid majority of the employees to whom it will apply. A union that acted as a bargaining representative during the negotiations may apply to be covered by the agreement.

This new framework is premised on good faith bargaining and recognises that most workplaces already bargain in good faith without any intervention. However, where this does not happen,
the bill empowers Fair Work Australia to make orders to ensure compliance with the good faith bargaining requirements.

**Bargaining for single interest employers**

The principle category of bargaining is for single interest employers at the level of the enterprise. Single interest employers include joint ventures, common enterprises, related bodies corporate and employers specified in a single interest employer authorisation or declaration. A single interest employer authorisation or declaration can be made to bring certain very limited types of employers with a strong commonality of interest (such as franchisees of the same franchisor, or employers who receive substantial public funding) into this stream, but only where those employers seek to be allowed to bargain together.

In the single interest bargaining stream, employees have the right to take protected industrial action. Employees may only take protected industrial action where they are genuinely trying to make agreements at the enterprise. Pattern bargaining is not permitted.

Fair Work Australia is empowered to make certain kinds of orders as part of its oversight of the bargaining process.

**Majority Support Orders**

Firstly, the bill provides that where an employer refuses to bargain with its employees, an employee bargaining representative can ask Fair Work Australia to determine if there is majority employee support for negotiating an enterprise agreement. If so, the employer will be required to bargain collectively with its employees in good faith.

**Scope orders**

Secondly, the bill provides that Fair Work Australia may make a scope order if it is satisfied that bargaining for a proposed enterprise agreement is not proceeding efficiently or fairly because the group of employees to whom a proposed agreement will apply has not been fairly chosen.

**Good faith bargaining orders**

Thirdly, the bill sets out good faith bargaining requirements that a bargaining representative for a proposed enterprise agreement must meet, including: attending, and participating in, meetings at reasonable times; disclosing relevant information; responding to proposals; giving genuine consideration to the proposals of others and giving reasons for responses to those proposals; and refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining.

The bill specifies that the good faith bargaining requirements do not require a bargaining representative to make concessions during bargaining or to reach agreement on the terms that are to be included in the agreement. Parties are entitled to take a tough stance in negotiations.

In the very unusual case where a negotiating party completely ignores good faith bargaining orders, the other party may apply to Fair Work Australia to intervene and to make a workplace determination. This will ensure there is no advantage to be gained by flouting the law.

**Multi-employer bargaining**

The bill provides that where employees and employers genuinely wish to bargain on a multi-employer basis they will be free to do so. Protected industrial action and good faith bargaining orders are not available in these circumstances.

The bill provides it is unlawful to coerce an employer to make a multi-employer agreement or to discriminate against the employer if they have not made a multi-employer agreement.

**Bargaining for the low paid**

The bill provides a new scheme of bargaining for low paid employees. There is significant evidence that enterprise bargaining benefits employees, employers and the economy and we want more Australians to benefit from it. Currently, many employees in industries like child care, community work, security and cleaning struggle to bargain effectively with their employers. To facilitate the entry of these types of employees and their employers into enterprise bargaining, the bill provides for a special low-paid bargaining stream.

Protected industrial action is not available, but Fair Work Australia will have the obligation to facilitate the making of agreements and will play a hands-on role to get the parties bargaining. For example, Fair Work Australia may convene and chair conferences, help to identify productivity improvements to underpin an agreement and gen-
erally guide the parties through the negotiating process.

The bill provides for the possibility of a workplace determination in the low-paid stream in two circumstances – by agreement or if there is no reasonable prospect of an agreement being made. In the latter case, access to a workplace determination is subject to strict criteria, including that there is no enterprise agreement in place and that the employment conditions of the employees are substantially those set out in the safety net. When making a determination, Fair Work Australia must consider how productivity in the business may be improved and the need to maintain the competitiveness of the employer.

**Representation in bargaining**

The bill provides that employees are entitled to have their union represent them in bargaining or can appoint another person, such as a colleague. Employers may also appoint a bargaining representative.

The bill also requires employers required to give written notice to all employees of their right to be represented in the bargaining when the employer initiates bargaining or if a majority support determination, low paid authorisation or a scope order is made.

**Agreement content**

The bill provides that all matters pertaining to the relationship between the employer and its employees, as well as to the relationship between the employer and a union representing those employees will be able to be the subject of bargaining. Agreements can also deal with the deduction of wages for any purpose authorised by the employee and contain terms dealing with how the agreement will operate. This means salary-sacrifice and pay-roll deduction arrangements and terms setting out how the parties agree to conduct negotiations for a replacement agreement can now be included in agreements.

