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SITTING DAYS—2009

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- PERTH      585AM
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FORTY-SECOND PARLIAMENT
FIRST SESSION—FOURTH 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
Temporary Chairs of Committees—Senators Guy Barnett, Cory Bernardi,
Thomas Mark Bishop, Carol Louise Brown, Patricia Margaret Crossin,
Michael George Forshaw, Gary John Joseph Humphries, Annette Kay Hurley,
Stephen Patrick Hutchins, Gavin Mark Marshall, Julian John James McGauran,
Claire Mary Moore, Stephen Shane Parry, Hon. Judith Mary Troeth and Russell Brunell Trood

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 Stephen Shane Parry

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 Fiona Nash
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

Chief Government Whip—Senator Kerry Williams Kelso O’Brien
Deputy Government Whips—Senators Donald Edward Farrell and Anne McEwen
Chief Opposition Whip—Senator Stephen Shane Parry
Deputy Opposition Whips—Senators Judith Anne Adams and David Christopher Bushby

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
## Members 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) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Christopher Martin Ellison, resigned.
(4) 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
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<th>Role</th>
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<tr>
<td>Prime Minister</td>
<td>Hon. Kevin Rudd, MP</td>
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<tr>
<td>Deputy Prime Minister, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion</td>
<td>Hon. Julia Gillard, MP</td>
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<td>Treasurer</td>
<td>Hon. Wayne Swan MP</td>
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<tr>
<td>Minister for Immigration and Citizenship and Leader of the Government in the Senate</td>
<td>Senator Hon. Chris Evans</td>
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<tr>
<td>Special Minister of State, Cabinet Secretary and Vice President of the Executive Council</td>
<td>Senator Hon. John Faulkner</td>
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<tr>
<td>Minister for Finance and Deregulation</td>
<td>Hon. Lindsay Tanner MP</td>
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<td>Minister for Trade</td>
<td>Hon. Simon Crean MP</td>
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<td>Minister for Foreign Affairs</td>
<td>Hon. Stephen Smith MP</td>
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<td>Minister for Defence</td>
<td>Hon. Joel Fitzgibbon MP</td>
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<td>Hon. Nicola Roxon MP</td>
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<td>Minister for Families, Housing, Community Services and Indigenous Affairs</td>
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<td>Hon. Anthony Albanese MP</td>
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<td>Minister for Innovation, Industry, Science and Research</td>
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<tr>
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<td>Senator Hon. Penny Wong</td>
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<tr>
<td>Minister for the Environment, Heritage and the Arts</td>
<td>Hon. Peter Garrett AM, MP</td>
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<tr>
<td>Attorney-General</td>
<td>Hon. Robert McClelland MP</td>
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<td>Senator Hon. Joe Ludwig</td>
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<td>Hon. Tony Burke MP</td>
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<tr>
<td>Minister for Resources and Energy and Minister for Tourism</td>
<td>Hon. Martin Ferguson AM, MP</td>
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[The above ministers constitute the cabinet]
RUDD MINISTRY—continued

Minister for Home Affairs  
Hon. Bob Debus MP

Assistant Treasurer and Minister for Competition Policy and Consumer Affairs  
Hon. Chris Bowen MP

Minister for Veterans’ Affairs  
Hon. Alan Griffin MP

Minister for Housing and Minister for the Status of Women  
Hon. Tanya Plibersek MP

Minister for Employment Participation  
Hon. Brendan O’Connor MP

Minister for Defence Science and Personnel  
Hon. Warren Snowdon MP

Minister for Small Business, Independent Contractors and the Service Economy and Minister Assisting the Finance Minister on Deregulation  
Hon. Dr Craig Emerson MP

Minister for Superannuation and Corporate Law  
Senator Hon. Nick Sherry

Minister for Ageing  
Hon. Justine Elliot MP

Minister for Youth and Minister for Sport  
Hon. Kate Ellis MP

Parliamentary Secretary for Early Childhood Education and Childcare  
Hon. Maxine McKew MP

Parliamentary Secretary for Climate Change  
Hon. Greg Combet AM, MP

Parliamentary Secretary for Defence Support and Parliamentary Secretary for Water  
Hon. Dr Mike Kelly AM, MP

Parliamentary Secretary for Regional Development and Northern Australia  
Hon. Gary Gray AO, MP

Parliamentary Secretary for Disabilities and Children’s Services and Parliamentary Secretary for Victorian Bushfire Reconstruction  
Hon. Bill Shorten MP

Parliamentary Secretary for International Development Assistance  
Hon. Bob McMullan MP

Parliamentary Secretary for Pacific Island Affairs  
Hon. Duncan Kerr MP

Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Trade  
Hon. Anthony Byrne MP

Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector  
Senator Hon. Ursula Stephens

Parliamentary Secretary to the Minister for Health and Ageing  
Senator Hon. Jan McLucas

Parliamentary Secretary for Multicultural Affairs and Settlement Services  
Hon. Laurie Ferguson MP

Parliamentary Secretary for Government Service Delivery  
Senator Hon. Mark Arbib
## SHADOW MINISTRY

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<td>Leader of the Opposition</td>
<td>The Hon Malcolm Turnbull MP</td>
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<tr>
<td>Shadow Minister for Foreign Affairs and Deputy Leader of the Opposition</td>
<td>The Hon Julie Bishop MP</td>
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<tr>
<td>Shadow Minister for Trade, Transport, Regional Development and Local Government and Leader of The Nationals</td>
<td>The Hon Warren Truss MP</td>
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<td>Shadow Minister for Broadband, Communications and the Digital Economy and Leader of the Opposition in the Senate</td>
<td>Senator the Hon Nick Minchin</td>
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<td>Shadow Minister for Innovation, Industry, Science and Research and Deputy Leader of the Opposition in the Senate</td>
<td>Senator the Hon Eric Abetz</td>
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<td>Shadow Treasurer</td>
<td>The Hon Joe Hockey MP</td>
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<td>Shadow Minister for Education, Apprenticeships and Training and Manager of Opposition Business in the House</td>
<td>The Hon Christopher Pyne MP</td>
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<td>Shadow Minister for Infrastructure and COAG and Shadow Minister Assisting the Leader on Emissions Trading Design</td>
<td>The Hon Andrew Robb AO, MP</td>
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<td>Shadow Minister for Finance, Competition Policy and Deregulation</td>
<td>Senator the Hon Helen Coonan</td>
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<td>Shadow Minister for Human Services and Deputy Leader of The Nationals</td>
<td>Senator the Hon Nigel Scullion</td>
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<td>Shadow Minister for Energy and Resources</td>
<td>The Hon Ian Macfarlane MP</td>
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<td>Shadow Minister for Families, Housing, Community Services and Indigenous Affairs</td>
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<td>Shadow Special Minister of State and Shadow Cabinet Secretary</td>
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<td>Shadow Minister for Climate Change, Environment and Water</td>
<td>The Hon Greg Hunt MP</td>
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<td>Shadow Minister for Agriculture, Fisheries and Forestry</td>
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<td>Shadow Minister for Employment and Workplace Relations</td>
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<td>Shadow Minister for Immigration and Citizenship</td>
<td>The Hon Dr Sharman Stone</td>
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<tr>
<td>Shadow Minister for Small Business, Independent Contractors, Tourism and the Arts</td>
<td>Mr Steven Ciobo</td>
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</table>

[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 Mitch Fifield

Shadow Parliamentary Secretary for Water Resources
and Conservation
Mr Mark Coulton MP

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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Thursday, 19 March 2009

The PRESIDENT (Senator the Hon. John Hogg) took the chair at 9.30 am and read prayers.

NOTICES
Presentation

Senator Heffernan to move on the next day of sitting:

That the following matter be referred to the Select Committee on Agricultural and Related Industries for inquiry and report:

The incidence and severity of bushfires across Australia, including:

(a) the impact of bushfires on human and animal life, agricultural land, the environment, public and private assets and local communities;

(b) factors contributing to the causes and risks of bushfires across Australia, including natural resource management policies, hazard reduction and agricultural land maintenance;

(c) the extent and effectiveness of bushfire mitigation strategies and practices, including application of resources for agricultural land, national parks, state forests, other Crown land, open space areas adjacent to development and private property and the impact of hazard reduction strategies;

(d) the identification of measures that can be undertaken by government, industry and the community and the effectiveness of these measures in protecting agricultural industries;

(e) any alternative or developmental bushfire prevention and mitigation approaches which can be implemented;

(f) the appropriateness of planning and building codes with respect to land use in bushfire prone regions;

(g) the adequacy and funding of fire-fighting resources both paid and voluntary and the usefulness of and impact on on-farm labour; and

(h) the role of volunteers.

Senator Fielding to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Parliamentary Contributory Superannuation Act 1948 to remove excessive superannuation arrangements for federal politicians, and for related purposes. Parliamentary Superannuation Amendment (Removal of Excessive Super) Bill 2009.

Senator WORTLEY (South Australia) (9.31 am)—Following the receipt of a satisfactory response, on behalf of the Standing Committee on Regulations and Ordinances I give notice that on the next day of sitting I shall withdraw business of the Senate notice of motion No. 2 standing in my name for 12 sitting days after today for the disallowance of the Other Grants Guidelines Research 2008. I seek leave to incorporate in Hansard the committee’s correspondence concerning the instrument.

Leave granted.

The correspondence read as follows—

Other Grants Guidelines (Research) 2008
5 February 2009

Senator the Hon Kim Carr
Minister for Innovation, Industry, Science and Research
Suite M1.48
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Other Grants Guidelines (Research) 2008 made under section 238-10 of the Higher Education Support Act 2003 that revoke and remake the Other Grants Guidelines. The Committee’s consideration of these Guidelines has raised the following issues.

Appendix 2A to these Guidelines specifies the conditions that apply to a Commercialisation Training Scheme grant. Clause 7 deals with rights...
of access to the premises and records of a grant recipient. Subclause 7.1 states that access must be given to certain prescribed officers, including “any person authorised in writing by the Secretary”. This appears to be a wide discretion. The Committee would appreciate your advice as to the need for this wide power and whether it should be restricted to persons of suitable seniority and experience.

Subclause 6.3 in Appendix 2A states that the Commonwealth’s right to be indemnified is “in addition to, and not exclusive of” any other right, power or remedy provided by law. The words “not exclusive of” are, presumably, intended to mean “does not exclude”, rather than implying that the Commonwealth’s right is inclusive of other rights. The Committee seeks your advice as to whether this wording should be corrected to avoid any ambiguity.

The Committee would appreciate your advice on the above matters as soon as possible, but before 6 March 2009, to enable it to finalise its consideration of these Guidelines. Correspondence should be directed to the Chair, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

Senator Dana Wortley
Chair

16 March 2009
Senator Dana Wortley
Chair
Senate Standing Committee on Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600
Dear Senator Wortley

Thank you for your letter of 5 February 2009 concerning the Senate Standing Committee on Regulations and Ordinances’ consideration of the Other Grants Guidelines (Research) 2008.

I agree that the provisions of sub-clause 7.1 are wide, but I believe this is necessary for my Department to fully meet its fiduciary duties in relation to the Commercialisation Training Scheme (CTS). The access provisions contained in clause 7 identify those officers with a clearly defined statutory or program management role in relation to the administration of the CTS. However, my Department may occasionally need to rely on the skills of individuals or organisations that cannot easily be identified in advance. For example, an audit of data returns required under the CTS conditions of grant may require the engagement of a private audit firm or information technology specialist.

In such circumstances, I believe that it is necessary for the Secretary to be able to source appropriate expertise and to ensure access to information as appropriate. In this case, sub-clause 7.1 allows these individuals or classes of individuals to be authorised at the discretion of the Secretary. I can assure you that the Secretary will ensure appropriate consideration of the skill sets required at the time in order to guarantee that only persons of suitable seniority and experience are authorised under this sub-clause.

In relation to the indemnity provisions in sub-clause 6.3, you correctly identified that within the phrase “in addition to, and not exclusive of”, the expression “not exclusive of” is intended to mean “does not exclude”. I understand that “in addition to, and not exclusive of,” is in relatively common use in Commonwealth agreements, however, I accept your view that a more direct expression would present less opportunity for confusion. My Department operates on an annual cycle that provides for review and amendment of guidelines each year subsequent to each year’s budget and I propose that this issue be corrected through the next amendment to the guidelines.

I trust that this information is of assistance to the committee. Thank you for seeking my views on these matters.

Yours sincerely

Kim Carr
Minister for Innovation, Industry, Science and Research

Senator WORTLEY (South Australia) (9.32 am)—On behalf of the Standing Committee on Regulations and Ordinances, I give
notice that 15 sitting days after today I shall move:

No. 1—That ACIS Administration (Commonwealth Financial Assistance) Determination 2009, made under subsections 11(3) and (4) of the ACIS Administration Act 1999, be disallowed.

No. 2—That the Banking Amendment Regulations 2008 (No. 2), as contained in Select Legislative Instrument 2008 No. 280 and made under the Banking Act 1959, be disallowed.

No. 3—That Banking (Prudential standard) determination No. 3 of 2008, made under subsections 11AF(1) and (3) of the Banking Act 1959, be disallowed.

No. 4—That the Family Law Amendment Regulations 2008 (No. 3), as contained in Select Legislative Instrument 2008 No. 258 and made under the Family Law Act 1975, be disallowed.

No. 5—That Instrument number CASA 51/09, made under regulation 208 of the Civil Aviation Regulations 1988, be disallowed.

No. 6—That the Insurance Amendment Regulations 2008 (No. 2), as contained in Select Legislative Instrument 2008 No. 281 and made under the Insurance Act 1973, be disallowed.


I seek leave to incorporate in Hansard a short summary of the matters raised by the committee.

Leave granted.

The summary read as follows—

ACIS Administration (Commonwealth Financial Assistance) Determination 2009

This Determination specifies automotive and other industry assistance programs for the purposes of the Automotive Competitiveness and Investment Scheme. Section 17 of the Legislative Instruments Act 2003 directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken particularly where a proposed instrument is likely to have an effect on business. Section 18 of the Act provides that in some circumstances consultation may be unnecessary or inappropriate. The definition of ‘explanatory statement’ in section 4 of the Act requires an explanatory statement to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken. The Explanatory Statement that accompanies this Determination makes no reference to consultation. The Committee has written to the Minister seeking advice on whether consultation was undertaken and, if so, the nature of that consultation.

Banking Amendment Regulations 2008 (No. 2), Select Legislative Instrument 2008 No. 280

These Amending Regulations make provision for the Financial Claims Scheme. The Explanatory Statement that accompanies these Regulations makes no reference to consultation. The Committee has written to the Minister seeking advice on whether consultation was undertaken and, if so, the nature of that consultation.

Banking (Prudential Standards) Determination No. 3 of 2008

This Determination revokes and replaces Prudential Standard APS 222 Associations with Related Entities which applies to all authorised deposit-taking institutions.

Clause 12 permits APRA to deem that other entities are related entities of an authorised deposit-taking institution (ADI). The ADI must then comply with monitoring and risk-control requirements in relation to the deemed related entity. This appears to be a widely-framed discretion. There is no indication as to the circumstances under which this discretion will be exercised and whether there is prior consultation with an ADI.

Clause 35 requires an ADI to consult with APRA prior to certain events (eg establishing or acquiring a subsidiary). It is not clear whether this clause operates simply as a method of notification, or whether APRA approval is required before the stipulated events.

The Committee has written to the Minister seeking further advice on these provisions.

Family Law Amendment Regulations 2008 (No. 3), as contained in Select Legislative Instrument 2008 No. 258
The Explanatory Statement that accompanies these Regulations makes no reference to consultation. The Committee has written to the Minister seeking advice on whether consultation was undertaken and, if so, the nature of that consultation.

**Instrument Number CASA 51/09**

This instrument permits certain aircraft operated by Macair Airlines Pty Ltd to be operated with one flight attendant. The Explanatory Statement indicates that the Civil Aviation Safety Authority (CASA) consulted ‘within CASA and with Macair Airlines’ prior to making this instrument. Notwithstanding the consultation with the airline, it is not clear how consultation by a rule-maker with itself meets the requirement of section 17 of the *Legislative Instruments Act 2003*. It is also unclear what consultation ‘within CASA’ means. The Committee has written to the Minister seeking advice on this matter.

**Insurance Amendment Regulations 2008 (No. 2), as contained in Select Legislative Instrument 2008 No. 281**

These Amending Regulations make provision for the Financial Claims Scheme. The Explanatory Statement that accompanies this instrument notes that there was only limited consultation due to the urgency of the amendments. The Committee has written to the Minister seeking further explanation about the nature of this limited consultation.

**Social Security (Administration) (Schooling Requirement) Determination 2009 (No. 1)**

This Determination specifies matters relevant to a decision regarding the suspension of a person’s schooling requirement payment. Part 2 of Schedule 1 lists reasonable excuses for failing to comply with an enrolment notice. Item 2 of Part 2 provides that it is an excuse if “the school … cannot provide a safe environment”. This is not framed as a reasonable belief, in contrast to Item 5 of Part 1. The explanatory statement provides no indication of the reasons for the difference in drafting.

The Committee has written to the Minister seeking advice on these matters.

**BUSINESS**

**Rearrangement**

Senator O’BRIEN (Tasmania) (9.32 am)—by leave—At the request of the Chair of the Standing Committee on Legal and Constitutional Affairs, Senator Crossin, I move:

That business of the Senate order of the day no. 3, relating to the presentation of the report of the Legal and Constitutional Affairs Committee on the exposure draft of the Personal Property Securities Bill 2008, be postponed till a later hour.

Question agreed to.

**COMMITTEES**

**Legal and Constitutional Affairs Committee**

**Reference**

Senator O’BRIEN (Tasmania) (9.33 am)—At the request of the Chair of the Standing Committee on Legal and Constitutional Affairs, Senator Crossin, I move:

That the reference to the Legal and Constitutional Affairs Committee relating to Australia’s judicial system be withdrawn.

Question agreed to.

Senator O’BRIEN (Tasmania) (9.33 am)—At the request of the Chair of the Standing Committee on Legal and Constitutional Affairs, Senator Crossin, I move:

That the following matter be referred to the Legal and Constitutional Affairs Committee for inquiry and report by 17 August 2009:

Access to justice, with particular reference to:
(a) the ability of people to access legal representation;
(b) the adequacy of legal aid;
(c) the cost of delivering justice;
(d) measures to reduce the length and complexity of litigation and improve efficiency;
(e) alternative means of delivering justice;
(f) the adequacy of funding and resource arrangements for community legal centres; and
(g) the ability of Indigenous people to access justice.

Question agreed to.

Senator O'BRIEN (Tasmania) (9.33 am)—At the request of the Chair of the Standing Committee on Legal and Constitutional Affairs, Senator Crossin, I move:

That the following matter be referred to the Legal and Constitutional Affairs Committee for inquiry and report by 17 August 2009:

Australia's judicial system and the role of judges, with particular reference to:

(a) procedures for appointment and method of termination of judges;
(b) term of appointment of judges, including the desirability of a compulsory retirement age, and the merit of full-time, part-time or other arrangements;
(c) jurisdictional issues, for example, the interface between the federal and state judicial system; and
(d) the judicial complaints handling system.

Question agreed to.

Rural and Regional Affairs and Transport Committee
Extension of Time

Senator O'BRIEN (Tasmania) (9.34 am)—At the request of the Chair of the Standing Committee on Rural and Regional Affairs and Transport, Senator Sterle, I move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Committee on the import risk analysis for the importation of Cavendish bananas from the Philippines be extended to 14 May 2009.

Question agreed to.

ASSOCIATION OF FORMER MEMBERS OF THE PARLIAMENT OF AUSTRALIA

Senator O'BRIEN (Tasmania) (9.34 am)—At the request of the President, I move:

That the Senate—

(1) Recognises the Association of Former Members of the Parliament of Australia, formed in 1988, as a forum in which former Members and Senators can meet, discuss and promote parliamentary democracy.

(2) Acknowledges the contribution made by the Association and its members to debate on public policy in Australia and the furthering of parliamentary democracy in general.

(3) Welcomes the role of the Association in encouraging former Members and Senators to maintain their contacts, associations and friendships established during their tenure as Australia parliamentarians.

(4) Endorses the Association's role in establishing fraternal relations with kindred organisations within Australia and internationally.

Question agreed to.

TURKEY

Senator FERGUSON (South Australia) (9.35 am)—I move:

That the Senate—

(a) celebrates and commends the achievements of the Turkish community here in the Commonwealth of Australia that has been created as a result of this agreement in the 40 years since its implementation;

(b) notes that once enemies on the battlefields of Gallipoli, the Commonwealth of Aus-
Australia and the Republic of Turkey have established a unique relationship and bond forged in the blood of young men from both nations and that this uniqueness at the core of deep rooted relations between the two countries gained even more momentum by the unforgettable reconciliatory remarks of the Founder of the Modern Turkish Republic, Mustafa Kemal Atatürk, to the mothers of fallen Anzacs ‘...You, the mothers, who sent their sons from far away countries wipe away your tears; your sons are now lying in our bosom and are in peace. After having lost their lives on this land they have become our sons as well’;

(c) notes the Turkish nation is now a friendly power and members of the Turkish community have now integrated into Australian society;

(d) acknowledges the unique relationship that exists between Australia and Turkey; a bond highlighted by both nations commitment to the rights and liberties of our citizens and the pursuit of a just world, highlighted by the statement of Atatürk ‘Peace at Home, Peace in the World’;

(e) commends the Republic of Turkey’s commitment to democracy, the rule of law and secularism; and

(f) on this, the 40th anniversary of the Formal Agreement between The Government of the Commonwealth of Australia and the Government of The Republic of Turkey concerning the Residence and Employment of Turkish Citizens in Australia, pledges Australia’s friendship, commitment and enduring support to the people of Turkey as we celebrate this important occasion together.

Question agreed to.

SAME-SEX COUPLES: LEGISLATIVE CHANGES

Senator HANSON-YOUNG (South Australia) (9.36 am)—I move:

That the Senate—

(a) notes the appreciation of the gay and lesbian community of the recent passing of the same-sex law reforms;

(b) recognises:

(i) concerns raised by the gay and lesbian community that isolated and vulnerable members of the community may only become aware of these reforms after 30 March 2009 when Centrelink’s education campaign commences, and

(ii) that the arbitrary time frame will not allow for same-sex couples to adequately adjust to the removal of discrimination before incurring debt and penalties; and

(c) calls on the Government to revisit the implementation of a 12-month transitional period to ensure individuals currently on a social security payment have sufficient time to readjust to the changes.

Senator LUDWIG (Queensland—Minister for Human Services) (9.36 am)—by leave—The government did not hide the fact that equal treatment could result in some same-sex couples having the benefits they currently receive reduced and that there would be winners and losers. That is why we put in place a long phase-in time—15 months—for those changes that adversely impact on the finances of same-sex couples. This allows time for same-sex couples to adjust to being treated the same as opposite-sex couples. The government is conscious of the need to allow couples an opportunity to adjust to the changes made by the reforms. Changes to social security and family assistance entitlements will not commence until 1 July 2009. This is to allow time for same-sex couples to adjust to being treated the same as opposite-sex couples. Centrelink has established a dedicated hotline for customers affected by the reforms to discuss their particular situation with a Centrelink service adviser. The hotline number is 136280. Centrelink social workers and financial information
service officers will be available to assist people affected by these changes.

Question put:
That the motion (Senator Hanson-Young’s) be agreed to.

The Senate divided. [9.37 am]
(The President—Senator the Hon. JJ Hogg)

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

**NOES**
Abetz, E. Arbib, M.V.
Back, C.J. Barnett, G.
Bernardi, C. Bilyk, C.L.
Bishop, T.M. Brown, C.L.
Bushby, D.C. Cameron, D.N.
Cash, M.C. Colbeck, R.
Collins, J. Conroy, S.M.
Cormann, M.H.P. Eggleston, A.
Farrell, D.E. Feeney, D.
Fielding, S. Fifield, M.P.
Forshaw, M.G. Forster, M.L.
Hogg, J.J. Humphries, G.
Hurley, A. Hutchins, S.P.
Joyce, B. Ludwig, J.W.
Lundy, K.A. Macdonald, I.
Marshall, G. McEwen, A.
McLucas, J.E. Moore, C.
O’Brien, K.W.K. Parry, S. *
Polley, H. Pratt, L.C.
Ryan, S.M. Scullion, N.G.
Sherry, N.J. Troeth, J.M.
Trost, R.B. Williams, J.R.
Wortley, D. Xenophon, N.

* denotes teller

Question negatived.

**SWIFT PARROT**

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (9.45 am)—I move:

That the Senate noting the words of the Government (Minister for Human Services, Senator Ludwig) in the Senate on 17 March 2009 that, ‘Under the EPBC Act the Minister for the Environment, Heritage and the Arts can do much more than prevent any deliberate actions which would increase the prospect of the swift parrot going to extinction’:

(a) calls on the Minister for the Environment, Heritage and the Arts (Mr Garrett) to act, well within these powers, to prevent any deliberate action which would increase the prospect of Australia’s swift parrot becoming extinct; and

(b) calls on the Government to inform the Senate by 12 May 2009 whether the swift parrot recovery plans meet International Union for the Conservation of Nature requirements.

**Senator LUDWIG** (Queensland—Minister for Human Services) (9.45 am)—by leave—The government does not support this motion because, under the Environment Protection and Biodiversity Conservation Act, threatened species recovery plans are not required to meet International Union for the Conservation of Nature requirements.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (9.46 am)—by leave—That is a complete cop-out. It just says that the Minister for the Environment, Heritage and the Arts is not prepared to meet international standards. This is the minister who said that he had more powers than I was asking about to stop deliberate action. Let us be straight about this. The minister says he has a recovery plan in place. Effectively, that is not true. The recovery plan in place is a 2003-06 recovery plan and he has failed to put a new one in place over the last three years. As if that was not culpa-
ble enough, he is now standing aside and allowing the logging of a prime nesting site of the swift parrot in south-east Tasmania, namely, the 10,000-hectare Wielangta Forest, described in a Federal Court procedure by scientists who know this as one of the richest nesting sites for the swift parrot that the scientists know of. These birds are headed for extinction, because no nesting sites means no birds, yet Mr Garrett is permitting the destruction of these nesting sites. That is irresponsible, unforgivable and, if this bird goes to extinction, his name will be written across the headstone of a magnificent creature that we should be looking after.

Question put:
That the motion (Senator Bob Brown’s) be agreed to.

The Senate divided. [9.49 am]
(The President—Senator the Hon. JJ Hogg)

  Ayes............  6  
  Noes............ 37  
  Majority........ 31

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.
Bishop, T.M.  Brown, C.L.
Bushby, D.C.  Cameron, D.N.
Cash, M.C.  Colbeck, R.
Collins, J.  Conroy, S.M.
Cormann, M.H.P.  Eggleston, A.
Farrell, D.E.  Fielding, S.
Fifield, M.P.  Forshaw, M.G.
Furner, M.L.  Hogg, J.J.
Hurley, A.  Hutchins, S.P.
Ludwig, J.W.  Lundy, K.A.
Macdonald, I.  Marshall, G.
McEwen, A.  McLucas, J.E.
Moore, C.  O’Bien, K.W.K. *
Parry, S.  Polley, H.

* denotes teller

Question negatived.

WHALING

Senator SIEWERT (Western Australia) (9.51 am)—I move:
That the Senate—
(a) expresses its concern over the treatment of Junichi Sato and Toru Suzuki, two Japanese Greenpeace activists who were held without charge for 26 days and are currently on strict bail restrictions, pending a court case into their role in exposing the embezzlement of whale meat from the Japanese Government sponsored whaling program;
(b) notes that:
(i) on Thursday, 19 March 2009, Greenpeace Australia is coordinating concerned Australian citizens to hold peaceful protests outside the Japanese Embassy in Canberra, to voice their concerns over the Japanese Government’s handling of this trial, and
(ii) no charges have been laid relating to the embezzlement of whale meat by the crew of the Nisshin Maru whaling vessel, and that the Japanese Public Prosecutor has subsequently dropped the investigation into the involvement of the crew and whaling officials in this illegal trade; and
(c) calls on the Australian Government:
(i) to press the Japanese Government to take action on the alleged embezzlement of whale meat and to ensure that international human rights treaties, of which Australia and Japan are signatories, are upheld, and
(ii) to request the International Whaling Commission to launch its own investigation into the embezzlement of whale meat by crew members of the Japanese whaling fleet.
Question put.
The Senate divided. [9.53 am]
(The President—Senator the Hon. JJ Hogg)

Ayes.......... 6
Noes.......... 42
Majority....... 36

AYES
Brown, B.J.
Ludlam, S.
Siewert, R. *

NOES
Arbib, M.V.
Barnett, G.
Bilyk, C.L.
Boyce, S.
Cameron, D.N.
Colbeck, R.
Conroy, S.M.
Eggleston, A.
Feeney, D.
Fifield, M.P.
Furner, M.L.
Hurley, A.
Johnston, D.
Landy, K.A.
Marshall, G.
McLucas, I.E.
O’Brien, K.W.K.
Polley, H.
Ronaldson, M.
Scullion, N.G.
Trood, R.B.

* denotes teller

Question negatived.

COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT ACT 2005

Senator LUDLAM (Western Australia)
(9.56 am)—I move:
That the Senate—
(a) notes that:
   (i) an Environment, Communication and
       the Arts Committee inquiry found nu-
       merous and fundamental flaws in the
       Commonwealth Radioactive Waste
       Management Act 2005 and rec-
       ommended in December 2008 that it be
       repealed, and
   (ii) the committee called for replacement
       legislation to be introduced into the
       parliament in the autumn 2009 sittings
       that would be based on principles of
       rigorous consultation, voluntary con-
       sent, environmental credibility, and
       which utilises best practice models
       tested internationally; and
(b) calls on the Australian Government to:
   (i) repeal the Commonwealth Radioactive
       Waste Management Act 2005 and in-
       troduce replacement legislation as out-
       lined in Australian Labor Party (ALP)
       policy and subsequently recommended
       by the committee,
   (ii) deliver a process on radioactive waste
       that is scientific, transparent account-
       able, fair and allows access to appeal
       mechanisms, which is both an election
       promise and a stated policy position of
       the ALP, and
   (iii) update the Senate as to the Govern-
       ment’s intended timetable for the intro-
       duction of the repeal and replacement
       legislation.

Question put.
The Senate divided. [9.58 am]
(The President—Senator the Hon. JJ Hogg)

Ayes.......... 6
Noes.......... 42
Majority....... 36

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

NOES
Arbib, M.V.
Back, C.J.
Barnett, G.
Bernardi, C.
Bilyk, C.L.
Bishop, T.M.
Boyce, S.
Brown, C.L.
Bushby, D.C.
Cash, M.C.  Colbeck, R. 
Collins, J.  Conroy, S.M. 
Cormann, M.H.P.  Eggleston, A. 
Farrell, D.E.  Feeney, D. 
Fielding, S.  Fifield, M.P. 
Forshaw, M.G.  Furner, M.L. 
Hogg, J.J.  Hurley, A. 
Hutchins, S.P.  Kroger, H. 
Ludwig, J.W.  Lundy, K.A. 
Macdonald, I.  Marshall, G. 
McEwen, A.  Moore, C. 
O’Brien, K.W.K.  Parry, S. 
Polley, H.  Pratt, L.C. 
Ronaldson, M.  Ryan, S.M. 
Scullion, N.G.  Troeth, J.M. 
Trood, R.B.  Wortley, D. 

* denotes teller

Question negatived.

COMMITTEES

Community Affairs Committee

Reference

Senator LUDWIG (Queensland—Minister for Human Services) (10.01 am)—I move:

That the following matter be referred to the Community Affairs Committee for inquiry and report by 15 May 2009:

Any Government proposal to implement the Government’s announced 2008-09 Budget measure to increase compliance audits on Medicare benefits by increasing the audit powers to Medicare Australia to access the patient records supporting Medicare billing and to apply sanctions on providers.

Senator CORMANN (Western Australia) (10.01 am)—by leave—On behalf of the opposition, while we support the reference to a committee, we do want to place on record that we do not support the proposition to increase the audit powers of Medicare Australia to access patient records. The government would be well aware that doctors are telling us that they would rather go to jail than hand over patient information and breach doctor-patient confidentiality. We think that this measure has the potential to lead to bad health outcomes and is a gross invasion of privacy. We also note that Labor in government has tried this before—all the way back in 1993—and it was forced into a significant backdown then. But, as I said, we do support the reference of the inquiry.

Question agreed to.

TERRORISM

Senator LUDLAM (Western Australia) (10.02 am)—I seek leave to amend general business notice of motion No. 410 standing in my name for today relating to legislation for an independent reviewer of terrorism laws.

Leave granted.

Senator LUDLAM—I move the motion as amended:

That the Senate—

(a) notes that:

(i) more than 40 terrorism laws have been enacted in relation to terrorism since 2001, some of which included significant departures from established principles of Australian law,

(ii) due to the exceptional nature of these complex laws, and to ensure scrutiny, accountability and transparency, an independent reviewer has been recommended by:

(A) the Security Legislation Review Committee chaired by the Honourable Simon Sheller AO, QC, in June 2006,

(B) the Parliamentary Joint Committee on Intelligence and Security in December 2006, and again in 2007,

(c) the Legal and Constitutional Affairs Committee in October 2008, and

(d) the Senate through the passage of a private senator’s bill in November 2008,
(iii) independent review mechanisms are a feature of best practice in like-minded democracies, and
(iv) the Government’s response to various reviews issued on 23 December 2008; and
(b) calls on the Australian Government to:
(i) introduce legislation to establish the independent reviewer of terrorism laws mechanism announced as the National Security Legislation Monitor in the Attorney-General’s press release of 23 December 2008, and
(ii) update the Senate as to the Government’s intended timetable for the introduction of the legislation.

Question agreed to.

NOTICES
Postponement
Senator CORMANN (Western Australia) (10.03 am)—by leave—I move:
That general business notice of motion no. 407 standing in his name for today, proposing an amendment to the order of continuing effect in relation to departmental and agency appointments and vacancies, be postponed till the next day of sitting.

Question agreed to.

COMMITTEES
Community Affairs Committee
Reference
Senator HUMPHRIES (Australian Capital Territory) (10.04 am)—I seek leave to amend business of the Senate notice of motion No. 5 standing in my name for today by substituting for the reporting date of 12 May 2009 the reporting date of 18 June 2009.

Leave granted.

Senator HUMPHRIES—I move the motion as amended:
That the following matter be referred to the Community Affairs Committee for inquiry and report by 18 June 2009:

The design of the Federal Government’s national registration and accreditation scheme for doctors and other health workers, including:
(a) the impact of the scheme on state and territory health services;
(b) the impact of the scheme on patient care and safety;
(c) the effect of the scheme on standards of training and qualification of relevant health professionals;
(d) how the scheme will affect complaints management and disciplinary processes within particular professional streams;
(e) the appropriate role, if any, in the scheme for state and territory registration boards; and
(f) alternative models for implementation of the scheme.

Senator LUDWIG (Queensland—Minister for Human Services) (10.04 am)—by leave—It is not the federal government’s scheme but reflects a COAG agreement to put in place a new arrangement for national registration and accreditation of health professionals. It is a national approach agreed by all first ministers, being progressed by all governments, not, as the motion outlines, a federal or Commonwealth government scheme. The overarching first bill has been passed, but many other key design features are expected to be contained in a subsequent bill which is yet to be determined by health ministers. The anticipated process is that the subsequent bill, once agreed, would be issued as an exposure draft. If there is a view to having a parliamentary inquiry, that would be the earliest stage to have that inquiry, when the committee can deal with a tangible piece of proposed legislation.

Question agreed to.
RESERVE BANK AMENDMENT (ENHANCED INDEPENDENCE) LEGISLATION

Senator BUSHBY (Tasmania) (10.06 am)—I move:

That the Senate—

(a) notes that:

(i) it has been 268 days since the House of Representatives received the Senate’s message regarding amendments to the Reserve Bank Amendment (Enhanced Independence) Bill 2008;

(ii) the Treasurer (Mr Swan) in his second reading speech to the bill said, ‘These reforms that the Governor and I agreed to last year herald in a new era of independence and transparency in monetary policy in Australia. The introduction of this bill into the parliament today is a key step to delivering this’, and

(iii) as a result of this inaction, the Government is failing to deliver on its ‘new era of independence and transparency’ for the Reserve Bank; and

(b) sends a message to the House of Representatives requesting that the House immediately consider the Senate amendments to the Reserve Bank Amendment (Enhanced Independence) Bill 2008.

Question put.

The Senate divided. [10.10 am]

(The President—Senator the Hon. JJ Hogg)

<table>
<thead>
<tr>
<th>AYES</th>
<th>NOES</th>
<th>MAJORITY</th>
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<td>32</td>
<td>31</td>
<td>1</td>
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Fifield, M.P. Fisher, M.J.
Heffernan, W. Humphries, G.
Joyce, B. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Parry, S. Payne, M.A.
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Troeth, J.M.
Williams, J.R. Xenophon, N.

NOES

Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, B.J.
Brown, C.L. Cameron, D.N.
Collins, J. Conroy, S.M.
Farrell, D.E. Faulkner, J.P.
Feehey, D. 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.
Milne, C. Moore, C.
O’Brien, K.W.K. Polley, H.
Pratt, L.C. Sherry, N.J.
Siewert, R. Stephens, U.
Worlery, D. * denotes teller

PAIRS

Adams, J. Carr, K.J.
Abetz, E. Crossin, P.M.
Trood, R.B. Evans, C.V.
Nash, F. McLucas, P.
Johnston, D. Sterle, G.
Ferravanti-Wells, C. Wong, P.

TRAVESTON CROSSING DAM

Senator IAN MACDONALD (Queensland) (10.14 am)—I ask that general business notice of motion No. 411 standing in my name for today, relating to the Traveston Crossing Dam and the Greens preferences in the Queensland election, be taken as a formal motion.

The PRESIDENT—Is there any objection to this motion being taken as formal?
Senator Bob Brown—Mr President, I would seek your advice about the process. We agree to formality after dealing with the amendments.

The President—I understand, Senator Brown, that you will seek leave to move an amendment and that will be followed by Senator Macdonald seeking leave to move an amendment to your amendment. Upon leave being granted in both instances, I will put Senator Macdonald’s amendment to your amendment, then I will put your amendment, as amended—if it is amended. If it is not amended, I will then put your amendment as it stands and then I will put the motion, as amended, to the chamber.

Senator Bob Brown—Just for clarity’s sake, I will seek formality for the amendment that—

The President—No, Senator Brown, you need to seek leave to move an amendment to the motion once it is formal. Is there any objection to the motion being taken as formal? There is no objection.

Senator Ian Macdonald—I move this motion about this very important matter for Queensland:

That the Senate notes:

(a) that the Greens political party in Queensland has allocated preferences to the Bligh Labor Government in 12 marginal seats thus heightening the chances of the Labor Government being returned to office in Queensland at the election on Saturday, 21 March 2009;

(b) the Greens political party both in Queensland and federally claim to oppose the construction of the Traveston Crossing Dam on the Mary River in Queensland;

(c) that the Liberal National Party in Queensland has consistently and firmly opposed the construction of the Traveston Crossing Dam;

(d) that the Bligh Labor Government has refused to rule out construction of the Traveston Crossing Dam and has indicated it would make an application to the Federal Government for Environment Protection and Biodiversity Conservation Act approval to construct the Traveston Crossing Dam after Saturday’s election in Queensland; and

(e) the contradictory approaches of the Greens political party to construction of the Traveston Crossing Dam.

Senator Bob Brown—Leader of the Australian Greens) (10.15 am)—I seek leave to move a very important and clarifying amendment to that motion.

Senator Ian Macdonald—Mr President, I raise a point of order on clarification. There is no problem with leave being granted but I would just like to ask whether Senator Bob Brown’s motion is correct. First of all, there is no such entity as the Queensland National Liberal Party, so I am not quite sure what his amendment refers to.

Greens senators interjecting—

Senator Ian Macdonald—Well? The second question is this: does Senator Brown really mean that he moves an amendment to my original motion by ‘adding the words that’ or is he proposing that his amendment replace the original motion? That will affect how we vote on it. I assume he means that his amendment should have been ‘that the following words be added’ to the motion and then saying what he is saying.

The President—On the first question that you raise, that is not something that I need to rule on from the chair. On the second matter, it is a matter for Senator Bob Brown as to how that is intended. Again, I can only seek clarification from Senator Brown as to what his intention is.

Senator Bob Brown—First, I seek leave to change it to the ‘Liberal National Party’. I note that Senator Macdonald says that the Queensland National Liberal Party
does not exist, but I think he is pre-empting history by about three days.

Leave granted.

Senator BOB BROWN—I intend to move the amendment as a consequence of Senator Macdonald’s motion by adding the words. It dovetails very nicely. I move:

At the end of the motion, add “and that, logically, the Queensland Liberal National Party, in concern for the Mary River, ought to prefer the Greens over the Australian Labor Party in assessing preference directions”.

The PRESIDENT—By adding the words—that has clarified the situation! Can we just have no-one else seeking clarification at this time.

Senator IAN MACDONALD (Queensland) (10.18 am)—by leave—I move this amendment to Senator Brown’s proposed amendment:

At the end of the motion, add “and that the Senate also notes that the Liberal National Party in Queensland is not recommending preferences”.

I thought it would be helpful if I read the amendment as it would be if the proposed amendment to the amendment were carried—just for clarity: ‘That, logically, the Queensland Liberal National Party, in concern for the Mary River, ought to prefer the Greens over the Australian Labor Party in assessing preference directions.’ And I would add the words but ‘that the Senate also notes that the Liberal National Party in Queensland is not recommending preferences’.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.19 am)—I seek leave to move an amendment to Senator Macdonald’s proposed amendment.

Leave granted.

Senator FIELDING—I move:

At the end of the motion, add “and that the Senate notes that this is a waste of time”.

Senator Ian Macdonald—Leave is not granted.

The PRESIDENT—Leave was granted to move that amendment.

Senator Ian Macdonald—Mr President, on a point of order, I did not hear you say, ‘Is leave granted to Senator Fielding to move that amendment?’

The PRESIDENT—Yes, I did.

Senator Ian Macdonald—When we knew what the amendment was?

The PRESIDENT—I do not have to. Leave was granted for him to move an amendment. That leave having been granted, he then moved the amendment. We are now dealing with the amendment moved by Senator Fielding.

Question negatived.

The PRESIDENT—The question now is that the amendment moved by Senator Ian Macdonald be agreed to.

Question negatived.

The PRESIDENT—The question now is that the amendment moved by Senator Bob Brown be agreed to.

Question agreed to.

The PRESIDENT—The question now is that the motion as amended be agreed to.

The Senate divided. [10.26 am]

(The President—Senator the Hon. JJ Hogg)

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

AYES

Abetz, E. Back, C.J.
Barnett, G. Bernardi, C.
Birmingham, S. Boyce, S.
Brandis, G.H. Bushby, D.C.
Cash, M.C. Colbeck, R.
Coonan, H.L. Cormann, M.H.P.

CHAMBER
Thursday, 19 March 2009

Eggleston, A. Ferguson, A.B.
Fifield, M.P. Fisher, M.J.
Johnston, D. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J.J. Minchin, N.H.
Parry, S. Payne, M.A.
Ryan, S.M. Scullion, N.G.
Troed, R.B. Williams, J.R.

Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, B.J.
Brown, C.L. Cameron, D.N.
Collins, J. Conroy, S.M.
Evans, C.V. Farrell, D.E.
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. Ludvig, J.W.
McEwen, A. Milne, C.
Moore, C. O’Brien, K.W.K.
Polley, H. Pratt, L.C.
Sherry, N.J. Siewert, R.
Stephens, U. Sterle, G.
Wortley, D. Xenophon, N.

Adams, J. Carr, K.J.
Boswell, R.L.D. Crossin, P.M.
Joyce, B. Faulkner, J.P.
Nash, F. McLucas, J.E.
Fierravanti-Wells, C. Wong, P.

Question negatived.

BUSINESS

Rearrangement

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (10.30 am)—At the request of Senator McLucas, I move:

That on Thursday, 19 March 2009:

(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 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:

Fair Work Bill 2008
Customs Tariff Amendment (2009 Measures No. 1) Bill 2009
Excise Tariff Amendment (2009 Measures No. 1) Bill 2009—consideration of messages
Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008
Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009
Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]
Appropriation Bill (No. 3) 2008-2009
Appropriation Bill (No. 4) 2008-2009
Appropriation Bill (No. 5) 2008-2009
Appropriation Bill (No. 6) 2008-2009
Tax Laws Amendment (2009 Measures No. 1) Bill 2009
Social Security Amendment (Liquid Assets Waiting Period) Bill 2009; and

(f) if the Senate is sitting at midnight, the sitting of the Senate be suspended till 9.30 am on Friday, 20 March 2009.

Senator Bob Brown—I just want to reiterate, because it is quite important, that the Greens have moved for an extra sitting week, and the Senate has denied that, but—

The PRESIDENT—You need leave to make a statement.
Senator Bob Brown—All right.

The PRESIDENT—The question is that the motion moved by Senator Ludwig be agreed to.

Question agreed to.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.31 am)—Mr President, would you record the Greens’ opposition to the motion.

The PRESIDENT—We will record the Greens’ opposition to that.

TURKEY

Senator XENOPHON (South Australia) (10.31 am)—by leave—I rise to make a short statement on Senator Ferguson’s motion No. 402 in relation to Turkey. I wish to have it noted that I could not support that motion. I do not take issue with the motion where it celebrates the achievements of the Turkish community here in Australia nor where it refers to Gallipoli, but I do take issue with it where it relates to the Turkish nation and its human rights record in relation to the continuing occupation of the Republic of Cyprus and the treatment of minorities within Turkey. These are significant human rights issues. The issue of the Turkish occupation of Cyprus is one that has been the subject of numerous UN resolutions and, for that reason, I could not support the motion of Senator Ferguson.

COMMITTEES

Publications Committee

Report

Senator O’BRIEN (Tasmania) (10.32 am)—On behalf of Senator Carol Brown, I present the ninth report of the Senate Standing Committee on Publications.

Ordered that the report be adopted.

Finance and Public Administration Committee

Additional Information

Senator O’BRIEN (Tasmania) (10.33 am)—On behalf of the Chair of the Senate Standing Committee on Finance and Public Administration, Senator Polley, I present additional information received by the committee relating to its inquiry into the provisions of the Appropriation (Nation Building and Jobs) Bill (No. 1) 2008-2009 and five related bills.

BUDGET

Consideration by Estimates Committees

Additional Information

Senator O’BRIEN (Tasmania) (10.33 am)—I present additional information received by committees relating to estimates hearings:

The list read as follows—

Budget (supplementary) 2008-09—

Economics—Standing Committee—

Additional information received between 5 February and 18 March 2009—

Treasury portfolio.

Education, Employment and Workplace Relations—Standing Committee—Additional information received between 4 February and 25 February 2009—

Education, Employment and Workplace Relations portfolio.

Finance and Public Administration—

Standing Committee—Additional information received between 11 February and 18 March 2009—Prime Minister and Cabinet portfolio.

Additional estimates 2008-09—

Community Affairs—Standing Committee—Additional information received between—

25 February and 18 March 2009—

Health and Ageing portfolio.

26 February and 18 March 2009—

Families, Housing, Community Ser-
vices and Indigenous Affairs portfolio.
27 February and 18 March 2009—
Indigenous issues across portfolio.
Finance and Public Administration—
Standing Committee—Additional in-
formation received between 27 Febru-
ary and 18 March 2009—
Finance and Deregulation portfolio.
Parliamentary departments.
Prime Minister and Cabinet portfo-
lio.
Legal and Constitutional Affairs—
Standing Committee—Additional in-
formation received between—
23 February and 17 March 2009—
Attorney-Generals’ portfolio.
24 February and 17 March 2009—
Immigration and Citizenship portfo-
lio
Senator BARNETT (Tasmania) (10.33 am)—by leave—I move:
That the Senate take note of additional infor-
mation received by the Legal and Constitutional
Affairs Committee.
I wish to speak to the additional estimates
2008-09 information received by the Senate
Standing Committee on Legal and Constitu-
tional Affairs and to highlight the questions
that were asked at estimates with regard to
budget cuts. Specifically, the committee que-
rried the Attorney-General’s Department and
a number of agencies about the impact of the
increased efficiency dividend on staffing in
particular. We asked questions about the im-
 pact on staffing in the law enforcement and
security agencies, specifically the Australian
Crime Commission, the Australian Federal
Police and the Australian Customs and Bor-
der Protection Service. And what did we dis-
cover? We found that the Australian Crime
Commission had lost 35 staff positions and
15 funded seconded places from a total of
573 positions in the last six months. The
Customs service had lost 151 staff, and the
Australian Federal Police—and this is on the
public record, as set out in the document to-
day—had lost around 170 members, includ-
ing a number from the Air Security Officer
Program.
We see in today’s Australian on page 3,
under the headline ‘Debus in backflip over
AFP staff cuts’:
THE Australian Federal Police is unable to ful-
fil its national security commitments after losing
more than 200 staff in redundancies, undermining
assertions to parliament this week by Home Af-
fairs Minister Bob Debus.
It refers to a leaked email from the Aus-
tralian Federal Police Commissioner, Mr
Keelty, where he:
… warned that the voluntary redundancies—
were—
introduced to “align our staffing level with our
budget” …
He goes on to say that:
… it is going to be a “tough couple of years for
everybody”.
“As the Government develops its policies to
deal with the current economic crisis, it is critical
that the AFP reviews our own practices,” he said.
You can see that, clearly, there is an impact
on security, in particular on the AFP and its
ability to perform its duties, as a result of the
increased efficiency dividend.
What is staggering is that the relevant
minister, the Minister for Home Affairs, Mr
Debus, rejected the allegation made by the
shadow minister, Jason Wood, with respect
to the figures. Mr Wood asked in parliament
why the AFP had lost 200 staff since No-
vember and why the Australian Crime
Commission had also been forced to slash
staff numbers. The minister’s response was
to say that Mr Wood had his facts wrong.
Well, who has his facts wrong? It is the fed-
eral minister who has his facts wrong, be-
cause this was on the public record. We were
sussing them out during budget estimates.
The document tabled today says that around
170 members have been lost, including numbers from the Air Security Officer Program. And then today it has been made very clear in this report and on the public record that there have been significant cuts. The police association even back up the concerns and they say, as reported in the Australian:

... the AFP budget has already been slashed by $24 million and that, with the imposition of the Government’s efficiency dividend across the public sector, the total cutback would be about $74 million.

So you can see it is very serious indeed. We have read reports recently, including by Paul Maley in the Australian, regarding the Sydney office of the agency, and we have read reports about cutbacks at the Australian Crime Commission and the Australian Customs service.

We are concerned with the security and the impact on staffing and concerned with respect to its impact on law enforcement and security. We would like the government to come clean and disclose exactly what they have in mind for our agencies, specifically the Australian Federal Police, Customs and the Australian Crime Commission. We want to know what plans they have in store to ensure that our law enforcement and security agencies are getting adequate funding to meet the demands that they face. This matter was properly raised during budget estimates and is set out in a report today.

Question agreed to.

Bill read a first time.

Second Reading

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (10.39 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—

This bill amends various taxation laws to implement a range of improvements to Australia’s tax laws.

Schedule 1 ensures there are no inappropriate tax consequences arising from payments made under the financial claims scheme, which this Parliament enacted in October last year. Under that scheme, APRA can make payments to account holders in failed financial institutions and to claimants under general insurance policies with failed insurance companies. The specific amendments cover capital gains tax, farm management deposits, retirement savings accounts, first home saver accounts and various withholding and reporting obligations.

Schedule 2 increases access to the small business CGT concessions for taxpayers owning passively held CGT assets.

These amendments will extend access to the small business CGT concessions to circumstances that are not currently eligible. Owners of passively held assets will now be able to qualify for the concessions under the small business entity test, which was introduced in 2007 to simplify eligibility requirements for the small business concessions.

This means that a taxpayer that owns a CGT asset used in a business by an affiliate or entity connected with the taxpayer, and partners owning certain CGT assets used in the partnership business, will have access to the small business CGT concessions via the small business entity test from the 2007-08 income year.
The Schedule also makes a number of minor amendments to refine and clarify aspects of the existing small business CGT concessions provisions so that they operate flexibly and as intended.

Schedule 3 provides a general exemption from CGT for capital gains or capital losses arising from a right or entitlement to a tax offset, deduction or similar benefit. A highly technical interpretation of the income tax law may result in a capital gain or capital loss arising to taxpayers who have a right to receive an urban water tax offset on the satisfaction of the right. This amendment will put beyond doubt that a capital gain or capital loss would not arise for taxpayers in such circumstances, or in other circumstances where taxpayers have a right or entitlement to a tax offset, deduction or other taxation benefit.

Schedule 4 provides refundable tax offsets for eligible projects under the Government’s $1 billion National Urban Water and Desalination Plan. Under the Plan, eligible projects may receive assistance at a rate of 10 per cent of eligible capital costs, up to a maximum of $100 million per project.

This Schedule implements the refundable tax offset component of the Plan and delivers on the Government’s election commitment.

Schedule 5 amends the list of deductible gift recipients, known as DGRs, in the Income Tax Assessment Act 1997. Subject to conditions, taxpayers can claim income tax deductions for gifts to organisations with DGR status. DGR status will assist the listed organisations to attract public support for their activities. This Schedule adds four new organisations to the Act:

- Australasian College of Emergency Medicine
- ACT Region Crime Stoppers Limited
- The Grattan Institute, and

This Schedule also extends the time limit on the DGR status of three further organisations:

- Bunbury Diocese Cathedral Rebuilding Fund
- St George’s Cathedral Restoration Fund, and
- Yachad Accelerated Learning Project

Schedule 6 amends the A New Tax System (Australian Business Number) Act 1999, or ABN Act, to allow the Registrar of the Australian Business Register to act as the Multi-agency Registration Authority to enable representatives of businesses to be identified for the purpose of communicating electronically with multiple government agencies on behalf of businesses. This is a part of the Government’s Standard Business Reporting program.

There are also a number of other amendments to the ABN Act that improve the integrity and efficiency of the Australian Business Register and help position the Registrar to take on the role of the Multi-agency Registration Authority.

Schedule 7 amends the Fuel Tax Act 2006 and related provisions elsewhere in the tax law, to remove the provision that businesses must be a member of the Greenhouse Challenge Plus program to claim more than $3 million of fuel tax credits in a financial year. This amendment to the Fuel Tax Act will have effect from 1 July 2009.

The Greenhouse Challenge Plus program will cease after 30 June 2009. The Greenhouse Challenge Plus program provision in the Fuel Tax Act was originally included so that large fuel users would monitor and take measures to reduce their carbon emissions. This outcome will be better achieved through the Government’s Carbon Pollution Reduction Scheme.

Without this amendment, businesses would be unable to claim fuel tax credits in excess of $3 million in a financial year after 30 June 2009. This would be inconsistent with the policy intent of the fuel tax credit system.

Finally, Schedule 8 provides an exemption from tax for the Clean-up and Restoration Grants paid to small businesses and primary producers affected by the Victorian bushfires. This measure recognises the extraordinary hardship suffered by small businesses and primary producers in affected areas, and provides certainty for recipients in terms of tax treatment at a time when they should not need to worry about tax matters.

Full details of the measures in this bill are contained in the explanatory memorandum.

Debate (on motion by Senator Evans) adjourned.
Ordered that the resumption of the debate be an order of the day for a later hour.

**AUSCHECK AMENDMENT BILL 2009**

**First Reading**

Bill received from the House of Representatives.

**Senator CHRIS EVANS** (Western Australia—Minister for Immigration and Citizenship) (10.40 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 CHRIS EVANS** (Western Australia—Minister for Immigration and Citizenship) (10.40 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—_

**AUSCHECK AMENDMENT BILL 2009**

**Policy Setting**

In 2005 a centralised background checking service was established in the Attorney-General’s Department as part of a wider initiative to strengthen aviation and maritime security.

This service—known as AusCheck—was created to help the aviation and maritime industries to identify high-risk individuals who should not be granted access to secure areas of Australian air and sea ports. It began operation in September 2007.

The main purpose of this bill is to amend the *AusCheck Act 2007* to provide the capacity for additional schemes under the Act to be carried out for national security purposes. The existing Act only permits AusCheck to coordinate background checks for the purposes of the Aviation and Maritime Security Identification Card scheme.

**Policy Objective**

The AusCheck Amendment Bill 2009 will expand the range of background checks that AusCheck is able to undertake. This will provide the legislative authority to enable AusCheck to provide centralised background checking coordination for the Commonwealth in relation to a wider range of national security regulatory schemes.

Background checking for national security purposes offers a tool for meeting national security policy objectives, including, coordinated and enhanced background checking regimes related to high-risk industries, and greater consistency in control of hazardous substances.

No requirement for any person to actually have a background check will be imposed as a result of the amendment to the Act; it will simply provide a framework to facilitate the extension of AusCheck’s background checking functions, in addition to those already provided for aviation and maritime transport.

If the Government wishes to use the AusCheck national security background check in a new context, it will separately develop the legislative or other regulatory provisions that establish the requirement for the check. The bill simply paves the way for AusCheck to take on additional background checking functions under future legislation.

The AusCheck Act has been in operation for just over two years – during this time the service has gained wide acceptance across the Australian aviation and maritime industries, and has achieved real results in improving the speed and consistency of background checking. Existing aviation and maritime clients report that not only is the AusCheck background checking system faster, it reduces administrative costs as fewer resources are required to chase outstanding applications and reconcile complex billing arrangements.

Other amendments in the bill will authorise and protect biometric information about an individual where this is required in order to complete a background check. In conducting criminal history background checks it is sometimes necessary to confirm the identity of an individual so that police services can distinguish between people with the
same or similar name and date of birth. In these circumstances, it may not be possible to complete the background check unless the identity of the individual can be confirmed through the provision of further identification information such as fingerprints.

The amendments are intended to ensure that if AusCheck is required to facilitate the provision of biometric information to the relevant police jurisdiction, then this information will be: afforded all of the additional protections given to other AusCheck personal information; and not be available for any purpose other than a further background check. This is intended to reflect the purpose of collecting this information in the first place, which is the verification of a particular individual’s identity.

As a consequence of the inclusion of a capacity to conduct national security background checks, the bill also includes amendments to the provisions that give authority for AusCheck to provide an online verification service. The online verification service is currently restricted to verifying aviation security identification cards and maritime security identification cards. With the addition of a national security background check, this authority will be consequently expanded so that an online verification service may be used to verify other types of authorities that may be issued indicating that a person has undergone a national security background check.

Conclusion

The positioning of AusCheck as a centralised background checking service for the Commonwealth is in keeping with the public’s expectations that adequate cost effective security arrangements are in place.

Greater access by Commonwealth agencies to AusCheck’s resources reduces duplication of effort where individuals require background checks for different purposes, and this will develop a more consistent and reliable approach to national security background checking.

The amendment to this bill provides the legislative framework for more efficient background checking schemes. The amendment is necessary to provide legislative authority for those processes and to provide appropriate protections for the information that will be collected and stored by AusCheck.

This amendment is another important step in improving national security generally.

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.

COMMITTEES

Community Affairs Committee

Report

Senator MOORE (Queensland) (10.40 am)—I present the report of the Standing Committee on Community Affairs, Grasping the opportunity of Opal: assessing the impact of the petrol sniffer strategy, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator MOORE—by leave—I move:

That the Senate take note of the report.

In moving this motion, I wish to acknowledge the presence in the gallery of members of the communities from Central Australia and the Northern Territory and also members of the organisation CAYLUS, the Central Australian Youth Link Up Service, without whose assistance, support and commitment I would not be standing in this place today talking about a report that means a lot to many people in this chamber.

Some people would remember that in June 2006 many of us stood in this chamber and talked about a report that we had done for a community affairs inquiry which looked at the issue of petrol sniffing in our community. Many of us, in giving contributions on that day, said that we hoped we would never have to give another report on the evils of petrol sniffing in this community. Today we are again talking about petrol sniffing, but it is an entirely different report. The report before the Senate today actually acknowledges the
work that has been done across Australia, particularly in the Northern Territory and Central Australia, on acting cooperatively and positively to see what can be done to wipe out the evils of petrol sniffing in the community.

The report does not say, of course, that all has been successful and it does not say that there is no petrol sniffing in Australia. What it does say is that some of the recommendations that were made in the earlier inquiry report and some of the work that was done by governments across Western Australia, the Northern Territory and South Australia, along with the federal government, have produced effective results. In particular it says that we must continue the work. In fact, the essence of this report is that not only must we continue the work but it must be resourced and there have to be better lines of accountability and a continuing acknowledgment that this issue is a priority. It cannot be dismissed. Most particularly, as we did put the focus of this issue at the federal level in 2006, it is not good enough to say that we have now dealt with petrol sniffing. That was the reason, in many ways, that this report was necessary.

I speak in deference to the people who told us in their large numbers in 2006 that they were tired of having reports. In fact, I still remember—and I have mentioned this a number of times in this place—the community of Balgo threatening to bring a wheelbarrow to our committee filled with all the reports that had been written about what was wrong with petrol sniffing. I remember someone saying, ‘Someone should do something about it.’ That has stayed in my mind and, I know, in the minds of many of the other committee members, who have had the privilege of working with the communities in those regions and talking with people directly—people who have given up their lives to work effectively in a professional manner to make sure that others are engaged in the struggle and acknowledging the horrific results of petrol sniffing in communities, not just for those who sniff but for their families and their friends, and the way it causes communities to disintegrate.

We have before us today a clear message to governments, and in particular to the federal government. We have made a number of recommendations, and I ask the community, although there are 18 recommendations, to please continue to read the report. I know it can be quite alarming to pick up a document that has 18 recommendations, but I assure people that many of these relate particularly to the information we received and are in support of the work already done.

When we met in the communities in 2006 and again over the last 12 months, one of the things that came before us consistently was that it is not good enough to just say that petrol sniffing should cease. It is not good enough to put in place medical and rehabilitation help and help for communities to respond to the medical conditions that people who are sniffing petrol have. The real underlying issue is the need to relate to the causes, to look at why young people in particular in communities turn to petrol to help them to get through their lives, to black out what is going on, and why they have no hope for the future. We consistently heard that word ‘hope’, and we have to engender real hope that there is a positive future. We used that term a lot.

One of the clear things that came out of our previous inquiry was the need for diversionary programs to be put in place across communities so that people had options, so that there was something worthwhile, so that there was not a sense of uselessness and failure and so that people did not feel that their lives were not important. What we found was that there have been diversionary programs
funded in many communities, and we talked with many people involved in those things. Our report says that these clearly need to be strengthened, that a long-term solution needs to be put in place and that, most importantly, any programs that are introduced have to be introduced with the full involvement and engagement of the local community. The message is that communities want to be involved. They certainly do not want to have people coming in from outside telling them what should happen and what they should do. They need a sensitive, effective and well-resourced program of funding that engages communities, uses local knowledge and makes sure that that sense of hope permeates the whole community, in particular the young people, who are most often the immediate victims of this scourge.

One of the other aspects that I think is most important in this report is that we should not forget the people who have already had their lives affected by petrol sniffing. The call is for rehabilitation programs, for retraining and for simple things like education programs to be provided for older people in communities. They are part of what we need to engage in an ongoing focus on all the efforts to look at the issues around petrol sniffing.

This report is entitled *Grasping the opportunity of Opal: assessing the impact of the petrol sniffing strategy*. I know that is not a particularly catchy title; we tried to be more clever. However, the real success story between 2006 and 2008 is the story we have heard about the success of Opal fuel in Aboriginal communities across Australia. When we came here in June 2006 it was a relatively new program. We encouraged that program to be rolled out. We said that we would work to see whether a fuel that did not provide the option of sniffing would work in communities, whether, through the Opal roll-out program, there would be discernable improvements in the quality of life and in the numbers of people who are involved in petrol sniffing. There is no doubt: one of the success stories of Australian engineering and ingenuity is the development of Opal fuel. One of the success stories of Aboriginal communities in the Northern Territory and in Central Australia is the way in which they have welcomed, indeed demanded in many cases, Opal fuel being wound out in their communities and also the way in which communities have worked to ensure that Opal is put into their communities and kept there for the future.

We have had evidence from the department about the amazing success of the roll-out in the increased number of outlets serving Opal locally. One of the negative aspects of this report is that some outlets continue to refuse to stock Opal fuel. This has been taken up strongly in our recommendations in the report. I think it is a message for the wider community. When we have evidence clearly on record about how something can work, it is a worry that, for various reasons—and it is very difficult to truly understand why—some outlets in Central Australia still refuse to turn to Opal fuel in their commercial enterprises. It is a concern for our community that that continues to happen, and one of the clear recommendations of our report is that that needs to be made public; it is not commercial-in-confidence. People who refuse to accept the use of Opal fuel should be named, and in fact over time we think measures should be put in place to make it mandatory for that to happen. There is a difference of view about how this should occur, but without doubt, in the communities and in our committee, there is absolute support for ensuring that Opal fuel is used and sold.

I want to acknowledge, as I know other people do, the amazing work of the committee secretariat. As always in our community affairs committee we extended the secretariat
and brought in Toni Matulick and Alice Crowley, who came on board with Mr Humphery and the other members of the community affairs secretariat. They are an essential part of our committee. They do not just provide for the secretariat; they are a part of our committee and they continue to give us the assistance we need in the way that we operate. This report is important. To the community members who came to share with us and the people from CAYLUS, thank you very much for your help and assistance. (Time expired)

Senator SIEWERT (Western Australia) (10.51 am)—The Greens fully support the report of the Senate Standing Committee on Community Affairs Grasping the opportunity of Opal: assessing the impact of the petrol sniffing strategy. It is a pleasure to work with the Standing Committee on Community Affairs and know that we were all working for the same thing in this inquiry. Once again, we have a consensus report—we all agree on the aims and objectives. While Senator Moore said we slightly differ on a couple of points, we have agreed on the recommendations, which I think is important in dealing with this very important issue. As Senator Moore said, this is following up on our previous very important inquiry, where we also had a unanimous report. Both inquiries were originally referred by the Greens and we are very pleased with the outcome of both reports. We believe this report makes strong and sensible recommendations. This is one of the Senate’s success stories where, working together, we are seeing real outcomes on the ground.

The rollout of Opal fuel, together with youth diversionary programs and support, has had a major impact on petrol sniffing in Aboriginal communities in Central Australia. We are very proud to have taken part in that process. This committee inquiry shows that we need to remain vigilant and that we still have a significant way to go. The inquiry found very strong success with the rollout of Opal but also found a number of problems with the rollout of the eight-point plan and a number of issues in places that have fallen between the cracks. In most places, we have, at best, rolled out only three or four points of the eight-point plan and in fact in some places only one—that is, the rollout of Opal. The original report said very clearly that Opal alone will not do the job; it needs to be part of a more comprehensive approach. That is why the eight-point plan was developed in the first place. It is very important that the whole package continues to be delivered and not just part of it. We need to be providing support services and initiatives which tackle the underlying causes of petrol sniffing—boredom, hopelessness and despair. If we do not do this, the problem will only shift to other substance abuse. We had some evidence of that happening with drugs like ganja and alcohol, and people troublemaking again, which also leads to other issues.

Years down the track we still do not have consistent legislation—as in the eight-point plan—across the Northern Territory, South Australia and my home state of Western Australia. Appropriately, with policing we have some but still not at an adequate level, particularly in the APY Lands. There is further rollout of Opal fuel but, as Senator Moore said, there are a number of stations in the Northern Territory which still refuse to stock Opal. That is proving a problem for communities. Also, it enables sniffable fuel to be run out of those particular service stations into other towns, which is happening in Balgo. The particular stations where communities have a lot of concern include Rabbit Flat, Tilmouth Well, Ti Tree and Laverton in Western Australia. While we now have the rollout of Opal to a large number of communities, there are still communities not receiv-
ing it. We make recommendations around that problem.

We have some alternative activities for young people and youth workers in some towns but not in others. Where there are both male and female workers, it is operating very well. There were significant problems getting the process underway. There are some treatment and respite facilities in place but not enough. We visited the fantastic new substance abuse centre at Amata. If we could have more of those in communities that would be fantastic. When I asked whether there were any more of these facilities in the APY Lands, the person I was talking to burst out laughing. It is really sad that we do not have enough of those facilities. We had some communications and education strategies. Again there were difficulties getting them going. Although it is about communication and education, there was not enough communication with the local communities about how to do that. It is very important, when rolling out Opal, that the communications strategy is in place.

With regard to strengthening and supporting communities, some communities have a lot of support; others have not. In our recommendations we strongly recommend an independent evaluation of the Central Australian petrol sniffing unit because we think there are some concerns with the rollout of the eight-point plan. So in the committee report we have recommended that that issue be looked at by government. I would like to see that done as a matter of priority because I think that there are some significant issues that we need to deal with in the delivery of services through this program to Central Australia.

One recommendation in the report says, as Senator Moore highlighted, that we need potentially to be looking at legislation to mandate the supply of Opal through petrol stations and roadhouses. We have recommended that this be looked into to see whether it is a possibility. It is a last resort mechanism—if service stations or roadhouses cannot be persuaded to sell Opal as a matter of priority and urgency, we believe there needs to be a process requiring them to do so. It is so important to communities that we believe governments, state, federal and territory, need to be looking at that as a last resort. We have set a time limit—if governments have not implemented it within six months, they need to then look at legislation.

There need to be many more resources for youth services. We need to ensure that there is a male and a female youth support officer in communities, with both of them delivering services. We need to make sure we have functioning infrastructure such as housing, cars and activity sheds. In Mutitjulu we saw an excellent program where young people are making handicrafts, using batik to make baskets, headbands and bags which they are selling at a local market. They were in a tiny little shed which was not air-conditioned. You can imagine what it was like on a 46-degree day. The young people were trying to make these things in very difficult circumstances.

We need more training for community workers, more rehabilitation services and more adult education and support for ex-sniffers. There is a problem around ganja coming into some of these communities and we need to be ahead of the game there. It was also pointed out that mainstream drug and alcohol campaigns often miss Aboriginal audiences, so we need to make sure we focus those better, and of course the whole underlying issues around schooling need to be dealt with. We need coordination between government departments. Although that is much better than it was, there still seem to be some problems there. There have been problems with the tendering processes, we be-
lieve, and this goes back to the issues around the Central Australian Petrol Sniffing Strategy Unit—the CAPSSU, as it is called. We believe those problems need to be investigated as part of the independent audit and evaluation of the unit. Those need to be looked at.

We also strongly support the recommendation that the Aboriginal and Torres Strait Islander Social Justice Commissioner be resourced to monitor and report on progress around petrol sniffing. This is such a vital issue. We have made such progress. We cannot stop. We absolutely have to continue it. It has the full support of the committee. It is such a pleasure to go to communities and see what progress has truly been made and, as I said, we cannot stop. We have to remain vigilant and we have to go beyond the eight-point plan, but we need to ensure we are implementing that as the starting point and we need to ensure that the resources for the rollout of Opal are maintained. I beg the government to please maintain those resources and enhance them where necessary.

Senator HUMPHRIES (Australian Capital Territory) (11.01 am)—I will only speak briefly to allow some time for Senator Boyce to also contribute to the debate on the report of the Senate Standing Committee on Community Affairs Grasping the opportunity of Opal: Assessing the impact of the Petrol Sniffing Strategy, but I want to reinforce the comments made by both the chair and deputy chair of the committee and emphasise that, in an area where very often the news is bad, we see Opal as having been a good news story about the success of a particular tool in the public policy armoury which has made a real difference. If senators are interested in recording just how effective Opal has been in changing the landscape of substance abuse in the Northern Territory and elsewhere, they only need to look at chapter 2 of the report to indicate some of those improvements.

In July 2007 it was estimated that there were 244 petrol sniffers in the Central Australian area of the Northern Territory. In July 2008 the CAPSSU, drawing on advice from service providers, estimated that there were approximately 85 people currently or recently sniffing in the same area. Survey results showed the number of petrol sniffers in the Anangu Pitjantjatjara Yankunytjatjara lands in South Australia had fallen from around 178 people in 2005 to 70 people in 2006. Other anecdotal reports suggested that petrol sniffing had been limited or non-existent in the six months to August 2008. There were similar successes reported in lands in Western Australia. This has made a real difference but, as senators have already indicated, it is not the only factor which needs to be built into public policy in this area to ensure that we drive down those rates of substance abuse.

I want to particularly mention two things. One is the absolutely vital nature of good, appropriate, well-resourced youth programs in these communities. As senators have indicated, there are some communities which do not have programs at all and others where the resources are too limited to provide good quality programs—for example, there is funding for a male worker but not for a female worker, and of course communities need both of those in order to bring male and female children into these programs. If we think of youth services in metropolitan areas of this country as being important, we should bear in mind that in remote Indigenous communities they are absolutely vital. There are not many other things for young people to do in these places. There are no cinemas or cool places to hang out. They need those services to keep them occupied and to give them a sense of direction and purpose, and I think that the importance of funding those programs properly cannot be overstated.
The second point I want to make is to reinforce the comments of others in this debate about the need to deal with those establishments still offering sniffable fuel at roadhouses. That is unacceptable. I am strongly supportive of taking incentivising measures to deal with these standouts, these organisations not prepared to sell Opal fuel. But at the end of the day, if those measures fail or if they do not succeed in a very short period of time, I want to assure the people who operate those establishments that there are plenty of people in the Australian parliament who will support legislation to make it mandatory for Opal to be sold in those establishments.

As a Liberal, I instinctively do not support the idea of legislation overbearing commercial behaviour, but in this case the arguments in favour of continuing to sell sniffable fuel are paper thin. There is no reason why people cannot use Opal fuel in their cars, where their cars are made for ordinary unleaded petrol, and the damage done to these communities because the sniffable fuel is still available is enormous. There is no good reason for it to continue to be available. So the warning is there to those roadhouses to get real and to ensure that that fuel is substituted as soon as possible. It may not be federal legislation which succeeds in doing that, but I am very hopeful that state and territory governments involved will realise the value of stamping out those few places which still act as conduits for bringing sniffable petrol into those communities.

I want to close by simply saying that there are a great many good things happening in a number of communities which I think provide a sufficiently strong foundation for us to proceed in the knowledge that we have means of success here. We are not stabbing in the dark. We are not trying to cook up new solutions when most are failing. We do have ways of dealing effectively with these problems, and what stands in the way of that for the most part is adequate resources to get those programs rolled out throughout all the communities affected by this problem.

Senator BOYCE (Queensland) (11.06 am)—It was a privilege to be involved in this inquiry of the Standing Committee on Community Affairs into petrol sniffing and a privilege to visit parts of Australia that not many Australians get to visit—and it is great to see people from Central Australia here today to listen to our report. Within that context that it is a part of Australia that very few Australians get to visit, the communities there can suffer very much from ‘out of sight, out of mind’ problems. As people have pointed out, we have made 18 recommendations. From my perspective, recommendations 12 through to 16 are the most important. These are the ones that deal with developing, monitoring and ensuring that there are activities and programs that are happening in communities which are within the petrol-sniffing zone.

In my view, it is far more important that we develop sustainable activities and programs than to worry quite so much about mandating Opal fuel. I would hope that the availability of non-sniffable petrol ceases to become an issue as we further and properly develop alternative activities. I think we need to keep in mind that petrol sniffing is a symptom. It is great that we have dealt as successfully as we have with that symptom, but it is not a symptom that needs to be our complete focus. I think it is very obvious from the report itself that our focus needs to be on developing the sorts of activities that children—teenagers—throughout Australia should reasonably expect to be available within their communities.

One other point, which is included in our first recommendation, is that it was a surprise to some members of the inquiry—certainly to me—that Opal fuel was available...
in any community that requested it. This was not, we thought, a well-known fact within the communities, and it certainly was not by the inquiry. We are recommending that CAPSSU and others put some effort into developing this. The other part to this issue is that what happens in those communities—just as the request to have Opal fuel—must be driven by the communities. During our visit to Lake Nash we were shown a steel skateboard ramp that had apparently been funded by FaHCSIA. It was not shaded. It was made of steel. The temperature on the day we were in Lake Nash was 42 degrees, which was pretty average. You could only use this skateboard ramp after dark, but there were no lights at the ramp area. I think it is a small indication of the sorts of problems that develop when you do not ask communities what they would like and what they want.

I share Senator Humphries’s concerns about mandating the supply of Opal petrol. I would hope that public pressure and negotiation by the federal government and by state and territory governments can convince the roadhouses involved in these areas to voluntarily undertake the supply of Opal. We never did get a satisfactory answer as to why they were not—particularly suppliers such as the Rabbit Flat Roadhouse, Tea Tree Roadhouse, Tilmouth Well Roadhouse, the Laver- ton Roadhouse and other stores: Laramba store, Maryvale Station, Canley Park, Jervois Roadhouse, Ross River Resort and the Uran-dangi community store in my home state of Queensland. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Finance and Public Administration Committee
Report

Senator FARRELL (South Australia) (11.11 am)—On behalf of the Chair of the Finance and Public Administration Commit-
So with those short introductory words it appears we are able to commence. The alternative is that we use the time available to go through some of the amendments on PA 442, which we do not think there is much controversy about. I can provide a short summary to the amendments. There are about 10 or so amendments—two pages worth. We can identify them in order and then I can say something about them. I will not read them out seriatim, but there are about 10. If we deal with those amendments, at least we might be able to clear them. As I understand it, there is very little controversy in respect of them. I seek leave to move government amendments (1) to (7) on sheet PA 442.

Leave granted.

Senator LUDWIG—I move:

(1) Clause 27, page 45 (before line 33), before subclause (1), insert:

(1A) Section 26 does not apply to any of the following laws:

(a) the Anti-Discrimination Act 1977 of New South Wales;
(b) the Equal Opportunity Act 1995 of Victoria;
(c) the Anti-Discrimination Act 1991 of Queensland;
(d) the Equal Opportunity Act 1984 of Western Australia;
(e) the Equal Opportunity Act 1984 of South Australia;
(f) the Anti-Discrimination Act 1998 of Tasmania;
(g) the Discrimination Act 1991 of the Australian Capital Territory;
(h) the Anti-Discrimination Act of the Northern Territory.

(2) Clause 27, page 45 (line 34) to page 46 (line 6), omit paragraph (1)(a).

(3) Clause 27, page 47 (lines 11 to 15), omit paragraph (2)(i), substitute:

(i) regulation of any of the following:

(ii) employer associations;
(iii) members of employee associations or of employer associations;

(4) Clause 29, page 48 (lines 5 to 13), omit subclause (2), substitute:

(2) Despite subsection (1), a term of a modern award or enterprise agreement applies subject to the following:

(a) any law covered by subsection 27(1A);
(b) any law of a State or Territory so far as it is covered by paragraph 27(1)(b), (c) or (d).

(5) Clause 34, page 52 (line 12), at the end of paragraph (3)(a), add “and “and”.

(6) Clause 34, page 52 (after line 13), after subclause (3), insert:

(3A) For the purposes of extending this Act in accordance with subsection (3):

(a) any reference in a provision of this Act to an employer is taken to include a reference to:

(i) an Australian employer; and
(ii) an employer of an Australian-based employee; and

(b) any reference in a provision of this Act to an employee is taken to include a reference to:

(i) an employee of an Australian employer; and
(ii) an Australian-based employee.

(7) Page 53 (after line 16), after clause 35, insert:

35A Regulations excluding application of Act

(1) Regulations made for the purposes of section 32 or subsection 33(4) or 34(4) may exclude the application of the whole of this Act in relation to all or a part of an area referred to in section 32 or subsection 33(4) or 34(4) (as the case may be).

(2) If subsection (1) applies, this Act has effect as if it did not apply in relation to that area or that part of that area.
Amendments (1) and (2) would make clear that each of the named state and territory antidiscrimination acts continue to apply to employers and employees covered by the bill. State and territory laws dealing with antidiscrimination and equal opportunity are contained in state industrial laws which are otherwise generally overridden. Amendments (3) and (4) are technical amendments to ensure that state or territory laws dealing with the regulation of employer and employee associations are properly preserved and that modern awards and enterprise agreements operate subject to all of the non-excluded state or territory laws. Amendment (5) deals with extra territoriality of the application of the bill. It corrects a typographical error by inserting the word ‘and’ at the end of clause 34(3)(a). Amendment (6) ensures that, if regulations are made to extend the bill’s application beyond the Exclusive Economic Zone and Continental Shelf, any reference to ‘employer’ and ‘employee’ in parts of the bill as extended are deemed to mean Australian employer and its employees and an Australian based employee and their employer. Amendment (7) makes clear that the regulations can exclude the extraterritorial application of the bill in particular areas.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (11.18 am)—by leave—I move government amendments (1) to (7) on sheet PJ 447:

(1) Clause 124, page 126 (lines 3 to 17), omit the clause, substitute:

124 Fair Work Ombudsman to prepare and publish Fair Work Information Statement


Note: If the Fair Work Ombudsman changes the Statement, the Fair Work Ombudsman must publish the new version of the Statement in the Gazette.

(2) The Statement must contain information about the following:

(a) the National Employment Standards;
(b) modern awards;
(c) agreement-making under this Act;
(d) the right to freedom of association;
(e) the role of FWA and the Fair Work Ombudsman;
(f) termination of employment;
(g) individual flexibility arrangements;
(h) right of entry (including the protection of personal information by privacy laws).

(3) The Fair Work Information Statement is not a legislative instrument.

(4) The regulations may prescribe other matters relating to the content or form of the Statement, or the manner in which employers may give the Statement to employees.

(2) Clause 576, page 461 (lines 8 and 9), omit “, and undertaking activities to promote public understanding of,”.

(3) Clause 682, page 517 (line 8), before “The”, insert “(1)”.

(4) Clause 682, page 517 (line 10), after “harmonious”, insert “productive”.

(5) Clause 682, page 517 (line 13), after “organisations”, insert “and producing best practice guides to workplace relations or workplace practices”.

(6) Clause 682, page 517 (line 31), after “Note”, insert “1”.

(7) Clause 682, page 517 (after line 32), at the end of the clause, add:

Note 2: In performing functions under paragraph (a), the Fair Work Ombudsman might, for example, produce a best practice guide to achieving productivity through bargaining.
The government proposes a series of amendments that ensures that the Fair Work Ombudsman is the primary source of information, assistance and advice within the institutional framework established by the Fair Work Bill. The amendments to clause 682 will enable the Fair Work Ombudsman to produce best practice guides in relation to workplace relations and workplace practices generally—for example, workplace privacy, work and family, use of individual flexibility agreements and improved workplace productivity and bargaining. The amendments to clause 124(1) will have the effect of making the Fair Work Ombudsman rather than Fair Work Australia responsible for publishing the fair work information statement. The list of matters which must be included in the statement has been expanded to reflect recommendations made in the Senate committee report on the Fair Work Bill.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (11.21 am)—by leave—I move government amendments (1) to (27) on sheet PD 364 revised together:

(1) Clause 12, page 20 (lines 10 and 11), omit “who is also a police, stipendiary or special magistrate”.

(2) Clause 539, page 428 (lines 17 to 19), omit “if an undertaking given by the person in relation to the contravention has not been withdrawn (see subsection 715(4))”, substitute “in certain cases where an undertaking or compliance notice has been given (see subsections 715(4) and 716(4A))”.

(3) Clause 544, page 441 (line 15), after “Note” insert “1”.

(4) Clause 544, page 441 (after line 17), at the end of the clause, add:

Note 2: For time limits on orders relating to underpayments, see subsection 545(5).

(5) Clause 545, page 442 (after line 24), at the end of the clause, add:

Time limit for orders in relation to underpayments

(5) A court must not make an order under this section in relation to an underpayment that relates to a period that is more than 6 years before the proceedings concerned commenced.

(6) Clause 573, page 458 (lines 21 and 22), omit “Division 7 deals with FWA’s seal, reviews and reports, and disclosing information obtained by FWA.”, substitute “Division 7 deals with FWA’s seal. It also deals with other powers and functions of the President and the General Manager (including in relation to annual reports, reports on making enterprise agreements, arrangements with certain courts, and disclosing information obtained by FWA.”.

(7) Page 459 (after line 2), after clause 574, insert:

574A Schedule 1

Schedule 1 has effect.

(8) Clause 576, page 461 (line 12), after “section 650”, insert “or 653A”.

(9) Clause 576, page 461 (after line 12), after paragraph (2)(c), insert:

(ca) mediating any proceedings, part of proceedings or matter arising out of any proceedings that, under section 53A of the Federal Court of Australia Act 1976 or section 34 of the Federal Magistrates Act 1999, have been referred by the Fair Work Division of the Federal Court or Federal Magistrates Court to FWA for mediation;

(10) Clause 596, page 470 (lines 14 and 15), omit paragraph (4)(b), substitute:

(b) is an employee or officer of:

(i) an organisation; or
(ii) an association of employers that is not registered under the *Fair Work (Registered Organisations) Act* 2009; or

(iii) a peak council; or

(iv) a bargaining representative;

that is representing the person; or

(11) Clause 625, page 485 (after line 12), after paragraph (2)(d), insert:

(da) publishing the results of a protected action ballot under section 457;

(12) Clause 625, page 485 (after line 21), at the end of subclause (2), add:

; (i) any function or power prescribed by the regulations.

(13) Heading to Division 7, page 501 (lines 2 and 3), omit the heading, substitute:

Division 7—Seals and additional powers and functions of the President and the General Manager

(14) Heading to clause 653, page 502 (line 5), omit the heading, substitute “Reports about making enterprise agreements, individual flexibility arrangements etc.”.

(15) Clause 653, page 502 (lines 6 to 11), omit subclause (1), substitute:

Review and research

(1) The General Manager must:

(a) review the developments, in Australia, in making enterprise agreements; and

(b) conduct research into the extent to which individual flexibility arrangements under modern awards and enterprise agreements are being agreed to, and the content of those arrangements; and

(c) conduct research into the operation of the provisions of the National Employment Standards relating to:

(i) requests for flexible working arrangements under subsection 65(1); and

(ii) requests for extensions of unpaid parental leave under subsection 76(1); and

(d) conduct research into:

(i) the circumstances in which employees make such requests; and

(ii) the outcome of such requests; and

(iii) the circumstances in which such requests are refused.

(1A) The review and research must be conducted in relation to each of the following periods:

(a) the 3 year period that starts when this section commences;

(b) each later 3 year period.

(16) Clause 653, page 502 (lines 12 and 13), omit “review the effects that such bargaining has had”, substitute “, in conducting the review and research, consider the effect that the matters referred to in paragraphs (1)(a) to (d) have had”.

(17) Clause 653, page 502 (line 24), after “review”, insert “and research”.

(18) Page 502 (after line 31), after clause 653, insert:

653A Arrangements with the Federal Court and the Federal Magistrates Court

The General Manager may make a written arrangement with the Federal Court or the Federal Magistrates Court for FWA to provide administrative support to the Fair Work Division of the Court.

(19) Clause 655, page 503 (line 29), omit “under this Act”, substitute “of FWA”.

(20) Clause 657, page 505 (after line 8), after subclause (1), insert:

(1A) The General Manager also has the following functions:

(a) any function conferred on him or her by a fair work instrument;

(b) any function conferred on him or her by a law of the Commonwealth.
Note: Sections 653 and 653A confer additional functions and powers on the General Manager.

(21) Clause 657, page 505 (lines 9 and 10), omit the note.

(22) Clause 657, page 505 (line 12), omit “assisting the President”, substitute “performing his or her functions”.

(23) Clause 658, page 505 (lines 24 and 25), omit “the General Manager’s review of developments in making enterprise agreements”, substitute “the conduct by the General Manager of the review and research, and the preparation of the report.”.

(24) Clause 671, page 509 (line 14), omit “in relation to assisting the President”.

(25) Clause 713, page 530 (lines 6 to 12), omit subclause (2), substitute:

(2) However, in the case of an individual none of the following are admissible in evidence against the individual in criminal proceedings:

(a) the record or document produced;
(b) producing the record or document;
(c) any information, document or thing obtained as a direct or indirect consequence of producing the record or document;
(d) any record or document that is inspected or copied under paragraph 709(e);
(e) any information, document or thing obtained as a direct or indirect consequence of inspecting or copying a record or document under paragraph 709(e).

(26) Clause 716, page 533 (after line 11), after subclause (4), insert:

Relationship with civil remedy provisions

(4A) An inspector must not apply for an order under Division 2 of Part 4-1 in relation to a contravention of a civil remedy provision by a person if:

(a) the inspector has given the person a notice in relation to the contravention; and
(b) either of the following subparagraphs applies:
   (i) the notice has not been withdrawn, and the person has complied with the notice;
   (ii) the person has made an application under section 717 in relation to the notice that has not been completely dealt with.

Note: A person other than an inspector who is otherwise entitled to apply for an order in relation to the contravention may do so.

(4B) A person who complies with a notice in relation to a contravention of a civil remedy provision is not taken:

(a) to have admitted to contravening the provision; or
(b) to have been found to have contravened the provision.

(27) Page 575 (after line 13), at the end of the Bill, add:

Schedule 1—Transitional provisions
Note: See section 574A.

1 Definitions

(1) For the purposes of this Schedule, unless a contrary intention appears, expressions used in this Schedule that are defined in the Workplace Relations Act 1996 (other than Schedule 1 to that Act) have the same meanings as they have in that Act.

(2) If:

(a) a provision of this Schedule uses an expression defined in both the Workplace Relations Act 1996 and this Act; and
(b) it is clear from the context of the provision which of those meanings is intended to apply in that provision;

the expression has that meaning.
### Appointments to Fair Work Australia

1. **Appointments to Fair Work Australia**

   (1) An appointment that is:
   
   (a) to an office of the Commission mentioned in a table item below; and
   
   (b) in force immediately before the commencement time for the table item;

   is taken, after that time, to be an appointment, under section 626 of this Act, to the office of FWA mentioned in the table item.