The bill provides that only terms that are about the relationship between the employer and the employee will be able to be the subject of protected industrial action. For example, employees will not be permitted to take protected industrial action in pursuit of a claim that the employer should make a donation to a charity or should start to manufacture a particular product.

**Required agreement content**

The bill provides that in order to be approved by Fair Work Australia, an enterprise agreement must contain:

- a flexibility term that allows individual flexibility arrangements, subject to specified protections;
- a dispute settlement process that must involve either Fair Work Australia or another person or body independent of the parties and that provides for the representation of employees in the process; and
- a term providing for consultation with employees about major workplace changes and that provides for the representation of employees in that process.

**Approval of Agreements**

The bill provides that Fair Work Australia must not approve an agreement that includes terms that are inconsistent with unfair dismissal, right of entry, National Employment Standards and the general protections provisions of the Act. Fair Work Australia must also be satisfied that:

- the employer and a valid majority of the employees to whom the agreement will apply genuinely agree to the agreement; and
- each employee would be better off overall under the agreement in comparison to the relevant modern award.

**Workplace determinations**

There are times when, despite their best efforts, parties cannot reach agreement. To assist the parties, the bill enables Fair Work Australia to exercise broad conciliation powers at the request of one of the parties.

Provided the parties have bargained in good faith, the bill provides that they will be able to walk away without having a settlement imposed on them.

Where the parties agree, the bill provides that Fair Work Australia may also make a binding determination on matters in dispute.

In those limited circumstances where protected industrial action is occurring in a bargaining con-
text that has a particularly negative or dangerous impact, the bill provides scope for Fair Work Australia to resolve the dispute by making a workplace determination.

Firstly, the bill incorporates the long-standing capacity for a workplace determination to be made where industrial action is threatening (or would threaten) to endanger the life, personal safety or health or welfare of the population or part of it or to cause significant damage to the economy.

Secondly, a new ground in the bill for the making of a workplace determination is where protracted industrial action is causing significant economic harm to the bargaining participants, or such harm is imminent. This provision is intended to apply only to the very small number of disputes where industrial action continues for an extended period, where the employees and the employer suffer greatly and yet the parties are so entrenched in their positions that there is no prospect of a breakthrough in negotiations.

Rights and Responsibilities

General protections
The bill incorporates the current provisions relating to freedom of association, unlawful termination and other miscellaneous protections into a streamlined and easy to follow Part titled General Protections. In doing so, the bill provides more comprehensive protections for workers in some situations.

The bill’s general protections ensure that employees remain free to choose to be represented by a union, provide more comprehensive protections for those participating in collective activities (such as representing other employees or bargaining). The bill provides sanctions where a person takes adverse action because someone exercises one of these rights.

The bill will protect individuals who are subject to adverse treatment because they have or seek to exercise a ‘workplace right’ such as being entitled to the benefit of an award or agreement or making a complaint or inquiry.

Employees with carer’s responsibilities will also now be protected from discriminatory treatment.

Unfair dismissal
Under Work Choices, employees in businesses with up to 100 workers could be dismissed for any reason without rights to challenge the dismissal. This resulted in clear injustices and real feelings of insecurity for workers who realised they could be dismissed at any time for no reason.

The bill provides a new scheme of unfair dismissal protections to ensure good employees are protected from being dismissed unfairly, while enabling employers to manage under-performing employees with fairness and with confidence.

Employees of a small business will not be able to claim for unfair dismissal until after they have served a qualifying period of twelve months, while for larger businesses, the qualifying period is six months.

‘Operational reasons’ will no longer be a defence to a claim of unfair dismissal. However, a dismissal is not unfair if it is for reasons of genuine redundancy.

The bill recognises that small businesses do not have the human resources support that larger businesses enjoy. The bill provides for the publication of a simple Small Business Fair Dismissal Code which, if followed, will ensure a dismissal is not found to be unfair. The Code requires the giving of a warning, based on a reason that validly relates to the employee’s performance or capacity to do the job, and a reasonable opportunity for the employee to improve his or her performance. The Code makes it clear the employer has the right to summarily dismiss an employee for serious misconduct.

The process for Fair Work Australia dealing with unfair dismissal applications will be streamlined and simplified.