   **Note:** The person continues to be appointed to the Commission (see subclause (3)).

### Appointments to FWA

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1: Office of the Commission</th>
<th>Column 2: Office of FWA</th>
<th>Column 3: Commencement time</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>President of the Commission</td>
<td>President of FWA</td>
<td>The day proclaimed for the purposes of item 2 of the table in subsection 2(1) of this Act.</td>
</tr>
<tr>
<td>2</td>
<td>Vice President of the Commission</td>
<td>Deputy President of FWA</td>
<td>The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act.</td>
</tr>
<tr>
<td>3</td>
<td>Senior Deputy President of the Commission</td>
<td>Deputy President of FWA</td>
<td>The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act.</td>
</tr>
<tr>
<td>4</td>
<td>Deputy President of the Commission</td>
<td>Deputy President of FWA</td>
<td>The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act.</td>
</tr>
</tbody>
</table>

2. **Subclause (1) does not apply to a member of the Commission who:**

   (a) was appointed as a member of a prescribed State industrial authority (within the meaning of the Workplace Relations Act 1996) before being appointed as a member of the Commission; and

   (b) still holds that appointment as a member of the prescribed State industrial authority.

**Dual appointments**

3. Despite any provision of the Workplace Relations Act 1996 or this Act, a person who is taken to have been appointed as an FWA Member under this clause continues also to hold office under the Workplace Relations Act 1996.

**Note:** The terms and conditions of a person who is taken to have been appointed as an FWA Member are the terms and conditions that attach to his or her appointment under the Workplace Relations Act 1996 (see clause 3).

3. **Terms and conditions**

   (1) A person who is taken to have been appointed as an FWA Member under clause 2:

   (a) holds office under this Act on the same terms and conditions as attach, or attached, to his or her appointment under the Workplace Relations Act 1996 (including under subsections 63(2) and (3) of that Act); and
(b) is entitled to the same designation as he or she is, or was, entitled to in relation to his or her appointment under the Workplace Relations Act 1996 (including the designation the person has, or had, because of subsection 80(2) of the Industrial Relations (Consequential Provisions) Act 1988).

(2) To avoid doubt, subclause (1):
(a) has effect despite subsections 633(1) and 644(1) of this Act; and
(b) continues the operation of the Judges’ Pensions Act 1968 in relation to a person taken to have been appointed under clause 2 and to whom that Act applied as a member of the Commission.

(3) For the purposes of determining the remuneration of a person who is taken to have been appointed as an FWA Member under clause 2:
(a) sections 635 and 637 of this Act do not apply; and
(b) sections 79 and 81 of the Workplace Relations Act 1996 continue to apply in relation to the person’s appointment as both an FWA Member and a member of the Commission.

4 Seniority of FWA Members

(1) If a person who is a member of the Commission is taken to have been appointed as an FWA Member under clause 2, the day on which the person’s appointment took effect is, for the purposes of section 619 of this Act, taken to be the day on which the person was appointed as such a member of the Commission.

(2) If 2 or more such persons were appointed to the Commission on the same day, their seniority is, for the purposes of section 619 of this Act, to be determined in accordance with the precedence assigned to them under section 65 of the Workplace Relations Act 1996.

5 Procedural rules

Section 609 of this Act has effect, in relation to any time at which the President is the only FWA Member, as if the words “After consulting the other FWA Members,” were omitted from subsection (1) of that section.

6 Transfer of assets and liabilities

(1) The person referred to in column 1 of an item of the following table must arrange for the transfer, on the first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act, of assets and liabilities of the body referred to in column 2 of the item of the following table to the body referred to in column 3 of the item of the following table.

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Office-holder who enters arrangement with FWA</td>
<td>Body whose assets and liabilities are transferred</td>
<td>Body to which assets and liabilities are transferred</td>
</tr>
<tr>
<td>1</td>
<td>Director of the AFPC Secretariat</td>
<td>AFPC Secretariat</td>
<td>FWA</td>
</tr>
<tr>
<td>2</td>
<td>Industrial Registrar</td>
<td>Australian Industrial Registry</td>
<td>FWA</td>
</tr>
<tr>
<td>3</td>
<td>Workplace Authority Director</td>
<td>Workplace Authority</td>
<td>Office of the Fair Work Ombudsman</td>
</tr>
<tr>
<td>4</td>
<td>Workplace Ombudsman</td>
<td>Office of the Workplace Ombudsman</td>
<td>Office of the Fair Work Ombudsman</td>
</tr>
</tbody>
</table>

(2) Despite subclause (1), the Minister may, before the day mentioned in that subclause, determine one or more of the following by writing:
(a) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred to a different body (as specified in the determination) from the one referred to in column 3 of the table;
(b) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred on a different day (as specified in the determination) from the one referred to in subclause (1);

(c) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred in accordance with regulations made, or to be made, for the purposes of this paragraph.

(3) A determination under subclause (2):

(a) has effect accordingly; and

(b) is not a legislative instrument.

(4) In this clause, a reference to an asset of a body includes a reference to a record or any other information that is in the custody of, or under the control of, the body.

7 Additional function and power of the General Manager

The General Manager of FWA may enter into an arrangement with the person referred to in column 1 of an item of the following table for FWA to provide assistance to the body referred to in column 2 of the item for the purpose of performing functions on and after the WR Act repeal day.

<table>
<thead>
<tr>
<th>Arrangements between FWA and body</th>
</tr>
</thead>
<tbody>
<tr>
<td>Column 1</td>
</tr>
<tr>
<td>Office-holder who enters arrangement with FWA</td>
</tr>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
</tbody>
</table>

The government proposes a series of largely technical amendments in relation to the revisions dealing with the new institutional arrangements. The main technical amendments would enable Fair Work Australia and the office of the Fair Work Ombudsman to commence before the operative provision of the Fair Work Bill as well as confer additional functions on FWA and the general management of FWA. The amendments would also require the general manager of FWA to conduct research into and report on the operation of individual flexibility arrangements under modern awards and enterprise agreements and the provision of the National Employment Standards relating to requests for flexible working arrangements and extension of unpaid parental leave. The general manager would be required to research and report on the circumstances in which employees make such requests, the outcome of such requests and the circumstances in which such requests are refused.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (11.22 am)—by leave—I move government amendments (1) to (4) and (6) to (13) on sheet PT205 together.

(1) Clause 174, page 165 (after line 12), at the end of the clause, add:

Regulations may prescribe additional content and form requirements etc.

(6) The regulations may prescribe other matters relating to the content or form of the notice, or the manner in which employers may give the notice to employees.

(2) Clause 176, page 166 (line 28), after “agreement”, insert “, or has revoked the status of the organisation as his or her bargaining representative for the agreement under subsection 178A(2)”.

(3) Clause 176, page 167 (line 21), at the end of subclause (2), add:

; or (f) the employee has revoked the status of the organisation as his or her bargaining representative for the agreement under subsection 178A(2).
(4) Page 169 (after line 8), after clause 178, insert:

178A Revocation of appointment of bargaining representatives etc.

(1) The appointment of a bargaining representative for an enterprise agreement may be revoked by written instrument.

(2) If a person would, apart from this subsection, be a bargaining representative of an employee for an enterprise agreement because of the operation of paragraph 176(1)(b) or subsection 176(2) (which deal with employee organisations), the employee may, by written instrument, revoke the person’s status as the employee’s bargaining representative for the agreement.

(3) A copy of an instrument under subsection (1) or (2):

(a) for an instrument made by an employee who will be covered by the agreement—must be given to the employee’s employer; and

(b) for an instrument made by an employer that will be covered by a proposed enterprise agreement—must be given to the bargaining representative and, on request, to a bargaining representative of an employee who will be covered by the agreement.

(4) The regulations may prescribe matters relating to the content or form of the instrument of revocation, or the manner in which the copy of the instrument may be given.

(6) Clause 186, page 176 (lines 3 to 8), omit subclause (3), substitute:

3 FWA must be satisfied that the group of employees covered by the agreement was fairly chosen.

(3A) If the agreement does not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding whether the group of employees covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

(7) Clause 228, page 207 (after line 19), at the end of subclause (1), add:

; (f) recognising and bargaining with the other bargaining representatives for the agreement.

(8) Clause 229, page 209 (lines 6 to 10), omit subclause (5), substitute:

(5) FWA may consider the application even if it does not comply with paragraph (4)(b) or (c) if FWA is satisfied that it is appropriate in all the circumstances to do so.

(9) Clause 237, page 215 (lines 8 to 11), omit paragraph (2)(c), substitute:

(c) that the group of employees who will be covered by the agreement was fairly chosen; and

(10) Clause 237, page 215 (after line 16), after subclause (3), insert:

3A If the agreement will not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding for the purposes of paragraph (2)(c) whether the group of employees who will be covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

(11) Clause 238, page 216 (lines 23 to 26), omit paragraph (4)(c), substitute:

(c) that the group of employees who will be covered by the agreement proposed to be specified in the scope order was fairly chosen; and

(12) Clause 238, page 216 (after line 27), after subclause (4), insert:

Matters which FWA must take into account

(4A) If the agreement proposed to be specified in the scope order will not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding for the purposes
of paragraph (4)(c) whether the group of employees who will be covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

(13) Clause 539, page 430 (table item 5), omit the table item.

The key government amendment to the Fair Work Bill in relation to the bargaining process would specifically provide for the revocation of the appointment of bargaining representatives and remove the civil penalty provision in clause 179 of the bill and instead insert into the good faith bargaining requirements in clause 228 a requirement on bargaining representatives to recognise and bargain with other bargaining representatives for an agreement and amend the operation of the fairly chosen criteria in majority support determinations and scope orders to require FWA to be satisfied in all cases that the group of employees to be covered is fairly chosen. The remaining amendments relating to the bargaining process are either consequential to the changes described above or deal with technical amendments related to aspects of the bargaining process.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (11.25 am)—The government opposes clause 179, on sheet PT205, in the following terms:

(5) Clause 179, page 169 (lines 9 to 19), to be opposed.

The TEMPORARY CHAIRMAN (Senator Carol Brown)—The question is that clause 179 stand as printed.

Question negatived.

Senator LUDWIG (Queensland—Minister for Human Services) (11.25 am)—by leave—I move government amendments (1) to (9) on sheet PT206 together:

(1) Clause 193, page 182 (after line 15), at the end of the clause, add:

FWA may assume employee better off overall in certain circumstances

(7) For the purposes of determining whether an enterprise agreement passes the better off overall test, if a class of employees to which a particular employee belongs would be better off if the agreement applied to that class than if the relevant modern award applied to that class, FWA is entitled to assume, in the absence of evidence to the contrary, that the employee would be better off overall if the agreement applied to the employee.

(2) Clause 207, page 196 (lines 5 to 10), omit subclause (5).

(3) Clause 211, page 198 (line 6), omit “and”.

(4) Clause 211, page 198 (lines 7 to 9), omit paragraph (1)(c), substitute:

unless FWA is satisfied that there are serious public interest grounds for not approving the variation.

(5) Clause 211, page 198 (line 26), omit “those provisions”, substitute “sections 180 and 188”.

(6) Clause 211, page 199 (line 3), omit “and subparagraph 188(a)(ii)”.

(7) Clause 211, page 199 (after line 4), after paragraph (3)(h), insert:

(ha) references in paragraphs 186(2)(c) and (d) to the agreement were references to the enterprise agreement as proposed to be varied; and

(hb) subparagraph 188(a)(ii) were omitted; and

(8) Page 202 (after line 5), after clause 217, insert:

217A FWA may deal with certain disputes about variations

(1) This section applies if a variation of an enterprise agreement is proposed.

(2) An employer or employee organisation covered by the enterprise agreement or an affected employee for the variation
may apply to FWA for FWA to deal with a dispute about the proposed variation if the employer and the affected employees are unable to resolve the dispute.

(3) FWA must not arbitrate (however described) the dispute.

(9) Page 230 (after line 20), after clause 256, insert:

256A How employees, employers and employer organisations are to be described

(1) This section applies if a provision of this Part requires or permits an instrument of any kind to specify the employers, employees or employee organisations covered, or who will be covered, by an enterprise agreement or other instrument.

(2) The employees may be specified by class or by name.

(3) The employers and employee organisations must be specified by name.

(4) Without limiting the way in which a class may be described for the purposes of subsection (2), the class may be described by reference to one or more of the following:

(a) a particular industry or part of an industry;
(b) a particular kind of work;
(c) a particular type of employment;
(d) a particular classification, job level or grade.

This group of amendments would ensure that Fair Work Australia, in satisfying itself that each employee is better off overall under a proposed enterprise agreement than under the relevant modern award, may apply the test to classes of employees—amendment (1); amend clause 207 of the bill to enable agreements that do not pass the better off overall test but which are approved by FWA in the public interest to be varied later on, subject to the BOOT amendment (2); omit paragraphs that currently require FWA to take into account the views of the union covered by the agreement and replace it with a provision requiring FWA to approve a variation unless there are serious public interest grounds for not doing so—amendments (3) and (4); make technical amendments to the variation provisions in clause 211 of the bill to make it clear that FWA is required to decide whether the agreement as varied passes the better off overall test and does not contravene the National Employment Standards, not whether the variation alone passes the BOOT and NES, which is amendment (7). Amendments (5) and (6) are consequential upon the changes proposed in amendment (7). Amendment (8) enables the FWA to conciliate or mediate disputes about a proposed variation to an enterprise agreement. Lastly, amendment (9) makes a technical amendment to make it clear that the enterprise agreements provisions of the bill do not require employees to be individually named in relevant documents and instruments.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (11.28 am)—I move government amendment (4) on sheet QC300:

(4) Page 251 (after line 26), at the end of Division 7, add:

281A How employees, employers and employer organisations are to be described

(1) This section applies if a provision of this part requires or permits an instrument of any kind to specify the employers, employees or employee organisations covered, or who will be covered, by a workplace determination or other instrument.

(2) The employees may be specified by class or by name.

(3) The employers and employee organisations must be specified by name.

(4) Without limiting the way in which a class may be described for the purposes
of subsection (2), the class may be described by reference to one or more of the following:

(a) a particular industry or part of an industry;
(b) a particular kind of work;
(c) a particular type of employment;
(d) a particular classification, job level or grade.

The amendment proposed by item 9 is technical in nature and makes clear that the provisions of parts 2 to 5 of the bill—that is, the workplace determinations—do not require employees to be individually named in relevant documents and instruments. It really comes on top of the previous amendment.

Question agreed to.

Progress reported.

COMMITTEES

Fuel and Energy Committee

Meeting

Senator PARRY (Tasmania) (11.30 am)—by leave—I move:

That the Senate Select Committee on Fuel and Energy have leave to meet during the sitting of the Senate today.

Question agreed to.

FAIR WORK BILL 2008

In Committee

Consideration resumed.

Senator LUDWIG (Queensland—Minister for Human Services) (11.31 am)—by leave—I move government amendments (14) to (16) on sheet QC300 together:

(14) Clause 734, page 543 (line 19), before “A”, insert “(1)."

(15) Clause 734, page 543 (line 22), omit “another”, substitute “an anti-discrimination”.

(16) Clause 734, page 543 (after line 27), at the end of the clause, add:

(2) A person must not make an application or complaint under an anti-discrimination law in relation to conduct that does not involve the dismissal of the person if:

(a) a general protections court application has been made by, or on behalf of, the person in relation to the conduct; and

(b) the application has not:

(i) been withdrawn by the person who made the application; or

(ii) failed for want of jurisdiction.

These amendments deal with provisions preventing a person from double-dipping by bringing multiple actions under the general protections provisions and other laws. As introduced, clause 734 would prevent a person bringing an action under the general protections if they had already brought an action employer must meet before standing down an employee (for example requirements relating to consultation or notice).

Item (12) is a minor technical amendment consequential on item (13). It allows a second legislative note to be included. Item (13) would insert another legislative note, following clause 524 of the bill. It explains that an enterprise agreement or contract of employment may make additional provisions for stand-down, including consultation or notice requirements.

Question agreed to.
under another law in relation to the same conduct. Concerns were raised that this did not prevent a person from bringing a general protections claim first and then bringing an action under another Commonwealth, state or territory antidiscrimination law. Amendment (16) would therefore ensure that a person is only able to bring an action under either the general protections or a Commonwealth, state or territory antidiscrimination law but not both—a sensible amendment, if I may say so. This will not prevent a person from bringing applications under other relevant laws in appropriate circumstances—for instance, where the conduct may also breach a person’s obligation under workers compensation laws. Amendments (15) and (16) are consequential upon that.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (11.34 am)—I move government amendment (1) on sheet PV376:

(1) Clause 596, page 470 (after line 6), at the end of subclause (2), add:

Note: Circumstances in which FW A might grant permission for a person to be represented by a lawyer or paid agent include the following:

(a) where a person is from a non-English speaking background or has difficulty reading or writing;

(b) where a small business is a party to a matter and has no specialist human resources staff while the other party is represented by an officer or employee of an industrial association or another person with experience in workplace relations advocacy.

Forward with Fairness noted that Fair Work Australia will act informally and in most cases lawyers and other professional representation will not be necessary, requiring lawyers and contingency fee agents to seek permission to appear before the FW A and ensuring that, wherever it is more efficient to do so, cases can be dealt with without legal representation. Employees of organisations appearing before the FW A who are legally qualified are not excluded, as they are appearing in the capacity of employees of the organisation rather than as legal representatives. Consistent with the FW A having a broad discretion as to how matters before it are dealt with, the FW A may allow paid lawyers or agents to represent a person in a matter before it, subject to a number of criteria.

The FW A must balance a number of factors in deciding this question, including whether it would be unfair not to allow representation, the complexity of the matter and the fairness between the parties. If the FW A considers that a worker involved in proceedings is disadvantaged or vulnerable, it is clearly open to the FW A to grant permission for legal representation. The government notes that the Senate committee received evidence that workers may be disadvantaged if they are not properly represented.

The government is moving this amendment following discussions with Senator Xenophon where examples were provided of when it would be appropriate for the FW A to allow legal representation. Examples of where the FW A may consider granting permission for a person to be represented by a lawyer or a paid agent are: where a person is from a non-English-speaking background or has difficulty reading or writing and where a small business with limited specialist human resources experience is unable to adequately represent itself against a party that is represented by an officer or employee of an industrial association or another person with experience in workplace relations advocacy.
Senator XENOPHON (South Australia) (11.37 am)—Very briefly, can I indicate that I am pleased that the government is moving this amendment as a result of discussions that I had with the government. I believe it will make it fairer in those circumstances where a party could be disadvantaged. I think that there is still an emphasis on informality, but, where there is perhaps a disparity in terms of representation, particularly in the circumstances that have been set out, I believe the amendment will make it fairer and clearer for FWA to determine cases where leave needs to be sought for representation.

Senator ABETZ (Tasmania) (11.37 am)—Can I briefly, on this occasion, add my support. I believe this is a very important measure, especially for small businesses who do not have in-house lawyers as employees of their organisation. If they were to come before Fair Work Australia, it would be fair to say that they might well be up against wonderful trade union advocates such as Senator Marshall and others. As a result, to allow the small business to have a trained advocate is, I think, a very important measure, and we welcome this move by the government.

Senator SIEWERT (Western Australia) (11.38 am)—The Greens support this amendment as it provides some guidance to FWA in circumstances where they may be minded to grant leave for legal representation. I remind the Senate that in fact the Greens have an amendment dealing with a similar issue, in that we want to exempt community legal centre lawyers from the need to seek leave, but we will move that amendment at a later time.

Senator FIELDING (Victoria—Leader of the Family First Party) (11.38 am)—I will just add that Family First obviously supports this amendment because it helps small businesses. As was quite clearly articulated, small businesses do not have the resources of larger businesses, and this is the reason why the government has acknowledged in the legislation that small businesses should be treated differently. This is a good move.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (11.39 am)—I think that draws to a conclusion the amendments on sheet PV376. There are some others, but I think they are really consequential and sometimes get a little bit complex, so it may be advisable now to go back to the order on the running sheet. I thank the Senate for the ability to move through those agreed items—or, at least, not opposed items—so that we can remove those from the running sheet and therefore reduce our workload for today. My understanding is we would then—

The TEMPORARY CHAIRMAN (Senator Carol Brown)—Minister, does that mean we will be going back to ‘various’ on sheet QW366 revised?

Senator LUDWIG (Queensland—Minister for Human Services) (11.40 am)—That is what I was just going to highlight. Unless the opposition have a different view and want to move on to something else, my understanding is that we would be going back to amendments on QW366 which are about right of entry.

Senator ABETZ (Tasmania) (11.40 am)—I thank the minister for conceding to me. In relation to these issues, we believe it may be preferable to get it in an order so that our amendments potentially be dealt with first. Therefore, if we can just defer this matter for some time so that we can further clarify that, that may mean substantial time-saving.

Senator LUDWIG (Queensland—Minister for Human Services) (11.41 am)—What we might do is get the relevant advis-
ers to sort that out as quickly as they can. I will find another one.

Senator FIELDING (Victoria—Leader of the Family First Party) (11.41 am)—If I could also make a comment on that, the government’s amendments on sheet QW366 appear to conflict with some of the Family First amendments on sheet 5733 revised 3. I am trying to work out whether we could go off-line and have a discussion about what might be the best order, because some amendments could preclude other amendments being moved before them.

Senator LUDWIG (Queensland—Minister for Human Services) (11.42 am)—I think that is the object of getting the advisers to deal with the way forward—so we can reduce the amount of time we spend on this. I am sorry, Senator Fielding; I did miss out Family First there, but it would include your amendments as well.

Senator Siewert—And mine!

Senator LUDWIG—I could not forget you, Senator Siewert!

The TEMPORARY CHAIRMAN—Everyone will be included. Minister, where are we going to now?

Senator LUDWIG (Queensland—Minister for Human Services) (11.42 am)—by leave—I move government amendments (1) to (22) on sheet QU427:

(1) Clause 12, page 10 (before line 25), before the definition of applicable award-derived long service leave terms, insert:

applicable agreement-derived long service leave terms: see subsection 113(5).

(2) Clause 16, page 34 (line 15), omit “However”, substitute “Despite subsection (1)”.

(3) Clause 16, page 34 (after line 28), at the end of the clause, add:

Meaning for pieceworkers for the purpose of section 206

(3) The regulations may prescribe, or provide for the determination of, the base rate of pay, for the purpose of section 206, of an employee who is a pieceworker. If the regulations do so, the employee’s base rate of pay, for the purpose of that section, is as prescribed by, or determined in accordance with, the regulations.

Note: Section 206 deals with an employee’s base rate of pay under an enterprise agreement.

(4) Clause 55, page 68 (line 8), omit “only if the”, substitute “only to the extent that the”.

(5) Clause 55, page 68 (lines 30 to 36), omit subclause (5), substitute:

Enterprise agreements may include terms that have the same effect as provisions of the National Employment Standards

(5) An enterprise agreement may include terms that have the same (or substantially the same) effect as provisions of the National Employment Standards, whether or not ancillary or supplementary terms are included as referred to in subsection (4).

Effect of terms that give an employee the same entitlement as under the National Employment Standards

(6) To avoid doubt, if a modern award includes terms permitted by subsection (4), or an enterprise agreement includes terms permitted by subsection (4) or (5), then, to the extent that the terms give an employee an entitlement (the award or agreement entitlement) that is the same as an entitlement (the NES entitlement) of the employee under the National Employment Standards:

(a) those terms operate in parallel with the employee’s NES entitlement, but not so as to give the employee a double benefit; and
(b) the provisions of the National Employment Standards relating to the NES entitlement apply, as a minimum standard, to the award or agreement entitlement.

Note: For example, if the award or agreement entitlement is to 6 weeks of paid annual leave per year, the provisions of the National Employment Standards relating to the accrual and taking of paid annual leave will apply, as a minimum standard, to 4 weeks of that leave.

Terms permitted by subsection (4) or (5) do not contravene subsection (1)

(7) To the extent that a term of a modern award or enterprise agreement is permitted by subsection (4) or (5), the term does not contravene subsection (1).

Note: A term of a modern award has no effect to the extent that it contravenes this section (see section 56). An enterprise agreement that includes a term that contravenes this section must not be approved (see section 186) and a term of an enterprise agreement has no effect to the extent that it contravenes this section (see section 56).

(6) Clause 61, page 72 (lines 5 and 6), omit subclause (1), substitute:

(1) This Part sets minimum standards that apply to the employment of employees which cannot be displaced, even if an enterprise agreement includes terms of the kind referred to in subsection 55(5).

Note: Subsection 55(5) allows enterprise agreements to include terms that have the same (or substantially the same) effect as provisions of the National Employment Standards.

(7) Clause 113, page 114 (line 3) to page 115 (line 19), omit the clause, substitute:

113 Entitlement to long service leave

Entitlement in accordance with applicable award-derived long service leave terms

(1) If there are applicable award-derived long service leave terms (see subsection (3)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.

Note: This Act does not exclude State and Territory laws that deal with long service leave, except in relation to employees who are entitled to long service leave under this Division (see paragraph 27(2)(g)), and except as provided in subsection 113A(3).

(2) However, subsection (1) does not apply if:

(a) a workplace agreement, or an AWA, that came into operation before the commencement of this Part applies to the employee; or

(b) one of the following kinds of instrument that came into operation before the commencement of this Part applies to the employee and expressly deals with long service leave:

(i) an enterprise agreement;

(ii) a preserved State agreement;

(iii) a workplace determination;

(iv) a pre-reform certified agreement;

(v) a pre-reform AWA;

(vi) a section 170MX award;

(vii) an old IR agreement.

Note: If there ceases to be any agreement or instrument of a kind referred to in paragraph (a) or (b) that applies to the employee, the employee will, at that time, become entitled under subsection (1) to long service leave in accordance with applicable
award-derived long service leave terms.

(3) Applicable award-derived long service leave terms, in relation to an employee, are:

(a) terms of an award that (disregarding the effect of any instrument of a kind referred to in subsection (2)):

(i) would have applied to the employee immediately before the commencement of this Part if the employee had, at that time, been in his or her current circumstances of employment; and

(ii) would have entitled the employee to long service leave; and

(b) any terms of the award that are ancillary or incidental to the terms referred to in paragraph (a).

Entitlement in accordance with applicable agreement-derived long service leave terms

(4) If there are applicable agreement-derived long service leave terms (see subsection (5)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.

(5) There are applicable agreement-derived long service leave terms, in relation to an employee if:

(a) an order under subsection (6) is in operation in relation to terms of an instrument; and

(b) those terms of the instrument would have applied to the employee immediately before the commencement of this Part if the employee had, at that time, been in his or her current circumstances of employment; and

(c) there are no applicable award-derived long service leave terms in relation to the employee.

(6) If FWA is satisfied that:

(a) any of the following instruments that was in operation immediately before the commencement of this Part contained terms entitling employees to long service leave:

(i) an enterprise agreement;

(ii) a collective agreement;

(iii) a pre-reform certified agreement;

(iv) an old IR agreement; and

(b) those terms constituted a long service leave scheme that was applying in more than one State or Territory; and

(c) the scheme, considered on an overall basis, is no less beneficial to the employees than the long service leave entitlements that would otherwise apply in relation to the employees under State and Territory laws;

FWA may, on application by, or on behalf of, a person to whom the instrument applies, make an order that those terms of the instrument (and any terms that are ancillary or incidental to those terms) are applicable agreement-derived long service leave terms.

References to instruments

(7) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.

113A Enterprise agreements may contain terms discounting service under prior agreements etc. in certain circumstances

(1) This section applies if:

(a) an instrument (the first instrument) of one of the following kinds that came into operation before the commencement of this Part applies to an employee on or after the commencement of this Part:

(i) an enterprise agreement;

(ii) a workplace agreement;
(iii) a workplace determination;
(iv) a preserved State agreement;
(v) an AWA;
(vi) a pre-reform certified agreement;
(vii) a pre-reform AWA;
(viii) an old IR agreement;
(ix) a section 170MX award; and

(b) the instrument states that the employee is not entitled to long service leave; and

(c) the instrument ceases, for whatever reason, to apply to the employee; and

(d) immediately after the first instrument ceases to apply, an enterprise agreement (the replacement agreement) starts to apply to the employee.

(2) The replacement agreement may include terms to the effect that an employee’s service with the employer during a specified period (the excluded period) (being some or all of the period when the first instrument applied to the employee) does not count as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory.

(3) If the replacement agreement includes terms as permitted by subsection (2), the excluded period does not count, and never again counts, as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory.

(4) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.

(8) Clause 117, page 119 (lines 24 to 28), omit paragraph (2)(b), substitute:

(b) the employer has paid to the employee (or to another person on the employee’s behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee’s behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.

(9) Clause 121, page 122 (line 5), before “Section”, insert “(1)”.

(10) Clause 121, page 122 (after line 11), at the end of the clause, add:

(2) A modern award may include a term specifying other situations in which section 119 does not apply to the termination of an employee’s employment.

(3) If a modern award that is in operation includes such a term (the award term), an enterprise agreement may:

(a) incorporate the award term by reference (and as in force from time to time) into the enterprise agreement; and

(b) provide that the incorporated term covers some or all of the employees who are also covered by the award term.

(11) Clause 123, page 124 (lines 11 to 19), omit paragraph (3)(a).

(12) Clause 186, page 176 (line 27), after “Note”, insert “1”.

(13) Clause 186, page 176 (after line 29), after the note at the end of subclause (6), add:

Note 2: However, this does not prevent FWA from dealing with a dispute relating to a term of an en-
terprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4).

(14) Clause 738, page 545 (line 16), after “employment”, insert “or other written agreement”.

(15) Clause 738, page 545 (after line 20), at the end of the clause, add:
:or (d) a determination under the Public Service Act 1999 includes a term that provides a procedure for dealing with disputes arising under the determination or in relation to the National Employment Standards.

(16) Clause 739, page 545 (line 26), omit “76(4)”, substitute “76(4), unless:
(a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to FWA dealing with the matter; or
(b) a determination under the Public Service Act 1999 authorises FWA to deal with the matter”.

(17) Clause 739, page 545 (after line 26), at the end of subclause (2), add:
Note: This does not prevent FWA from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

(18) Clause 740, page 546 (line 16), omit “76(4)”, substitute “76(4), unless:
(a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to the person dealing with the matter; or
(b) a determination under the Public Service Act 1999 authorises the person to deal with the matter”.

(19) Clause 740, page 546 (after line 16), at the end of subclause (2), add:

Note: This does not prevent a person from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

(20) Clause 758, page 554 (lines 5 to 12), omit the clause, substitute:

**758 Object of this Division**

The object of this Division is to give effect, or further effect, to:

(a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 (1994 ATS 4); and

(b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website (www.ilo.org).

(21) Clause 771, page 559 (lines 12 to 14), omit paragraph 771(c), substitute:
(c) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 (1994 ATS 4); and

(d) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

(22) Clause 784, page 565 (lines 5 to 12), omit the clause, substitute:
The object of this Division is to give effect, or further effect, to:

(a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and

(b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website (www.ilo.org).

The government proposes a number of amendments to make clear that parties can agree to dispute resolution about the right to request flexible work arrangements and the right to request additional parental leave, including the requirement that an employer who refuses such a request has reasonable business grounds for doing so. This can occur through including terms about the right to request in an enterprise agreement, a contract of employment or another written agreement. Public Service determinations may also provide for such disputes about rights to request.

These amendments also clarify the intended interaction of entitlements in the National Employment Standards—these are items (4), (5) and (6)—with award or agreement terms that deal with the same subject matter, ensuring that the NES operate as minimum standards and do not impede flexibility in relation to entitlements beyond the NES, such as additional leave. Item (11) also ensures that all employees are entitled to a notice of termination in their first year of employment—that is, other than employees subject to an express exclusion, such as short-term casuals. This addresses an error in the bill as introduced. Items (9) and (10) deal with when modern awards and enterprise agreements are replaced, specifying when redundancy payments do not apply.

Items (1) and (7) allow employers who have developed long service leave arrangements in national collective agreements to retain these arrangements as their employees’ National Employment Standards guarantee entitlements in limited circumstances. In addition, item (7) provides for a fair and balanced transition to new long service leave arrangements where an employee’s long service leave entitlement has previously been excluded. As a catch-all, there are other minor technical changes that I will not go to in detail.

Senator SIEWERT (Western Australia) (11.45 am)—I indicate the Greens’ support for these amendments. I will note that we have amendments around some of these issues as well. We think ours are better, particularly those giving the FWA dispute resolution powers without the need for agreements. We believe those are better, but we will be supporting the government’s amendments.

Senator ABETZ (Tasmania) (11.45 am)—I indicate that, whilst the running sheet suggests that there might be a conflict with opposition amendments, we do believe that they can coexist. The running sheet now reflects that and we will be moving our amendments at a later stage to complement the amendments moved by the government.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (11.46 am)—
by leave—I move government amendments (1) to (21) on sheet PT207:

(1) Clause 12, page 14 (line 22), at the end of the definition of employee claim action, add “and paragraph 471(4A)(c)”.  

(2) Clause 12, page 14 (line 29), at the end of the definition of employee response action, add “and paragraph 471(4A)(d)”.  

(3) Clause 19, page 37 (after line 8), at the end of the clause, add:

Note: In this section, employee and employer have their ordinary meanings (see section 11).  

(4) Clause 409, page 336 (line 17), before “about”, insert “only”.  

(5) Clause 409, page 336 (line 18), after “to”, insert “only”.  

(6) Clause 413, page 341 (line 22), omit “Neither”, substitute “None”.  

(7) Clause 413, page 341 (line 24), omit “the industrial action”, substitute “industrial action in relation to the agreement”.  

(8) Clause 413, page 341 (line 26), omit “the industrial action.”, substitute “industrial action in relation to the agreement;”.  

(9) Clause 413, page 341 (after line 26), at the end of subclause (7), add:  

(c) a serious breach declaration in relation to the agreement.  

(10) Clause 417, page 344 (lines 17 and 18), omit “to whom the agreement or determination applies”, substitute “who is covered by the agreement or determination”.  

(11) Clause 417, page 344 (lines 19 and 20), omit “to which the agreement or determination applies”, substitute “that is covered by the agreement or determination”.  

(12) Clause 426, page 355 (line 7), after “disrupt”, insert “, for an extended period,”.  

(13) Clause 426, page 355 (line 9), before “reduce”, insert “significantly”.  

(14) Clause 426, page 355 (line 11), after “other”, insert “serious”.  

(15) Clause 426, page 355 (after line 11), after subclause (4), insert:

Requirement—harm is imminent  

(4A) If the protected industrial action is threatening to cause significant harm as referred to in subsection (3), FWA must be satisfied that the harm is imminent.  

(16) Clause 438, page 363 (line 5), omit “apply to”, substitute “cover”.  

(17) Clause 470, page 383 (lines 19 to 31), omit subclause (4), substitute:

(4) If the industrial action is, or includes, an overtime ban, this section does not apply, in relation to a period of overtime to which the ban applies, unless:

(a) the employer requested or required the employee to work the period of overtime; and  

(b) the employee refused to work the period of overtime; and  

(c) the refusal was a contravention of the employee’s obligations under a modern award, enterprise agreement or contract of employment.  

(5) If:

(a) the industrial action is, or includes, an overtime ban; and  

(b) this section applies in relation to a period of overtime to which the ban applies;

then for the purposes of this section, the total duration of the industrial action is, or includes, the period of overtime to which the ban applies.  

(18) Clause 471, page 384 (lines 28 to 30), omit paragraph (4)(c), substitute:

(c) the employer gives to the employee a written notice stating that, because of the ban:

(i) the employee will not be entitled to any payments; and  

(ii) the employer refuses to accept the performance of any work by the employee until the employee is prepared to perform all of his or her normal duties.  

(19) Clause 471, page 384 (after line 32), after subclause (4), insert:
(4A) If:
(a) an employer has given an employee a notice under paragraph (4)(c); and
(b) the employee fails or refuses to attend for work, or fails or refuses to perform any work at all if he or she attends for work, during the industrial action period;
then:
(c) the failure or refusal is employee claim action, even if it does not satisfy subsections 409(2) and 413(4), if the related industrial action referred to in paragraph (4)(a) is employee claim action; or
(d) the failure or refusal is employee response action, even if it does not satisfy subsection 413(4), if the related industrial action referred to in paragraph (4)(a) is employee response action.

(20) Clause 474, page 387 (after line 25), after subclause (2), insert:
(2A) If:
(a) the industrial action is, or includes, an overtime ban; and
(b) this section applies in relation to a period of overtime to which the ban applies;
then, for the purposes of this section:
(c) the total duration of the industrial action is, or includes, the period of overtime to which the ban applies; and
(d) if paragraph (1)(b) applies—the period of 4 hours mentioned in that paragraph includes the period of overtime to which the ban applies.

(21) Clause 539, page 433 (table item 14, paragraph (c) of column 2), omit “to which the enterprise agreement or workplace determination concerned applies”, substitute “covered by the enterprise agreement or workplace determination concerned”.

These provisions make a number of amendments to the industrial action provision of part 3-3 of the Fair Work Bill. Part 3-3 deals with industrial action, including protected action, ballots and restrictions on payments to employees relating to periods of industrial action. The key item in this group would be in three parts. It would make clear that industrial action will not be protected if it occurs whilst a serious breach declaration is in operation. The second leg, which amends clause 426 of the bill to modify the threshold of the FWA, is to apply when considering whether to suspend protected industrial action because the action is threatening to cause significant harm to a third party. The third is to amend the strike pay provisions to clarify the operation of the rules about deductions of pay in the context of overtime bans and partial work bans. The remaining amendments are, as a catch-all, technical in nature.

Senator SIEWERT (Western Australia) (11.48 am)—Chair, I seek your guidance. The Greens would prefer to separate out item (9) because we do not support that item. Could we deal with that separately?

The TEMPORARY CHAIRMAN (Senator Carol Brown)—I can put that item separately when we come to the vote.

Senator ABETZ (Tasmania) (11.48 am)—I indicate on behalf of the opposition that, depending on the attitude of other senators, we would be making a similar request in relation to amendments (4) and (5) in as much as we support those amendments but oppose the rest. If an indication can be provided as to the particular stance that honourable senators are taking, we might be able to deal with this simply on the voices without the need to divide. I flag that at this stage to encourage senators to indicate their stance in relation to the various clauses to save us a division.

The TEMPORARY CHAIRMAN—To clarify, we will put amendments (4), (5) and
(9) separately. If senators could indicate how they might be voting on those amendments, that will give a clearer indication as to the intent of the chamber.

Senator SIEWERT (Western Australia) (11.50 am)—I will speak to all of the amendments and then vote on them separately, if that suits the chamber. Most of these amendments are relatively minor amendments. We see them as putting in place even more barriers to what we believe are the legitimate rights of workers to take industrial action. The Greens do not support item (9). The bill already places a lot of restrictions on industrial action, and we believe this item, which relates to industrial action not being permitted where a serious breach order is in place, places further restriction on industrial action and we do not support it. We support items (12) to (15), suspension or termination of industrial action on significant harm. We support these amendments as an important strengthening of the test to be applied.

My comments need to be borne in the context that we disagree with the restrictions on industrial action in the bill. As people will see from the amendments we have circulated, we have our own amendments to oppose this provision in its entirety. So, while we do support this particular amendment, we do not support all of the provisions in the bill and we will be dealing with those later. In terms of items (17) to (21), partial work bans, we support these amendments in clarifying the application of the partial work ban provisions to overtime bans. We will be supporting those particular items.

Senator XENOPHON (South Australia) (11.52 am)—I support the government’s position in relation to amendments (4), (5) and (9). They narrow the scope of protected industrial action. I understand from discussions with various employer groups that there is still sufficient scope for protected industrial action, but I prefer the government’s position in relation to this, and I will be supporting these amendments.

Senator LUDWIG (Queensland—Minister for Human Services) (11.52 am)—We are not supporting the Greens amendment. The government considers that a more nuanced approach towards strike pay is required, particularly concerning overtime bans and partial work bans, which is in relation to the removal of the distinction between protected and unprotected industrial action. Also, the government does not support the Greens proposal to remove the requirement that protected industrial action must be in relation to permitted matters. Employers and employees are always free to negotiate about any matter they wish at the workplace, but the government believes that enterprise agreements under workplace relations legislation must remain connected to the employment relationship. We have said that quite clearly and loudly in respect of the Fair Work Bill.

Senator ABETZ (Tasmania) (11.53 am) In relation to the raft of 21 government amendments, I indicate the opposition’s support for amendments (4) and (5). We are not supportive of amendment (9) but I can indicate that, if it were to be a choice between the Greens and the government, we would support the government’s position.

In relation to items (12) to (15), I would be interested to know the attitude of colleagues on the crossbenches. These four amendments seek to raise the threshold of particular damage before a third party can take action and succeed before Fair Work Australia. For example, under the item of protected industrial action, the government is now seeking that the disruption has to be ‘for an extended period’. Rather than just showing disruption, you have to show it for an
extended period. If you have disruption occurring for 24 hours but you do not know whether it is going to last for 24 hours or a week, you would have to wait a while before you could go to Fair Work Australia and say, ‘It’s for an extended period.’ Similarly, amendment (13) inserts the word ‘significantly’ and amendment (14) inserts the word ‘serious’. Amendment (15) inserts an extra subclause (4A), which says:

If the protected industrial action is threatening to cause significant harm as referred to in subsection (3), FWA must be satisfied that the harm is imminent.

You might suffer significant harm, but that is not good enough. It has to be imminent significant harm, although you might be able to show that the significant harm will be later on. For instance, in your supply of a particular material, the person to whom you are supplying might have a binding contract with you but the significant harm might not be imminent; it might be in a year’s time when you are about to renew a contract with a person to whom you are supplying. That is when the harm might be, but you might not be able to show that it is imminent. It might be when you are negotiating a contract 12 months down the track.

What I am suggesting to the Senate is that amendments (12), (13), (14) and (15) make it more difficult for third parties to be able to convince Fair Work Australia that they should intervene in certain industrial actions. If parties are damaged, the economy is damaged. The test that we as a coalition have been applying to all these measures is: what is its effect on jobs, what is its effect on small business and would it be seen as allowing excessive union power? In this case, we believe that those four amendments in particular will be damaging to jobs, especially small businesses. Further, because of the increased threshold, it will give unions more power. They can run a bit of a raid on companies and say, ‘It’s not going to be significant; it’s not going to be for an extended period of time; it’s only going to be for 24 hours,’ and as a result escape any intervention by Fair Work Australia.

I put that to my crossbench colleagues and say to them genuinely that, if they are serious about job protection and especially about small business protection—the engine room of jobs growth in this country—they might care to join with us in opposing amendments (12) to (15) inclusive. We would appreciate it if they could do us the courtesy of indicating their intention. I have put the opposition position on the record. For the record, we do not necessarily seek to divide the Senate if it is obvious that we are going to lose the vote. That is why I would be pleased if crossbench senators would indicate their view—but I dare say the minister has a response.

Senator LUDWIG (Queensland—Minister for Human Services) (11.59 pm)—I was going to outline the position of the government on amendments (12), (13), (14) and (15) so that the crossbenchers then are in a clear position to indicate to the chamber. Amendments (12) to (15) would amend clause 426 of the bill by modifying the threshold that Fair Work Australia is to apply when considering whether to suspend protected action because the action is threatening to cause significant harm to a third party. Amendments (12) to (15) would amend clause 426(4) to require FWA to take into account the extent to which industrial action threatens ‘for an extended period’ the supply of goods or services to an enterprise carried on by a third party, ‘significantly reduce the capacity of the third party to fulfil a contractual obligation or cause other ‘serious’ economic loss to a third party. Amendment (15) will insert a new subclause 426(4A) to require FWA to be satisfied that the threatened
significant harm to the third party is imminent before it suspends protected industrial action. In framing these amendments, the government has taken into account that this was a matter that was raised in the Senate committee report recommendation about these provisions—perhaps a better way to put it is that they were inspired by it.

Senator FIELDING (Victoria—Leader of the Family First Party) (12.01 pm)—This is an important issue. Protected industrial action is that—it is protected. The issue is that other businesses are innocent bystanders. There are very tough financial times at the moment. It means small businesses in particular do not have a lot of buffer sometimes. They can be innocent bystanders. I can see the dilemma that we have here. I appreciate that the minister outlined the changes the government has made. I did not hear much of a rationale for why we should stick with it. I heard the opposition put forward a pretty good rationale for why they should be changed. Obviously we need to look after protected industrial action, but I am not so sure that we should make it easier for those concerns not to be taken into account. I would be happy if the government could put forward an argument rather than going through the changes that they have made.

Senator LUDWIG (Queensland—Minister for Human Services) (12.02 pm)—It was the matter that was raised in recommendation 8 of the Senate committee report. I am finding it now. This was an issue that, as I understood, got significant time in the Senate committee report. The arguments that were raised during that—

Senator Abetz—It’s on page 80.

Senator LUDWIG—Thank you, Senator Abetz. I was going to get there eventually!

Senator Abetz—I’m here to help!

Senator LUDWIG—The report said:

The committee majority recommends that it would be desirable to ensure consistency of the drafting between these two provisions by providing that where industrial action threatens harm the threat should be imminent, and the harm to the third party should be economic harm.

... ... 

The committee majority notes the high threshold for FWA to order the suspension or termination of industrial action. It notes the likelihood that this power would be exercised only rarely in recognition of the right for employees to take protected action.

The new system may attract some criticism in that the new system allows for a fairer, more proportional response than under the current arrangements. That seems to be what we are putting forward. Whether you accept that the current regime may operate unfairly for those where FWA is called in too early, it may be that industrial action can progress. Your particular enterprise level agreement may be circumvented very early in the piece by the use of the current terminology. This is an obvious way of ensuring that there would be three tests to allow Fair Work Australia to intervene and then use these as a way to highlight what we are looking for: disrupt for an extended period the supply of goods or services to an enterprise carried on by the third party, significantly reduce the capacity of the third party to fulfil a contractual obligation or cause serious economic loss to a third party.

The provision is a modification of the existing provision. Senator Cameron raised questions about Australia’s international obligations in relation to the suspension of protected action. DEEWR advised that the department considers that the provisions of clauses 423, 424 and 426 are consistent with Australia’s international obligations under the ILO Freedom of Association and Protection of the Right to Organise Convention. It is about ensuring that we have the ILO abil-
ity to raise this issue and ensuring that we have the appropriate test in the legislation. It is about a balance between what might be considered to operate too harshly and that which might allow those parties, if there is a need to go to the commission if a business is suffering, or alleging that it is suffering, from industrial action, to then put that case and for Fair Work Australia to then be guided in its determination—and it would be guided by those three points that I have outlined.

Senator XENOPHON (South Australia) (12.07 pm)—As I read clause 426(4) now, it says:

FWA may take into account any matters it considers relevant including the extent to which the protected industrial action threatens to—

Then there is a debate about the amendments being sought to insert ‘for an extended period’ after ‘disrupt’, ‘significantly’ before ‘reduce’ and ‘serious’ before ‘economic loss’. My question to the minister is: isn’t it the case that there is already a fair degree of discretion built in on the part of Fair Work Australia to consider these matters? It is appropriate to have that level of discretion there so that trivial matters would not be considered. But would further including a significant qualification, which is what is being proposed, not fetter unduly the discretion of FWA to deal with these matters? In terms of current case law, could the minister advise what the status quo is in terms of any precedents that have been set, both for this type of wording and the wording for the higher threshold, which is what is being sought by putting in ‘significantly’, ‘for an extended period’ and ‘serious’ economic loss?

Senator LUDWIG (Queensland—Minister for Human Services) (12.08 pm)—We will have a look to see if there is any case law, though I cannot recall any; it has not been widely used. This is about, if we just come back a fraction, when the Fair Work Bill allows employees to take protected industrial action within, if I could call them so, the fair-but-tough rules. You must focus on the operative provision. If you look at the current provision we are amending, which is clause 426, the FWA is required to suspend protected action if action is being engaged in and it is satisfied that clause 426(1) has been met. The clause then goes through what FWA’s actions must be. But this is about third parties—those at the margin. Looking at it in the broader sense, if there is a major supplier to a major company and that supplier is disrupted, you can see that would quite easily fall within ‘disrupt for an extended period the supply of goods’, ‘significantly reduce the person’s capacity’ or cause serious economic harm, because the second business relies on the supply of parts or what have you from the first business. If one were to go on strike or take industrial action of any particular nature, that could disrupt the flow of goods or services to the third party. It provides guidelines for Fair Work Australia to make that assessment and judgment within those parameters.

What the current provision, though, does not take into account—and that is why we are seeking to amend those three parts there—is when a third party gets a lot further away from the major supplier. It is easy to imagine a parts manufacturer supplying parts to an assembly plant. If the employees of the parts manufacturer were to take industrial action which could stop or disrupt the supply of parts to the assembly production line then you could have a third party going to Fair Work Australia, and clearly it would fall under clause 426 quite easily under the current provisions. I have no doubt about that. But if you then go to a third party at the periphery—I think they use the supply of pies to an individual pie van as an example, though I
am not a fan of pies; maybe I should not say that on the record!—and say that—

Senator Abetz—That’s very un-Australian!

Senator Ludwig—Maybe we will not use a pie van then! If we use another small, individual business which is a third party to an individual supplier, but which is quite well away in the sense that it is a small, individual party, clause 426 might allow them to intervene in protected industrial action which has been taken at a large bakery or bread manufacturer who supplies to a whole range of distributors which then supply to a broad market. But one of those third parties right at the periphery could put its hand up under clause 426 and potentially argue that it is being significantly affected by that action and therefore seek to remove the protection from the employees of the manufacturer of pies or the bakery to be able to take protected industrial action in furtherance of their enterprise-level agreement.

We have sought to ensure that, when Fair Work Australia looks at those cases at the margin, it can take all of the circumstances into account and turn to those which ‘disrupt for an extended period’, ‘significantly reduce’ or cause serious economic loss. If it were to cause serious economic loss then there is an argument that those parties should be heard and have the opportunity to argue that the protected industrial action should cease. But if it is well and truly a third party who is at the margin then Fair Work Australia can turn to ‘take into account … the extent to which the protected industrial action threatens to’. We are seeking to ensure that clause 426 operates fairly—in other words, that we get the balance right—between those who are at the margin of the area rather than what generally comes to mind, which is those who are major suppliers or contractors, where the examples are pretty straightforward and usually uncontested, in the sense that those parties will certainly make an application and go to Fair Work Australia.

Senator Fielding (Victoria—Leader of the Family First Party) (12.14 pm)—All this talk about pies is making me awfully hungry, actually. This is an important matter, so we are not wasting time here at all. From what I have heard, making these changes would make it even harder to look at the impact on a third party. We have Fair Work Australia, which is an independent umpire. I am more inclined to stick with what we have in the current bill, rather than adding in higher hurdles to jump over. If there is a real problem with this particular issue, parliament can come back and make some other changes. I do not think that we should take that lightly. I believe that protected industrial action should be okay, but we have to make sure that we consider the third parties. We should not make it too hard for them to make a claim. Fair Work Australia can adjudicate and be the policeman or the independent umpire. That is what this new legislation is trying to do. We should let them do their job and not make it even harder for a third party to claim that they are being impacted. I am inclined to leave the bill as it is in regard to items (12), (13), (14) and (15).

Senator Ludwig (Queensland—Minister for Human Services) (12.16 pm)—Earlier, you asked whether there have been any decisions made in respect of it. There are two that we are aware of, the AMWU and the CEPU and Ford case—I can give you the reference for that or we can dig it up—and the AEU and the Northern Territory Department of Education and Training case. The latter was overturned on appeal. That is the only case law that surrounds this. Action is not often taken in this area.

We are talking about ensuring that within the fair and tough rules we get the balance
right and we ensure that we give sufficient guidance to Fair Work Australia about dealing with those provisions. We have erred on the side of providing more guidance; more words. I accept that can lead to people thinking that maybe it should be left at the simple rule under 426. We have tried to get the balance right by providing that guidance so that Fair Work Australia comes to the correct decisions in this area.

It is a significant step to remove someone’s right to a particular protected industrial action once they have commenced it and they are seeking to further their claims. For a third party who is significantly removed from the remote action to put their hand up and say, ‘We think that the right to this protected industrial action should be removed under provision 426.’ That might happen because the industrial action is adversely affecting an employer or an employee who will be covered by the proposed enterprise agreement. I will not go through the whole provision.

We have taken on board what the Senate committee recommended. That cannot be ignored lightly. The committee recommended this, and the government does take those committee reports seriously. We looked at what we could do and, inspired by that recommendation, came up with a form of words which we think encapsulates all of those circumstances and allows Fair Work Australia to come to the correct decision when looking at these matters. There is also this clause:

... if it—

FWA—

is satisfied that the protected industrial action has threatened, is threatening or would threaten to endanger the life, the personal safety, health or welfare of the population ... or to cause significant damage to the Australian economy ...

That remains in the picture. We are looking at damage that is substantively economic.

If I could reverse this—although the advisers might think otherwise—if you are a large company, you will have many distributors, sub-distributors and sub-sub-distributors. They are all third parties. If anywhere down the chain a third party puts their hands up and says, ‘I’m being threatened and I want to stop this action,’ you might find that under provision 426 they are able to succeed in that argument. This is where balance comes in. Those who are seeking to take protected industrial action in furtherance of their claim, which might be a large work force of 1,000 or 2,000 people, might be able to be stymied—that protection is being removed—because of a third party.

It may be that that third party has a serious case. What we have said in respect of that is they will have to meet certain criteria. They will not be able to put their hand up under the broader section, but there will be three criteria so that Fair Work Australia can focus in on any real harm and determine where the harm should fall. Should it fall on those seeking to take protected action in furtherance of their collective agreement or should the harm fall on the third party? We will not determine that; Fair Work Australia will determine where the onus lies and where the harm should fall. Should the harm be the removal of the right to a protected industrial action or should the harm be to the third party? We wanted to ensure that Fair Work Australia has clarity around those provisions.

Senator ABETZ (Tasmania) (12.22 pm)—Very briefly, in relation to this I think, with respect, the minister is wrong and I will go through the reasoning as to why. But a very important principle here, which the minister I think inadvertently talked about, is—and potentially he is accepting this—that a small business can be sacrificed for the
sake of trade union action. That is basically what he said: if they are further down the chain, should that one individual pie seller happen to go out of business it will have no economic effect generally on Australia, and these other workers should be entitled to have a strike even if it means a small business goes out the door backwards.

With the tests that we as a coalition are consistently applying to each one of these amendments, this is an example of one where there would be excessive union power at the expense of small business and jobs. I invite crossbench senators—and I understand that Senator Xenophon, who is at present standing next to the minister engaged in a conversation with government advisers, does need to speak to the minister and advisers from time to time—

Senator Ludwig interjecting—

Senator ABETZ—I know, unfortunately, that I will not convince you; what I am trying to do is attract the attention of Senator Xenophon ear because my advocacy on this matter may well decide whether or not we divide. With great respect to Senator Xenophon, I refer him to section 426, subclause (3). This deals with the requirement concerning significant harm to a third party—the words ‘significant harm’ are included in the section’s heading. It states:

FWA must be satisfied that the protected industrial action is threatening to cause significant harm to any person …

It is already saying ‘significant harm’; then, in subclause (4) it states:

… FWA may take into account any matters it considers relevant—

and then goes through four or so different scenarios. What the minister is now saying is that not only do we need to prove significant harm but we now have to prove significant harm that will reduce significantly a person’s capacity to fulfil a contractual obligation. So it really is a double whammy.

In relation to the disruption of the supply of goods, it will have to cause significant harm and disrupt for an extended period. So you could potentially have significant harm that does not go on for an extended period. What you are doing is tying up Fair Work Australia and basically gutting it of any real and genuine discretion so that, for example, if the newspaper printers went on strike and I did not get my morning newspaper it would not allow me to run along to Fair Work Australia and say, ‘I am suffering harm.’ Although chances are it is better for me not to have read the newspaper in recent times! Fair Work Australia, in assessing it, would immediately say, ‘Does it cause significant harm?’ I would have thought the answer to that would clearly be no.

So there is the overriding, overarching test, which is that Fair Work Australia needs to find significant harm. You have to have significant harm and on top of that the disruption has to be for an extended period—that it has to reduce significantly the person’s capacity to fulfil a contractual obligation or cause other serious economic loss to the person. So you have got significant harm and serious economic loss. I would have thought that significant harm is the balancing part of this section of the bill and all these additions have been thrown in as a sop to some people. And with great respect to Senator Marshall, who chaired the Senate committee to which Senator Ludwig referred—and I think Senator Marshall did the job very well—the committee’s report contains only the Labor senators’ view on this. That ought to be kept in mind. I am concerned about how these extra qualifications will apply with, say, a stevedoring strike because, for example, one day of disruption would not be regarded as an extended period of time, but if you have perishable goods it could be very damaging.
That is why allowing Fair Work Australia to determine whether it would cause significant harm is the test, and then those four categorisations are important.

It is also interesting to note that the Labor senators’ recommendation did not have the suggestion of all the amendments that are in here, only (4)(a) and the suggestion that it should only be economic harm, whereas these amendments, thank goodness, do not take up that suggestion. I say to the cross-benches that we believe this is a very important aspect which unduly gives power to unions at the expense of small business and jobs.

Senator FIELDING (Victoria—Leader of the Family First Party) (12.28 pm)—To hopefully break a deadlock here, under section 426—and given subclause (3), which you have just been through, so I will not repeat it—in subclause (4) it says that the FW A ‘may’, and I think we should not be putting overly restrictive abilities for third parties to make a claim. Fair Work Australia should be able to look at it and may take into account those items. So I think we can still allow Fair Work Australia to adjudicate on the issue. I do not think we want to overly restrict people from making a particular claim.

Senator LUDWIG (Queensland—Minister for Human Services) (12.29 pm)—What I really wanted to do, in reply to Senator Abetz’s argument, was to look at clause 426. This is the really critical part. It says that the ‘FWA must’. So there is no discretion there. If you go to the dot point about ‘any threatened disruption to the supply of goods or services to an enterprise carried on by a third party,’ that is where the issue—

Senator Abetz—Which dot point? There are no dot points.

Senator LUDWIG—If you go to clause 426 there are three dot points in a row; then at 1726 there are two dot points. These are the factors that the FWA may take into account when determining when protected industrial action has threatened to cause significant harm.

Senator Abetz—Where are the dot points? I don’t understand what you mean by dot points.

Senator LUDWIG—We are on page 270 of the EM.

Senator Abetz—I thought you were in the bill.

Senator LUDWIG—We can either use the bill or the EM but the EM sometimes puts the argument in a nutshell.

Senator Abetz—This EM does not deal with the amendments.

Senator LUDWIG—No. Let me come to the argument. The amendment, of course, amends this provision. What I am simply setting out, which is taking longer than I hoped, is what the current provision is. Then I will say why your argument, although well reasoned, is wrong. Then I will say why you should support ours. Allow me to continue. Clause 426 uses the word ‘must’ and then if you drop down to the third party under 1727, at the first dot point, you find it says:

any potential damage to the ongoing viability of an enterprise carried on by the third party ...

And the second dot point says:

any threatened disruption to the supply of goods or services to an enterprise carried on by the third party ...

The amendment seeks to give greater guidance to Fair Work Australia to use the dot points that I have just indicated. I think Senator Abetz was arguing that those points are cumulative but they are not; they are alternatives. So it refers to disruption for an extended period, significantly reduce or cause serious economic loss to a third party. So if the case that was being raised was a small business down the track, and action was
causing serious economic loss to a third party, then the protection is still there. It has not disappeared. It has not been watered down or changed. If it is a third party’s capacity to fulfil a contractual obligation or fulfill the majority of its business is significantly reduced, the protection is not impaired—nor is it if there is a disruption, for an extended period, of the supply of goods or services to an enterprise carried on by a third party.

At the moment we are looking at the two provisions. The first existing provision under 426 says ‘must suspend protected industrial action’ and then it goes on to talk about any ‘threatened disruption to the supply of goods or services’. We are seeking to take into account that where that provision operates it may not get the balance right between the rights of the employees to take protected industrial action and the rights of a third party not to have it cause serious economic loss to them, or to significantly reduce their capacity to fulfil a contractual obligation, or disrupt for an extended period the supply of goods or services to an enterprise carried on by them.

This is all put within the framework that these are factors that the FWA may take into account when determining whether protected industrial action has threatened to cause significant harm to a third party as specified in 426(4) under the existing EM. So it is still a decision that Fair Work Australia will make with respect to that, taking all those circumstances into account. They will obviously be able to hear from both parties and those interveners, should there be any, in those matters.

Senator XENOPHON (South Australia) (12.35 pm)—Could I indicate that, despite the magnificent advocacy skills of Senator Abetz, I am in a position where I support the government’s amendments for these reasons. As I read it, from a point of view of statutory interpretation, subclause (3) would be the primary clause looking at the issue of significant harm. That is still the primary criteria. Subclause (4) looks at factors that may be taken into account by Fair Work Australia.

Whilst I understand the concerns that have been expressed by the opposition, and by Senator Fielding, in respect to this, I am significantly comforted by subclause (4)(a) where—the government has not sought to amend it—reference is made to any protected industrial that threatens to ‘damage the ongoing viability of an enterprise carried on by the person’. I see that as a fairly broad catch-all clause.

In any event, it is my understanding, from the point of statutory interpretation, that the primary clause would be subclause (3) where significant harm is the test, and subclause (4) relates to a number of matters that may be taken into account in the exercise of the FWA’s discretion.

Senator ABETZ (Tasmania) (12.36 pm)—Can I ask, across the chamber, as to what Senator Fielding’s attitude is in relation to opposing government amendments (12) to (15) because if, unlike Senator Xenophon—leaving my advocacy skills out of the question—he is convinced that they should be voted against, then I would seek to call a division in relation to amendments (12) to (15) because then those amendments would be lost. But if his indication is that he would go along with the government then I put on record the opposition’s concern about these amendments but I would not seek to divide the chamber in a formal division.

Senator FIELDING (Victoria—Leader of the Family First Party) (12.37 pm)—As I said, I have listened to the debate and I have raised my concerns. I think that again the word ‘may’ in subclause 426(4) means that Fair Work Australia can work it out. We have
set Fair Work Australia to be the independent umpire, and I do not see the justification for increasing the hurdles for someone making a claim. Despite the arguments put forward, you still have subclause (3):

(3) FWA must be satisfied that the protected industrial action is threatening to cause significant harm to any person other than:

(a) a bargaining representative for the agreement—

and it goes on. But subclause (4) I think allows people and other third parties to have a look at that and say, ‘I think I’ve got a claim that should be considered by Fair Work Australia.’ Fair Work Australia is big enough to look after itself, it is a statutory body and it is accountable to parliament—and we can review it. If there is a problem, I think I would rather err on the side of allowing the effect protected industrial action has on third parties to be taken into account, so I am inclined to leave the bill the way it is at the moment.

Senator ABETZ (Tasmania) (12.38 pm)—I think Senator Siewert had something in relation to amendment (9), but I indicate that, whilst we oppose, we will not be seeking to divide up until we get to amendments (12) to (15) inclusive. I will be asking that amendments (12) to (15) inclusive be put on block.

The TEMPORARY CHAIRMAN (Senator Trood)—I understand that it has been agreed that we are going to deal with these amendments in tranche form. I just want to clarify that we have the right blocks. First, there will be a vote on items (1) to (3), (6) to (8) and (10) to (21); second, there will be a vote on (4) and (5); and, third, there will be a vote on (9). That is my understanding of the situation.

Senator ABETZ (Tasmania) (12.40 pm)—Could I indicate that, given the feeling around the chamber, I think amendments other than (12) to (15) will be carried so we do not need a separate vote on (4) and (5); we can include them.

Senator SIEWERT (Western Australia) (12.41 pm)—It might be easier if I just say: could you please register the Greens’ opposition to amendment (9).

The TEMPORARY CHAIRMAN (Senator Trood)—The question is that amendments (1) to (11) and (16) to (21) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Trood)—The question now is that amendments (12) to (15) be agreed to.

The committee divided. [12.46 pm]

(The Temporary Chairman—Senator RB Trood)

Ayes………….. 31

Noes………….. 31

Majority……….. 0

AYES

Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, B.J.
Brown, C.L. Cameron, D.N.
Collins, J. Conroy, S.M.
Crossin, P.M. Farrell, D.E.
Faulkner, J.P. Feeney, D.
Forshaw, M.G. Furner, M.L.
Hanson-Young, S.C. Hogg, J.J.
Hutchesons, S.P. Ludlam, S.
Lundy, K.A. Marshall, G.
McEwen, A. Milne, C.
Moore, C. O’Brien, K.W.K.*
Polley, H. Pratt, L.C.
Siewert, R. Stephens, U.
Sterle, G. Wortley, D.
Xenophon, N.

NOES

Abetz, E. Barnett, G.
Birmingham, S. Boswell, R.L.D.
Boyce, S. Brandis, G.H.
Bushby, D.C.* Colbeck, R.
Cormann, M.H.P. Eggleston, A.
Ferguson, A.B. Fielding, S.
Fifield, M.P. Fisher, M.J.

CHAMBER
(1) Clause 12, page 19 (line 8), omit "means redundancy", substitute "means redundancy or termination payment".

(2) Page 137 (after line 3), after clause 140, insert:

140A  Terms for long distance transport employees

A modern award may include terms relating to the conditions under which an employer may employ employees to undertake long distance transport work.

(3) Page 142 (after line 8), after clause 145, insert:

145A  Terms about consultation and representation

Without limiting paragraph 139(1)(j), a modern award must include a term that:

(a) requires an employer to whom the award applies to consult the employer’s employees to whom the award applies about major workplace changes that are likely to have a significant effect on the employees; and

(b) allows for the representation of those employees for the purposes of that consultation.

(4) Clause 154, page 144 (line 27), omit paragraph (1)(b), substitute:

(b) are expressed to operate in one or more, but not every, State and Territory.

(5) Clause 287, page 257 (line 21) to page 258 (line 4), omit the clause, substitute:

287 When national minimum wage orders come into operation etc.

Orders come into operation on 1 July

(1) A national minimum wage order that is made in an annual wage review comes into operation on 1 July in the next financial year (the year of operation).

Setting of different wages or loadings only permitted in exceptional circumstances

(2) The national minimum wage or the casual loading for award/agreement free employees set by the order must be the same for all employees, unless:

(a) FWA is satisfied that there are exceptional circumstances justifying setting different wages or loadings; and

(b) the setting of different wages or loadings is limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate.

(3) A special national minimum wage set by the order for a specified class of employees must be the same for all employees in that class, unless:

(a) FWA is satisfied that there are exceptional circumstances justifying setting different wages; and

(b) the setting of different wages is limited just to the extent necessary because of the particular situation to
which the exceptional circumstances relate.

Adjustments taking effect during year of operation only permitted in exceptional circumstances

(4) The order may provide that an adjustment of the national minimum wage, the casual loading for award/agreement free employees, or a special national minimum wage, set by the order takes effect (whether for some or all employees to whom that wage or loading applies) on a specified day in the year of operation that is later than 1 July, but only if:

(a) FW A is satisfied that there are exceptional circumstances justifying the adjustment taking effect on that day; and

(b) the adjustment is limited just to the particular situation to which the exceptional circumstances relate.

When orders take effect

(5) The order takes effect in relation to a particular employee from the start of the employee’s first full pay period that starts on or after 1 July in the year of operation. However, an adjustment referred to in subsection (4) takes effect in relation to a particular employee from the start of the employee’s first full pay period that starts on or after the day specified as referred to in that subsection.

(6) Clause 289, page 258 (line 27) to page 259 (line 2), omit subclauses (2) and (3), substitute:

(2) FW A must publish all submissions made to FW A for consideration in the review.

(3) However, if a submission made by a person or body includes information that is claimed by the person or body to be confidential or commercially sensitive, and FW A is satisfied that the information is confidential or commercially sensitive, FW A:

(a) may decide not to publish the information; and

(b) may instead publish:

(i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or

(ii) if FW A considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.

(4) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).

(5) FW A must ensure that all persons and bodies have a reasonable opportunity to make comments to FW A, for consideration in the review, on the material published under subsections (2) and (3).

(6) The publishing of material under subsections (2) and (3) may be on FW A’s website or by any other means that FW A considers appropriate.

(7) Clause 306, page 266 (lines 29 and 30), omit all the words from and including “to the extent” to and including “equal remuneration order”, substitute “in relation to an employee to the extent that it is less beneficial to the employee than a term of an equal remuneration order that applies to the employee”.

(8) Clause 324, page 282 (line 2), before “An”, insert “(1)”.

(9) Clause 324, page 282 (after line 22), at the end of the clause, add:

(2) An authorisation for the purposes of paragraph (1)(a):

(a) must specify the amount of the deduction; and
(b) may be withdrawn in writing by the employee at any time.

(3) Any variation in the amount of the deduction must be authorised in writing by the employee.

(10) Clause 326, page 283 (line 6), omit “the”, substitute “an”.

(11) Clause 326, page 283 (lines 10 to 12), omit all the words from and including “the deduction” to the end of subclause (1), substitute:

either of the following apply:

c) the deduction or payment is:

(i) directly or indirectly for the benefit of the employer, or a party related to the employer; and

(ii) unreasonable in the circumstances;

(d) if the employee is under 18—the deduction or payment is not agreed to in writing by a parent or guardian of the employee.

(12) Clause 333, page 289 (line 9), omit “The”, substitute “(1) Subject to this section, the”.

(13) Clause 333, page 289 (after line 10), at the end of the clause, add:

(2) A regulation made for the purposes of subsection (1) has no effect to the extent that it would have the effect of reducing the amount of the high income threshold.

(3) If:

(a) in prescribing a manner in which the high income threshold is worked out, regulations made for the purposes of subsection (1) specify a particular matter or state of affairs; and

(b) as a result of a change in the matter or state of affairs, the amount of the high income threshold worked out in that manner would, but for this subsection, be less than it was on the last occasion on which this subsection did not apply;

the high income threshold is the amount that it would be if the change had not occurred.

(14) Page 289 (after line 10), at the end of Division 3, add:

333A Prospective employees

If:

(a) an employer, or a person who may become an employer, gives to another person an undertaking that would have been a guarantee of annual earnings if the other person had been the employer’s or person’s employee; and

(b) the other person subsequently becomes the employer’s or person’s employee; and

(c) the undertaking relates to the work that the other person performs for the employer or person;

this Division applies in relation to the undertaking, after the other person becomes the employer’s or person’s employee, as if the other person had been the employer’s or person’s employee at the time the undertaking was given.

We have turned to other safety net entitlements. I will provide an overview and I will deal with item 2 separately so that the opposition can follow the debate. I will leave item 2 aside for a moment; my remarks will not deal with item 2. We might talk a little bit more about that shortly.

The government proposes a series of amendments in relation to the provisions dealing with modern awards and wages. The amendments would clarify the scope of industry-specific redundancy schemes that can be included in modern awards and would make further provision for the types of matters that can or must be included in modern awards, requiring awards to provide for consultation and representation where majority change is proposed. They would provide
limited scope for Fair Work Australia to de-
lay wage increases through national mini-
mum wage orders, similar to that which al-
ready exists in the bill for award wage rates.
They would provide additional protection for
employees in relation to deductions from
wages and ensure that the amount of the
high-income threshold cannot be reduced
through regulations. The high-income
threshold determines when an award ceases
to apply to an employee with guaranteed
annual earnings. They would determine
whether an award-agreement-free employee
has access to unfair dismissal remedy. Lastly,
they would enable an employer and prospec-
tive employee to agree to a guarantee of an-
nual earnings before the prospective em-
ployee commences. I did seek leave to move
amendments (1) to (14) together but I may
leave item 2 out.

The TEMPORARY CHAIRMAN
(Senator Trood)—Minister, are you happy
to have a cognate debate on these matters?
Perhaps you can leave the question of how
we vote on this matter until a little later.

Senator LUDWIG—I am advised that in
relation to amendment (2) we might prefer to
leave that to a later hour.

Senator Abetz—Until a later hour?

Senator LUDWIG—Yes. I seek leave to
withdraw government amendments (1) to
(14) on sheet RE403.

Leave granted.

Senator LUDWIG (Queensland—
Minister for Human Services) (12.54 pm)—
by leave—I move government amendments
(2), (10) and (11) on sheet QC300 together:
(2) Clause 12, page 26 (after line 22), after the
definition of registered employee associa-
tion, insert:
(10) Clause 391, page 325 (after line 28), after
subclause (1), insert:
(1A) If:
(a) the position in which the person was
employed immediately before the
dismissal is no longer a position
with the person’s employer at the
time of the dismissal; and
(b) that position, or an equivalent posi-
tion, is a position with an associated
entity of the employer;
the order under subsection (1) may
be an order to the associated entity
to:
(c) appoint the person to the position in
which the person was employed
immediately before the dismissal; or
(d) appoint the person to another posi-
tion on terms and conditions no less
favourable than those on which the
person was employed immediately
before the dismissal.

(11) Clause 391, page 326 (line 7), at the end of
paragraph (2)(b), add “, or (if subsec-
tion (1A) applies) the associated entity”.

Amendments (2) and (10) reflect the gov-
ernment’s commitment to reinstatement as
the primary remedy for unfair dismissal.

The TEMPORARY CHAIRMAN—Is
leave granted?

Senator ABETZ (Tasmania) (12.54
pm)—Unfortunately not, as we would prefer
the whole debate in this area to take place
together. We have very real reservations
about amendments (2) and (3) and we would
not want a position where they go through
and then are changed in relation to amend-
ment (2) impacting in other areas, if the gov-
ernment would be minded. I understand
some information still needs to be provided
to one of the Independent senators, which is
fully understood.

Senator LUDWIG (Queensland—
Minister for Human Services) (12.55 pm)—
by leave—I move government amendments
(2), (10) and (11) on sheet QC300 together:
(2) Clause 12, page 26 (after line 22), after the
definition of registered employee associa-
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entity of the employer;
the order under subsection (1) may
be an order to the associated entity
to:
(c) appoint the person to the position in
which the person was employed
immediately before the dismissal; or
(d) appoint the person to another posi-
tion on terms and conditions no less
favourable than those on which the
person was employed immediately
before the dismissal.

(11) Clause 391, page 326 (line 7), at the end of
paragraph (2)(b), add “, or (if subsec-
tion (1A) applies) the associated entity”.

Amendments (2) and (10) reflect the gov-
ernment’s commitment to reinstatement as
the primary remedy for unfair dismissal.
These amendments will ensure that reinstatement remains an available remedy in cases where there has been a corporate restructure in the time since the person was unfairly dismissed. The amendments will also ensure that an order for reinstatement applies to the appropriate employer in the circumstances, and this will ensure that an employee is not denied reinstatement simply because a corporate restructure has occurred between their dismissal and an FWA finding that he or she should be reinstated.

Amendment (11) is a minor technical and consequential amendment. It allows a second legislative note to be included. Amendment (12) of course would insert another legislative note following clause 524 of the bill. It explains that an enterprise agreement or contract of employment may make additional provision for stand-down including consultation or notice requirements.

Senator ABETZ (Tasmania) (12.57 pm)—The opposition opposes these amendments. We say in large part that the new reinstatement provisions are impractical and do not take into account the business dynamic of the associated entity or any restructure. They may also lead to a redundancy situation if there is no position available for the returning employee. There is a suggestion that there could be a reinstatement by an associated entity and I am just wondering about the potential of that. To make the case, let us say there is a company that runs two types of operations: one in southern Tasmania and one in the Torres Strait Islands. If the dismissal were to take place in Tasmania, but there were a vacancy or possibility of employment in this business’s Torres Strait Island enterprise, would that be a possibility and who would need to incur the costs of removal et cetera for that employee? I provide that as an extreme hypothetical to make the case to see if that would be the potential reach and application of this amendment.

Senator LUDWIG (Queensland—Minister for Human Services) (12.59 pm)—I see the point that is trying to be made, but reinstatement would still be a case of whether it is reasonable or practicable. In the position that you have outlined, Fair Work Australia could look at this issue, but it would be in the framework of whether it would be reasonable or practicable. In that circumstance I cannot say whether it would be or would not be. The person might have relatives there; they might have lived in that place and may in fact be returning home; they might have been simply working in Tasmania for a short period of time. Those are the circumstances that sometimes can get complex when you use examples. I usually try not to use examples, even a pie cart, which I am eternally sorry for. When you consider the circumstances, it is broadly to apply when you want to bring in a corporate restructure since the time the person was unfairly dismissed. There are a couple of thresholds that would need to be taken into account.

Then, of course, reinstatement occurs where it is practicable. Fair Work Australia would have to turn their mind to that, and that would come down to the circumstances of the individual in the particular case. If the individual was a local resident of that area and had left and worked in another place or was a longstanding resident, a Tasmanian through and through, those circumstances would be taken into account by Fair Work Australia. Quite frankly, I think that is where it should lie. The amendment will ensure that an order for reinstatement applies to the appropriate employee in the circumstances. It means that it is not an automatic right.

Senator ABETZ (Tasmania—Deputy Leader of the Opposition in the Senate) (1.01 pm)—It may be practicable, it may be reasonable—that was not the question. The question was: who would incur the cost of
moving the person for this practicable and reasonable relocation, to employ the language of the minister?

Senator LUDWIG (Queensland—Minister for Human Services) (1.02 pm)—This is one of the difficulties: we always appraise ourselves with examples. It would depend on the employer, the circumstances of the restructure and whether the primary instrument that they were employed under included costs for relocation and in what circumstances. You would then have to turn to those provisions to see whether or not that would in fact apply, where the employer has restructured the new entity at the time of dismissal. One of the things Fair Work Australia can do is, where practicable, reinstate. It may not be able to. I am advised that it would be very unlikely to make such an order in those circumstances.

Senator Abetz—That’s clear!

Senator LUDWIG—It would depend. This is the difficulty when we come up with an extreme circumstance which may or may not have all the facts around it. The difficulty will always confront us. In the example I gave, what happens if the person that we are talking about was in fact a resident of—I think the example you used was Thursday Island—

Senator Abetz—The Torres Strait Islands. All I am asking about is the cost. We accept that it’s practicable; we accept it’s reasonable. The cost is the only question.

Senator LUDWIG—Fair Work Australia would be unlikely to make such a call, but it would be a matter for Fair Work Australia.

Senator ABETZ (Tasmania) (1.04 pm)—If I can put it another way: Fair Work Australia could make such an order if the circumstances around the case warranted it in Fair Work Australia’s determination.

Senator LUDWIG (Queensland—Minister for Human Services) (1.04 pm)—Just to be correct about that, they can order to restore lost pay. I am looking at the Fair Work Bill 2008, page 326, under 392(3):

If FWA makes an order under subsection (1) and considers it appropriate to do so, FWA may also make any order that FWA considers appropriate to cause the employer to pay to the person an amount for the remuneration lost, or likely to have been lost, by the person because of the dismissal.

So it is conditional upon remuneration lost. That is where I went back to the earlier provision as to what the instrument had in it to determine whether or not it was part of their remuneration, part of their enterprise agreement. All being equal, and where it is not part of their agreement or part of their provision, it would be unlikely to be included in that provision. In other words, they could not restore the person or pay those costs if they were costs that were in futuro, if they were going to have to be undertaken. The bill says:

In determining an amount for the purposes of an order under 14 subsection (3), FWA must take into account ...

It shows the matters it takes into account. It does not to say that it can pay the costs of relocation in those circumstances.

Senator ABETZ (Tasmania) (1.06 pm)—To get it clear, this does not only apply to a company or a business restructure; it also applies, as I understand it, to an unfair dismissal situation. Under this regime, reinstatement is going to be the thing that Fair Work Australia must concentrate on, under section 390(3). Therefore, if there is the possibility of Fair Work Australia ordering the removal costs for somebody to another associated entity, the prospect of what we have been concerned about—go-away money being paid—will become a very real and live issue because an employer could be con-
fronted not only with the issue of reinstating somebody within their business enterprise but incurring substantial removal costs.

In those circumstances, I know what I would be doing if I were acting for that particular employee. I would be saying, ‘There’s a real chance of some sort of cost being incurred. Just sling me $3,000 or $4,000 and we’ll go away’—and we would be right back in the circumstance which we believe was not conducive to employers taking on employees. We have always been concerned about this, but in a time of rising unemployment we are especially concerned. I do not intend to prolong the debate in relation to this matter other than to indicate our opposition to it. If there is a chance that one or two of the crossbench senators were to come with us we would, of course, call a division. If not, I think I have registered the coalition’s views in relation to this matter as being something that, at the end of the day, will be very anti jobs and a burden in particular for small business, which are two of the three benchmarks that I have been talking about throughout the consideration of this bill.

Senator FIELDING (Victoria—Leader of the Family First Party) (1.08 pm)—I suppose I had better at least make some comment on this. Senator Abetz, you have challenged the crossbenchers. I have listened to the arguments one way and the other. I think the government has it right on this one and I will go with what it has proposed. The arguments have been put forward. I understand the question that the opposition have raised about who pays for it, but it is the principle of reinstatement and I think that has to be worked out through that process. I will support the government on these amendments.

The TEMPORARY CHAIRMAN (Senator Trood)—The question is that amendments (2), (10) and (11) on sheet QC300 be agreed to.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (1.09 pm)—by leave—I move government amendments (1) to (4) on sheet QC301:

(1) Clause 318, page 276 (line 12), omit paragraph (3)(d), substitute:

(d) whether the transferable instrument would have a negative impact on the productivity of the new employer’s workplace;
(e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument covering the new employer;
(f) the degree of business synergy between the transferable instrument and any workplace instrument that already covers the new employer;
(g) the public interest.

(2) Clause 319, page 277 (line 34), omit paragraph (3)(d), substitute:

(d) whether the transferable instrument would have a negative impact on the productivity of the new employer’s workplace;
(e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument covering the new employer;
(f) the degree of business synergy between the transferable instrument and any workplace instrument that already covers the new employer;
(g) the public interest.

(3) Clause 320, page 278 (line 23), at the end of subclause (2), add:

; or (c) to enable the transferable instrument to operate in a way that is better aligned to the working arrangements of the new employer’s enterprise.

(4) Clause 320, page 279 (line 14), omit paragraph (4)(d), substitute:
(d) whether the transferable instrument, without the variation, would have a negative impact on the productivity of the new employer’s workplace;
(e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument, without the variation;
(f) the degree of business synergy between the transferable instrument, without the variation, and any workplace instrument that already covers the new employer;
(g) the public interest.

Senator ABETZ (Tasmania) (1.10 pm)—Could I seek the indulgence of the minister. Without showing him all my cards on this very vexed issue, I indicate that we would be minded to vote for the government’s amendments in the event that ours, dealing with a similar issue, were to be voted down. So I wonder, without delaying the Senate for too long, if the crossbenchers would be minded to indicate which preference they have.

Senator Ludwig—We can deal with yours first

Senator ABETZ—That is what I was going to suggest, in the event that the crossbenchers showed some degree of interest. If they do not, it is a matter of regret but we accept the will of the Senate.

Senator LUDWIG (Queensland—Minister for Human Services) (1.11 pm)—I will withdraw the government’s amendments and allow Senator Abetz to move his. I seek leave to withdraw government amendments (1) to (4) on sheet QC301.

Leave granted.

Senator ABETZ (Tasmania) (1.11 pm)—by leave—I move opposition amendments (28) to (32) and (34) to (36) on sheet 5739 revised 2:

(28) Heading to subclause 311(1), page 269 (line 10), omit “and transferring work”, substitute “; transferring work and time of transmission”.

(29) Clause 311, page 269 (lines 21 and 22), omit paragraph 311(1)(d), substitute:

(d) the new employer has become the successor, transmittee or assignee of the business or part of the business in which the employee worked for the old employer.

(e) the time at which the new employer becomes the successor, transmittee or assignee of the business being transferred is the time of transmission.

(30) Clause 311, page 269 (line 25), omit “paragraphs (1)(a), (b) and (c)”, substitute “paragraphs (1)(a), (b), (c) and (d)”.

(31) Clause 311, page 269 (line 28) to page 271 (line 2), omit subclauses 311(3) to (6), substitute:

(3) A person is also a transferring employee for the purposes of this Part if:

(a) the person is employed by the old employer at any time within the period of 1 month before the time of transmission; and

(b) the person’s employment with the old employer is terminated by the old employer before the time of transmission for redundancy reasons or for reasons that include redundancy; and

(c) the person becomes employed by the new employer in the business being transferred within 2 months after the time of transmission.

(4) A reference to a particular state of affairs existing in relation to a transferring employee immediately before the time of transmission is to be read as a reference to that state of affairs existing immediately before the person last ceased to be an employee of the old employer.
(32) Page 272, after line 2, after clause 313, insert:

313A Coverage of a transferable instrument

(1) Subject to subsection (3), a transferable instrument that covers the new employer and the transferring employee because of section 313 (or any other person because of another provision of this Part) ceases to have coverage on the earlier of:

(a) the date the instrument ceases coverage under its own terms;
(b) 12 months after the transfer time.

(2) Subject to subsection (3), after the transferable instrument ceases to have coverage in accordance with subsection (1), the new employer and the transferring employee are covered by:

(a) the modern award which is expressed to cover the new employer and the transferring employee; or
(b) the enterprise agreement which is expressed to cover the new employer and the transferring employee;
whichever is most beneficial to the employee.

(3) If the redundancy pay provisions in the transferable instrument are more beneficial to the employee than the provisions in the instrument which would otherwise take effect under subsection (2), the redundancy pay provisions in the transferable instrument continue to cover the transferring employee until 24 months after the transfer time.

(34) Clause 319, page 276 (lines 23 to 31), omit paragraphs (1)(a) and (b).

(35) Clause 319, page 277 (lines 14 and 15), omit paragraph (2)(b).

(36) Clause 319, page 277 (lines 19 to 22), omit paragraph (2)(d).

If the crossbenchers have already determined an attitude, then I do not seek to delay the Senate any further.

Senator XENOPHON (South Australia) (1.12 pm)—If I can assist my colleagues, in particular Senator Abetz, I am minded to support the government’s position in relation to transfer of business rather than the opposition’s. I believe the government has come some way in dealing with some of the concerns with respect to the transfer of business and I therefore support the government’s position.

Senator ABETZ (Tasmania) (1.12 pm)—It looks as though without any advocacy I am just as successful with Senator Xenophon, despite his very kind comments about my advocacy, so I might as well save my breath! I just put on the record, seriously, the coalition’s concerns. We would have preferred our amendments, but we accept that, other than for a senator not being present for a division, it would be very unlikely that our amendments would get up. We will not persist with them and, in those circumstances, we can move on to anticipate what the minister will say in relation to the amendments he will move and indicate opposition support for those amendments. I seek leave to withdraw opposition amendments (28) to (32) and (34) to (36) on sheet 5739 revised 2.

Leave granted.

Senator LUDWIG (Queensland—Minister for Human Services) (1.13 pm)—by leave—I thank Senator Abetz and move government amendments (1) to (4) on sheet QC301:

(1) Clause 318, page 276 (line 12), omit paragraph (3)(d), substitute:

(d) whether the transferable instrument would have a negative impact on the productivity of the new employer’s workplace;
(e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument covering the new employer;
(f) the degree of business synergy between the transferable instrument and any workplace instrument that already covers the new employer;

(g) the public interest.

(2) Clause 319, page 277 (line 34), omit paragraph (3)(d), substitute:

(d) whether the transferable instrument would have a negative impact on the productivity of the new employer’s workplace;

(e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument covering the new employer;

(f) the degree of business synergy between the transferable instrument and any workplace instrument that already covers the new employer;

(g) the public interest.

(3) Clause 320, page 278 (line 23), at the end of subclause (2), add:

: or (c) to enable the transferable instrument to operate in a way that is better aligned to the working arrangements of the new employer’s enterprise.

(4) Clause 320, page 279 (line 14), omit paragraph (4)(d), substitute:

(d) whether the transferable instrument, without the variation, would have a negative impact on the productivity of the new employer’s workplace;

(e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument, without the variation;

(f) the degree of business synergy between the transferable instrument, without the variation, and any workplace instrument that already covers the new employer;

(g) the public interest.

These amendments deal with transfer of business. Items 1, 2 and 4 will amend clauses 318, 319 and 320 of the bill to insert three additional matters that FWA must take into account in deciding, in a transfer of business, whether to order that the old employer’s industrial instruments cover the new employer and transferring employees, order that the old employer’s industrial instruments cover the new employer and its existing employees and vary the old employer’s industrial instruments in their application to the new employer. These amendments are intended to ensure that, in addition to considering matters such as whether employees would be disadvantaged, FWA also has regard to the circumstances of the new employer. In particular, this includes the new employer’s financial position and the degree of alignment between any industrial instruments of the old employer and arrangements that already exist in the new employer’s enterprise. Item 3 will amend clause 320 of the bill to insert an additional ground on which the FWA may vary a transferable instrument where there is a transfer of business—namely, to enable the transferable instrument to operate in a way that is better aligned to the working arrangements of the new employer.

Senator SIEWERT (Western Australia)

(1.16 pm)—The Greens oppose these amendments. We think the government got it right the first time. I am sorry about that, Minister. We believe the amendments pander to business and bias the factors Fair Work Australia are to take into account in not transferring instruments and therefore water down the employees’ rights. As I said, we think the government got it right last time. We were deeply concerned about the way transmission and transfer of business operated previously and we thought the government had taken the right steps in the bill. So we will be opposing these amendments.

Question agreed to.
Senator LUDWIG (Queensland—Minister for Human Services) (1.17 pm)—To bring back some order so that we do not get too far out, I think we are now going to an Australian Greens amendment on, if I am correct, sheet 5729. I am sorry, the one after that, on sheet 5744.

Senator FIELDING (Victoria—Leader of the Family First Party) (1.18 pm)—Chair, could we just stick with the revised 6 running sheet, because that would help the chamber be very orderly. It would be better if we could start on each amendment by giving the details of the running sheet and the page and then call out the amendment reference number. There are so many amendments here that we need to help the chamber if we can.