Industrial action, secret ballots and strike pay
The bill provides clear rules to govern industrial action. The bill distinguishes between protected industrial action which may legitimately occur during bargaining and unprotected industrial action taken outside of bargaining.

The bill requires employees to approve industrial action through a secret ballot, while streamlining the ballot process.
When protected industrial action occurs, employers must deduct pay for the actual period of time the employee stopped work. If partial work bans are implemented, employers will be able to issue a notice and deduct a proportion of pay, with any disputes resolved by Fair Work Australia. The bill provides that pre-emptive lockouts – taken by the employer when the employees have not taken any industrial action – will no longer be protected action.

For unprotected industrial action, such as industrial action during the life of an agreement, the bill provides that employees will face a mandatory minimum deduction of four hours’ pay.

**Right of entry**

The bill provides a fair and proper balance between the rights of employees and their union to meet in the workplace and the rights of employers to run their businesses without interference.

The bill provides a right for members of a union that is eligible to represent their industrial interests (and potential members of that union) to meet with their union at the workplace during non-working hours for the purpose of holding discussions. No employee can be discriminated against for participating, or declining to participate, in such discussions.

The bill provides that the right to enter premises to hold discussions comes with strict obligations, including the holding of a valid right of entry permit, the giving of 24 hours notice to enter and requirements for conduct while on site.

Unions will continue to be able to investigate alleged breaches of workplace obligations that affect a member or members of the union. This right is subject to strict requirements. Unions will be able to look at and copy employment records of all employees but only where those records are relevant to the suspected breach being investigated.

The bill includes new protections against misuse of information obtained by the union investigating suspected breaches.

**Compliance and Enforcement**

The bill establishes an integrated framework to oversee the new workplace relations system.

**Fair Work Australia**

The bill establishes Fair Work Australia to act as a one-stop shop for information, advice and assistance on workplace issues, by merging the functions currently performed across seven government agencies.

Fair Work Australia will be independent and will be focused on providing fast and effective assistance for employers and employees.

**Fair Work Divisions of the courts**

Fair Work Divisions will be created in the Federal Court and the Federal Magistrate’s Court to hear matters which arise under the new workplace relations laws.

The Courts will have new and more effective powers to deal with breaches of the Act and entitlements, including the power to make ‘any order they consider appropriate’ to remedy a breach as well as injunctions to restrain breaches.

A new user-friendly small claims jurisdiction will be provided where the Court will not be bound by the rules of evidence and may act in an informal manner.

**Fair Work Ombudsman**

The bill establishes the Office of Fair Work Ombudsman, with functions including promoting harmonious and cooperative workplace relations and compliance by providing education, assistance and advice.

**Transition to the New System**

It is intended that the bill will commence on 1 July 2009. However, consistent with election policy commitments, the National Employment Standards and modern awards will commence on 1 January 2010.

Separate legislation, the Transitional Bill, will be introduced in the first half of 2009 to set out transitional and consequential changes to ensure a smooth, simple and fair transition to the new scheme, while providing for certainty.

The Transitional Bill will:

- ensure that an employee’s take home pay is not reduced as a result of the employee’s transition onto a modern award by allowing for Fair Work Australia to make orders to deal with any such matter;
provide that existing agreements will continue to apply until terminated or replaced by a new agreement made under the new bargaining framework;

• ensure a fair safety net with the National Employment Standards and minimum wages applying to all employees from 1 January 2010, including those covered by existing agreements; and

• allow parties to ‘modernise’ enterprise awards so that they can continue to operate in the new system and treat Notional Agreement Preserving State Awards (NAPSA) derived from State enterprise awards in the same way.

**National System for the Private Sector**

The bill will apply to ‘national system’ employers and their employees, relying principally on the corporations’ power of the Constitution.

The Government is working with the states and territories to achieve a national workplace relations system for the private sector.

The bill will exclude State and Territory industrial laws but not in areas such as discrimination, workers compensation and occupational health and safety.

**Conclusion**

This bill ensures balance and fairness in Australian workplaces.

Work Choices made the mistake of swinging the workplace relations pendulum to the extreme, destroying the employment safety net and stripping away basic industrial rights for employees.

The Fair Work Bill 2008 recognises the importance of balance. Balance in terms of supporting entrepreneurship, initiative and the growth of the businesses that produce our goods and services and employ others, while providing for fair and decent work for employees and a fair return for their labour.