The TEMPORARY CHAIRMAN (Senator Trood)—I think that is a sensible suggestion, Senator Fielding, but I am at the will of the chamber.

Senator LUDWIG (Queensland—Minister for Human Services) (1.18 pm)—I do understand the difficulty being confronted. What I was going to do was ask the Australian Greens to identify and move an amendment so that we can then deal with it. If I pass to Senator Siewert I am sure she will be able to describe it in that way and then we can deal with it.

Senator SIEWERT (Western Australia) (1.19 pm)—I will just triple confirm that the amendment you are asking me to move is amendment (4) on sheet 5744. Sorry, is it amendments (1) to (3) on sheet 5744?

The TEMPORARY CHAIRMAN (Senator Trood)—Yes; on page 3.

Senator SIEWERT (Western Australia) (1.19 pm)—by leave—I move:

(1) Clause 65, page 76 (lines 5 to 8), omit sub-clause (1), substitute:

(1) An employee may request the employer for a change in working arrange-ments to assist the employee to care for someone who is:

(a) a child of the employee, or a child the employee has responsibility for the care of, if the child:

(i) is under school age; or

(ii) is under 18 and has a disability; or

(b) a person in need of care who is:

(i) the spouse or de facto partner of the employee; or

(ii) a member of the employee’s immediate family; or

(iii) a member of the employee’s household.

(2) Clause 65, page 76 (lines 27 to 29), omit subclause (4), substitute:

(4) If an employee makes a request in accordance with subsection (3):

(a) the employer must, within 28 days of receiving the written request, meet with the employee to discuss the request; and

(b) the employer must give the employee a written response to the request within 14 days of the meeting, stating whether the employer grants or refuses the request.

(3) Clause 65, page 77 (after line 2), at the end of the clause, add:

FWA can review refusal of request

(7) If the employer refuses the request, the employee may apply to FWA to review the employer’s decision on the following grounds:

(a) because there has been a contravention of a requirement of this section; or

(b) because there has been a misunderstanding or misapplication of a fact relating to the application.

(8) The application must be made within 7 days after the employer gives the employee a written response under subsection (4), unless FWA is satisfied
there are circumstances which justify a late application.

(9) FWA may make:
(a) an order for reconsideration of the request; and
(b) an award of compensation to be paid by the employer to the employee.

(10) The amount of compensation must be an amount, not exceeding 26 weeks’ pay for the employee, as FWA considers fair in all the circumstances.

These Greens amendments relate to the right to request flexible working arrangements and the right to request extended parental leave. These amendments address two important initiatives in the National Employment Standards which have been designed to assist parents in balancing their work and family lives. In relation to items 1 to 3, we think the right to request flexible working hours is a good idea that is badly needed. This legislation is providing a right to request flexible working hours, but it cannot actually be enforced. A lot of issues have been raised about this during the committee inquiry and to the Greens separately. While there is an appreciation of the fact that the legislation includes the right to request, there is a lot of concern that a request cannot in fact be enforced. Therefore, we are very concerned that the right is not really a right. The way the legislation is drafted means that, effectively, employers can just say no without giving any reasons. We understand that the government’s provisions in the bill are based on similar provisions in the UK. However, there are important differences. There is the 26-week qualification period, there are more procedural requirements and, importantly, there is a review process.

The provisions in the National Employment Standards require an employee to be employed 52 weeks before the right becomes available, and in the UK it is 26 weeks or six months. We think that this is more appropriate. Although we have not moved an amendment to this effect as we wanted to concentrate on the more substantial problems with these provisions, we believe that six months is a much more appropriate time. We believe that 12 months is far too long a period before you can get this so-called ‘right’—and I am saying ‘so-called right’ because of my previous comments about it not being able to be enforced.

The Greens’ amendments pick out and deal with what we see as the key elements in the UK scheme that we believe should be a very minimum for the National Employment Standards—that is, the requirement for an employer to meet with their employee to discuss the request, and the ability for the employer’s decision to be reviewed by FWA on essential procedural grounds. We think this puts a lot more fairness into these arrangements and, to tell you the truth, I am a little bit confused as to why the government did not look at these and did not feel that it was important to provide these mechanisms in the first place, given that it is simply a process of procedural fairness, it seems to me. You would think that you would be able to ask to have the employer’s decision reviewed and also have the right to request to meet with your employer and just ask them about the issues.

Our amendments are taken from the UK legislation, and my understanding is that the UK legislation is working well and that the requirement to discuss the request is an important part of assisting to change the workplace culture around these issues. While there may be employers who will, as a matter of course, take this step anyway—and of course we expect fair employers to be doing that—we believe it can assist to make the provisions more effective if employees and employers sit down at least to hear each other out. Unfortunately, there will be some employers who do not take the time or the
trouble to meet with employees to discuss this issue. We believe that there needs to be legislative backing for that.

There were a lot of submissions to the committee on this issue and there were calls in many submissions to merely delete clause 442, which prevents courts making an order about an employer’s decision to refuse such a request. Wishing to introduce these measures carefully, which is why we have not proposed that amendment at this stage, we suggest instead a limited review process by FWA. We think, in fact, that we are being fair. Our amendment is intended to allow FWA to review the process for making the decision and decide whether a decision is based on incorrect facts. Again, it follows the UK model, which we know works.

The other amendment we have moved to these provisions is to expand their eligibility. At present they are available to parents or other employees who have responsibility for the care of children under school age. The UK provisions extend to parents of children under 18 with a disability and to other carers. The position of carers in our community is well known and in fact has been discussed in this place on many occasions. The key problem for many carers is staying in touch with the workforce, and this is exactly the kind of measure that they need to assist in keeping them in the workforce while undertaking their care responsibilities. We particularly think that is a key amendment and we think it would be of great assistance to parents of children with disabilities. Again, it came up at the inquiry on many occasions. In fact Senator Abetz was following that issue extensively during the committee inquiry.

Foreseeing a little bit that the government may not be persuaded by the fairness of these arguments, we have also asked the government to review—and they have agreed—the operation of these provisions.

As I said earlier, the reason we are moving these amendments is that we do not think they are going to operate effectively without the procedural amendments that we are moving—in other words, being able to meet with your employer to discuss the issue but also being able to ask Fair Work Australia to review the case. We think that they are not going to operate as effectively as the UK model does, or operate in a way that the government, presumably, is hoping that they will work. We believe that at least a review of the operation of the procedures is a good move.

We ask the Senate to support these amendments, believing that they will help to improve the work-life balance much more effectively than the government’s amendments do at present. They are a step in the right direction. They are not going as far as they should as compared with the UK model on which these are based. We urge the government and the opposition and our fellow crossbenchers to consider these issues very carefully.

Senator ABETZ (Tasmania) (1.28 pm)—Very briefly I indicate that the coalition does not support Green amendments (1) to (3), but we will be supporting amendment (4). I indicate that, in relation to the transition bill, the minister in the other place, I think quite arrogantly in her speech, has already said that the National Employment Standards include important entitlements, and one of them is for parents of young or disabled children. The Senate has not decided upon that as yet, but I fully support that inclusion.

It was very kind of Senator Siewert to recognise my following of that issue in relation to parents with disabled children. I simply say that as a senator I am indebted to one of my first employees, who had siblings who were disabled. Her family have educated me about the issues of the disability sector and
for the last 15 years I have been seeking to work with and for them.

I saw an opportunity to include such a clause in this legislation. Having raised it during the committee hearings, I had hoped the government would introduce amendments—because I thought they were non-controversial—only to find that the government did not. But the Greens did do it. I indicate the support of the coalition for those. Briefly, we oppose amendments (1) to (3) because we do not believe it should be mandatory, but we do believe that there should be the sorts of requests that this legislation suggests, so we will be supporting amendment (4).

Progress reported.

BUSINESS
Rearrangement

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.31 pm)—I move:

That intervening business be postponed till after consideration of:

(a) government business order of the day no. 5 (Social Security Amendment (Liquid Assets Waiting Period) Bill 2009);

(b) government business order of the day no. 6 (consideration of a message from the House of Representatives to vary the appointment of the Joint Standing Committee on Foreign Affairs, Defence and Trade); and

(c) government business order of the day no. 2 (Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009)—second reading speeches only.

Question agreed to.

SOCIAL SECURITY AMENDMENT (LIQUID ASSETS WAITING PERIOD) BILL 2009
Second Reading

Debate resumed from 18 March, on motion by Senator McLucas:

That this bill be now read a second time.

Senator SCULLION (Northern Territory) (1.32 pm)—The opposition will be supporting the Social Security Amendment (Liquid Assets Waiting Period) Bill 2009. This measure will allow someone who is claiming Newstart, youth allowance, sickness allowance or Austudy to have a doubling of the liquid assets previously allowable. They were $2,500 for singles and $5,000 for others. The bill also amends the Social Security Act 1991 to exclude the surrender value of life insurance policies from the definition of liquid assets for social security purposes. Whilst the opposition supports these measures, which will provide a little more financial security to people newly unemployed, we believe the government must do far more for job seekers and school leavers than simply prepare them for unemployment.

I can remember when in the 1990s children were leaving school in conditions similar to those we are facing at the moment. Their employment prospects were slight, although nothing like that which we have seen in the last decade. Back in the 1990s, when kids left their school their career advice was to see which job or education opportunity presented the
best option for their individual futures. Under this Labor government it is again a travesty to see that we are returning to the bad old days. It brings to this place legislation that will provide a safety net, and that of course is supported by the opposition, but it is sad that that seems to be the only area in which it is making any genuine relief for people leaving school and people facing unemployment.

We are told—and everyone accepts—that there is a global economic downturn and that there are things this government could and should be doing to protect our economy and our jobs. The Prime Minister continues to remind us that he is here to end the blame game. I think it is about time we stop blaming the rest of the world for our problems, step up and actually act. When the rest of the world had their foot on the economic accelerator to stimulate the economy, the Prime Minister and the Treasurer had their feet on the brake, daring and encouraging the Reserve Bank of Australia to change interest rates. Spending cuts have happened. Because of the interest rate rise, our economy has now stalled. When we needed to protect jobs—when we needed to do something about the economy—the government had a political strategy and took its eye off the ball, which is why we are now in a position of having to create a safety net.

We are now spending billions of dollars on poorly-thought-out cash giveaways in an attempt to get our economy back to where it was and to protect jobs. Unfortunately, many pundits and economists around the world are saying it is too little, too late. The promise in December was that the $10 billion package was going to create 75,000 new jobs. It has now been exposed through time and fact simply as a political stunt. Those on this side suspected this, but we gave them the benefit of the doubt. There are a number of figures that demonstrate that it was a stunt. The ABS labour force figures for February show a four per cent increase in unemployment for the month, pushing up the overall unemployment rate to 5.2 per cent. Tragically, that number is rising.

It is quite clear that the current government is absolutely clueless when it comes to managing our economy and protecting and supporting businesses, which are absolutely essential to creating jobs. The only plan the government appears to have now is to look back to the nineties—‘What did we do last time we created a horrible hole and a recession? What we can do is to look sympathetic and stitch up a bit of a safety net.’ I think Australians deserve more. We should be investing in job creation programs and infrastructure that will improve our competitiveness in the future, and that is all about jobs, jobs, jobs. Of course, we are going to support these measures as they are going to assist the refugees of another Labor recession. It is our policy—and one that we urge the Rudd government to follow—that government investment and focus must be on future capacity and productivity so Australians are not faced with unemployment and the need to live off savings, missing out on what I consider a fundamental right for Australians: the opportunity to make a contribution through employment. They need to learn and study, and, in any way they can, contribute to the Australian community. If you are of working age, obviously this is something that you would like to do, but this is an opportunity that so many Australians will not have. Whilst we will be supporting this safety net for refugees of the incompetence of the federal government, we really believe that it is high time that the government stop blaming the rest of the world for their woes and get on with making Australia a better place with more opportunities for employment.

\[\text{Senator SIEWERT (Western Australia)}\]
\[\text{(1.37 pm)}\]—We think that the Social Security
Amendment (Liquid Assets Waiting Period) 

Bill 2009 is very important and we are pleased that the government have moved on it. They actually moved on it in response to the Greens putting it to the government in discussions over the economic stimulus package, because we felt that this was a significant way that the government could help working Australians in this time of economic crisis. This bill cushions the blow for Australian workers who lose their jobs by raising the threshold of the amount of money that they can have in savings before they can go on unemployment benefits. You would have thought this would have been something that the government would have thought of themselves and been worried about in response to the global financial crisis, with unemployment already rising and, unfortunately, projected to rise much higher. Bear in mind that it was the previous government, the Howard government, that cut the threshold of the liquid assets test quite substantially. We were extremely pleased when the government saw that this was a sensible and practical amendment that could be made to improve the stimulus package, and they committed $50 million to ensure that this could occur.

I must admit, I was very angry at the government. When introducing the bill, the Rudd government in no way gave the Greens any credit for the fact that this was a Greens initiative. I am extremely disappointed that they could be so mean-spirited as to fail to acknowledge that it was the Greens’ idea and the Greens who negotiated this commitment from the government. Having said that, I am, of course, pleased that they are doing it; I am just a bit disturbed that the government decided that they would not acknowledge that the Greens were looking out for working Australians who will benefit from this very important amendment. Brendan O’Connor did not mention it in his second reading speech or in any of his media statements. To add insult to injury, the minister went to great lengths to present this as an ALP initiative by pointing out how the ALP had opposed the changes introduced by the Howard government which reduced the threshold from $5,000 to $2,500. The ALP did not fix it on their own initiative; they did it once the Greens put it to them and raised this issue.

I am very glad that these amendments are being made. I am glad that the government are fulfilling their promise. This is one example of how the Australian Greens have attempted to redirect the stimulus package and other aspects of government legislation to ensure that in this time of financial crisis we focus our efforts to look out for those who will be the hardest hit by the downturn. We need to cushion the blow for those people who will lose their jobs and ensure that those people and their families are looked after through these tough times so that they are ready and able to get back into work and can play a key role in driving economic recovery as we come out of the other side of this downturn. We are concerned that too much of the two stimulus packages was focused on throwing money around willy-nilly instead of focusing on efforts that not only stimulate the economy but also help those worst affected by this downturn. The Greens do support the need for immediate stimulus, but we believe that in spending our limited resources we should also have an eye for the longer term future and for those that are most at risk from the economic downturn. The best way to get the most out of our limited budget is to target our efforts at measures that build the new green economy of the future and strengthen the safety net for those on the receiving end of job losses, facing mortgage defaults and facing the credit crunch.

The liquid assets test threshold will increase from $2,500 to $5,000. There is a sunset clause which the government have intro-
duced in this particular piece of legislation. We believe that this should be indefinite, but, of course, we understand that the government have included the sunset clause because they think the downturn will last a short period of time, so this will not be as necessary in the future as it is now. We believe that the increased threshold of the liquid assets test should be there permanently. We hope that the government will give an undertaking that, if people are still suffering when the sunset clause comes around, the government will reconsider that clause so that, if we are still in unfortunate economic circumstances, people will not suffer as people are suffering now prior to the introduction of this particular measure.

When you lose your job and apply to go on Newstart allowance, you have to go through a series of NSA asset tests before you can get any income support. One of the most punitive features of NSA is the liquid assets waiting period. Liquid assets are defined as cash and bank deposits, including term deposits, shares and so on. You could be required to serve a waiting period of between and one and thirteen weeks if your liquid assets exceed $2,500, or $5,000 for a couple. This amendment puts this threshold back up to $5,000 and $10,000 respectively, which is where it was before the Howard government made the changes. These are small amounts, and the whole point of this test is, it appears, to be highly punitive. The test is in addition to the income maintenance period, which affects payments for a period of time based on the accrued leave paid out as a lump sum. In effect, it says that the benefits of all your hard work and careful savings need to be eroded before we will help you out.

The Australia Institute has been very active on this point and in fact made a submission to the committee inquiry into the Nation Building and Jobs Plan and made a series of very important points around these particular issues. They said:

While the liquid assets waiting period is partly aimed at those who have received a termination payment from their last job, the philosophy behind it is in complete contrast to the insurance philosophy of most OECD countries whereby unemployment payments are payable simply because of the contingency of job loss.

The Australia Institute estimated that to abolish the liquid assets waiting period altogether would have cost around $500 million per annum.

We believe that this is an important move. In these times of economic downturn, we need to ensure that we remain a caring society that looks after the people who are most adversely affected. Despite my concern about the fact that the government did not acknowledge that this was a Greens initiative, we are pleased that they took it up. I am very happy to see this legislation. They have kept their commitment to introduce this legislation in order for it to start on 1 April. It will make a significant difference for hard-working Australians who, through no fault of their own and because of the economic downturn, are going to be facing hard times. If they lose their jobs, they will be facing very hard times. This will in small measure—there are a whole lot of other things that we need to be doing—help those struggling Australians and ensure that they and their families get the support that is needed.

Senator McLucas (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.46 pm)—in reply—

The measures in the Social Security Amendment (Liquid Assets Waiting Period) Bill 2009 will mean that people who lose their job and others who need income support with modest levels of liquid assets can access income support more readily. The measures in the bill are part of the government’s Nation Building and Jobs Plan to
support jobs and invest in future economic growth during the global downturn. The measures should be considered together with the government’s economic stimulus measures, training investments and extra assistance for newly retrenched workers.

The Nation Building and Jobs Plan and other recently announced measures will provide newly retrenched workers with the opportunity of retraining in order to gain skills to help them back to work quickly and to grow our nation’s productivity into the future. The changes to the liquid assets waiting period in this bill are about providing practical support to people when they most need it.

The changes to the liquid assets waiting period proposed by this bill have been advocated by community and welfare groups for some time and supported by the Greens. They were agreed to last month with Greens leader Senator Bob Brown as part of the negotiations to secure passage of the Nation Building and Jobs Plan. I wish to acknowledge the contribution of Senator Brown and probably Senator Siewert and in particular thank them for their support of the measures in this bill. I commend the bill to the chamber.

Question agreed to.

Bill read a second time.

Third Reading

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.48 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint Membership

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop)—The President has received a message from the House of Representatives proposing a variation in the appointment of members to the Joint Standing Committee on Foreign Affairs, Defence and Trade.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.48 pm)—I move:

That the Senate concur with the resolution of the House of Representatives.

Senator FERGUSON (South Australia) (1.49 pm)—I rise to speak briefly on this message that has come from the House of Representatives. I do so having for some 8½ years been Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade. I am deeply concerned at the process that is behind this message coming to the Senate. A joint standing committee is just that: a joint standing committee. When I found out that the Chief Government Whip and the Chief Opposition Whip in the House of Representatives had decided between them that they were going to increase the numbers of members on this committee without any consultation with the Senate and without any consultation of any depth with the chair of that committee, Senator Michael Forshaw—he was only told that this was happening, and I commend him for his work on this committee—I thought that it is about time those on the other side of this parliament genuinely made some effort to consult with senators—before they decide that they will increase the size of a committee.

It was only done in order to accommodate a difference of opinion on that side when there was going to be a contest between
some members of the House of Representatives for positions on this committee. If this is the way that they are going to solve any contests or disputes that might occur in the future, we will have a committee of 34, 36, 38 or 40—probably again without any consultation with the Senate.

I want to place on record that, if we are going to have joint committees in this place, they need to be joint committees. If there are going to be changes to joint committees, they need to be made in consultation with both houses. The House of Representatives should consult with the Senate if it wants to add more members of the House of Representatives to a committee.

There have been 32 members on this committee for as long as I can remember, and for even longer. It is one of the very important committees of this parliament. If there are going to be changes which affect the composition of the committee, the very least people on the other side of this parliament could do is consult with the Senate and get some agreement before they bring a message such as this to the Senate.

The first that I as a member of that committee heard about the fact that there was to be a change in the membership of the committee was when I read on the Notice Paper that there was a message coming from the House of Representatives about it. That is no way for us to conduct our relationship with the House of Representatives. It is no way for committee structures to be changed. I would hope that in future the people involved—in this case, the Chief Government Whip and the Chief Opposition Whip in the House of Representatives—would at least have the courtesy to consult with their Senate colleagues instead of unilaterally increasing the size of the committee in order to accommodate their own wishes.

Question agreed to.

SOCIAL SECURITY AND VETERANS’ ENTITLEMENTS AMENDMENT (COMMONWEALTH SENIORS HEALTH CARD) BILL 2009

Second Reading

Debate resumed from 18 March, on motion by Senator McLucas:

That this bill be now read a second time.

Senator SCULLION (Northern Territory) (1.52 pm)—I rise to speak on the Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009. It probably does not need clarification, but as I read the title of this bill I wonder whether it tells you exactly what it is about. It probably should read ‘Social Security and Veterans’ Entitlements Adjustment Bill’ because this is clearly taking entitlements away from seniors. But you would have to be a bit fair dinkum to do that, and the Australian government, the Labor Party and those on the other side have not been fair dinkum about this matter.

Those in the gallery will perhaps remember—although that probably does not apply to some of the young people I see in the gallery—the carping of the Labor government before they came into power when they said, ‘When we go into government we are going to ease the cost-of-living pressures on older Australians.’ They have clearly failed to deliver. In fact, this particular piece of legislation says to 22,000 Commonwealth Seniors Health Card holders, ‘You’re going to get less. Your cost of living is going to get higher and you are going to be worse off.’

I am a simple sort of a bloke but even to me this is disingenuous at best. On the one hand they say, ‘We’re going to an election and we’re going to reduce the cost of living. We’re going to make sure that we ease pressures on older Australians.’ But in bringing this legislation into this place they are acting 180 degrees in the opposite direction.
We had a Senate inquiry into cost-of-living pressures and throughout that inquiry you will note that older Australians kept saying, and the inquiry was told, ‘listen to older Australians’. But the Rudd government commissioned yet another inquiry, this time investigating income support for older Australians, with a reporting date of 28 February. We understand that they reported on that date. That review is known as the Harmer review, but so far it has not been made public.

Here we are with legislation that takes payments from older Australians and nobody bothered to say, ‘Wouldn’t this particular debate be informed by a significant review into the matter.’ But no, they decided that they would leave the report out. They are not even going to consider informing this debate by tabling that information and the advice from the Harmer review.

The government made cash payments last year of $1,400 per single person and $2,100 per couple, but they were a blatant political stunt to try to show pensioners just how much Labor cares. But the fact is that that one-off payment is going to be completely sucked up by the loss of the Commonwealth Seniors Health Card. On 13 June Labor were trying so hard to get elected to government they were showing their support by calling for a Senate inquiry—another inquiry—into cost-of-living pressures on older Australians. They actually said:

Older Australian are the lifeblood of a nation. They protected us during the Second World War. Through their hard work they have helped build our national prosperity.

They are fine words. They then said:

Today, federal Labor calls on Mr Howard to support this very important Senate inquiry.

A Rudd Labor government will ensure that older Australians enjoy the prosperity which they helped create for all of us.

Again these are fine words, but older Australians have every right to feel completely ripped off. They deserve a lot better than the thin pickings and the deception that have been offered by Kevin Rudd and his duplicitous team. The Commonwealth Seniors Health Card established eligibility for other Commonwealth benefits, such as access to discounted pharmaceuticals through the PBS, telephone concessions and the $500 bonus for seniors. Commonwealth Seniors Health Card holders may benefit from other concessions as we all know, whether it is medical bulk billing, household, transport, education or entertainment facilities. For those seniors who lose the Commonwealth Seniors Health Card the effects are absolutely dire. For those who are dependant on prescribed pharmaceuticals, as so many older Australians are, under the PBS the Commonwealth Seniors Health Card holders currently pay $5.30 per prescription. After losing it they will pay $32.90, an increase of no less than 605 per cent. This comes from those people on the other side, who said, ‘We’re not going to put up the cost of living for older Australians. We’re here to help. So what we’ll do first up is reach into your pockets so that when you go into the chemist and pay for your prescriptions you will be paying 605 per cent more.’ It is an absolute outrage.

In spite of all the safety nets that they promised, these are just thinly veiled deceptions. At the moment, under the safety net threshold, if a person has paid a total of $318 for scripts the ones after that are free. Under the new legislation the safety net threshold for those who do not have the Commonwealth Seniors Health Card will rise to $1,264.90, after which it will be $5.30 for each prescription. So all of the 22,000 senior Australians need to understand not only the duplicity of those on the other side but also the huge financial impact that the legislation
they are asking us to pass will have on every single one of you.

The Commonwealth Seniors Health Card comes with a number of other benefits. There was the $500 bonus in the 2008-09 year. If a person loses their Commonwealth Seniors Health Card because of eligibility changes they will not participate in any further bonuses. Cardholders currently qualify for a telephone allowance of $34.60 paid every six months as qualified income support under the Commonwealth Seniors Health Card, and that will be lost. Senior Australians are telling me that those are the sorts of things that impact on the standard of living. If those opposite think that they can con senior Australians into thinking that they were the ones who were going to relieve the cost-of-living pressure, they are wrong. Senior Australians are well educated and understand very well—

The PRESIDENT—Order! It being 2.00 pm we shall proceed to questions without notice.

QUESTIONS WITHOUT NOTICE

Alcopops

Senator CORMANN (2.00 pm)—My question is to the Minister representing the Treasurer, Senator Conroy. Why will the government not act on the advice of the Senate and introduce legislation today to validate the $300 million of revenue collected over the past 12 months as part of their failed alcopop tax grab?

Senator CONROY—I thank Senator Cormann for that question. There is a very simple solution: pass the bill. It is very simple. Pass the bill and there will be no need to validate anything. Pass the bill. Stop pretending that there is no economic crisis in this country. Stop playing short-term politics with Australian families’ lives. Just past the bill. This is one of the most disgracefully inept economic performances by an opposition in many years. It is one of the most disgraceful. There are a lot of claims on that title and you are winning hands down. You have been completely wrong at every stage of the response to the global economic crisis.

This bill needs to be passed to give this country the support, through a revenue base, to allow it to manage in the best possible way the crisis that is enveloping the world. This is the worst recession since the 1930s, yet those opposite continue to believe that it is really something that can be wished away if you just sit on your hands and wait and see. That is the position being adopted by those opposite—sit on your hands and wait and see. This country needs strong and decisive action, and that is why the Rudd government has taken it. That includes this bill which you have now rejected.

Those opposite should hang their heads in shame that they have been prepared to play short-term politics at the expense of the country’s national interest. They are weakening the position of the government to be able to cushion the global impact. That is why they deserve to be condemned.

Senator CORMANN—Mr President, I have a supplementary question for the minister. Given that the liquor industry has said that they do not expect back the $300 million in revenue raised as a result of their failed alcopop tax, will the government follow calls from the coalition and the Senate and direct this money into alcohol rehabilitation, education and health measures?

Senator CONROY—Those opposite should have thought about this before they took the grossly irresponsible position of defeating this bill. Those opposite are now trying to find a way to crawl out from the irresponsible position that they dragged themselves into. Well, a stunt like this will not help. The Australian public knows that this economic crisis requires swift and deci-
sive action. It needs a stimulus package. It needs the budget to have been in surplus to allow us to go down the path of the ESS and the new jobs package that we have just announced. Those opposite who are now trying to pretend that they care, trying to pretend that they are interested in supporting measures that will remediate this economic crisis, should just have a good look in the mirror. The Australian public have worked you out. You are frauds. You are economic vandals and frauds, and they have worked you out.

Senator CORMANN—Mr President, I ask a further supplementary question. Given that the Rudd Labor government has been given every opportunity to get themselves out of this legal mess, if the money has to be returned to the liquor industry is it because of the government’s complete incompetence or because of their political pig-headedness?

Senator CONROY—It is no surprise that even Senator Abetz is missing and does not want to be associated with this one. Even Senator Abetz, who runs your tactics committee. Fair dinkum, you get yourselves into this hole—

Senator Minchin—Mr President, I rise on a couple of points of order. Could you direct Senator Conroy to observe the standing orders and direct his remarks through the chair. Could you also point out to him that Senator Abetz has been in this chamber debating the Fair Work Bill, and it is not unreasonable that he be absent at the moment. I would ask Senator Conroy to be chivalrous in his remarks.

Senator CONROY—I was in no way being critical of the fact that Senator Abetz was not present. I was simply pointing out the fact that even he did not want to be associated with this ridiculous question. I was in no way imputing anything at all about Senator Abetz other than—

The PRESIDENT—Comments should be directed to the chair, from both sides, either when questions are being asked or when questions are being answered. That is the first thing. The second thing: you should address the question that has been asked of you. You now have 51 seconds to answer that question, Senator Conroy.

Senator CONROY—Thank you, Mr President. I accept your admonishment. This is an important health measure. It has been supported by doctors’ groups, by health experts and by police groups. For those opposite who have dug themselves into this hole to be now trying, through this stunt of a question, to extricate themselves is just embarrassing on their behalf. There is a very simple answer to these questions: pass the bill. You will get a better health outcome and you will get a better economic circumstance for Australia. Pass the bill.

Honourable senators interjecting—

The PRESIDENT—There is time for debating these at the end. If you do not like the answer, I can understand that; that is your entitlement. But the time to debate it is at the end of question time, not during question time itself.

Senator Ian Macdonald—Mr President, could I raise a point of order under standing order 193. Senator Conroy’s whole three answers have reflected upon a vote in this Senate. That is contrary to standing order 193 and I would ask you to rule that Senator Conroy should obey the standing orders.

Senator Chris Evans—Mr President, on the point of order, could I draw your attention to the fact that Senator Ian Macdonald has really highlighted the fact that the question should have been ruled out of order—not the answer. Senator Macdonald seems to be struggling this week with parliamentary process. Senator Cormann asked Minister Conroy directly about the failure to pass the
bill and the impacts of that, and of course those issues were covered in his answer. If you ask the question, you are going to get the answer.

Senator Cormann—Mr President, on that point of order, I asked the minister very specifically whether the government intends to act on the advice of the Senate in accordance with the motion passed by the Senate in the third reading stages of the bill. Will the government act on the advice of the Senate?

The PRESIDENT—There is no point of order.

Honourable senators interjecting—

The PRESIDENT—Order! I am waiting to proceed with question time. Senator Conroy has completed his answer.

Economy

Senator FEENEY (2.09 pm)—My question is to the Minister representing the Treasurer, Senator Conroy. Is the minister aware that the major advanced economies are in recession, including the United States, the United Kingdom, Japan and the European economies; that growth in the key emerging economies of China and India has now slowed dramatically; and that, as a result of these rapidly moving global developments, we have seen global forecasts revised down on almost a weekly basis? Can the minister update the Senate on how the Rudd government is taking action to support jobs and growth in the current economic climate?

Senator CONROY—I thank my good friend Senator Feeney for that question. We are facing the worst economic crisis since the Great Depression. It is worth focusing on just one fact that emerged from the blizzard of statistics at last week’s G20 finance ministers meeting in London, and that is that the advanced economies collectively contracted by seven per cent, annualised, in the December quarter. This just underscores the difficulties of the global environment we now face. The World Bank overnight cut its growth forecasts for China by one percentage point, to 6.5 per cent. This is a halving in China’s growth from its peak two years ago.

The Rudd government has taken decisive action to promote economic stability in Australia, to cushion us against the worst impacts and to protect Australian jobs. In October last year the government moved quickly and decisively to ensure confidence in the banking system through the guarantee of bank deposits. We also took decisive action to stimulate the economy and support jobs with our $10.4 billion Economic Security Strategy and our $42 billion Nation Building and Jobs Plan to support jobs and deliver important investments to strengthen the economy for the future. As I outlined yesterday, we have also taken action to promote economic stability and protect Australian jobs by proposing to establish the Australian Business Investment Partnership, or ABIP.

Senator Coonan—It’s a slush fund.

Senator CONROY—ABIP is an important part of the government’s measures to cushion Australia against the effects of the global economic crisis. I will accept that interjection from Senator Coonan, once again displaying a complete ignorance of any economic circumstances—(Time expired)

Senator FEENEY—Mr President, I ask a supplementary question. Is the minister aware that pressures on international finances are unprecedented, particularly in the context where we have seen many banks in Europe and the US collapse or be bailed out by their governments, and that the global financial crisis clearly raises the possibility that some financiers, particularly foreign banks, may reduce their level of funding to projects in Australia? Can the minister explain how ABIP will address this problem?
Senator CONROY—Unlike those opposite, the Rudd government is not willing to stand by and do nothing while commercial property prices tumble and jobs are wiped out by developments in global financial markets. The opposition say, as evidenced by Senator Coonan’s question in this place yesterday, that no commercial property projects or jobs are at risk. That is the contention from those opposite. However, foreign banks have been unable to give the Treasury a commitment that they will maintain their current exposures to the Australian economy in general, including commercial property, and there have been reports from the Property Council and others that up to 24 foreign banks may be reducing their lending to the commercial property sector. ABIP is a contingency measure being put in place with a number of safeguards. (Time expired)

Senator FEENEY—Mr President, I have a second supplementary question for the minister. Given that the government is putting ABIP in place to support the commercial property sector in the event of the withdrawal of finance by foreign banks—not necessarily because of the viability of these projects in Australia but because of pressures within their own countries—can the minister please explain why it is so critical now that the government supports the commercial property sector?

Senator CONROY—As I said yesterday, the Australian commercial property sector employs about 150,000 people whose jobs will be under threat if the sector is forced to abandon projects due to the loss of finance. So 150,000 Australian workers and their families, honest hardworking Australians—plumbers, builders, carpenters and electricians—will lose their income and their livelihoods should the commercial property sector go to the wall, as those opposite seem quite happy to see happen. Those opposite and their leader are short-term political opportunists. It seems that the Leader of the Opposition’s favourite policies to oppose are those that make an effort to support the jobs of Australians. I ask once again, Mr President—

The PRESIDENT—Senator Conroy, your time has expired. Resume your seat.

Senator CONROY—how much hush money has Goldman Sachs paid to cover up—

The PRESIDENT—Resume your seat!

Senator CONROY—the—

The PRESIDENT—Resume your seat, Senator Conroy!

Honourable senators interjecting—

The PRESIDENT—Order! Senator Trood is waiting to ask his question. I now call Senator Trood.

Medicare

Senator TROOD (2.16 pm)—My question is to the Minister representing the Minister for Health and Ageing—

Honourable senators interjecting—

The PRESIDENT—Order! Senator Macdonald and those on my right!

Senator Bob Brown—Mr President, I rise on a point of order. I ask that Senator Macdonald be asked to withdraw those comments.

The PRESIDENT—I could not hear the comments. I could hear sufficient noise that was disrupting the chamber but I could not hear the comments.

Senator Bob Brown—I just want to object that that was completely below the belt by Senator Macdonald and he ought to be withdrawing them.

The PRESIDENT—I have no knowledge of what Senator Macdonald said. But I was concerned about order in the chamber such that Senator Trood could properly ask his
question and be heard, and I was asking for order under that particular set of circumstances. Senator Trood, we will reset the clock so that your question can be heard.

Senator TROOD—Thank you for the opportunity, Mr President. My question is to the Minister representing the Minister for Health and Ageing, Senator Ludwig. Will the minister guarantee to the people of Queensland that the government will not break its pre-election promise, delivered by the Prime Minister himself, to maintain the Medicare safety net into the future with no qualifications?

Senator LUDWIG—If I can deal with the Medicare issue more broadly, the extended—

Opposition senators interjecting—

Senator LUDWIG—Medicare—

Opposition senators interjecting—

The PRESIDENT—Order!

Senator LUDWIG—Let me finish my statement as to where I am going there. The extended Medicare safety net was introduced in 2004. The legislation introduced by the previous government at that time included a requirement for a review of the operation, effectiveness and implications of the act by an independent academic institution. The Centre for Health Economics Research and Evaluation at the University of Technology, Sydney, has been contracted by the department of health to undertake the review. It is expected that that review will be completed in mid-2009. The review report will be tabled in both houses of parliament. I note that the recently released interim report of the National Health and Hospitals Reform Commission has indicated it will do more work on the safety net.

The government recognises that in the current economic climate many families are under significant pressure. For that reason the Rudd government is committed to retaining the Medicare safety net. The Rudd government is also committed to ensuring that the Medicare safety net meets its objective, which is to make necessary medical services more affordable to Australians. The point that we have made is that in this area we have done the hard work, we have looked at what we can do, and the government has recognised that in this current economic climate many families are under significant economic pressure—unlike those on the other side who seem to ignore the whole issue completely. This government is committed to retaining the Medicare safety net. Those opposite might be able to, in their question, indicate what they intend their policies will be when they—(Time expired)

Senator TROOD—Mr President, I do not object to the minister dealing with the question ‘more broadly’, as he said, but I asked a very straightforward question about a guarantee. Let me try again, perhaps more specifically with this supplementary question. Will the minister guarantee that certain medical specialties, like gynaecology, obstetrics and IVF treatment, will not be excluded from the Medicare safety net?

Senator LUDWIG—If I could turn to the maternity services review report—and I am sure Senator Trood is familiar with it—it notes that a significant proportion of Commonwealth funding for obstetrics is through the safety net and that anecdotally there is some suggestion that it is not being dealt with well. Of course the government is concerned about the trends that have been highlighted in that report. We will consider this along with other recommendations. But let me be absolutely clear that, while we absolutely support the Medicare safety net, which provides important relief to families struggling with health costs, I would certainly be—and the health minister would be as well—very concerned if it were being rorted
or otherwise being non-complied with. We would take a look at how to crack down on that, because that report did highlight, particularly in the obstetrics area, that there are problems—(Time expired)

Senator TROOD—At least, Mr President, he has acknowledged the concerns, and I ask a further supplementary question. Will the minister guarantee to Queenslanders that the government is not going to seek to cut medical services of struggling Australians and their families to repair the fiscal damage caused by its reckless $52 billion cash splash?

Senator LUDWIG—I wonder how that question relates to the first and supplementary questions. Let me reject outright the assertion that is included within that question. Senator Trood, you were not here or perhaps you might have read it.

The PRESIDENT—Order! Address the chair, Senator Ludwig.

Senator LUDWIG—Sorry, Mr President. I am certain that Senator Trood was not here when the previous government ripped $1 billion out of the health system. That is what the previous government did. Senator Trood might want to go back and look at the record. Our record is quite clear on this. The Rudd government is committed to retaining the Medicare safety net. The Rudd government is rebuilding the health system with $64.4 billion in funding announced through the COAG meeting—$60.4 billion over five years for the national healthcare agreement, $500 million in 2008-09 for subacute beds, $1.1 billion to train more doctors, nurses and other health professionals. (Time expired)

Emissions Trading Scheme

Senator MILNE (2.23 pm)—My question is to the Minister for Climate Change and Water, Senator Wong. The government has said that it would go to a 15 per cent reduction target in greenhouse gas emissions if there were a global agreement, ‘where all major economies commit to substantially restrain emissions’ and ‘all developed countries take on comparable reductions to that of Australia’. Will the minister tell the Senate how the government defines a ‘major economy’ for the purposes of its target commitment? Can she also tell us what is meant by ‘substantially restrain emissions’ and also which countries are regarded as major economies by the government’s definition?

Senator WONG—It is the case that the government has indicated different levels of targets depending on what type of agreement or the scope and ambition of agreement is achieved at Copenhagen. That is the responsible thing to do because, of course, the capacity for any single nation to reduce its emissions is affected by the extent to which other nations also take on targets. The Treasury modelling that the government undertook demonstrated that that is the case. Effectively working together we can reduce emissions more quickly than if there is not an effective international agreement, which is one of the reasons why the government makes a significant priority of engagement through these international processes. A number of the issues of definition that the good senator refers to are, in fact, the very issues which are the subject of negotiation. Issues such as restraining of emissions in the context of developing economies is one of the difficult and complex issues, which is at the heart of the international negotiations.

Senator Milne is somebody who has a close awareness of the range of publications on this matter and she will know, for example, that there are different trajectories under IPCC scenarios which look at deviation from business as usual. These are matters which are at the core of the negotiations. The fact is the government realises very clearly that developed countries need not only to commit to reduce their emissions in accordance with
their existing obligations under the convention but to reduce emissions. We also have to have action from developing economies and the delinking of economic growth and emissions growth. *(Time expired)*

**Senator MILNE**—Mr President, I ask a supplementary question. We do not know what the ‘major economies’ are and we do not know what ‘substantially restrain emissions’ means. In relation to the second part of the question, will the minister inform the Senate what specific criteria the government will use to determine ‘comparable reductions’ to that of Australia for annex 1 countries?

**Senator WONG**—Again, these are exactly some of the matters which are currently being negotiated and I invite the senator to consider some of the submissions to the United Nations Framework Convention on Climate Change negotiations where these issues are canvassed not only by Australia but also by other economies. We in this government do believe that we have to seek to have agreed, through the international process, a range of factors against which comparability ought to be considered. There are different views about what those factors should be, and the Australian government is participating constructively in the negotiations that deal with these issues. Comparability of effort is an important principle. There is a way to go yet to get international agreement about what the factors are to which any international agreement would have regard when considering comparability.

**Senator MILNE**—Mr President, I ask a further supplementary question. Given the minister’s answer, can the minister confirm that the only certainty this parliament will have when the legislation comes before it, before Copenhagen, is that Australia will go for a five per cent reduction in emissions, since the minister’s answer has been that it is totally discretionary for Australia to determine those parameters after the legislation comes before the chamber and therefore the 15 per cent is an illusion? Is that the case?

**Senator WONG**—That is utterly misleading, Senator Milne, and it is typical, frankly, of an approach where you try to ignore the aspects of this legislation which are ambitious. I again say to the Greens that they can take a position where they say, ‘No, we would rather have emissions grow than have emissions reduce.’ That will be a matter for them and their constituency. The government have been clear that 15 per cent is something we are prepared to put on the table but of course, as Senator Milne well knows—and she does well know this—these are exactly the sorts of issues which need to be negotiated in the context of an international agreement and we will take a constructive approach to that as we have to date. If the Greens want to play at these sorts of political games with something as important as this then that is probably something they will need to describe to their constituency.

**Economy**

**Senator BOYCE** (2.28 pm)—My question is to the Minister representing the Treasurer, Senator Conroy, and refers to the insolvency statistics released this week by the Australian Securities and Investments Commission. The number of companies going broke in the three months to January 2009 increased by 698, or 30 per cent, when compared to the same quarter last year. Aren’t these figures further evidence that the December cash splash has comprehensively failed to help Australian businesses?

**Senator CONROY**—I thank the senator for the question. As perplexing as the question is, it again demonstrates that those opposite simply have lost their grasp of basic economics. What you have here is the impact caused by the rest of the world contracting and the dramatic effect of that on the Austra-
lian economy. We have made it abundantly clear. We have been honest and upfront with the Australian public that, while we are better placed to resist these pressures, we will be impacted. It includes the small business sector and it includes working families. They are going to be buffeted by this. But what you have with this government is a commitment to act decisively and fast.

To argue that the economic stimulus package prior to Christmas has not had any positive impact in slowing the decline is to defy the statistics as they exist. It is just tragic that the retail sales figures came out two days after the idiotic decision taken by those opposite to oppose the stimulus package that we put in place. Let me be clear: if only they had waited another couple of days they would have realised that the line that they have taken is completely and utterly disproved by the figures that were released. It is just embarrassing. They climbed a long way out on a limb, making a guess, and they have been left high and dry. The Australian public have seen right through them. They recognise a government that is taking decisive and swift action to protect the economy as best it can—(Time expired)

Senator BOYCE—Mr President, I ask a supplementary question. In pursuit of some sort of response regarding basic economics, can I point out further that insolvencies in the state of Queensland increased by 164 in the past three months compared with the same period last year—an increase of 60 per cent and double the national average. Is this an indication that the federal government does not understand Queensland industry, has its priorities somewhere else in Australia and is doing nothing to help Queensland business?

Senator CONROY—The government has taken action. Unfortunately, in this area of supporting small business, those opposite decided to oppose it. This government’s Nation Building and Jobs Plan provides substantial support to Australia’s almost two million small businesses by providing a $2.7 billion small business and general business tax break to help boost business investment, bolster economic activity and support jobs, stimulating demand for the services of small businesses through $12.2 billion in targeted payments to families and individuals and undertaking significant infrastructure investment in a range of sectors, including education, housing and roads. The government’s temporary investment tax break will help Australia’s small businesses, boost investment and bolster economic activity. (Time expired)

Senator BOYCE—Mr President, I ask a further supplementary question based on the fact that the vast majority of these Australian companies that went into insolvency were small businesses. Given that the recently released Sensis small business survey for the February quarter reports that small business confidence for the next 12 months is at a record low—down 75 per cent from the same time last year—do these figures again indicate that the government is failing small business operators and their families?

Senator CONROY—Once again, the opposition demonstrates that they are trying to walk both sides of the street. They are crying poor about the impact of the global recession on Australia’s small businesses, yet when it came to the chance to vote for a measure that would assist small businesses in this country they voted against it. They have no credibility—no credibility at all. The small business tax break, this particular benefit for small business, means they will receive an extra 30 per cent tax break for assets costing more than $1,000 compared with $10,000 for other businesses. Those opposite had the chance to vote for it and what did they do? They chose to oppose it.
Senator Coonan—It went through.

Senator CONROY—Do not sit there and pretend it went through. It went through despite the fact that you voted against it. It was a specific measure to assist small businesses. Do not come in here and cry crocodile tears. You had the chance to support them. *(Time expired)*

**Executive Payments**

Senator LUNDY *(2.35 pm)*—My question is to the Minister for Superannuation and Corporate Law, Senator Sherry. Can the minister please update the Senate on the government’s decisive response to shareholder and community concerns over the exorbitant and irresponsible golden handshakes being paid to Australian company executives, which includes lowering the threshold for shareholder approval for such payments from seven times total annual remuneration to one times annual base salary, expanding the coverage of the binding shareholder vote to all executives contained in the company’s remuneration report rather than just directors, and broadening the definition of what constitutes a termination benefit? How has the community responded to a measure that will empower shareholders to take action and more easily reject outrageous golden handshakes?

*Senator Chris Evans interjecting—*

*Senator SHERRY*—Indeed, Senator Evans, it is a very, very good question. I thank Senator Lundy for referring to some of the major reforms that the Rudd Labor government announced yesterday to tackle the issue of significant, indeed massive, golden handshakes that we have seen emerge over the last decade or so. There is indeed strong concern about the level of so-called golden handshakes in the Australian community—including in the shareholder community. I might say.

One key element of the decisive, comprehensive reforms announced yesterday is to empower individual and institutional shareholders to prevent the payment of excessive and unjustified golden handshakes to company executives. These payments are often made when a company has been driven into the ground. It is totally inappropriate for payments to be made in those circumstances. They usually bear no resemblance to the future good governance and good economic operation of a firm. Therefore, the government strongly believed it was time to crack down on these particular forms of payment.

One may remember the days when, if someone retired or left the workplace, they often received a gold watch. But unfortunately the level of these payments is now such that we are no longer seeing gold watches; we are seeing a truckload of bullion being paid to many of these executives.

The reforms announced by the government yesterday have received widespread support. Mr David Gonski from the ASX said: ‘12 months has been the convention. This is a good announcement. I would compliment the Treasurer on not taking the quick decision to prescribe.’ *(Time expired)*

*Senator LUNDY*—Mr President, I ask a supplementary question of the minister, and I thank him for his answer. Is the minister aware of any alternative views on the government’s actions to curb executive golden handshakes by empowering shareholders to take action and more easily reject payments that are not in the interests of the company, the shareholder or the community?

*Senator SHERRY*—Yes. This issue is obviously being widely debated—indeed, it has been widely debated for a very long time. This matter came before the parliament in 2004. I think I referred yesterday to the fact that my colleague who was then handling this matter was Senator Conroy. He in
fact moved a raft of decisive reforms on golden handshakes. What happened?

Opposition senators—Oh, finally decisive!

Senator SHERRY—Those now sitting opposite—the Liberal-National party—interject and complain about this government’s action to crack down on golden handshakes opposed those reforms. Senator Coonan, who is now the shadow minister for finance, said: ‘The actual Labor proposal to limit termination payments to one year’s remuneration very much throws the baby out with the bathwater.’ (Time expired)

Senator LUNDY—Mr President, I ask a further supplementary question. Is the minister aware of any further public views on the government’s important reforms, which will see a significant curb on the incredible level of executive pay packages, particularly concerning the growth and the size of termination payments? As we know, they are also known as golden handshakes.

Senator SHERRY—Given the track record of the Liberal-National party, who have opposed almost every decisive measure this government has announced in respect of the global financial crisis, I was surprised that last night, in the dead of night, they issued a press release and—surprise, surprise!—the Liberal-National party have agreed to support Labor’s announcements.

Opposition senators interjecting—

Senator SHERRY—So, for all those of you who are interjecting and complaining, and were opposing a few minutes ago, the Liberal-National party has signed up.

Opposition senators interjecting—

The PRESIDENT—Senator Sherry, resume your seat. On my right! I need order— and, Senator Sherry, your comments should be addressed to the chair.

Senator SHERRY—Thank you, Mr President. For the information of the Liberal-National party members opposite, the shadow minister, Mr Pearce, issued a press release last night signing you all up to support our changes. But, of course, we know the track record of those opposite: when it comes to the votes they will change their minds. We have seen it time after time—a divided opposition; they will change their minds yet again. (Time expired)

Emissions Trading Scheme

Senator BOSWELL (2.41 pm)—My question is to the Minister for Climate Change and Water, Minister Wong. Will the minister confirm that the Queensland coal-mining communities are being placed in an untenable position due to the Rudd Labor government’s flawed and bureaucratic emissions trading scheme and the $2.4 billion carbon tax placed on the Queensland industry?

Senator WONG—This government recognises that failure to act on climate change will have an impact on jobs, including jobs in Queensland, and will ensure, if we continue to fail to act, that we forgo the jobs that will be developed in the cleaner technologies and renewable energy industries which will ensure that Australia continues to have economic strength, not only now but into the future.

But, of course, we recognise that this is a transition and that transition requires that we support industries, households and Australian businesses through this period. That is why the government’s scheme puts in place a very significant investment in assisting Australian industry to manage the impact of the introduction of a carbon price through the Carbon Pollution Reduction Scheme.

I would remind the senator from Queensland that the Garnaut report and other reports have outlined the ways in which em-
ployment and our economy will be affected by climate change. Approximately 90,000 people are employed in agriculture in the Murray-Darling Basin. The Great Barrier Reef employs tens of thousands of Queenslander. It is simply not open to this nation to continue to avoid the challenge of climate change, as the previous government did for 12 years. The fact is that this is a challenge that is before us. We have to manage it responsibly and sensibly, and that is why the government has put forward a balanced package.

The good senator seems to fail to recall the very substantial assistance provided to industries which are potentially affected. It includes some $750 million to the coal sector and significant provision of free permits—(Time expired)

Senator BOSWELL—Mr President, I ask a supplementary question. I refer the minister to her answer to a question from Senator Boyce in the chamber this week where she said:

Those opposite never talk about the jobs that are lost or forgone.

I draw the minister’s attention to the Courier Mail article today which reports that three Labor MPs from Queensland, Mr Bidgood, Ms Livermore and Mr Trevor, have been gagged from talking about the elephant in their electorates: lost and forgone jobs due to the implications of the Rudd government’s emissions trading scheme. Has the minister or her office directed or advised these MPs and others not to talk about the job loss implications in their electorates?

Senator WONG—I do not know if Senator Boswell has met CT—Mr Trevor—but he is not really somebody you would be able to shut up even if you wanted to. And the fact is that if the good senator looks, for example, at some of the local papers this week I know he will see that Ms Livermore has spoken about these issues. These MPs continue to put their views to government, they continue to represent their constituents assiduously, and it is not unusual for government to provide a response to a range of questions through the relevant frontbencher. But the issue here is that what we have on the other side is a willingness to do anything and say anything to avoid acting on climate change. That is the position of Senator Boswell. That is the position of many people on that side of the chamber. (Time expired)

Senator BOSWELL—Mr President, I ask a further supplementary question. Will the minister now act to save not only her job but her three Labor colleagues’ jobs and, more importantly, the jobs of tens of thousands of her fellow Australians and dump this scheme like a hot cake?

Senator WONG—We will act in the national interest, Senator Boswell. We will bear in mind not only supporting today’s jobs but the jobs of tomorrow. I ask Senator Boswell: is he going to take a similar approach to the approach of the shadow minister when he made a range of assertions about Sun Metals, for example, about potential alleged job losses which led to Sun Metals saying publicly:

“We had a meeting with Mr Greg Hunt three or four months ago and at that time there was no … assistance for zinc, but since then we have made significant progress and we will now get significant compensation, so I can say for sure there is no way we will shut down. This story is based on very old information. I don’t know why Mr Robb would say these things.”

The fact is you have been caught out again. You on that side will do anything and say anything to avoid taking action on climate change. We are acting in the national interest. (Time expired)

Credit Rating Agencies
Senator XENOPHON (2.47 pm)—My question is to the Minister for Superannuation and Corporate Law, Senator Sherry. The role played by credit rating agencies has been roundly criticised for giving favourable, undeserved and reckless ratings to the US subprime residential mortgage backed securities and other so-called structured financial services which ultimately led to the global financial crisis, which has done untold damage to markets and to individuals around the world. Professor John Quiggin from the University of Queensland has recently stated:

... much of the blame for the survival of these agencies must rest with governments, which have enshrined agency ratings in official investment guidelines, effectively outsourcing the crucial public role of prudential regulation.

I note that on 22 May last year the government announced a review of the regulatory regime of credit rating agencies in Australia. Can the minister advise what progress has been made in this review and the time frame for any proposed reforms?

Senator SHERRY—I think I got all that, and it is a very good question. This is an important issue. The performance of credit rating agencies has been observed and analysed in the context of the world financial and now economic crisis. It was identified as one of the key failings that led to the financial crisis, the so-called subprime crisis, in the United States. The unquestioning use of the ratings by credit rating agencies, the overreliance on them by users, was a major contributing factor. It is completely unacceptable to have a systemically important set of entities such as credit rating agencies that operate in Australia—and, indeed, in most countries of the world—being without any oversight whatsoever. They are outside our regulatory system. They are regulated—to the extent they are—by the United States. Of course, this is of deep concern, given what has occurred.

On 13 November last year I announced our decision to bring credit rating agencies under federal Australian regulation for the first time. There was a review and—before we have criticism of reviews—the review was expeditious; it was an important area. The review has concluded and action has been announced. For the first time all rating agencies in Australia will require a licence, but we have not stopped there. They will also be required to issue an annual compliance report based on how they have conformed with what are now tough global sets of minimum rules on issues such as conflicts of interest management. Australia is well ahead of most other countries in this regard. I’m getting another two minutes? Australia is well ahead—

The PRESIDENT—Thank you, Senator Sherry, your time has expired. It was such a riveting answer I was captivated by it!

Senator XENOPHON—Mr President, I ask a supplementary question. Can the minister outline the time frame for such reforms? What does he say of Standard and Poor’s criticism earlier this month that there will be ‘conflicting rules’ if only one country regulates in the absence of some uniform regulations so that these rating agencies can be held to account?

Senator SHERRY—I did not have notice of this question but I am pleased to respond. Frankly, my response to Standard and Poor’s criticism earlier this month that there will be ‘conflicting rules’ if only one country regulates in the absence of some uniform regulations so that these rating agencies can be held to account?
thiness of particularly exotic and complex financial products, they do it properly—and credit rating agencies did not do it properly. We are going to license them in Australia. We are going to require a compliance report. *(Time expired)*

**Senator XENOPHON**—Mr President, I ask a further supplementary question. Given that the credit rating agencies are routinely used to rate the financial status of governments in Australia, is the government considering a different independent credit rating regime?

**Senator SHERRY**—Thank you again for the supplementary question. Our approach has been to ensure that the approach of credit rating agencies in Australia is rigorous and underpinned by proper analysis and that conflicts of interest are identified. Whether the credit rating agencies are supplying a rating of governments or of private institutions that rely on this information, particularly the public, the investors, need to have confidence in the rating.

Our approach has been to license these rating agencies. The independent regulator, ASIC, are finalising the reporting requirements but, as I have already indicated, they will be required to give a compliance report. It will be internationally coordinated. The international supervisory body, IOSCO, based in Spain, have come up with some minimum standards and it will be checked periodically by the regulator for its validity. *(Time expired)*

**Banking**

**Senator BRANDIS** *(2.53 pm)*—My question is to the minister representing the Minister for Infrastructure, Transport, Regional Development and Local Government, Senator Conroy. I refer to reports in this morning’s newspapers that state governments are having increasing difficulty in borrowing due to the effect of the Rudd government’s bank guarantee scheme which makes state government bonds less attractive to investors. What infrastructure projects are at risk as a result of the unintended consequences of the Rudd government’s bank guarantee scheme, of which Malcolm Turnbull warned last October but which the Rudd Labor government ignored?

**Senator CONROY**—I congratulate Senator Brandis on getting a question. He is the only Queenslander, I think, not to get one this week, but we welcome it. The government is supporting business investment during—

*Opposition senators interjecting—*

**Senator CONROY**—He’s not really a Queenslander? The government is supporting business investment during the global credit crisis. The government has already taken steps to facilitate the flow of credit to businesses by securing their deposit base. We have offered bank deposit guarantees to ensure the banks could attract deposits and wholesale funding in exceptionally difficult credit market conditions.

*Senator Bernardi interjecting—*

**Senator CONROY**—Senator Bernardi, if you listened to the question that was asked—

*The PRESIDENT*—Senator Conroy, ignore the injections and just address the chair.

**Senator CONROY**—you would know exactly that this is on the question.

*The PRESIDENT*—Order! Senator Conroy, you were asked to ignore the interjections and address the chair.

**Senator CONROY**—Sorry, Mr President. As I was saying, banks will be able to attract deposits and wholesale funding in exceptionally difficult credit market conditions so that they continue to lend. The coalition rejected the Australian Business Investment Partnership we put before the parliament to assist large-scale commercial property access fi-
nancing. They have committed to voting it down in the parliament.

Senator Brandis—Mr President, I rise on a point of order on relevance. This answer is not directly relevant. I asked about infrastructure. I asked him to identify infrastructure projects. He has neither mentioned the word nor any particular project.

Senator Chris Evans—On the point of order, Mr President, the question started with a reference to the availability of credit for state governments and the funding situation to finance infrastructure projects. Senator Conroy is directly on the question when talking about credit, the bank deposits and guarantees, and how we actually make sure that credit does flow to both private and government investors. So Senator Conroy is directly answering the question. He is only a minute into his answer and I think that he ought to be allowed to finish his answer.

The PRESIDENT—Senator Conroy, you have 44 seconds remaining to address the question that has been asked by Senator Brandis.

Senator CONROY—As I have been outlining, there has been a deterioration in the global economy that has not deterred the government’s long-term nation-building agenda. The truth is we started acting before the global recession hit. One of the key aspects that we have identified is setting aside more than $26 billion for the nation-building funds to finance critical national infrastructure projects. The reports in the newspaper that Senator Brandis is referring to are nothing more than speculation. Infrastructure Australia is working—(Time expired)

Senator BRANDIS—Given that the Queensland government is already projecting public debt of $74 billion, what effect will the difficulty Queensland faces in sourcing funds have on major infrastructure projects in my state such as the Northern Link tunnel in Brisbane?

Senator CONROY—The government is investing over $6.5 billion in vital road and rail infrastructure in Queensland with the nation-building program. This is almost double what the opposition spent over the same period of time when in office. Take, for example, the Bruce Highway. The opposition only spent $900 million on it, whereas the Rudd government is investing $2.2 billion on the highway. On the notoriously dangerous stretch of road from Curra to Cooroy the Rudd government has committed $200 million towards this project to undertake necessary planning and design work as well as to progress with land acquisition. In contrast, when the coalition was in government it spent only $3.22 million on this same stretch of road, a measly $3.22 million was all the local member—(Time expired)

Senator BRANDIS—Mr President, I ask a further supplementary question. Will the state governments’ inability to borrow or to borrow only at higher interest rates impose future financial demands upon the Commonwealth through Infrastructure Australia? What is the government’s estimate of the additional cost to the Commonwealth of unfunded state debt?

Senator CONROY—A number of those questions are premised on a number of assumptions, which are not assumptions this government necessarily agrees with. But, if there is any further information that I can get for Senator Brandis, I am happy to take it on notice and respond to him.

Senator Chris Evans—Mr President, I ask that further questions be placed on the Notice Paper.
QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Economy

Senator CHRIS EVANS (Western Australia—Leader of the Government in the Senate) (3.00 pm)—On 12 March, Senator Scullion asked me two supplementary questions regarding the stimulus package. I have those answers from the Treasurer’s office, and I seek leave to incorporate them in Hansard.

Leave granted.

The answers read as follows—
Senator Scullion asked the Minister (Chris Evans), without notice, on 12 March 2009:
Will an eligible Australian taxpayer who paid tax and lodged a tax return in the 2007-08 financial year, but who has departed Australia permanently, receive a payment from the government’s most recent $42 billion cash splash? If that is the case, how does giving Australian taxpayers’ money to overseas residents help stimulate the Australian economy?

Senator Chris Evans: The Treasurer has provided the following answer to the honourable senator’s question:
Direct support for consumption provided by payments such as the tax bonus is integral to the Government’s response to the global financial crisis.
People who worked in the 2007-08 income year and incurred a net tax liability are entitled to the tax bonus payment.
Eligibility for the tax bonus requires that the taxpayer was an Australian resident in 2007-08.
On present ATO figures less than 0.4 per cent of lodged returns for 2007-08 have overseas addresses.
It would be administratively infeasible for the ATO to determine whether taxpayers who were residents in 2007-08 remain residents today.
Where a person has moved overseas they may be overseas temporarily.

Ms Britt Lapthorne

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (3.01 pm)—I seek leave to incorporate some additional information to an answer I gave to Senator Fielding yesterday, relating to the case of Britt Lapthorne.

Leave granted.

The answer read as follows—
The Australian Law Reform Commission (ALRC) released a report on Australian privacy law and practice in August last year.
In its submission to the ALRC, DFAT supported the Commission’s proposal to remove the need for a threat to life or health to be both serious and imminent before personal information could be disclosed or used for another purpose, such as informing relatives.
The ALRC’s report recommends change to existing legislation such that personal information could be legally disclosed in a larger number of situations. It also found however, that it would be undesirable to create a new exception to assist in missing persons investigations. The Government is preparing its response to the ALRC Report and will of course consider the circumstances of Ms Lapthorne’s case in doing so.
As well, the Minister for Foreign Affairs has asked DFAT to approach the Privacy Commissioner to develop a new and broader Public Interest Determination (PID) that would assist DFAT in providing more timely and comprehensive consular assistance.
I sympathise that the Lapthorne family continues to endure an extremely difficult period and again offer our deepest condolences and sympathies to Ms Lapthorne’s family and friends. DFAT continues to provide consular assistance to the Lapthorne Family.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Emissions Trading Scheme

Senator BOSWELL (Queensland) (3.01 pm)—I move:
That the Senate take note of the answer given by the Minister for Climate Change and Water (Senator Wong) to a question without notice asked by Senator Boswell today, relating to the emissions trading scheme.

In today’s Courier-Mail, there is a photo of the member for Capricornia, Kirsten Livermore; the member for Flynn, Chris Trevor; and the member Dawson, James Bidgood with ‘censored’ written across their faces. They obviously are not speaking out for their electorates on the emissions trading scheme. Today in question time I asked Senator Wong whether she had given them instructions not to speak out. She denied it, and that may well be true. But I do not know why these people do not speak out for their electorates when their electorates are coming under so much pressure. These electorates represent the coal-mining industries of Queensland. Most of the coal mines are in these electorates. The mayors of the towns in these electorates have pleaded with the government not to go ahead with the emissions trading scheme. But the unions have been absolutely quiet on this issue.

The mining companies have come out and warned the government about how many jobs will be lost if it goes ahead with the scheme. There will be thousands of jobs lost if this $2.4 billion carbon tax is placed on the mining industries. Every dragsline that runs on electricity and every electric motor used in those mines will be hit with a carbon tax. Yet, day after day, the people who should be opposing this tax are sitting there like stunned mullets, not saying a word.

Today, in question time, Senator Milne asked a question about agreements on emissions, and the answer was that there were no international agreements on anything. There is no modelling on a white paper and no modelling on a green paper to tell us where the economy is now. No modelling has been done on the economy. The government is absolutely determined to go ahead with this scheme, and there is no opposition coming from the government benches.

Senator Cameron was an absolute raging lion before he came in here. He was on every radio station and in every newspaper saying what he would do when he got here. He got here after garrotting Senator Ian Campbell, and he has been like a weak, whipped squib. He has not said a word. He has been one of the great disappointments of the Labor Party. I am sure the union people who put him here would be disappointed by his lack of commitment to the union movement. It is a disgrace. Where are the people who represent the blue-collar workers? Where are they? Why have they disappeared? Why do you let down the people who pay their union fees, who keep your labour movement together through blood, sweat and tears? You have walked out on them. You know that you are trading their jobs off for Greens preferences. You are making exactly the same mistake as your previous leader, Mr Latham, did. He decided that he would trade off the jobs of timber workers for Greens preferences. The blue-collar workers dumped him, and you are going to get dumped. Mr Rudd is also going to get dumped in exactly the same fashion, unless he listens to the people whose jobs will be lost because of him. He is going to be deserted by the blue-collar workers.

Let us go back to the beginning. This thing started as an absolute farce. A professor said that we had to get rid of our cattle herds and our sheep flocks, we had to farm 240 million kangaroos and we had to turn our arable farming land into a tree plantation. It was a joke then, and everyone laughed at it and thought it was ridiculous, but it is getting damned serious now—(Time expired)

Senator WONG (South Australia—Minister for Climate Change and Water) (3.06 pm)—I would not usually speak in the
taking note of answers debate, because obviously it is usually members of the backbench who put their views, but really that contribution deserves a response. What we are seeing from Senator Boswell and many in the opposition is more of the same behaviour, the same opinion and the same dogma that ensured that for 12 years they pretended that climate change was not happening. That is the reality.

Senator Ian Macdonald—Why did we set up the first greenhouse office in the world?

Senator WONG—Yes, you did set up the first Australian Greenhouse Office—I will take that interjection, Senator Macdonald—and do you know what? I think tomorrow is the 10th anniversary of the first report presented to your government recommending an emissions trading scheme. So, 10 years ago, your government had a recommendation to establish an emissions trading scheme, and that was the beginning of 10 further years of denial and neglect by those opposite because you are not up to the challenge.

Senator Boswell comes in here and says he is the friend of working people. It is a pity he did not think about that when he joined up with the rest of the opposition to pass the Work Choices legislation. I would like to see if Senator Boswell is going to be one of the ones who say, ‘Yes, Work Choices is dead,’ because so far what we have seen on the other side is that they just cannot bear to let it go.

Going back to the emissions trading scheme, I want to just remind senators opposite of this statement. I could do a Senator Abetz—you know, ‘Who said that?’—but really it was not very funny when he did that, so I will not try and copy it. Mr Turnbull, in May 2008, said:

The biggest element in the fight against climate change has to be the emissions-trading scheme …

Mr Turnbull, at the Press Club, said:
The Emissions Trading Scheme is the central mechanism to decarbonise our economy.

Now what is Mr Turnbull saying? He is saying, ‘Oh, look, it’s not really a necessary tool at all.’ Do you know why? Because senators like those opposite, the sceptics from Western Australia and the sceptics from Queensland, who do not want to act on climate change, who want to dump this issue, just like they did for more than the last decade.

The fact is that we know that climate change is not going to go away. Senator Boswell and others can come along to committees and argue the science all they like. Perhaps they should go out and talk to a few Australians about this issue, because people understand what is required. What we need to do is to make a transition across our economy. We have to move to a lower-polluting economy. We have to respond to climate change, and Australians understand that. And, yes, we have an absolute responsibility to ensure that we support the jobs of today while we are making that transition. That is why the government has put in place substantial assistance through free permits and the provision of funds—about $750 million for the coal sector, as well as free permits for those companies in Australia who face the highest costs under the scheme. We understand the importance of that.

I again remind Senator Boswell that the Treasury modelling, which is the largest modelling exercise in the nation’s history, shows that we continue to grow as an economy, including in emissions-intensive sectors, and that modelling in fact assumes less
generous assistance than the government is proposing. Senator Boswell would have more credibility if he just came into this place and said, ‘I simply oppose any action on climate change because I don’t think it’s real.’ He should just say that because that is his position.

The problem is that that has not been Mr Turnbull’s position. It is now apparently becoming Mr Turnbull’s position as he is pursued by Peter Costello. That is the reality of the politics on the other side: the sceptics, who are substantially represented in this chamber, who do not wish to take action on climate change, are running the Liberal Party’s policy when it comes to climate change action. Senator Boswell is amongst those in the opposition who simply do not want to take action.

As I said in question time, we also saw this week a company that the opposition had tried to use, had tried to point to and say, ‘They’re going to close down,’ come out and say, ‘We don’t know why Mr Robb would say that.’ Well, I can tell you why he would say that—because you on that side will do and say anything to avoid this responsibility, to avoid taking action.

Senator IAN MACDONALD (Queensland) (3.11 pm)—It is a pity that the Minister for Climate Change and Water did not abide by the convention of her party and let a backbencher speak here, because when she reads that contribution she will realise how much waffle it was.

Senator Boswell—No-one was game to do it.

Senator IAN MACDONALD—You are right, Senator Boswell. I do not think any of her Queensland colleagues are prepared to get up and defend this flawed emissions trading scheme, particularly before this Saturday. There is only one of Senator Wong’s Queensland colleagues in the chamber, and I assume Senator Moore might speak, but I bet none of her other Queensland colleagues will, because they do not want a bar of Senator Wong’s emissions trading scheme. You only have to look at the actions of Mr Bidgood, the member for Dawson, which takes in a lot of the Bowen Basin coalfields; Ms Livermore, whose electorate takes in a lot of the Central Queensland coalfields; and Mr Trevor, from Flynn, which also takes in many mining fields. They do not want to talk to the media about this at all. Why not? Because they do not agree with Senator Wong’s emissions trading scheme.

In fact, I have been all around the countryside on Senator Cormann’s committee looking at the emissions trading scheme and I cannot find anyone in support of it, not even the AWU, not even the CFMEU. None of the unions want it because they, like us, have an interest in working families, whom the Australian Labor Party seems to have abandoned when it comes to the emissions trading scheme. And three members of parliament from North Queensland in the ALP have been gagged by this minister and by her party so they will not say anything about a flawed emissions trading scheme that will cost working families in my state of Queensland their jobs.

Where are the Greens on this important issue of saving the jobs of working families? The Greens, of course, are in complete disarray. As I pointed out this morning in my notice of motion, the Greens are preferencing the Labor Party in 12 marginal seats, which could result in the return of Anna Bligh’s Labor government. Anna Bligh has made it quite clear that once she is returned she will be proceeding with the Traveston Crossing Dam. What hypocrisy from Senator Brown—canoeing down the Mary River saying, ‘We are opposed to the Traveston Crossing Dam,’ and then giving preferences to Labor to build that dam.
It is not me saying this, Mr Deputy President; you have only got to look at yesterday’s news reports which show that the Greens political party in Queensland is in complete disarray. In fact the Greens candidate for Gympie, Mr Ken Hutton, returned 15,000 how-to-vote cards prepared by the Brisbane office of the Greens party giving preferences to Labor because he does not want a bar of returning a Labor Party which will build the Traveston Crossing Dam. So here is the hypocrisy of the Greens, joining with their mates in the Labor Party—and they are only the left-wing faction of the Labor Party—destroying all those jobs in the Mary Valley of Queensland and ensuring the construction of that dog of an idea, the Traveston Crossing Dam, which will not help at all.

Where are the Greens when it comes to protecting the jobs of working families up my way in the Bowen Basin coalfields? What about out in Mount Isa? Where is the Labor Party out there protecting jobs? I want to know if Anna Bligh, the Labor Premier of Queensland, has raised a finger to help the working families in Mount Isa, in Collinsville, in Moranbah, in Glenden—in all those Bowen coalfields towns—and in Mackay, Rockhampton, Gladstone and Emerald. Has Anna Bligh lifted a finger to help those working families or are they just going to roll over to this flawed emissions trading scheme of Minister Penny Wong?

It is a scheme that the federal Labor members in that area do not want to have a bar of. It is a scheme that very few Labor senators from Queensland in this chamber want a bar of. That is why the minister suffers the indignity of having to come in after question time and defend herself in the take note of answers debate. It is because none of her colleagues have any interest in that scheme. They know, like we know, that it is a dog of an idea and will cost workers jobs.

Senator MOORE (Queensland) (3.17 pm)—I know that Senator Macdonald is absolutely fixated on what is going to happen in the Queensland state election. We have seen that all week. It does not matter what the topic is—

Senator Ian Macdonald—I am a bit excited.

Senator MOORE—I take the interjection. Senator Macdonald: I note that you are extremely excited about the process around the Queensland state election. The question in this taking note motion was, I believe, Senator Boswell’s question to Senator Wong during question time about the carbon emissions trading scheme, the ETS. That was actually a replay of an urgency motion we had in this place earlier this week around the Queensland election. That, again, was trying to beat up issues, trying to scare the community. It reinforced the clear difference between us. On one side there is the understanding, the acceptance, of the challenge of the worldwide fear that we have about what is going to happen to our planet. We as a government accept that we have a responsibility and within that responsibility we have put forward legislation for consideration. We have known from the start that it did not matter about the science, it did not matter about the reason. On the other hand, there are people, particularly those in the opposition—not all, of course, because there are a wide range of views—who refuse to accept that there is a challenge. We have had a series of attacks from people on the opposition side who refuse to accept that there is a challenge for our community in which we have a responsibility to take part.

We continue through our legislative process and through the special fund that has been provided by the government to provide information about the issues of global warming—about our need to have a scheme that
looks at the industries within our nation to see how we can reduce carbon emissions, and to work effectively and cooperatively with industry and with communities to identify the issues and see what we can do together to make a change. It seems to me, Mr Deputy President, that that should not be such a big issue with which we must struggle. However, consistently, there is open rejection.

This week—for some reason!—we have a particular Queensland flavour to the rejection. Most times it is just about why we as a whole nation should not be accepting our responsibilities. This week it is all about Queensland. While I am often all about Queensland, because I was elected by Queensland people, the attempt over the last few days to score cheap, easy points in the week before a state election is not useful. I do not know why people think that an interchange in the Senate will impact on the voting of any citizen of the state of Queensland, but, nonetheless, I am happy to be part of the debate. However, I would think that it would be more useful if we looked at the wider issues.

Certainly, Senator Boswell has raised real concerns about the jobs that will be impacted by the schemes that we brought in under legislation to respond to the challenge of global warming. We have never denied that there would need to be a transition in employment through this process. But the reasons we have put out to the community are specifically about the wider issues—what we must do as a nation, what we must do as a range of industries, to take up the responsibility from which there is no escape. The government have acknowledged that, through the process of information, through the process of working with industry, we are trying to ensure that people can see that they will have a role to play—in fact, there must be the engagement of industry, because without the involvement of industry there will be no progress.

A scare campaign, which is generated simply to cause fear, to cause concern, is not positive. There must be a transition in industry, and certainly we have talked about the kinds of jobs that must be created in our state. I will talk about Queensland in response to the excitement of Senator MacDonald. There are a range of jobs that must be created in Queensland to keep people employed, particularly now as we know there are the other issues of the global economic crisis. But it is particularly concerning that we do not have positive input from the opposition; what we have is a series of scares, a series of negatives and actually an attempt to make political points out of what should be an opportunity in our state and in our nation to be part of what is an international response. One of the real worries is that people are underestimating the concern and the knowledge of so many people in our country. We know there is a problem; we must be part of the solution. (Time expired)

Senator CORMANN (Western Australia) (3.22 pm)—Labor’s emissions trading scheme has become a complete dog’s breakfast. The Rudd Labor government has come up with a scheme that will do nothing for the environment and will put even more pressure on the economy and jobs. Senator Moore just said how we need to focus on the needs of the planet and address the challenges of global warming. The Labor government’s emissions trading scheme will do nothing to address the needs of the planet and will do nothing to address global warming. It could well be argued that it will make things worse. Given that it could well make things worse, Australians are well entitled to ask the questions: why do we have to make these sacrifices? Why do we have to lose our jobs? Why do we have to put additional pressure on the economy, particularly at a time like
this, if it is not going to reduce greenhouse gas emissions at a global level, which the government is telling us that it wants to achieve?

The government has put out a green paper, it has put out a white paper and it has done some Treasury modelling. As the Senate, obviously it is our responsibility to scrutinise what the government is proposing in this area. The Select Committee on Fuel and Energy, over the past seven or eight months, as Senator Macdonald has mentioned, has done a lot of scrutinising of the government’s proposals for an emissions trading scheme. The government has not provided access to any of the modelling information it has been trying to keep secret. I am going to raise a few issues here. You might all recall the Treasury modelling that was released on the government’s proposed Carbon Pollution Reduction Scheme. We as a committee commissioned Dr Brian Fisher to conduct a peer review of that Treasury modelling and the conclusion he came back with was that this Treasury modelling was seriously underestimating the impact of the government’s proposed Carbon Pollution Reduction Scheme on the economy and jobs. Why? Are Treasury officials to blame? Have they done the wrong modelling? No, it is the government that is to blame, because the government directed Treasury on how to conduct its modelling. The government said, ‘You don’t have to assess the impact of the global economic crisis on how the Carbon Pollution Reduction Scheme is going to play out in terms of the economy and jobs,’ even though the current circumstance is the worst economic crisis we have had since the Great Depression. The government did not model the most realistic scenarios such as the scenario that other parts of the world do not take action as fast as we do. These are the reasons Dr Brian Fisher expressed his concerns.

Since then, the committee has had evidence from Mr Paul Howse, the National Secretary of the Australian Workers Union. He also said that the Treasury modelling was inadequate. Jennie George, the member for Throsby, and Senator Glenn Sterle—a whole range of Labor members of parliament—have expressed concerns about the impact of the government’s proposed Carbon Pollution Reduction Scheme on the economy and jobs. Given that fact, it is quite proper for a Senate committee to want to apply some proper scrutiny to what the government is proposing.

In order to be able to do this, we needed to have access to unpublished modelling information that Treasury is keeping secret on the assumptions, the model codes and databases and all the other underlying information that the government has fed into the process. The committee wrote to the Treasurer on 9 December. For two months the Treasurer of Australia did not respond to a request of a committee of the Senate. Then we had an order of the Senate passed on 4 February, and the government refused to comply with it. The government came into this chamber and claimed that commercial harm could be incurred by the external organisations that they have contracted to assist them with their modelling. One of those organisations is Monash University. We as a committee bent over backwards and changed the motion to see whether we could accommodate Monash University so that our committee could do our job and apply proper scrutiny but also could protect the interests of Monash University. The government did not want to give you the information. But do you know what? They were hiding behind Monash University by saying they could well be exposed to commercial harm.

Monash University has written to the Treasurer. I will seek leave to table the letters
written to the Treasurer and I will seek leave to table the letter that I, as Chair of the Senate Select Committee on Fuel and Energy, have sent to the Treasurer since then in response. It has got absolutely no concerns about this information being released, so it is time that the government stops hiding and starts to release the information that the Senate select committee needs to apply some proper scrutiny to this flawed emissions trading scheme. I call on the government to table the information the committee has asked for by close of business today, and I seek leave to table the correspondence that I have mentioned.

Leave granted.

Senator MILNE (Tasmania) (3.27 pm)—
I rise to support the motion to take note of the answers from the Minister for Climate Change and Water, Senator Wong, on greenhouse gas emissions targets. In referring to the targets, I want to comment that Dr Brian Fisher would be the least authoritative person when it comes to any assessment of greenhouse gas emissions, Treasury modelling or whatever. I remind the Senate that Dr Fisher was Chairman of ABARE for a long time. He peopled ABARE with climate sceptics, and that is one of the reasons we have had such a poor performance over 10 years whilst ABARE was in his control. When I came in here it was Dr Fisher who, in answer to questions about Peak oil, said: ‘Put climate change to one side. By putting climate change to one side, we can run our vehicle fleet on liquid coal.’ That is in an era of climate change. Anyone who can say that with a straight face in a Senate committee on oil cannot be believed on anything in relation to climate change. If he wants to put climate change to one side, then I would like to put Dr Brian Fisher to one side when it comes to any assessment or analysis of what he has got to say.

The issue on the government’s targets is this: the government has been out there saying a five per cent reduction is unconditional, and I accept that, but it has been laying it on by saying that it will go to 15 per cent and the parameters of that are ‘where all major economies commit to substantially restrain emissions’ and ‘all developed countries take on comparable reductions to that of Australia’. The latter category is annex 1 countries—‘comparable reductions to that of Australia’. I asked today what the criteria for that was because the community has to know whether there is any realistic capacity or intent of the government to go to 15 per cent. That is the critical issue here.

What we discovered from the answer today is that we could not get an answer to what a ‘major economy’ is for the purposes of this definition. We could not get a definition of what ‘substantially restrain emissions’ means. We could not get an answer for which countries constitute major economies, and we could not get an answer to what criteria constitute ‘comparable reductions to those of Australia’. What that means is that there will be legislation before the Senate where the people of Australia, through their parliamentarians, are being asked to decide on an emissions trading system with parameters between five and 15 per cent, with people being misled into thinking that 15 per cent is a realistic proposition. The only way you would not be misled into thinking that is by having parameters so you could actually see whether the government has properly used its discretion over those definitions. Instead of that, we will have to vote on this before we have any understanding of what terms such as ‘major economies’, ‘substantially restrain emissions’ and ‘developed countries taking on comparable reductions to Australia’ actually mean.

From what the government has said to date, there is a very dubious criterion being
applied to population and comparable efforts. This is an extraordinary effort; the head of the climate department tried it on again in the economics committee last night by saying of contraction and convergence, ‘Well, that meant everyone had to be equal’. I asked him why that is not fair and got this convoluted answer about some countries having more hydro resources. In fact, Australia has some of the best renewable energy resources in the world, so it is hardly an excuse. The whole issue here is that the government has absolute discretion in applying these criteria and the community and parliament are not going to know what those criteria are before they vote on the legislation. It gives the Australian government maximum wriggle room on ‘15 per cent’ in Copenhagen. Furthermore, Australia has not said whether Australia will go higher than 15 if the rest of the world goes through all these criteria the government has set or whether they will block a global treaty if the rest of the world tries to go beyond 15. These are issues that are critical for the Australian people to know before this legislation comes before the parliament for a vote.

Question agreed to.

CONDOLENCES

Corporal Mathew Hopkins

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (3.32 pm)—by leave—I move:

That the Senate record its deep regret at the death, on 16 March 2009, of Corporal Mathew Hopkins, while on combat operations in Afghanistan, and place on record its appreciation of his service to his country, and tender its profound sympathy to his family and his colleagues in their bereavement.

Question agreed to, honourable senators standing in their places.

MINISTERIAL STATEMENTS

FIFA World Cup

Senator WONG (South Australia—Minister for Climate Change and Water) (3.33 pm)—On behalf of the Minister for Sport, Ms Kate Ellis, I table a ministerial statement on the progress of Australia’s bid to host the FIFA World Cup.

COMMITTEES

Treaties Committee

Reports: Government Responses

Senator WONG (South Australia—Minister for Climate Change and Water) (3.34 pm)—I present the government’s response to the 93rd report of the Joint Standing Committee on Treaties on its inquiry into treaties tabled on 12 March and 14 May 2008, and seek leave to have the document incorporated in Hansard.

Leave granted.

The document read as follows—


Recommendation (1)

The Committee recommends that the Australian Government monitor and assess the impact of trade in freshwater sawfish to determine whether the current listing, with annotation, on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora provides sufficient protection for the species.

Agreed in part.

Assessment occurs as part of the export approval process. The trade in *Pristis microdon* (freshwater sawfish) is small scale and is considered to be non-commercial (for exhibition in appropriate aquaria) for the purposes of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The approval for export in this case is not the same as that which would be required if the trade was commercial. Any export of Austra-
lian native species does require an assessment that the impact of the harvest on the species is not detrimental to the survival of the species in the wild (a non-detriment finding), and that the specimens are legally collected. The collection of freshwater sawfish in Queensland is licensed by that state’s Department of Primary Industries and Fisheries.

Each application for export is evaluated on a case-by-case basis and based on the best information available. To support future assessment decisions and management actions, the Government has funded a number of research projects to fill information gaps regarding population status and the impacts of threats on freshwater sawfish.

**Recommendation (2)**

The Committee recommends that the Australian Government review its existing policies on the composition of delegations to CITES negotiations with a view to minimising conflicts of interest, whether real or perceived.

Further, the Committee recommends that the Australian Government review the policy of allowing the participation in delegations of parties with a commercial or other direct interest in negotiations.

**Not agreed.**

The Government believes that the practice of inviting appropriately qualified non-government organisation representatives to meetings of the CITES Conference of Parties (CoPs) contributes significantly to open and transparent government. Australian delegations to CITES Conference of the Parties often include representatives of non-government organisations and industry, all of whom usually have a direct interest in the subject matter of the negotiations. The Government’s additional formal process recognises that non-government representatives, including industry representatives, are able to provide valuable assistance and expertise to official Australian delegations with regard to issues on which they have specialist knowledge. Nevertheless, the Department of the Environment, Water, Heritage and the Arts will continue to require all non-Commonwealth Government representatives to sign an agreement that they will abide by the Government brief and act in accordance with the instructions of the head of delegation. In this way real or perceived potential conflicts of interest are fully taken into account and minimised as a possibility.

**Recommendation (3)**

The Committee recommends that the Australian Government undertake a consultative and publicly accessible process for the assessment of non-detriment findings and ambassador agreements, including providing the opportunity for public comment by interested stakeholders.

**Agreed in part.**

The Australian Government provides for public comment on most non-detriment findings. All applications for commercial harvesting of native species from the wild are subject to a public comment period. The Australian Government did seek public comment on the non-detriment finding and the ambassador agreements in the case of sawfish and will continue to seek comment on non-commercial transactions on a case by case basis.

**Recommendation (4)**

The Committee recommends that the Australian Government review its existing assessment process under the Environment Protection and Biodiversity Conservation Act 1999 for CITES listed species to provide for a more formalised process of independent scientific verification of the claims made by proponents in non-detriment findings.

**Not Agreed.**

The Australian Government considers that the existing process for approvals under the EPBC Act, which includes provisions for public consultation, are appropriate and sufficient. The use of precautionary/restrictive measures and conditions such as the application of biological reference points, quotas, compliance and observer programs and spatial and temporal closures can assist in supporting decisions on non-detriment findings to ensure harvest of a species is sustainable.

In cases of high scientific uncertainty, the Australian Government regularly seeks independent scientific advice from relevant scientific experts. Mandating an additional formal process for the independent scientific review of all claims would
result in significant additional costs and time delays. More importantly, this would not necessarily be balanced by improved scientific verification, particularly for species where the conservation status is well understood, or where limited expertise is available.

AUDITOR-GENERAL’S REPORTS
Report No. 26 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: Report No. 26 of 2008-09: Performance audit-rural and remote health workforce capacity: the contributions made by programs administered by the Department of Health and Ageing.

COMMITTEES
Treaties Committee
Report
Senator PARRY (Tasmania) (3.35 pm)—On behalf Senator McGauran, deputy chair of the Joint Standing Committee on Treaties, I present report No. 100 of the committee, Treaties tabled on 25 June 2008 (2). I seek leave to move a motion in relation to the report.

Leave granted.

Senator PARRY—I move:
That the Senate take note of the report.

I seek leave to continue my remarks.

Leave granted; debate adjourned.

DOCUMENTS
Tabling
The Clerk—Documents are tabled in accordance with the list circulated to senators.

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

BUSINESS
Rearrangement
Senator WONG (South Australia—Minister for Climate Change and Water) (3.36 pm)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 1 (Fair Work Bill 2008).

Question agreed to.

FAIR WORK BILL 2008
In Committee
Consideration resumed
The CHAIRMAN—We are dealing with amendments (1) to (3) on sheet 5744, moved by Senator Siewert.

Senator MARSHALL (Victoria) (3.37 pm)—I notice that the key players in the committee stage are just taking their positions and getting their documents together, which gives me a couple of moments to address the bill while that happens. As soon as we are in a position to go directly to the question before the chair, I will end my remarks. I did want to take this opportunity to talk about the process that got us here today. The bill before us was the subject of wide consultation while we as a party were in opposition and it was something we sought a mandate for in some very specific terms and in some very general terms as well.

In government, we then undertook a very comprehensive process, consulting all of the parties that have an interest in industrial relations in this country, including academics, employers and unions. We went through a very exhaustive COIL process and consultation process with those stakeholders. A draft bill was in front of people and they had an opportunity to look at how that worked. We made significant changes to the bill in the process to try to accommodate any of the major concerns that the stakeholders may have had. We then, of course, presented the
bill to the parliament. Naturally, with a bill of this size and substance, the Senate Standing Committee on Education, Employment and Workplace Relations conducted an inquiry. I want to commend the senators that participated in that inquiry—

Senator Abetz—Thank you!

Senator MARSHALL—including Senator Abetz! It was a long and exhaustive inquiry. At some stages during the inquiry we had up to 15 senators at the table. It is a bill that generated much interest. We went to most of the major capital cities, as well as spending a full day with the Department of Education, Employment and Workplace Relations. I note that the Minister representing the Minister for Employment and Workplace Relations is here; if he indicates that he is just about ready, I will wind up. We published a comprehensive report with several recommendations, all of which have been seriously considered by the government and many of which have been picked up in government amendments. I will just finish by briefly thanking the secretariat for the work they did in preparing the report and the senators for their participation. I thank all those involved, and I commend the process, which was one of extensive consultation and review of the bill that is before us today.