With the introduction today of the Fair Work Bill, Work Choices is tantalisingly close to being gone forever, along with the careers of those who tried to foist it, without a mandate and without transparency, on an unwilling Australia people.

This bill achieves the right balance in a way that is true to the values that made us who and what we are.

The world is a lot different to the one in which Australia devised the original conciliation and arbitration system more than a hundred years ago. Economic reform, globalization, new technologies and rising levels of education have rendered the old ways obsolete.

Today building greater opportunity for all Australians requires a degree of flexibility and responsiveness that would have been unimaginable to previous generations. Competition is sharper and innovation faster.

But in this new world, Australians voted for a workplace relations system that delivers a fair go, the benefits of mateship at work, a decent safety net and a fair way of striking a bargain.

That’s what this bill does.

Ordered that further consideration of this bill be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

**VALEDICTORIES**

The PRESIDENT (1.30 am)—I take this opportunity at the end of the 2008 sittings to thank all senators for their cooperation and assistance this year. My thanks, also, to my colleagues the temporary chairman of committees for their contribution to the work of this chamber. I would particularly like to thank the Deputy President and Chairman of Committees, Senator Alan Ferguson. Senator Ferguson was President for much of this year, and I know he would join me in thanking the many staff who support the operations in this place.

There are many people in the Department of the Senate whose hard work deserves our thanks, including the Clerk of the Senate, Harry Evans; the Deputy Clerk and the other clerks at the table, for their support and advice; the Usher of the Black Rod, the Deputy Black Rod and the senators’ services staff; the chamber support staff and, in particular,
the attendants and the mail attendants; staff of the Committee Office, the Table Office, the Procedure Office; and all other Department of the Senate staff, including Senate IT, printing and transport.

I would also like to thank staff of the Department of Parliamentary Services, led by Alan Thompson, including the staff of Landscape Services, Art Services, Facilities management, the guides service, and IT, Broadcasting and Hansard staff. My thanks also go to the Parliamentary Library, under the direction of Roxanne Missingham; to the Parliamentary Relations Office and Parliamentary Education Office; to those who work in security and for Protective Services at Parliament House, in particular Superintendent Mark Andrews of the AFP, who has been Protective Security Controller at Parliament House and who will be retiring after five years of service in that position; to the Health and Recreation Centre staff; to the Speaker and his staff; and, of course, to the staff of my own office, including those in Queensland.

On behalf of all senators, many thanks to all the other people who work in Parliament House and in electorate offices right around Australia. I wish you all a happy and peaceful Christmas period, and look forward to seeing you all at the next sitting, in 2009.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (1.33 am)—by leave—Mr President, I want first of all to add to the thanks you have provided. But I also want to say thank you from the government to the staff—the people who make this chamber work—and particularly to the Usher of the Black Rod. I know that she is heading off into new waters and I wish her well. But also I want to say thank you to the many others—the Clerk and the deputy clerks and all of those people who make this place tick over. It has been an interesting year, I think you could say, for us all. It has had its challenges. My thanks to all, and I wish you a happy Christmas and a safe New Year.

I also want to recognise the opposition, the minor parties and the Independents—Senator Fielding and Senator Xenophon—and say thank you for the work that you have done to ensure that this place continues to operate in the principled way that its has always done. This year has, I think, demonstrated that for all to see. In conclusion, I say to the opposition and the Greens, to Senator Fielding and Senator Xenophon, and, of course, to the government: happy Christmas and a safe New Year.

Senator MINCHIN (South Australia—Leader of the Opposition in the Senate) (1.34 am)—by leave—Mr President, can I begin by thanking you very much for your wise stewardship of this chamber in the period in which you have presided over us. You have done it, I think, with great wisdom, calmness and patience for the period in which you have been there, despite some duress. Also, on behalf of the coalition, I particularly want to thank the former President and now Deputy President, Senator Alan Ferguson, for his great service to this chamber throughout 2008, a service which we all honour and respect. I also want to add my thanks along with yours and the government’s to our Clerk, Harry Evans, and all Senate officials, particularly Andrea, who is of course leaving us this year. Again, it has been a remarkable display of professionalism and loyalty to all that is best about this chamber from our Senate officials. And, of course, to all Parliament House staff: we thank them.