Senator LUDWIG (Queensland—Minister for Human Services) (3.40 pm)—As I understand it, before the break we were at the point where Senator Fielding was about to contribute in respect of this particular provision. That is my recollection, and I will wait for an indication around the chamber about that. Dealing with the substantive matters, I think that, having focused on this issue for some time, the government supports the Greens proposal to extend the right to request to the parents of disabled children. That is amendment (4); I think Senator Abetz dealt with that some time earlier, but we are not dealing with that at this juncture. But the government is not prepared—and I wanted to soften the blow—to extend the existing legislation as broadly as is otherwise proposed in amendments (1) to (3) and, if it is of some help to Senator Siewert in her deliberations this afternoon, (5).

The government considers that the right-to-request provisions balance the reasonable need of businesses with recognition that working families can find it particularly difficult to balance work and family responsibilities. Of course, it is always open for employers and employees to discuss flexible workplace arrangements and reach sensible agreements that meet the needs of both parties. Nothing in the legislation prevents this occurring. It is also worth observing that existing discrimination law may provide a remedy for employees with these additional caring responsibilities if the reason for the refusal of their request amounts to unlawful discrimination. There are a range of existing laws around antidiscrimination that would also kick in. The NES entitlement to paid and unpaid carers leave also provides a source of support for employees to care for a member of their immediate family or household who requires the employee’s care and support. Perhaps I could cease at that point. I think I have provided at least a reasonable explanation of what the government’s stance is. Let us see how the debate unfolds from here.

Senator FIELDING (Victoria—Leader of the Family First Party) (3.43 pm)—Are we dealing with Greens amendments (1), (2) and (3) on sheet 5744?

The CHAIRMAN—That is correct.

Senator FIELDING—These are in relation to requests for flexible working arrangements. This is always a tricky area. I suppose it comes home a bit for me. I have a sister who is intellectually disabled. Obvi-
ously the strains and stresses on any family with a disabled child are quite extreme; most families in that situation do it tough. I have more than strong sympathy for them and I believe that we can go further than what is in Labor’s current bill.

I was hoping that Labor would agree with some of the amendments, in particular amendment (1) and amendment (3). Amendment (2) is very onerous in my eyes. It is a bit more than Family First would like to see. But (1) and (3) are very important additions. They help bring home some of the issues. I am hoping that even the coalition might think about amendments (1) and (3) separately to amendment (2). Amendment (2) would still keep the other clause, so (1) and (3) could still work with the existing clause about how the employer must give the employee a written response to the request within 21 days stating whether the employer grants or refuses the request.

We think the Greens amendment (1) strengthens clause 65(1) in the bill. At the moment, it just reads, ‘An employee who is a parent or has a responsibility for the care of a child under school age may request the employer for a change in working arrangements to assist the employee to care for the child.’ The Greens go a bit further and strengthen that clause. I believe that amendment (1) is a sensible amendment. Amendment (3) alters clause 65 to allow Fair Work Australia to review refusals of requests. The chamber should have a rethink on whether they could live with (1) and (3), but not (2). Perhaps we should put the question separately. I will take the lead of the two major parties on that.

Senator LUDWIG (Queensland—Minister for Human Services) (3.46 pm)—I understand that Senator Xenophon might be warmed to this phrase, but the difficulty we face in this is that we do not support the proposed amendment empowering FWA to review an employee’s refusal of a request and impose penalties. The challenge there is that this goes against a longstanding position. The amendments would involve FWA, which is not a court, granting remedies for breaches of the NES. This would involve the excise of judicial power by a non-judicial body and would therefore be unconstitutional. Although a legal phrase, it is pretty much accepted around the chamber, at least from the opposition’s perspective. Since the boiler-makers case, that has been the position on Australian commissions, such as the Australian Industrial Relations Commission and subsequent bodies, even under Work Choices. That is a significant impediment to getting that system to work.

Effectively, that would mean that the underpinnings of the system would fall away, because FWA could not make a decision on that because it is a non-judicial body. Therefore, the government does not agree that there is scope to allow the parties to involve FWA and has proposed amendments to enable this to occur. The amendments will make clear that the terms of the National Employment Standard can be replicated in an enterprise agreement. Where those terms are replicated, they will operate as terms of the agreement and disputes about these terms can be dealt with by FWA under the dispute settling terms of the agreement.

We cannot agree to the amendments that are being sought by the Greens, for a range of reasons, including those articulated earlier. It is open to the parties to discuss flexible working arrangements. It is also worth observing that there is antidiscrimination legislation in place. The NES entitlement to paid and unpaid carers leave also provides a source of support. The additional procedural requirements that these amendments impose fall under the hammer of being unconstitutional and there are better systems to use. We should not be trying to reverse a principle in
a way that I do not think we can legislate for. I will leave it at that point.

Senator XENOPHON (South Australia) (3.49 pm)—I support the intent contained in amendments (1), (2) and (3) moved by Senator Siewert. I do not share the same concerns with respect to subclause (3), in that I see it more as an issue of process rather than substantive rights. But it would provide a process with which to deal with these matters. However, having said that, it seems that there is support for subclause (4), which for the first time will include consideration for those parents who have a child under 18 who has a disability. That is a significant improvement in trying to achieve a work-life balance and taking into account the needs of families.

Senator SIEWERT (Western Australia) (3.50 pm)—I must admit that I anticipated that the government would not be supporting amendments (1) to (3). However, there is an issue that I raised during my earlier comments and which is also contained in a letter that we received from Minister Gillard. I would just like the minister to confirm that the government has agreed to review, as part of the series of reviews, the way that the right-to-request provisions have operated to see whether the manner in which they are written in the bill is effective and whether people are able to use those provisions to successfully request flexible working agreements.

Senator LUDWIG (Queensland—Minister for Human Services) (3.51 pm)—Yes.

Question negatived.

Senator SIEWERT (Western Australia) (3.52 pm)—I move Greens amendment (4) on sheet 5744:

(4) Clause 65, page 76 (lines 5 to 8), omit subclause (1), substitute:

(1) An employee who is a parent, or has responsibility for the care, of a child may request the employer for a change in working arrangements to assist the employee to care for the child if the child:

(a) is under school age; or
(b) is under 18 and has a disability.

This amendment relates to one of the issues that we were just talking about. It is an alternative to my previous amendment and it is not as comprehensive. The amendment extends to parents of children who are under the age of 18 and have a disability eligibility to request flexible working arrangements. This is not as comprehensive as my previous amendment but it is a very important step for parents with children who have a disability. When you are a carer of a child with a disability you have a lot of requirements, a lot of medical issues that you need to deal with and you have a lot of other caring responsibilities beyond those that you would have if you were not looking after a child with a disability.

I strongly commend this amendment to the Senate as it will make a significant difference to parents of children with a disability. It may mean the difference between whether or not they can actually be a member of the workforce. In many cases if they do not have flexible working arrangements they cannot maintain their active engagement with the workforce. I strongly commend this amendment to the house.

Senator FIELDING (Victoria—Leader of the Family First Party) (3.53 pm)—The issue here is what is currently in the bill with regard to requests for flexible working arrangements. Subclause (1)—and I do not want to overstress this point of view—states:

An employee who is a parent, or has a responsibility for the care, of a child under school age may request the employer for a change in working arrangements to assist the employee to care for the child.
It concerns a child under 18 with a disability. I am not convinced that when they turn 19 and have a disability there is any less of a requirement for flexible working arrangements. That is the problem I have with this. The disability carries all the way through, whether they are 18, 19, 20, 30 or 40, and that is the reason I was thinking that we need to strengthen that further, but I will support the amendment.

Senator ABETZ (Tasmania) (3.55 pm)—I indicated the opposition’s stance on this before we suspended at 1.30 pm, which was that we support amendment (4). Senator Siewert kindly referred to my pursuit of this matter during the committee stage and, as I indicated, I thought Labor or the government would be moving an amendment and therefore I did not, Senator Marshall. But there was a sign-off within the coalition in relation to this. I am delighted that the Greens have moved it.

I say to Senator Fielding that, looking at it from an employer’s point of view, one of the reasons that we were against the last lot of amendments was that I would not want a circumstance to arise where, potentially, parents of disabled children are not employed because of a request that might be denied being taken to Fair Work Australia, where it will be adjudicated and forced upon the employer. Sometimes these things, which are meant with the best intentions in the world, can in fact have a negative impact. That is why I think that having just the request as it is now is a very major step forward. I understand that the government will also be supporting this amendment, and I am therefore delighted that there will be unity in the chamber and it will be unanimous that the disability sector is going to be recognised for the first time. Given the work I do with them in my home state of Tasmania, I am delighted, but we have to be careful that sometimes we do not overcook the egg in trying to be helpful because sometimes there can be adverse consequences.

I commend the fact that the Greens have moved this amendment and I think it is a great day on which the Senate, as I understand it, will be supporting this amendment unanimously.

Senator LUDWIG (Queensland—Minister for Human Services) (3.57 pm)—I thank Abetz for that contribution, as well as everyone else, particularly Senator Siewert, who moved the amendment. The government supports this provision, as I indicated earlier today. It extends the right to request to the parents of disabled children and is a sensible amendment. It is one of those areas where there is broad support.

Question agreed to.

Senator ABETZ (Tasmania) (3.58 pm)—I would like to request of the committee that we move to the section dealing with the definition of ‘small business’. May I be so bold as to suggest that the opposition amendment, where we suggest that the number be 25, be put first. Next should be Family First and Senator Xenophon—Senator Siewert—Going down.

Senator ABETZ—Yes, going down until we hit bingo and the Senate is in agreement, and I say to Senator Siewert that I have no doubt what that number will be. If I were a bingo player I would be asking for the number 20, but, nevertheless, I am still holding out for 25. That will then impact on Senator Fielding’s amendments in relation to right of entry. I think it would help clarify if we could have the issue of the definition of ‘small business’ dealt with in that order, if the committee is agreeable. I therefore suggest that we go to opposition amendments (2) to (5) on sheet 5739 revised 2.

Senator LUDWIG (Queensland—Minister for Human Services) (4.00 pm)—I
had an alternative proposal, unfortunately. I was going to encourage Senator Siewert to deal with some of her significant amendments so that we could make progress on those. In relation to those matters that you highlighted—I am looking at some of my notes to get the order right—my preference would be to deal with the Greens amendments in this area: those on sheet 5729, although we have dealt with one in the centre of that, and sheet 5744. There are a whole range of others. Today we have dealt with a fair few government amendments. I wanted the minor parties and the Independent to have an opportunity to progress some of their matters, because I think either we both disagree with them, so we can then get rid of them quite quickly, or we both support them, in which case we will test them with the Independent and Senator Fielding. I was looking at how to confine this, to effectively leave some of the tougher debates for a bit later on.

Senator FIELDING (Victoria—Leader of the Family First Party) (4.01 pm)—I was just thinking that, because we may take some time on the definition of ‘small business’, it may be worth tackling that now. I do not want to pre-empt what others want to do—I am just thinking aloud. My preference is probably to cover that now, but I do not want to force it upon anyone either.

The CHAIRMAN—I will be guided by the chamber, but right now I have no idea what you want to do.

Senator SIEWERT (Western Australia) (4.02 pm)—Maybe while we are waiting we could deal with clause 76 and Greens amendment (5) on sheet 5744, which seems to me to finish off that group of amendments that we have around the right to request. This particular one deals with the right to request an extension of unpaid parental leave. I suspect we could deal with that one fairly quickly while the negotiations are going on about where we go to next.

The CHAIRMAN—Senator, I am just concerned that nobody will be listening to anything you say, the way things are going at present. You are talking about clause 76 and your amendment (5) on sheet 5744—is that the one? I suggest you get up and move it, Senator Siewert, and we will continue the debate.

Senator SIEWERT—I do not want people to miss my pearls of wisdom, though.

An honourable senator—We’re listening.

Senator SIEWERT—I am assured people are listening. I move Greens amendment (5) on sheet 5744:

(5) Clause 76, page 89 (after line 9), after sub-clause (5), insert:

(5A) If the employer refuses the request, the employee may apply to FWA to review the employer’s decision on the following grounds:

(a) because there has been a contravention of a requirement of this section; or

(b) because there has been a misunderstanding or misapplication of a fact relating to the application.

(5B) The application must be made within 7 days after the employer gives the employee a written response under sub-section (3), unless FWA is satisfied there are circumstances which justify a late application.

(5C) FWA may make:

(a) an order for reconsideration of the request; and

(b) an award of compensation to be paid by the employer to the employee.

(5D) The amount of compensation must be an amount, not exceeding 26 weeks’ pay for the employee, as FWA considers fair in all the circumstances.
This amendment relates to the right to request flexible working arrangements and deals with the right to request an extension of unpaid parental leave. Similar issues arise here, where the bill provides what it calls a right but with no means of actually enforcing that right. Our amendment replicates the review procedure discussed with respect to the right to request flexible working arrangements—we had that debate not long ago—and ensures employees are able to apply to Fair Work Australia to review the employer’s decision on procedural grounds.

These are similar sorts of issues to those we were dealing with when we were discussing the previous set of amendments on the right to request flexible working arrangements. Here we have a right in the legislation, but you cannot enforce it in any way, so an employer can just say no and that is the end of the matter. We think, to be fair, you should be able to at least have a review of that decision. We had that discussion around the right to request flexible working arrangements for parents, and of course if you are on unpaid parental leave you are still a parent, but this is a slightly different issue of seeking to extend your unpaid parental leave.

Question negatived.

Senator ABETZ (Tasmania) (4.05 pm)—I am wondering whether I could repeat my request to the minister that we deal with the numbers for the purposes of the definition of ‘small business’. The minister says he is not ready. I would have thought—

Senator LUDWIG (Queensland—Minister for Human Services) (4.05 pm)—As I tried to indicate without it actually going into the transcript, I do have a cabinet meeting and there is an item that I wanted to be involved in. Senator Sherry is here to relieve me, but I wanted to deal with the substantive matters and the important issues that you have indicated myself. Senator Sherry had a significant issue that he wanted to deal with, which was super. Everybody knows Senator Sherry has a very longstanding interest in superannuation, so it was really a case of asking two things—first of all, to allow the Greens to move some of their amendments, and I am sure Senator Sherry can deal with those quite effectively—

Senator Siewert—Are you saying I’m unimportant?

Senator Sherry—He’s saying I’m not important!

Senator LUDWIG—That is exactly why I did not want to do it in the transcript, quite frankly, because it seems to me that that is the point I am not making. I would return, having dealt with the matters that I have to deal with, and then we could get on with some other amendments, because there are a couple on the right of entry which I think are important. They are on the first page. There is the one you have highlighted on the definition of ‘small business’ and then there are one or two others that will be significant debates for this evening. One of those might end up being debated after the dinner break, depending on how long the other ones take. That was the broad order I wanted to follow, if I might be allowed to.

Senator ABETZ (Tasmania) (4.07 pm)—I have known Senator Sherry for quite some time and, whilst many a time I may question his capacities and capabilities, I say with great respect that Senator Sherry could well and truly handle on behalf of the government the simple and discrete issue as to the numbers that should be used for the purposes of defining ‘small business’. Can I simply indicate to the minister that, if that were possible, I would imagine that there would be four or five relatively short speeches as to why a particular number was favoured over another and we would then move to vote on that. I think that would help us—
Senator Ludwig interjecting—

Senator ABETZ—Yes, but you are in the chamber now, Senator Ludwig, and if your amendment comes up I would be happy for it to be adjourned and then interpose the super amendment. But, whilst you are in the chamber, I can see no reason why we cannot get started, in the hope of dealing with the matter before you are called to cabinet. That is the proposition I am putting.

Senator Ludwig—That’s why Senator Sherry’s here.

Senator ABETZ—So cabinet is ready for you—is that what you are saying?

Senator Ludwig—Well, I’ll have to go and find out.

Senator ABETZ—So, no, it is not.

Senator LUDWIG (Queensland—Minister for Human Services) (4.09 pm)—My view is I can deal with government amendments and I can proceed with those according to the position we have put. Usually you require agreement to deal with it any other way; clearly we do not have agreement. We are now wasting time. I am happy to deal with Senator Sherry’s matters, to go to the Greens or to deal with the matters of the government.

Senator Abetz—The House sits tonight—

Senator LUDWIG—I must say it does not trouble me.

Senator Abetz—All right—done; that’s fine.

Senator SIEWERT (Western Australia) (4.10 pm)—I move Greens amendment (9) on sheet 5729:

(9) Page 118 (after line 28), at the end of Division 10, add:

116A Compensation for public holiday

(1) Where an employee works on a public holiday, the employee is entitled to the additional compensation provided for in the modern award that covers the employee.

(2) To avoid doubt, an enterprise agreement or individual flexibility arrangement cannot alter the entitlement to compensation in subsection (1).

This amendment adds a clause dealing with public holiday compensation. It is intended to ensure that employees who work on public holidays are appropriately compensated. We appreciate that penalty rates for public holidays are in the relevant modern award and believe that is the correct approach. However, we are concerned that such compensation can be bargained away with enterprise agreements or in fact with individual flexibility arrangements. As Professor Peetz stated in his submission to the Senate inquiry:

Public holidays exist for reasons of community celebration and benefit, and all workers should be entitled to such a benefit. For the majority of workers, this benefit takes the form of a day off to commemorate the particular occasion in the way that suits them. For a minority of workers … it is not feasible for all to have a guaranteed day off. Those workers should be paid a significant premium for working that day …

We agree with Professor Peetz. This amendment seeks to ensure that what Professor Peetz articulated occurs. We commend the amendment to the Senate.
Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (4.11 pm)—I can indicate the government is not supporting the amendment. We believe it is not necessary as the bill already enables a modern award to include terms about penalty rates, including for employees working on public holidays. A clause in the modern award providing for this payment will ensure that the employee is entitled to be paid without the need for the proposed amendment. Enterprise agreements could alter the penalty described in the modern award but the agreement would be subject to the ‘better-off overall’ test. If an entitlement such as a penalty was reduced or removed, the agreement would need to provide a more favourable entitlement in another respect to ensure the agreement passed the test. The same test will apply where an employer and employee enter into an individual flexibility agreement, thus ensuring an employee will be compensated if the award entitlements are reduced or removed.

Senator FIELDING (Victoria—Leader of the Family First Party) (4.12 pm)—This is an important issue and something that WorkChoices totally underestimated when it was being proposed as the last lot of IR changes. I think this strengthens the bill to make sure that there can be no risk of public holidays being traded away without the right sort of compensation. I know the government would say that the modern awards or the National Employment Standards take care of it, but this puts it squarely in the bill rather than in the awards or the National Employment Standards—although they are obviously referred to within the bill and are part of it, I suppose you would say. I do not think this has as much danger or would cause the problems the government is describing. So we are supportive of this amendment to cover compensation for public holidays.

Senator ABETZ (Tasmania) (4.14 pm)—Very briefly, the opposition opposes this amendment. It does remove the ability for industry awards to deal with these sorts of issues on an industry by industry basis. Even before certain changes were made to the industrial relations framework in 2004, the reality was many awards were moving away and these were negotiated and agreed to by workers, unions and employers. Indeed, our friends in the media had an award whereby they were not compensated specifically for working on public holidays or weekends. It was put into the total mix of their overall pay.

I know those businesses that do pay penalty rates for particular days of the year are in great difficulty. I know that with my local Coles supermarket, which pays penalties on Australia Day, all the young workers queued up to be put on the roster for Australia Day, for the extra money. As for protecting family life, in fact they were all queuing up to work on the public holiday, which is exactly counter that reasoning. That then provided difficulties for the employer as to which people would be favoured, because not all of them could be rostered on on Australia Day. As a result, some employees had to be chosen over others and those that missed out literally did miss out financially. So it does cause problems for some employers. So, having said that, I note we as an opposition are minded to oppose the Greens amendment.

Question negatived.

Senator SIEWERT (Western Australia) (4.17 pm)—by leave—I move Australian Greens amendments (11) to (13) on sheet 5746:

(11) Clause 119, page 121 (line 2), omit “The”, substitute “Subject to subsection (3), the”.

(12) Clause 119, page 121 (before line 7), at the end of the clause, add:
(3) If, immediately before the time of the termination, or at the time when the person was given notice of the termination as described in subsection 117(1) (whichever happened first), the employer is a small business employer, the amount of the redundancy pay equals the total amount payable to the employee for the redundancy pay period worked out using the following table at the employee’s base rate of pay for his or her ordinary hours of work:

<table>
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<th>Redundancy pay period</th>
<th>Employee’s period of continuous service with the employer on termination</th>
</tr>
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<tr>
<td>4 weeks</td>
<td>At least 1 year but less than 2 years</td>
</tr>
<tr>
<td>6 weeks</td>
<td>At least 2 years but less than 3 years</td>
</tr>
<tr>
<td>7 weeks</td>
<td>At least 3 years but less than 4 years</td>
</tr>
<tr>
<td>8 weeks</td>
<td>At least 4 years</td>
</tr>
</tbody>
</table>

(13) Clause 121, page 122 (line 11), omit paragraph (b).

These amendments relate to the issue of redundancy payments. The bill continues the Work Choices provision denying employees of small businesses redundancy pay. This comes after a 2004 Australian Industrial Relations Commission decision extending redundancy pay to small businesses. The full bench of the AIRC said in that decision:

Having considered all of the material and submissions with respect to the issue we have concluded that we should partially remove the small business exemption from severance pay. As a general proposition the employees of small businesses are entitled to some level of severance pay. The evidence establishes that the nature and extent of losses suffered by small business employees upon being made redundant is broadly the same as suffered by persons employed by medium and larger businesses.

It is also clear that the level of the exemption is to some extent arbitrary and can give rise to inequities in circumstances where a business reduces employment levels over time. While some small businesses lack financial resilience and have less ability to bear the costs of severance pay than larger businesses, the available evidence does not support the general proposition that small businesses do not have the capacity to pay severance pay.

Access to redundancy pay is even more important now for employees as we enter these very difficult economic times. Without redundancy pay, more workers will end up relying on the state to survive. We note the bill continues the ability of employers to apply to FWA to reduce redundancy pay, including down to nothing, if they can demonstrate an incapacity to pay. We do not see why employees of small businesses that have the capacity to pay should be denied this right.

I also note comments by the Deputy Prime Minister during question time yesterday, when she was having a go at the opposition, on expanding the definition of small business and how that would lead to employees losing redundancy pay. She said:

Let every Australian worker, particularly those who work for small businesses, understand that … the Leader of the Opposition and his Liberal Party have drafted an amendment and committed themselves to supporting an amendment that rips redundancy pay off hardworking employees.

But that is exactly what the Fair Work Bill does by extending the Work Choices exemption for small businesses on redundancy pay. The ALP is not returning to the position before Work Choices and giving small business employees redundancy pay. This is what in fact our amendment does. You can argue as long as you want and all you want about where the line is drawn, but this government is still drawing a line denying hardworking and long-serving employees redundancy pay. However, a few short years ago, before Work Choices, these employees would have been entitled to it. We believe this is also an example of the consequences of putting minimum conditions in legislation and thus in the hands of us politicians. Given the decision of
the AIRC that there was no evidence to support the proposition that small businesses could not afford to pay a lower standard of redundancy pay, to now take that right away is a political decision, not one based on the evidence. It is a decision that will have severe ramifications for the many employees of small businesses in the next few years.

We believe that our amendments are very significant and replicate the AIRC decision in extending a more limited right to redundancy pay to employees of small businesses. We commend these amendments to the chamber. We think they are important amendments. I cannot understand why the ALP has not, particularly after the strong words of the Deputy Prime Minister, who is in fact the minister for industrial relations, moved further on redundancy pay. It is clearly not fair to workers in small businesses and the Greens believe that these amendments are much more appropriate for a fairer industrial relations system in this country.

Senator ABETZ (Tasmania) (4.22 pm)—The opposition opposes these amendments. As I have been saying throughout the debate, we measure amendments and proposals against the yardstick of impact on jobs and small business. In the ideal world everyone might get entitlement to redundancy but, once small business learn that they might be made responsible for certain redundancy payments, the cost of employment increases. Basic economics tells you that once the cost increases for an item, even if it is labour, the demand for it will decrease. As a result, small businesses will try their utmost to ensure they do not have to have that extra impost and therefore they will not be employing as many people. When you are confronted with that reality—as somebody like me who moves amongst small business people on a very regular basis is—you realise the long hours that small business people work. One of the reasons for that is they do not and cannot afford to put on another employee. The more costly you make it, the more likely you are to deny somebody the opportunity of a job.

It sounds good in principle but when you then apply it in practice it means that small business people, who are the engine room of employment in this country, will be less likely to employ. I am then confronted with a situation: is it better for employers to employ people without redundancy or not employ them at all? I say it is better that they be employed even without redundancy provisions than not be employed at all. That is what guides our stance in relation to this.

Can I finish by simply saying in relation to this issue that we are talking about small business in these amendments, yet we have not defined what small business is. That is why I again put the proposition to the Senate, before we go through all these amendments, that we should in fact have fixed by the Senate what the number of employees that defines a small business is, so that we can actually debate with some certainty what it is we are talking about. I note the minister is not minded to do this, but I think this is another example as to why the issue of small business and the numbers should be determined now rather than towards the end of this debate.

Question negatived.

Senator SIEWERT (Western Australia) (4.26 pm)—I move Greens amendment (14) on sheet 5746:

(14) Clause 123, page 123 (line 31), after “casual employee”, insert “, except a long-term casual employee”.

This relates to redundancy for long-term casual employees. We believe that redundancy pay should be extended to long-term casual employees. The very notion of long-term casuals is a nonsense. Casuals are, by
definition, supposed to be temporary workers. Given that in Australia we have developed this concept, and given that it involves having consistent work for at least one year, with the expectation of further work, we strongly believe long-term casuals should have the right to redundancy pay. Professor Peetz in his submission to the inquiry provided evidence to demonstrate that long-term casuals are more disadvantaged than permanent employees when made redundant.

We also take this opportunity to note our disappointment that the bill does not include in the definition of ‘genuine redundancy’ all the usual matters the Industrial Relations Commission has considered in the past. For example, the definition does not include a consideration of the fairness of selecting the employee made redundant nor a consideration of whether the employee has received appropriate compensation for the redundancy. These long-term considerations by the commission are ignored in this bill. We believe that our previous amendments and amendment (14) put more fairness back into the industrial relations system in this country. We think the notion of long-term casuals is, as I said, a nonsense, but they are in fact a reality in Australia and therefore we should be protecting their rights and conditions and we believe they should have a right to redundancy pay.

Senator Ludwig (Queensland—Minister for Human Services) (4.28 pm)—Long-term casual employees have historically not been covered by notice of termination provisions. Long-term casual employees were excluded from the notice of termination provisions before Work Choices and this also reflects the outcome of the 2004 redundancy test case. The standard clause developed by the Australian Industrial Relations Commission—as it then was in 2004—in the redundancy case expressly excluded casual employees from the redundancy provisions and provided that notice of termination must be given to terminate the employment of a full-time or regular part-time but not casual employee. The commission stated in its decision that it would be inappropriate to award severance pay for casuals. There is no real reason to depart from what the commission has said.

Senator Abetz (Tasmania) (4.29 pm)—The coalition’s stance on this is to oppose the amendment. One of the unfortunate consequences of this amendment, if it were to pass, would be that its application in practice would mean that, chances are, a casual employee would not last for 12 months. Every time you increase the cost of employment you decrease the opportunity of employment. As unemployment is going up in particular at the moment, I would have thought that these sorts of measures would be unwise. Even if the economy were zooming along very well and everybody had plenty of money, like there was about 18 months ago, we would still be opposing it because there are many casual employees who are in fact happy and want to be casual employees, and to make it more costly for them to be in that category may well cost them the opportunity of that ongoing employment. So we as a coalition, on the measure of jobs and small business, are opposed to this amendment.

Senator Siewert (Western Australia) (4.30 pm)—Senator Abetz makes an excellent argument for why we need strong unfair dismissal laws in this country. I am aware that a lot of people do want casual work, but I challenge the concept that it is the preferred choice of work for most people. I do not believe that the argument Senator Abetz put up is the reason why workers should miss out on redundancy pay or entitlement. I know of many workers who have continued to be employed as long-term casuals who would prefer not to be, but it has been their only option. I believe those people deserve redun-
dancy pay. It is clear that the chamber does not agree with me, which is unfortunate because I think it would progress a fairer and more robust industrial relations system.

I am disappointed that we continue to use Work Choices as a standard. It was in Work Choices. Part of the problem with this legislation is that it measures itself against Work Choices rather than what should be a fair industrial relations system. Many of our other amendments also seek to take us to a much fairer industrial relations system and not just measure the legislation against Work Choices, which we all agree significantly undermined workers’ rights.

Question negatived.

Senator ABETZ (Tasmania) (4.33 pm)—I move opposition amendment (18) on sheet 5739 revised 2:

(18) Clause 139, page 138 (line 14), after “superannuation”, insert “, but ensuring employers can nominate any complying superannuation fund as the default fund”.

What this amendment seeks to do is of course maintain the employee’s right to choose his or her superannuation fund, so they have that choice, but, if that choice is not exercised by the employee, to allow the employer to nominate a superannuation fund as the default fund at a workplace as an alternative to the one nominated by the modern award.

Superannuation is now an allowable award matter to be included in modern awards. The Australian Industrial Relations Commission has issued modern awards that limit the default fund to industry funds. We believe that our amendments are beneficial in that they allow an employer to nominate an alternative super fund—the choice of fund remains with the employee—but it also allows scope for the employer to negotiate or choose a better fund that is not an industry fund, such as one that provides reduced fees, better returns or better insurance cover. It also allows the employer to offer a default fund consistent with the employer’s business. For example, there are, as I understand it, various types of social and ethical super funds—that is how they describe themselves. I am sure all the others are ethical as well, but that is how they sell themselves. If a particular business is so minded then that should be a right that is available to the employer, because, if the employee disagrees with the employer’s choice of fund, the employee’s choice would prevail.

I turn to some information that I have. There has been some suggestion that industry funds are substantially better for those who invest in them. I am advised—and I can go through the detail if need be, depending on the reaction to that—that there are many funds now in the private sector that are in fact a better buy and cheaper than industry funds. I note that one of those that has been mentioned in recent times has just increased its charges by 50 per cent. I indicate that some of the industry funds are themselves asking for this.

I understand that CareSuper is concerned about the default fund policy denying the opportunity for employers to nominate a fund. I understand a letter has gone to the Australian Industrial Relations Commission from the CEO of CareSuper, who called for an employer to be able to nominate CareSuper as a default fund for relevant employees. The letter goes on to say:

If new employees of administrative people within various industries can no longer nominate CareSuper as a default fund this will have the combined effects of making it more difficult for employees to belong to the fund that is designed to meet their specific needs and adding to the proliferation of superannuation accounts and unnecessary costs associated with these multiple accounts. CareSuper also objects to REST being awarded a monopoly in the retail sector. CareSu-
per notes that it has over 2,500 participating employers, who contribute to over 14,000 members in the retail sector.

I am also in possession of a letter from the BT Financial Group. As I understand it, they provide superannuation for approximately 1,160 employers and over 44,000 employees. They advise:

In many cases, employers choose BT Lifetime Super as their default fund after an active tender process. These tender processes assess a range of features of various superannuation funds, including fees, insurance and member services, against the needs of a specific workplace.

Often within the public debate only fees are compared as opposed to all the other matters and the total package. I am advised:

The average employer using BT Lifetime Super has approximately 40 employees. BT Financial Group are concerned that this bill will prevent employers in a large number of industries from selecting BT Lifetime Super as the default fund for their award covered employees.

I happen to note, just as an aside, that BT exists in a particular state of Australia. I understand they have an office in Adelaide, in South Australia. They say:

The bill will therefore significantly reduce the ability of BT Lifetime Super to win business from employers.

What will that do?

... the resultant risk of job losses at our Adelaide office.

They also advise:

A monopoly has been awarded in relation to award covered employees in the following industries: textile, clothing and footwear; hair and beauty—

I think Minister Ludwig and I touched on hair and beauty the other day and thought it did not have much application for either of us—

general retail; fast food; and higher education. Many of these industries are major employers of award covered employees, and in other industries competition is restricted to a limited number of industry funds. Award modernisation will effectively lock all other superannuation funds from a very substantial segment of the market.

BT is not aware of any rationale as to why the commission would pick one super fund over another. I think the Industrial Relations Commission has already said that it is not going to be sitting in judgment on fees, member services and insurance policy here and there as to what is going to be the most beneficial for the people under the particular award. So, of course, what is going to happen is that those large funds that in particular have big employer/big union involvement will undoubtedly be submitted as being the default fund, squeezing out the smaller superannuation funds. There is that African proverb that, when elephants mate, the grass gets trampled. When big business and big unions get together with their big industry super funds, the small super funds and also the workers, who would get an extra benefit, will be the grass—they will be the ones that get trampled. That is what is motivating the opposition in this matter.

The fund with the biggest monopoly, which is AustralianSuper, has just raised its base fee by 50 per cent. If that is—and I understand it has already been—nominated as a default, in those circumstances, once it is nominated as the default fund, it sits there and it then can, as AustralianSuper has just done, increase its fees by 50 per cent and everybody will be required to contribute to it unless they nominate otherwise. We say, especially in the context of small business—and other employers, of course—that they should be entitled to nominate another fund, should they choose to. And I think that is especially relevant for businesses in smaller regional areas that might, for example, want to invest in a specific state based superannuation plan or in a specifically environmentally minded or ethical superannuation fund.
I see no reason why the employer should not also be given the opportunity of nominating a fund and, if that fund is to the dissatisfaction of the employee, the employee can nominate his or her own super fund or say to the employer, ‘I don’t like yours,’ and avail themselves of the default fund that is in the award in any event. I commend this amendment to the Senate.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (4.45 pm)—The government does not support this amendment. I would firstly make the point that this amendment, if passed, will have significant ramifications for the superannuation system—and I will explain why shortly. What is interesting about this amendment is that, from my knowledge, we have a situation on this issue where the employer organisations and the union movement are in agreement, which is pretty unique in terms of the legislation we are dealing with. Why is that? Because employer organisations who represent small, medium and large business believe that the current default arrangements are best for business—small, medium and large. They do not want a change in the current arrangements, and I might point out that the effect of the amendment is a very significant variation to existing practice and award provisions. The opposition is trying to change the existing provision in state and federal awards, which is what the government are incorporating into this legislation. We are not putting in new provisions; we are maintaining what has been the status quo for 20 years in state and federal awards. And it is not just one industry fund; some awards have two, three or four. So we are not changing the status quo with this legislation.

Another important point to make is that it is not just industry funds that are default funds. Corporate superannuation funds are default funds, and in that case they are incorporated through enterprise agreements generally; there is a default fund. And where that has been incorporated in an enterprise agreement there is no other default fund, usually. So we have a situation where, in the main, the default funds in awards are industry funds and in enterprise agreements they are often corporate funds.

I think it is important to understand that if someone chooses a fund, if Joe Smith decides he wants fund ABC, that right is conferred through the choice of funds legislation, and that does not change. So, for those who want to make an active decision, the provision in the legislation does not change the position for those who want a choice of fund. It raises a very controversial issue. For those individuals who choose a fund outside a default fund, how do they choose? Invariably, they choose through a planner—they are advised to choose. That has raised a whole range of very complex and, I have to say, controversial issues about conflicts of interest. The planner says, ‘I advise fund ABC,’ and the individual who is choosing is advised to choose. That raises a set of issues around commissions, servicing et cetera which are very controversial in the retail sector.

Why is the default fund so important? In a compulsory system, a significant number of members do not choose a fund. You cannot force choice on people. Therefore, in any system there is a default fund arrangement. In other countries it is often the government that provides a default fund. In our case it has been an industry fund, it has been a corporate fund and it has been a public sector fund. Public sector funds are default funds albeit usually by statute not award; corporate and industry funds are underpinned by industrial arrangements. As I said, that has been the position for the last 20 years. If this bill is passed unamended, that position does not change. If the Liberals’ amendment is
passed, there will be a significant change in those funds that become default funds.

Let us look at the long-term 10-year average return for each of these sectors. For freestanding corporate superannuation funds, the 10-year average return is 7.7 per cent; for industry funds, it is seven per cent; for public sector funds, it is 7.7 per cent. They are all underpinned by a range of agreements, either awards, industrial agreements or legislation. Let us go to the retail sector. This proposed change, if passed, will primarily benefit the expansion of the retail sector as a default fund, and bear in mind the Liberals are submitting that the default fund should be chosen by the employer, not the member. The employer does a deal—and I will get to the deal in a moment— with a retail fund. That is what will flow if this amendment occurs. What is the average long-term rate of return for a retail fund? It is 5.7 per cent. So we have a situation where, if this amendment is passed, there will be a significant expansion of retail fund activity as a default fund through some sort of agreement between the fund and the employer. Bear in mind the individuals have no say because they default. So the status of default fund becomes very important.

I wish I could give you the long-term rate of return for every superannuation fund in Australia—I think that would be very useful to have. The problem is—though not exclusively—that the retail funds will not allow the publication of individual long-term fund data. They have opposed it. They argue that is because of statistical analysis. I cannot give you a breakdown on how good and bad these funds are in any sector because APRA cannot publish it yet. They are going to publish at some point in time. So the status of a default fund is very important, and we are arguing that there should be no change to the current arrangements.

The other point I would make is: Senator Abetz is right, there are arrangements that exist through the agreement of the employer and the business, and those arrangements do not change. My understanding is that the commission has said that current arrangements reached between a retail fund and an individual enterprise continue—and there is the case of BT that Senator Abetz quoted. So the status quo continues with the current arrangements that a retail fund has with an individual employer. There is no change to the current circumstances.

Why should the employer have the right to choose the default fund? In our system the independent industrial commission determines the default fund. That is a better way of selecting a default fund than the employer choosing the default fund under some sort of tender arrangement with a retail fund.

Let me get to these tender arrangements. The fact is that these are secret. We do not know the outcomes of these tender arrangements. That perhaps is a defect in law—I will acknowledge that. Our system does not have legal criteria for the determination of what a default fund is or what is in the best interest of a member. Our superannuation regulatory system does not have that. It does not have a set of criteria to oversee these tender processes. They do not exist.

We do know about the outcomes. One of the outcomes was featured on the front page of yesterday’s Sydney Morning Herald. What happens—and this is relatively secret, (1) because you cannot get the data, and (2) because the industry have not been too keen to highlight it—is that when a deal or an arrangement is entered into between some retail funds and some employers to provide a default fund, yes, the fees are good fees and the rate of return is a good competitive rate of return. The fee can be anywhere between three-quarters of one per cent and one per
cent. But what happens when the employee leaves the employer in these arrangements, in many cases where we have a deal between a retail fund and an employer? Bear in mind there are no criteria and there is no open scrutiny. When that individual leaves the employer, if they are made redundant or re-trenched or moved from that employer, in many cases the individual is moved out of that account in the retail fund into another account and their fees double, and sometimes they more than double. Some retail funds provide a good cost-effective fee in the deal with the employer but when the individual employee, who has become involved in these arrangements by default, leaves, without their knowledge—and it is perfectly legal—their fee increases. They are in the same group fund but their fee increases. This is a serious abuse of the system and it is a consequence of the fact that we have no criteria for determining what a default fund is, and I acknowledge that weakness in our system.

I have been proactive on this matter. My policy concern from a superannuation point of view is that, when I look across the superannuation system, to varying degrees there are funds that underperform long term. There are industry funds, retail funds, public sector funds and corporate funds and some of them underperform. Regrettably, we cannot yet release the data but APRA intends to release it. So we will be able to see all the funds’ performance—and there are 600 of them. What is a good fund in terms of a return? Fundamentally, the bottom line is: a rate of return—not the services option, not the 200 investment options. Fundamentally, the bottom line is: what is the rate of return to that member over the long-term 10 years? We do not have that data yet.

There are controversial issues, some of which I have touched on today. There are controversial issues about conflicts of interest, commissions and investment practices, particularly in the current climate. The superannuation system has a range of controversial practices. We have got 6.3 million lost accounts. They just sit there and are eaten up by fees. We have got a range of difficulties with our superannuation system, which I acknowledge. My argument to the industry has been: we do need to examine these issues—I call it ‘renovating the house’. I wrote to the industrial commission and suggested that they look at the long-term performance of these funds. Unfortunately they cannot get the data because it has not been published yet. It will be published in April or May, as I understand it. Therefore the commission, having determined not to examine the issue of long-term default funds—and I understand why; I am not being critical of them—have communicated that to us and I have indicated that we will need to look at what the criteria should be for a default fund. We should look at that. Nothing exists in law at the moment. We should look at the criteria for the contract arrangements that are entered into between funds and an employer, and many of them in my view are to the disadvantage of the default member. Some of the fees are, frankly, a blatant rip-off. But there is no law that stops that at the moment. We should look at some of these investment issues. We should look at the conflicts of interest, and I would suggest that the best place to do that is a comprehensive examination of the way the super system is operating. (Time expired)

Senator XENOPHON (South Australia) (4.59 pm)—I indicate that I do not support the position of the opposition in relation to this. My view is that there should still be a choice of super for employees. They can always switch to another fund. If they are persuaded by another fund that they ought to go to that fund, they can do so. I think the fundamentally safe option is not to accept this position, although—and I say this with affec-
— if Senator Sherry gives another 15 minutes on super, I may change my position!

Senator ABETZ (Tasmania) (5.00 pm)— If I heard the minister correctly, he indicated that under award modernisation a number of default funds might be included in the award. In those circumstances, who would determine where the superannuation contribution of a particular employee went?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.01 pm)—The independent commission determines the status of a default fund or funds. Some current state and federal awards have one fund. Some have a number of funds. Some accept a corporate fund. In the case of CareSuper, which you have alluded to, my understanding is that CareSuper are not supporting your amendment. They are arguing at the commission that they be allowed to be a default fund in a number of these awards as they are modernised—in other words, that the status quo be maintained for CareSuper. They are not arguing for your amendment.

I take heed of Senator Xenophon’s comments. I will make one other comment because I want to put this on the public record, particularly for Senators Xenophon and Fielding and the Greens. I have indicated that I would give a public commitment. This is my commitment: the government will put in place a process to examine the establishment of criteria for default funds. We are going to commence a process to undertake this work, but at the same time we will put in place a process to examine other issues that are being highlighted in our superannuation system. That includes controversies around the definition of a default investment option. That includes issues relating to investment products and their definitions. That includes lost accounts; we have to do something about lost accounts. That includes what I call conflicts of interest—the conflict between a retail fund owning a planner group and commission based selling. There are a significant range of issues that I accept are of contention in our system; therefore, I say for the public record that we will put in place a process—I have dubbed it ‘renovating a house’—to examine all these issues comprehensively.

For the time being, on this issue I have indicated to every sector of industry—the retail sector, the corporate sector, the industry fund sector—that it is status quo until we put in place a comprehensive examination of these issues. They are very complex and they are interrelated. That process will occur, and I think that, rather than trying to deal with claims about what is right or wrong with our system, is the way forward. In this context, the government’s bill maintains the status quo rather than significantly amending it; it is only a one-line amendment but it has very significant implications. Rather than trying to fix people’s particular problems and concerns here, we do it through a proper examination of the superannuation system.

I put that on the record particularly for Senators Fielding and Xenophon and the Greens. I know Senator Fielding has a keen interest in this area because of his background, and I think we need to deal with these differences of opinion in a comprehensive way across the totality of the system. If you change one element of the system it has a significant impact on the others in a whole range of disputed areas. This is a process I have put forward to a number of these different major organisations and, whilst I can give no indication as to outcomes, I think there is a generally emerging consensus that we need to have a process to look at these issues, including the issue of how you define a default fund. I strongly suggest that this is not the appropriate time to try to fix these problems that various contending parties are claiming.

If the Liberals’ amendment is rejected, the
status quo continues until such time as we comprehensively examine the operation of this area and all the other areas of contention in the superannuation system.

Senator ABETZ (Tasmania) (5.05 pm)—If I may briefly follow up, the question was—and I think on the basis of that answer I might have Senator Xenophon’s vote—if three funds are nominated by way of default in the award, what determines into which fund the payment of each individual employee’s super guarantee goes?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.05 pm)—The commission does that. The independent commission will nominate a default fund or funds. The individual employee does not make a choice of fund. That is default fund only.

Senator ABETZ (Tasmania) (5.06 pm)—If I may continue on this very issue, it is interesting to note—this is very important—that the Australian Industrial Relations Commission on 12 September issued a statement accompanying the release of 14 draft priority modern awards. This is what they said:

We do not think it is appropriate that the Commission conduct an independent appraisal of the investment performance of particular funds. Performance will vary from time to time and even long term historical averages may not be a reliable indicator of future performance.

The Industrial Relations Commission is going to make the determination for each employee without looking into what it believes may or may not be the best fund.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.07 pm)—You are right, Senator Abetz; I have already said that. As the Minister for Superannuation and Corporate Law, I wrote to the commission and said, ‘Look, you are continuing on past practice over the last 20 years, but I would ask you, the commission, to look at criteria—and, in particular, long-term investment performance; I think that is pretty fundamental and often is a reflection of fees—for defining what a default fund should be in the best interests of the member.’ For one, the data is not publicly available. They cannot get the data; no-one can get the data yet. I want to make data about the long-term performance of these funds publicly available. The commission, I assume, did not have the expertise to do that, but I did ask them to do it.