It has been my observation in my time here that the Senate displays a level of decorum and civility unfamiliar to the House of Representatives. While we might not always be perfect in our behaviour, I think the behaviour in this chamber is far superior to that
of our colleagues in the other place. I think that has been on display in 2008 and I look forward to that continuing in 2009. As part now of the non-government side of the chamber, I thank the other non-government senators for their cooperation on a range of issues that have come before the chamber throughout the course of this year. In conclusion, I just want to wish every senator a very happy Christmas.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.36 am)—by leave—Mr President, I join in the salutations that have been expressed by you, by the Leader of the Government in the Senate and by the Leader of the Opposition in the Senate. I want to say on behalf of my colleagues that we enjoyed being here. We are much honoured and are grateful for all the work of the Presiding Officers, the clerks, the attendants, Hansard, the Parliamentary Library and the great depth and spread of people throughout this enormous parliament building, which is the fulcrum of our democratic society in Australia. I join with the previous speakers in wishing everybody here a happy, safe Christmas and a bountiful New Year, and I extend that same wish to all the people of Australia.

Senator BOSWELL (Queensland) (1.37 am)—by leave—Senator Joyce is not here at the moment, so I will place myself in his position. I would like to wish all my colleagues in the Liberal and National parties, the crossbenchers and the Labor Party and you, of course, Mr President, and Senator Evans a wonderful break, which we so much deserve at the moment. We have gone hard for 12 months, and I hope that we can all take a nice holiday, spend it with our families, our children and our grandchildren and make up for the time that we have been down here. I would like to wish everyone a happy, holy Christmas and a great New Year.

Senator XENOPHON (South Australia) (1.38 am)—by leave—Ditto.

The PRESIDENT—That is the best speech tonight, Senator Xenophon.

Senator FIELDING (Victoria—Leader of the Family First Party) (1.38 am)—by leave—I also on behalf of Family First want to wish everybody a very safe and merry Christmas and New Year. I again thank the Black Rod, chamber support staff, the clerks and deputy clerks, committees, the library, my own staff, the President and colleagues. I thought I should give a highlight for the year: I suppose it was taking my shirt off in Melbourne for the pensioners. I would probably do it again if I had to. It has been a very tough year. My wife has not been at all well and I would like to thank those who have given me support through the year.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (1.39 am)—by leave—I do not wish to upstage Senator Ludwig, who I am sure did a terrific job in my absence. I am sorry I was out of the chamber when this started. Thanks to all who contributed to the working of the Senate. I wish everyone a peaceful Christmas break. I think everyone deserves a decent break. As I say, I wish everyone all the best for the festive season and we will see you all back here far too soon, the first week of February.

LEAVE OF ABSENCE

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (1.40 am)—I move:

That leave of absence be granted to every member of the Senate from the end of the sitting today to the day on which the Senate next meets.

Question agreed to.

Senate adjourned at 1.41 am (Friday)
The following documents were tabled by the Clerk:

* Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number

Australian Radiation Protection and Nuclear Safety Act—Select Legislative Instrument 2008 No. 234—Australian Radiation Protection and Nuclear Safety Amendment Regulations 2008 (No. 1) [F2008L04264]*.

Customs Act—Select Legislative Instrument 2008 No. 227—Customs (Thailand–Australia Free Trade Agreement) Amendment Regulations 2008 (No. 1) [F2008L04438]*.

Higher Education Support Act—VET Provider Approval (No. 8 of 2008)—The Academy of Interactive Entertainment Ltd [F2008L04549]*.


Industrial Chemicals (Notification and Assessment) Act—Select Legislative Instrument 2008 No. 236—Industrial Chemicals (Notification and Assessment) Amendment Regulations 2008 (No. 2) [F2008L03863]*.

Parliamentary Entitlements Act—Select Legislative Instrument 2008 No. 228—Parliamentary Entitlements Amendment Regulations 2008 (No. 2) [F2008L04474]*.

Quarantine Act—Quarantine Amendment Proclamation 2008 (No. 4) [F2008L04345]*.

* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE
The following answers to questions were circulated:

Human Services: Departmental Staff
(Question No. 634)

Senator Minchin asked the Minister for Human Services, upon notice, on 27 August 2008:

(1) How many departmental officers are working in the office of the Minister/Parliamentary Secretary.
(2) How many of these staff are Departmental Liaison Officers.
(3) How many departmental officers, on secondment from the department, are in the office of the Min-
ister/Parliamentary Secretary in personal staff positions.

Senator Ludwig—The answer to the honourable senator’s question is as follows:

(1) Three.
(2) Three.
(3) None.