Now, I do not think we should leave it there. I have said that we do need criteria for a default fund. I put that on the public record. I indicated a few minutes ago that we are going to have a policy process in the context of superannuation and all of these contentious issues and the way the system is operating can be examined. I am more than happy to put that on the record, and I have indicated that to various people. But we should not be making significant changes in the context of this debate and this legislation. These proposed changes are significant in their implications. People can argue about the outcomes and who gets what, but there will be a significant change in the status of default funds if your amendment is passed. I argue that it is not the appropriate time. Let us look at these issues as a whole, develop some effective policy, have some criteria in this area for default funds—whether it goes into statute or not remains to be seen—and do the job thoroughly in that way rather than trying to arbitrate between contending parties at the present time. We have an independent commission to oversee this practice. I do not think it is an optimal process, so let us leave it to the comprehensive examination. Ultimately, we can deal with it in the context of total super policy.
Senator FIELDING (Victoria—Leader of the Family First Party) (5.09 pm)—First of all, I worked for five years in the industry superannuation fund area. I think that should be placed on the table; I do not want someone saying, ‘Well, you worked for an industry super fund before so you will have a bias.’ I make it quite clear that I have for five years worked for an industry super fund. The issue here, I suppose, is choice, and let me keep on going here, because I know this area reasonably well and understand that superannuation choice is a good thing. We also know that there is not a lot of switching going on. You can get the figures, but it is not a high percentage.

Unfortunately, it is only as you start to lose your hair that you show a lot more interest in your superannuation; when you are younger, you do not really pay enough attention to it. I will not go to the pollies’ super. When someone joins a company or starts a new job, if you are under a certain age—probably not going bald—you do not pay a lot of attention to your super. A lot of paperwork is usually shoved at you and you know which ones are really important—your tax file number and those things—and have be filled in, but one of the other ones, on super, says, ‘Well, look, if you don’t make a choice then this will be the default fund.’ So the default fund is very important. There are a lot of people in a superannuation fund just because of the default arrangement from the workplace that they first started at. This is how people get two or three funds; they have two or three jobs over a period of time and end up with two or three funds. Everybody says that you should roll them in together, and that is probably highly desirable, but you do not get around to it. In fact, you could streamline it even more to make it really easy. Frankly, when you have made the decision to change funds, it is just too bloomin’ hard. Again, I will not go there, but the default superannuation fund is a very important issue.

Now, the Minister for Superannuation and Corporate Law has said that the current arrangements with the Industrial Relations Commission are not optimal; I understand that. I am not having a go at you here, Minister; I am just saying that it really is not optimal, because, when you think about it, what is the process of the choice there? They obviously have some criteria. I do not know what exactly they are, and I am not sure whether you can table the criteria they are currently using in detail and how often that is reviewed. Normally, if you select a superannuation fund, there is a review process. The Industrial Relations Commission is an umpire, but some people feel a bit shut out of that process. Maybe the minister could answer this question: out of the awards, what percentage have not chosen an industry super fund as the default fund?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.13 pm)—We simply do not know, because the process has begun, as I understand. There have been 14 awards established so far, so we do not know. One of the difficulties in this area is getting good hard data right across all the areas.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.13 pm)—But based on the current awards—not the modern ones but the existing awards that are out there—a lot of the arrangements are industry funds. I am not against industry funds—I worked for them for a number of years—and I am not against corporate funds, as they are called. But there is an important issue to do with how the default fund is selected. That is a really important issue, given that so many people stick with the default for quite a period of time. You can get into a debate about who has better returns, and that is probably
going to be something that is still unfolding over the year. I would be interested to know when the APRA stuff is likely to come out—just a likely date; I will not hold you to it, of course. Then it comes down to this choice. Once someone is in a default fund, they can choose to take their money somewhere else. They have to watch the exit fees and all those sorts of things. They are important criteria when you select the default fund. The optimal process would probably be to allow the enterprise agreement to include the flexibility to select the default fund.

You would probably say that there is a process to look at those issues. The problem is that there are a lot of businesses that do not have an enterprise agreement that would be covered by an award. That means that they are going to have the superannuation fund forced on them through the award. Is that true for businesses that do not have enterprise agreements? Each worker would be covered by the relevant award. If there is no enterprise agreement, then obviously the award would therefore force them into the default fund. Is that true?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.15 pm)—Yes. That is the current arrangement, with one caveat: there are existing arrangements in agreements between corporate and retail funds and individual employers. There are negotiated deals, if you like, between employers and retail funds. There are no criteria for these, by the way; there are no criteria in law overseeing the deals that are cut between a retail fund and an individual employer. I cannot get the data; we just do not know. That has led to some of the problems that I referred to. Without pre-empting where you are going, we are not going to disrupt any existing arrangements. Where there is a particular provision that an employer has entered into with a particular fund, the status quo will continue.

My argument is that it is not a perfect system; deals between retail funds and employers do not make a perfect system. It is open to abuse. It would be nice to see these fees and look at the evidence, but you cannot get it—although I intend to get it, I have to say. We intend to publish this data some time up to June. The consultations are going on at the moment.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.17 pm)—I want to follow up on the question that I had about the Industrial Relations Commission. When will that have a more public and accountable process and criteria? Given that the modern awards are being created now, when would that be public so that we can get a feeling for how different types of funds could pitch for that business?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.17 pm)—We have the initial 14 national awards with indicative provisions in them at this stage. They are technically drafts. The commission is going through a process. It will hear the position of state and federal areas that have not yet been developed in terms of those 14, apparently doing that in tranches. The operative date is 1 July next year. The status quo continues until 1 July next year anyway. For example, CareSuper—or anyone else for that matter that wants to become a default fund—can put a submission to the commission and they may or may not be accepted. The commission will oversee that process.

Are the commission going to develop criteria? I wrote to them and suggested that the criteria should primarily be long-term performance—say over 10 years—in the best interests of the member. The commission have not got the data to do that, so I understand their reluctance. But I would argue that
we need criteria. The best way to get that is as part of superannuation policy.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.19 pm)—The issue here is that there is a bit of secrecy about how the Industrial Relations Commission will make that choice. Competition is good to drive prices down. You have to be careful with that. I do not believe in open slather market forces; I believe in some regulation. Too much regulation and you stifle the market; open slather competition means that the biggest and best wins. I believe that we should be somewhere between the two. But how do we get industry funds and corporate funds feeling as if one of them is being cut out of the process with the Industrial Relations Commission? It is a genuine question. I have a genuine desire to understand that process. By all means you should be looking at returns over the long term—say, the last 10 years. But you may want to review that every three years and look back at the last 10. My question is: how often does the Industrial Relations Commission look at the default fund to allow those competitive forces to drive the best fund as the default?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.20 pm)—In terms of the examination of the modern award structure and how it is working—and this would include superannuation provisions—there are four-year reviews. There are full public reviews of all the modern awards. Anyone can make submissions about their content, including the superannuation provision in respect of default funds.

Senator FIEL Destiny (Victoria—Leader of the Family First Party) (5.20 pm)—I will now be really specific to see if we can nail this one: when will the Industrial Relations Commission publish their criteria for selecting default funds in awards?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.21 pm)—They publish reasons for their decisions in respect of particular provisions. They will give their reasons for particular decisions. Parties, including retail fund organisations such as IFSA and others, put submissions to the commission. Then the reasons are published for the decisions on the tranches that are being considered in the modernisation process.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.22 pm)—Is a public tender, just for superannuation, held by the Australian Industrial Relations Commission for each award? Is there a tender process for each specific award and are the criteria published—not just the results but the actual input? Is there something that states what the tender conditions are when calling for public tenders for the default fund for a specific award?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.22 pm)—I am going to say ‘yes’ and ‘no’ and I am not trying to be smart. The governance of a profit-for-member or not-for-profit industry fund is overwhelmingly a tender process. The trustees tender out the investment, the administration, overwhelmingly, but there are some exceptions.

Senator Fielding interjecting—

Senator SHERRY—I know what you are getting at, so I would argue that there is a tender process and, interestingly, some of the retail funds—I will not name them—actually win the tenders for the investment. I am sure you are aware of that. But is there a tender, say, for building and construction? Does the commission issue a tender specifically for that? The answer is no. The other point I will make is that there is no public tender where an employer does a deal with a particular fund. We do not see the provisions because
they are kept secret. You are highlighting what I think is a weakness in our system. I do not necessarily agree that what you are saying is the solution. You are highlighting a weakness. We do not know and I think we need to improve this. So we will publish the data and the commission has a process for the four-year reviews. All the parties, including those who want to be a default fund, can put their submission to the industrial commission. It may or may not be accepted. The reasons will be published.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.24 pm)—I am mindful of the fact that we have used up some time here and we have the entire bill to go through. As we know, in Australia there is a huge amount of money in superannuation funds so it is a sizeable issue and the default fund is very important. Would the government be willing to commit that the Australian Industrial Relations Commission would hold a tender process for each specific award for the default fund? Because you were saying that the review process is every four years, you could call a tender every four years for each award so that competition would occur for each of the default funds.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.25 pm)—I cannot commit to that here and now because the Australian Industrial Relations Commission is independent. As I indicated, I wrote to them suggesting a process. They said, ‘Fair enough, but we do not agree with you, Minister.’ So I cannot indicate anything publicly. I have not had any discussions with them about that. They are independent and have the position of a court so I would not dare interfere, quite rightly, I can indicate at this point in time that Fair Work Australia is essentially continuing the status quo, but we do agree in future that when the performance data is published—and I have indicated when that will be—the four-year review process will be conducted to allow fully informed decision making. That is what I can indicate to you at the moment. But as I have said to you, Senator Fielding, I do intend to set in train a process to look at the issues and I think it is perfectly reasonable to look at the issue you have suggested.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.26 pm)—I do understand that it is an independent body but the parliament of Australia makes law for Australia and we can make law that would instruct the Industrial Relations Commission to hold a specific tender to choose a default fund for each award. I think that would be the best way to solve the issue. We have already heard and we all would agree that the current process has some problems. I am not saying that it is the existing arrangements, but the issue is that getting the best deal for a default fund is kept in secret and there is no competitive force over a period of time as there would be if there were to be a tender process every four years. That is Family First’s suggestion, given the number of people who rely on the default fund. The government’s suggestion is basically the status quo—with some other performance criteria and some processes—but it does not go as far as calling a public tender for each particular fund. The opposition’s process is to leave it with the employer to make that choice, but workers do not have a say there either. Does that make sense to you? I am caught again between a rock and a hard place and I think there is a better way for Australia to do this if we think about it.

The Industrial Relations Commission is making a very big decision on behalf of a lot of Australians. That is okay but we should ensure that we have proper public scrutiny and that we have a process that is robust and that will deliver the best result on an ongoing basis. So every four years a public tender would be called for each specific award and I

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think that may go some way towards getting something that is between what the government is intending and opening up the process to choice and competition, as the opposition is calling for. I wonder whether you, Minister, could give some sort of commitment to seeing that happen.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.29 pm)—In terms of scrutiny of a default fund, firstly, as I have made the point, the commission does not have the data that would enable it to do that yet. I hope it is publicly available soon. Should there be criteria? I do not want to say what the criteria should be, here and now. I accept that there should be criteria. There should be criteria to ensure that we have oversight of the default fund arrangements in every sector. But we do not have those criteria. I acknowledge that we have a less-than-perfect process at the moment but if we accept that there needs to be some change and improvement, we cannot, here and now, fix the problem. That is my frustration, Senator Fielding. It is my frustration with a lot of issues in superannuation. The lost accounts of $6.3 million, the conflicts of interest around commission based selling: these are considerable concerns. That is why I have said to the various sectors, ‘We are going to look at these issues. We’re not going to ignore any issue of contention.’

I cannot indicate to you whether the tender process is good or bad. You are right: the parliament can change the law. I suspect that we are going to end up with me, as minister, having gone through a process, coming back at some point in time with these issues of controversy in superannuation and saying, ‘Look, the system does need improving right across the board in a whole range of areas.’ That is the way it should be done, in my view. I am interested in your idea. It is what is in the best interests of the member—it is competition that works in the interest of the member that is critically important. I note your careful caveat about competition. Competition in long-term compulsory superannuation funds is not necessarily economically rational, but I will not go there.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.31 pm)—There is a lot of money in default funds and I think we need to make sure that we are getting the best result for each member in the default fund. I am wondering whether the government could give me some assurances that the Senate Standing Committee on Economics would look at the issue of requiring the Australian Industrial Relations Commission to hold a public tender for each specific award, and the advantages and disadvantages of that. I really have considered this and I think that is a good way forward. Could the government give me some assurance so we can move on from this discussion?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.32 pm)—I will give you this assurance: we will have a robust, comprehensive examination of every issue in superannuation, including this one—every issue that has been raised. I will give you a public assurance we will have that. I can say that I am interested in your concept—

Senator Fielding—It is a new concept, and a genuine concept.

Senator SHERRY—I accept that, but I cannot give a commitment beyond that at this time. I am interested in examining, as I have indicated, a whole range of other issues where there are significant matters of dispute in our system. I think we need to look at them in totality as part of the way the superannuation system is operating because I think we could do better.
Senator ABETZ (Tasmania) (5.33 pm)—I was very interested in Senator Fielding’s contribution that somehow there was a link between interest in superannuation and hair loss. So I do inquire as to why Minister Garrett is not the minister for superannuation, but it also explains Senator Xenophon’s lack of interest in my amendment! Can I quickly sum up: I accept where the numbers in the chamber lie, so the amendment will not get up, unfortunately. We will not be seeking to divide on this but we do want to put a few stakes in the ground and also indicate our position.

I also indicate that if there were a likelihood of this amendment being successful I would have been seeking to move some subsequent amendments that came to my attention, but that will not be necessary and I will not bore the Senate with the detail of that. I will respond to the minister. Yes, big business is not necessarily supportive of our amendment. On this side of the chamber we always see ourselves, firstly, as the champions of small business. The sorts of agreements that big business and big unions make in order to submit a particular fund to the Industrial Relations Commission have none of the transparency that Senator Sherry is arguing for in relation to the situation where an employer chooses the default fund. We know that in the old industrial relations club they tend to get together and make deals for themselves. They will nominate who from the trade union movement and who from big industry will sit on the boards of these superannuation companies. They will stitch it up between themselves and it will all become a very cosy arrangement. So, just because big business is not on our side does not move us from our position in any way, shape or form.

We are concerned that the system creates mandated monopolies or oligopolies and does not promote active competition, which means higher fees and comparatively reduced services. I also indicate that nearly all employers would have employees who would be covered by more than one award. As a result, a multiplicity of payments will be required in this system, in any event. For a lot of small businesses if there is agreement with the employee, simply having the one fund would make some sense. The minister, I understand, has said that he has had an aspirational goal of average fees being of one per cent.

Senator Sherry—Less than one.

Senator ABETZ—Less than one per cent. For firms with approximately 150 employees, tenders for default superannuation have delivered total fees of between 0.84 and 0.96 per cent. So that is exactly in that aspirational category that the minister has been talking about, yet he does not seem to want to move in that direction. For firms with over 1,000 employees, tenders have delivered fees of between 0.58 and 0.83 per cent—yet again in that aspirational category.

From what I can gather, no rationale has been provided as to why particular funds are or are not appropriate as default funds in a given industry. The Industrial Relations Commission say, ‘Hands off; we are not going to make a determination as to why a particular fund might be good, bad or indifferent.’ Basically they would rely on the submission and the agreement, as I said before, of the big employer and employee organisations—a sweetheart deal would be done and then it would just get rubber-stamped by the industrial commission. They admit they do not undertake an analysis.

When you have a look at that, you find that, in the retail industry sector, the REST scheme is the monopoly scheme—it is the only scheme. Australian Bureau of Statistics figures indicate that in the minister’s and my
home state of Tasmania 33,500 Tasmanians, or 16 per cent of the Tasmanian workforce, are employed in the retail trade. A lot of businesses at the moment would be putting their super money into a Tasmanian based—

Senator Sherry—Tasplan.

Senator ABETZ—Yes. And under the modernised award the default fund is now going to be REST. That is going to have an impact on smaller schemes. Tasplan is, unfortunately, one of those schemes where business and unions get together that I was talking about before. Having only one monopoly supplier is going to have an impact on a lot of other smaller super funds.

I also understand that the default funds for the hospitality industry are HOSTPLUS and Queensland and Western Australian based funds. The ABS figures show that 11,800 Tasmanians, or 4.5 per cent of the Tasmanian workforce, are employed in the accommodation, cafe and restaurant industry. That is going to have a further impact in relation to Tasmanian based schemes. Can I also suggest that many employers have established rigorous tendering processes to choose the most appropriate default funds for their employees—those that have the best fees and performance outcomes for their employees.

I will not take the matter any further other than to say that this is unfortunately an indication that we are once again moving into the area of big business and big unions making deals, stitching things up for their own benefit with no real transparency, which the Industrial Relations Commission will just rubber stamp. It will be to the detriment of small business, of workers and of smaller funds. Having said that, I accept what the Senate is about to do and indicate that we will simply vote no on the voices.

Senator SIEWERT (Western Australia) (5.40 pm)—I do not want to prolong this debate any longer so I will simply say that the Greens will not be supporting the opposition amendments.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.41 pm)—Firstly, the IRC is public, it is transparent and people can put their case through the decision. Secondly, Senator Abetz quotes figures—fees of 0.5 to 0.8 per cent for firms with more than 1,000 employees—but what has been kept secret is what happens to that fee when an employee leaves that business. Unfortunately, I am sad to say, some funds are in the practice of doubling the fee, because they flick them over to the retail section of the trust.

Yes, competition is good. But, if this was a perfectly rational world where people were well-informed about super and made informed choices, why would we make it compulsory in the first place? People do not make informed choices—they do not save for retirement. To expect 10 million people to make rational decisions without some fundamental protections is, I think, a misunderstanding of human nature.

Senator Abetz states a concern about multiplicity of payments. Senator Abetz, employers are not concerned about the multiplicity of payments to different default funds; what they are concerned about is the multiplicity of payments they have to make to different funds as a consequence of choice of fund. Employees front up and say they want this fund or that fund—to the extent that that works, it is about 10 per cent of the workforce. That is the real concern of employers about your choice of fund regime. I am informed that Tasplan—which I am obviously familiar with; it is from my home state—is the default fund in the retail sector as of 12 September.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.43 pm)—I would like to sum up as well on this issue. I
think the current arrangement has some flaws. I think that what is being proposed by the opposition also has some flaws. I genuinely believe the best way of solving this is for the Industrial Relations Commission to hold, every three or four years, public tenders specifically for each award that allow industry funds, corporate funds and any other hybrid funds to pitch for that business. That would make sure we were getting the best possible default fund for Australians in each particular award area. I still think that would be the best way and I will probably seek at some other stage to have the Senate Standing Committee on Economics look into that issue and report back to the Senate.

Senator ABETZ (Tasmania) (5.44 pm)—I am wondering whether the minister has been to cabinet and back yet, because I would like to move the opposition amendments on page 3 of the running sheet, being amendments (2) to (5) on sheet 5739 revised 2.

Senator LUDWIG (Queensland—Minister for Human Services) (5.45 pm)—What I was going to suggest is that we could either go back to the running sheet, back to the order in which we started, and do ‘right of entry’, or go to the second page and do ‘other safety net entitlements’. If we could do either one of those it would at least clear running sheet page 1 and then page 2. I was also going to ask, while people were here, whether we wanted to have a shorter dinner break.

Senator Fielding—Absolutely not.

Senator LUDWIG—All right; I have lost that debate.

Senator ABETZ (Tasmania) (5.45 pm)—Can I make the request again that we deal with the issue of definition of ‘small business’. We have already dealt with some Greens amendments dealing with small business, not knowing what definition of ‘small business’ we were dealing with. I am still not sure as to why the minister has this reluctance to deal with this issue now. Can I say it would be a fairly quick debate—I would imagine each of us would be speaking for about five minutes as to why we had a preferred number—and we would get it out of the way. That is why, if I may, Mr Temporary Chairman, I will move opposition amendments (2) to (5) on sheet 5739 revised 2.

Senator XENOPHON (South Australia) (5.46 pm)—Mr Temporary Chairman, this may assist the chamber. When I spoke to Senator Siewert briefly before she left the chamber, as she had a committee meeting to go to, she expressed a preference—and I hope I am putting this correctly—for the right-of-entry matters to be dealt with at this stage. I think she will be back as soon as she can. But I am in the hands of the chamber as to what the preferred course is. I am keen to deal with the small-business definitional matters as well. But in relation to Senator Siewert’s preferred wish that I am passing on, I do not know whether that would be helpful at all.

Senator ABETZ (Tasmania) (5.47 pm)—I indicate that with right of entry Senator Fielding, for example, has an amendment that it should not apply to small business. How can we deal with right of entry as to small business if we do not know what the legislation is going to say about what a small business is? That was the same difficulty we had with some Greens amendments. We voted them down anyway in respect of the
size. But I really do think that this is a discrete area as to the size of business, and we know what the Greens position is in relation to that—it is very much 15. So if I may, Mr Temporary Chairman, I will proceed and move the amendments.

Senator LUDWIG (Queensland—Minister for Human Services) (5.48 pm)—Given the Greens are not here—and I think that is a pertinent point that has been made—and that Senator Siewert did indicate to the government that she would not be too long, I think on that basis we could go to ‘other safety net entitlements’ and go to government amendments (1) to (14) on sheet RE403 and deal with those. So I seek leave to move those.

Senator Bushby—Mr Temporary Chairman, I rise on a point of order. I believe that Senator Abetz has actually moved these amendments. I think that the discussion that we are having at the moment is therefore a moot point.

The TEMPORARY CHAIRMAN—On that point of order, Senator Bushby, my understanding was that Senator Abetz said he would move those. But my understanding is that leave would need to be granted to move amendments (2) to (5) together.

Senator Abetz—Well, in that case I will move amendment (2).

Senator LUDWIG—But I have the call.

The TEMPORARY CHAIRMAN—Is this on the point of order, Minister?

Senator LUDWIG—That is right. The point of order was with regard to me, so could we go back to that. I had indicated we were going to ‘other safety net entitlements’ and to amendments (1) to (14), which I would then seek leave on. If leave is not granted, I will deal with them singly. So it is a question of whether or not I will be granted leave. We need to deal with that.
need to try to get a bit of order into this process here.

The TEMPORARY CHAIRMAN—Thank you, Senator Fielding. I note that the note does say government amendments (12) and (13) ‘conflict with’ Australian Greens amendments (21) and (24). The government has moved amendment (1) on page 2 of the running sheet.

Senator LUDWIG—In relation to Forward with Fairness the government provided that modern awards could provide industry-specific detail on the National Employment Standards, which is the policy implementation plan of August 2007. Consistent with this promise the Minister for Employment and Workplace Relations signed an award modernisation request to the Australian Industrial Relations Commission on 28 March 2008 which enabled the commission to include an industry-specific redundancy scheme in a modern award.

Where the commission includes an industry-specific redundancy scheme in a modern award, the Fair Work Bill provides at clause 123(4) that the redundancy pay entitlements in the National Employment Standards do not apply. This is not about creating new schemes; rather, it is about ensuring that industry-specific redundancy schemes can continue where they are an established feature of an industry. Industry-specific redundancy schemes are a longstanding feature of some industries and provide important assistance to employees.

For example, in the building and construction industry, the Western Australian Construction Industry Redundancy Fund has been operating for 16 years. In Queensland, BERT has been operating since 1989. In the building and construction industry an employer makes a weekly contribution to a fund and, when an employee’s employment ends for any reason other than misconduct, the employee can draw on the fund and the payment is beneficially taxed as a termination payment. These schemes recognise the special nature of the building industry. Under the traditional definition of ‘redundancy’ an employee would not be considered redundant when a project ends; however, employees in these circumstances need to be able to receive payments until the next project commences, and these schemes allow for such payments. I am aware that the commission is considering submissions from stakeholders on the issue in relation to stage 2 exposure draft modern awards, particularly in respect of the building and construction industry, prior to making a final modern award on 3 April 2009.

Amendment (1) amends clause 12, which contains the definition of industry-specific redundancy schemes, to ensure that the full range of such schemes may be included in modern awards. However, the commission should have regard to the terms of the minister’s award modernisation request and to the existing award provisions, including those notional agreements preserving state awards when including an industry-specific redundancy scheme in a modern award. It is for the stakeholders to make submissions to the commission on the factors the commission may have regard to in determining whether to include an industry-specific scheme in a modern award. These factors when considered in total are whether the scheme is no less beneficial to employees in the industry than the redundancy provisions in the NES, and whether the scheme is an established feature of the relevant industry. This amendment gives effect to what clearly amounts to the policy intent of the government.

Senator ABETZ (Tasmania) (5.55 pm)—I must raise very seriously with the minister the objection of the opposition to his absolute pig-headedness in relation to dealing
with the issue of the definition of ‘small business’. We could have had this debate and vote by now, and he has been in the chamber throughout the whole period.

Senator Jacinta Collins—That is not true; he wasn’t.

Senator ABETZ—All right; he could have been in the chamber throughout the whole period to discuss this issue. He said, ‘Possibly with right of entry the Greens might have an interest.’ That is right, but with small business the Greens have not moved an amendment. The only three parties that have are the opposition, Family First and Senator Xenophon—whereas the Greens have a specific interest in the amendments we are now dealing with and the minister is deliberately proceeding with them in the absence of the Greens.

What is motivating this behaviour? Why this dogmatic denial of the opposition’s request to simply deal with something which we could have dealt with by now which then would have allowed us to proceed in a logical manner through a lot of the other amendments that deal with the issue of small business? At this stage of the debate the Senate still has not determined its definition of small business. I would have thought it would have made sense for the orderly conduct of this debate to have done this. We could have done it by now. The minister is now deliberately moving into an area that the Greens have a keen interest in and the Greens cannot be here.

Now, I am not usually here to defend the Greens, but all parties have been very cooperative in getting these amendments through. There are over 50 pages worth of amendments from the government, and, when you add ours and everybody else’s, it needs cooperation. I think we have been very cooperative for the minister and the minister has not shown any cooperation in reciprocation. I just put that on the table and would be interested in an answer from the minister, because we could have dealt with this issue of ‘small business’ definition by now.

In relation to the specific amendment that is before us, I can indicate the opposition will oppose it, as it will oppose the raft of amendments that we will be dealing with in this section and in particular the next couple as they relate to the transport sector.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (5.59 pm)—I move government amendment (2) on sheet RE403:

(2) Page 137 (after line 3), after clause 140, insert:

140A Terms for long distance transport employees

A modern award may include terms relating to the conditions under which an employer may employ employees to undertake long-distance transport work.

The government amendment will introduce a new clause 140A into the Fair Work Bill that will enable modern awards to include terms relating to the conditions under which an employer may employ employees to undertake long-distance transport work. This amendment is sought in order to permit the Australian Industrial Relations Commission to provide for the continued operation of certain provisions of the New South Wales Transport Industry Mutual Responsibility for Road Safety (State) Award, if after hearing from the parties it is minded to do so.

I place on the public record that we will amend the award modernisation request to make it clear that the Australian Industrial Relations Commission can include safety net terms where they exist—that is, in New South Wales—but not otherwise. I understand that it is not intended that this provision allow duplication of any other state
safety net law to be included in modern awards. I place on the record that the minister’s award modernisation request will make this clear. The provisions currently contained in the New South Wales award cover the following matters: safe driving plans, transport operators who undertake long-distance work, single journey or series of journeys in one shift of more than 500 kilometres, and development of a safe driving plan that minimises fatigue and facilitates the safe conduct of the work task. All parties in the supply chain have a responsibility to adhere to the plan and monitor compliance.

In addition, all transport operators must develop and implement a written drug and alcohol policy that prevents occupational use and addresses the health and welfare of persons found to be using drugs. Also, all transport operators must ensure that all employees and contractors have been trained in occupational health and safety practices through the blue-card training program. This amendment reflects concerns that industry-specific health and safety measures that are currently in the longstanding New South Wales award may not be included in a modern award dealing with long-distance transport. To be clear, if this amendment is not passed, the important protections that exist for road transport drivers in New South Wales will cease to apply.

There have been numerous inquiries and reports that clearly demonstrate the need for specific protection for employees in the long-distance driving sector. For example, the comprehensive Quinlan report into the long-haul driving sector in New South Wales found that a strong link existed between drivers’ tight schedules and payment at delivery time, and bonuses or penalties and rates of chronic injury. In fact, over 23 per cent of drivers reported a chronic back injury and the incidence of dangerous driving practices such as excessive hours. The National Transport Commission reports similar disturbing figures, including that around 330 people are killed each year in crashes involving heavy vehicles and that around 16 per cent, or 52, of those killed are the drivers of heavy vehicles. In addition, crashes involving heavy vehicles are estimated to cost around $2 billion a year out of a total of $15 billion in costs of road crashes. According to the Australian Safety and Compensation Council, the transport industry has the largest number of compensated fatalities of any industry. The commission is also subject to the government’s award modernisation request, including the requirement that there be no increase in costs.

Senator WILLIAMS (New South Wales) (6.03 pm)—I have a question for the minister. This amendment will mirror the transport and driver regulations in New South Wales—is that correct?

Senator LUDWIG (Queensland—Minister for Human Services) (6.03 pm)—The request will enable the commission to do that if it is so minded. It is an enabling provision.

Senator WILLIAMS (New South Wales) (6.04 pm)—So it is an enabling amendment so that the industry can go down the same road, if I can put it that way, as New South Wales. The transport industry has tough fatigue management laws which were implemented nationally on 28 September 2008. The industry supports these laws. Why do you wish to change them again? Why do you need to change those safety regulations again, Minister?

Senator LUDWIG (Queensland—Minister for Human Services) (6.04 pm)—As I am advised, the AIRC are able to consider whether or not they wish to keep those. It is ultimately a matter for the Australian Industrial Relations Commission to determine. It is worth going back to the concerns
that this provision is intended to introduce a new layer of regulation. That is one of the areas in which some in the industry have expressed concerns. As I said, it is not intended that this provision will allow for duplication of any other state safety laws included in modern awards. That is why we placed on the record that the minister's award modernisation request will make that clear. It is about enabling the provision. It also contains the New South Wales award to deal with those matters that I indicated earlier. Of course, it leaves open the question of whether the AIRC wish to deal with it in any way for other states.

Senator WILLIAMS (New South Wales) (6.05 pm)—So it locks up the system we have in New South Wales and enables other jurisdictions to adopt that system. That is obviously what you are saying. Minister, are you familiar with the blue card and how that works in the New South Wales driver transport system?

Senator LUDWIG (Queensland—Minister for Human Services) (6.06 pm)—My knowledge about these things stretches far and wide, but I am not familiar with how the blue card operates in New South Wales. You used the term 'locks up'. It will be confined to New South Wales operation. I can seek further information if you want it in relation to the blue-card system as it operates in New South Wales, unless you want to add your own knowledge for the chamber's benefit.

Senator WILLIAMS (New South Wales) (6.06 pm)—Perhaps I will explain the blue card. In 2005 in New South Wales, the government introduced regulations to the transport industry where every truck driver who drove distances greater than 500 kilometres had to have a blue card. That applies to all truck drivers in New South Wales as well as interstate truck drivers who travel into New South Wales. The blue card was to show that you had gone through an OH&S course, you had an understanding of safety regulations et cetera. And it is amazing that Coles and Woolworths do not even recognise the blue card when the transport drivers pull up there. They have their own regulations, if I could call them that.

I will give you an example of the implications of the blue card. Inverell Freighters had about 11 truck drivers and it cost Kerry Brown, the proprietor, some $8,000 to carry out OH&S training to have his drivers qualify for the blue card. You might be interested that, when he went to buy the blue cards, they were printed by a company in Western Australia and, I think, cost about $55 each. You wonder why the blue card had to be printed in Western Australia. We do have printing machines in New South Wales and people quite capable of doing that, but, of course, the truth of it is that the blue card is printed by a company over there that has strong ties to the Transport Workers Union.

I have a quote here from NatRoad—this shows you the problem with this legislation. That company in Western Australia:

... requires employers in the road freight industry to pay for all employees to obtain safety awareness training, more commonly known as blue card.

Bluecard is a private business in Western Australia with ties to the Transport Workers Union. In fact, the owners of Bluecard have admitted that the Transport Workers Union receives a kickback from each card sold. It also gives those operating Bluecard a list of all truck drivers in New South Wales, whether in a union or not. These trucking companies are charged a compulsory levy that goes to this Bluecard company, which admits it gives kickbacks to the Transport Workers Union, which, no doubt, gives kickbacks to the Australian Labor Party.
I hope Senator Xenophon and Senator Fielding are listening to me here. We are looking at a situation where this legislation can force these companies into a situation where they have to buy these blue cards and carry out this expensive training, when we already have OH&S regulations in the states, and there is a compulsory charge for the blue card that provides funding to the Transport Workers Union. To me, that has a rotten smell about it. The truckies I have talked to in New South Wales are furious about this policy of the Carr-Iemma government. Now it has been brought into the Fair Work Bill. It is called the Fair Work Bill? This is unfair work. That is what it is about.

Senator Marshall—You really want to start talking about unfair work, after what you did?

Senator WILLIAMS—No, we are talking about the siphoning of compulsory mon-

eys. I will take your interjection, Senator Marshall. This bill allows for a compulsory payment to a company in Western Australia. I ask the minister: are you going to endorse that sort of action or are you going to nullify it?

Senator LUDWIG (Queensland—Minister for Human Services) (6.11 pm)—The critical issue in all of this—and I think we agree—is the safety of drivers. The mat-

ters that you raise are matters which may be relevant to the AIRC, which may want to hear about how driving protections should be dealt with and the particular details that might be involved. What we are talking about in this respect is that we have settled the industrial relations to the extent of allow-

ing New South Wales to maintain an existing system which involves ensuring that it in-

cludes safe driving plans, a drug and alcohol policy, and occupational health and safety training. We are not about wiping that out as part of the Fair Work Bill. We are going to ensure that it is a matter contained to New South Wales. If it is a matter that should ex-
tend to other states, then it is a matter that the AIRC can deal with and those submissions that you make today might be entirely relev-

ant to whether it should or should not be included.

Senator WILLIAMS (New South Wales) (6.12 pm)—I would like to continue and look at what this amendment to this legisla-
tion means. The Transport Workers Union will have the power to enter a workplace with 24 hours notice, even if the company involved is not union affiliated. We have talked about this throughout the whole de-
bate on this legislation. Union delegates will be free to inspect driving records and order companies to provide documents as far back as six years. What sort of a headache for companies will that be? They will require road freight employers and contractors to publish employee and contractor remunera-
tion in publicly available documents—so much for privacy. They will require compul-
sory union involvement in drug and alcohol training, irrespective of whether any union members are present in the employer’s work-
force. Employees and employers no longer have a choice, and—this is quite strange—right of entry access will be provided to un-
ions to enter and enforce the award and con-
tract determination at any related place of business, including consignors of freight, with just 24 hours notice. Upon a successful prosecution the union can then apply and receive up to 50 per cent of the penalties im-
posed by the AIRC.

This is how it is in New South Wales, and you want to bring it in Australia wide. This seems to be a great funding network for the trade union movement. This is what this modern award system is about. At no point have the relevant industry associations been consulted on this provision, despite being active in the many industrial relations re-
forms introduced by the federal government. I say to you, Minister—from the Queensland Trucking Association and the ATA—that you have not consulted with them. Why didn’t the government consult with the appropriate transport representatives in the nation before it decided to slip this amendment into this bill?

Senator Abetz—Have they consulted with the TWU?

Senator WILLIAMS—Oh, they would have consulted with the TWU for sure.

Senator LUDWIG (Queensland—Minister for Human Services) (6.14 pm)—There are a couple of wild assertions contained in there, some of which I think would be helpful if made to the AIRC, should the AIRC decide—and, of course, it is the AIRC that make the decision—whether it is extended to any other state. That is certainly not the amendment that is currently before us. One thing we do need to be clear about, though, is the terms about right of entry, which are at 152, if I can take you to that provision—and I am sure Senator Abetz may be able to assist in showing you that provision as well. It says:

A modern award must not include terms that require or authorise an official of an organisation to enter premises:

(a) to hold discussions with, or interview, an employee; or

(b) to inspect any work, process or object.

So the assertions that you make in relation to that provision would not and could not derogate from 152. So, although you might find it interesting to make them in this chamber, they are wild assertions. Clause 152, ‘Terms about right of entry’, clearly says a modern award must not include terms that require or authorise an official of an organisation to enter premises to hold discussions with or interview an employee or to inspect any work, process or object.

I have indicated what the position is. It is about ensuring that, when making the Fair Work Bill and pursuing the framework we have been talking about, we do not simply sweep aside the current protections in the state of New South Wales for drivers’ safety. Those protections are not insignificant. As I have indicated, they are about having safe driving plans and ensuring that occupational health and safety issues and drug and alcohol policy are being dealt with. If it is to extend further than New South Wales, then that is a matter for the Industrial Relations Commission—and not only if it is, but in what form it would do so: in which way it would extend and how it would extend. They are all matters for the Industrial Relations Commission to determine. It is not the case that through the Fair Work Bill it would simply be a matter of—as you indicated—spreading this around to all other states. That is plainly wrong. The Industrial Relations Commission would have to determine whether or not it would consider any other state, and it would go through such things as you have talked about, quite frankly—and I would encourage you to make those submissions to it if it was minded to look at that more broadly. Those are matters for the Industrial Relations Commission to decide, not the Fair Work Bill. What the bill seeks to do is ensure that those issues I have talked about are maintained in New South Wales—not to sweep away what currently exists for occupational health and safety, drug and alcohol policy and safe work plans. The alternative would be that by introducing the Fair Work Bill without this amendment we would be sweeping those away. That is not the intent nor the desire of this government. Those matters which you seem most concerned about, as to whether they are reflected in other states, I think are misplaced.
Senator WILLIAMS (New South Wales) (6.18 pm)—I did not get an answer from you, Minister, about why you did not consult with the transport industry, so obviously you do not want to answer that. I will conclude by saying that it is just another part of this modern award system that exists in our state and it is probably the reason why the Electoral Commission are now going to remove another federal seat from New South Wales. Prior to the 2007 election we had 50 seats and Queensland had 28. We went down to 49—we had the seat of Gwydir taken off us—and Queensland went up to 29. Now they are doing it again, because New South Wales will go down to 48 federal seats and Queensland will go up to 30. These regulations, the red tape and the absolute strangling of business is why people are moving out New South Wales at a rate of knots, yet somehow through this we could expand New South Wales red tape and bureaucratic bungling right around the nation!

I will just add one more thing, Minister. The drug and alcohol testing policy must permit consensual and non-consensual testing. It says employees and labour hire employees who voluntarily disclose professional drug use or a personal drug or alcohol use problem shall not be subject to disciplinary action but shall be provided with counselling, training and, if necessary, treatment and rehabilitation. This is the sort of rot that flourishes in New South Wales. As I said, from the blue card to the red tape and bureaucratic bungling right around the nation!

Senator FIELDING (Victoria—Leader of the Family First Party) (6.21 pm)—To continue that theme, I do not believe I saw a recommendation on this issue in the Senate committee report. I may have missed it. Given the contentious nature of this issue, I wonder whether it needs to be looked at a bit more, rather than going back and forth on it here. I understand there is a submission on it, but I do not believe the committee report made any recommendation in this area.

Senator Ludwig interjecting—

Senator FIELDING—A good indication that this clause was going to be inserted into the bill has been probably a little bit late, and I am trying to work out whether we should actually go through a process. There is a concern out there with these cards, and to be debating this point at the eleventh hour without any robust process going into it—I must admit I am a bit nervous about voting for an insertion that is very contentious when there was no recommendation in the report on this issue. It does not give me a lot of confidence in voting for this particular insertion in the bill, given its contentious nature. Given there have been numerous press articles about claims and counterclaims in this area, I must admit I am not getting a lot of confidence to vote for it.

Senator LUDWIG (Queensland—Minister for Human Services) (6.23 pm)—I will deal with two matters. Firstly, in relation to Senator Williams, I have not been able to, in the time, get a definitive answer about who has been consulted. I do know from Senator Marshall that there may have been submissions on the issue more broadly, but I will not go there. What I can say—and you
may hold me to this—is that before the minister’s award request is made the minister will consult with the industry. So I can provide that. Secondly, with respect to what this provision does, it limits it to New South Wales awards, and in making its award modernisation the AIRC will have hearings and will research the history of these provisions. I cannot second-guess all of the matters it will look at, but I am sure it will look at these particular issues that have been raised before finally coming to a determination.

What we are doing here is ensuring that we do not sweep away the entitlements that currently exist in state awards that provide for driver protection—that is the important part. Otherwise, what you are doing is subjectively removing these provisions from current awards so that they no longer operate. The government is proposing that these provisions remain but that they remain confined to New South Wales, as they currently operate. Whether or not you have a view about how they operate is another matter, but they are currently operating. People do have those provisions that I have indicated. Those protections exist. So we will have them confined to New South Wales. There is no automatic extension.

Regarding the award modernisation process, it will be up to the Australian Industrial Relations Commission to decide on a range of matters within that whole award modernisation process, but including this provision and how it will operate. All the relevant submissions that may go to how it operates, whether it is effective, whether it provides enough protection or whether there should be more, are a matter for the Australian Industrial Relations Commission to look at. What we are simply doing in respect of this provision is maintaining the status quo. I think that is a reasonably fair position to put forward: that safe driving plans, drug and alcohol policy, and occupational health and safety training as currently exist within state awards and as are currently operating within state awards will not be removed as a consequence of bringing forward the workforce bill.

Senator ABETZ (Tasmania) (6.27 pm)—In the few moments remaining I have to say it is very interesting to note that these provisions have been introduced into this bill without any consultation with the transport sector. These are last-minute changes to deliver huge powers to the Transport Workers Union. You bet your bottom dollar the transport industry has not been consulted but the Transport Workers Union has. Let the minister deny it—and he will not. The reason is that these issues have been rushed in at the last minute, with the government amending its own legislation, in a very important and large area of concern, without anybody having the opportunity to submit to the Senate committee that inquired into this legislation.

Why wasn’t this put in the original legislation? Was it simply an oversight or was it because the government and the Transport Workers Union did not want trucking company after trucking company, especially from New South Wales, putting submissions before it indicating the corruption of the blue card and all the kickbacks that Senator Williams has been able to expose this afternoon? Why wasn’t it submitted to the Senate committee for all this to be teased out publicly? ‘No, no, no, we don’t put it in the bill. We then rush it in with amendments and try to smother it in about 20 amendments in this raft, hoping that nobody will necessarily pick up on it.’ Take the tip: we in the coalition have picked up on it, and it fails all our fundamental tests as to how we look at this legislation.
I have asked a number of times in this debate: how will it impact on small business? Very, very adversely, as Senator Williams has outlined. And does it deliver excessive union power? Of course it does—and it delivers it by the bucket load or by the truck load, if I can use that analogy in these circumstances. This is excessive union power. After the suspension of the sitting I will be making a few more comments about the New South Wales arrangements that have been driving the trucking industry.

Progress reported.

Senator LUDWIG (Queensland—Minister for Human Services) (6.30 pm)—I move:

That the committee have leave to sit again at a later hour of the day.

Question agreed to.

Sitting suspended from 6.31 pm to 7.30 pm

COMMITTEES
Selection of Bills Committee

Report

Senator O’BRIEN (Tasmania) (7.30 pm)—I present the fourth report of 2009 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator O’BRIEN—I seek leave to have the report incorporated in Hansard.

Leave granted.

*The report read as follows—*

**SELECTION OF BILLS COMMITTEE**

**REPORT NO. 4 OF 2009**

(1) The committee met in private session on Thursday, 19 March 2009 at 1.01 pm.

(2) The committee resolved to recommend—

That—

(a) the order of the Senate of 18 March 2009 adopting the committee’s 3rd report of 2009 be varied to provide that the Australian Business Investment Partnership Bill 2009 and a related bill be referred immediately to the Economics Committee for inquiry and report by 7 May 2009 (see appendix 1 for a statement of reasons for referral);

(b) the provisions of the Evidence Amendment (Journalists’ Privilege) Bill 2009 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 7 May 2009 (see appendix 2 for a statement of reasons for referral);

(c) the provisions of the Fair Work ( Transitional Provisions and Consequential Amendments) Bill 2009 be referred immediately to the Education, Employment and Workplace Relations Committee for inquiry and report by 7 May 2009 (see appendix 3 for a statement of reasons for referral);

(d) the provisions of the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009 be referred immediately to the Community Affairs Committee for inquiry and report by 7 May 2009;

(e) the provisions of the Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Bill 2009 be referred immediately to the Economics Committee for inquiry and report by 7 May 2009 (see appendix 4 for a statement of reasons for referral);

(f) the provisions of the Law and Justice (Cross Border and Other Amendments) Bill 2009 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 7 May 2009 (see appendix 5 for a statement of reasons for referral);

(g) the provisions of the National Greenhouse and Energy Reporting Amendment Bill 2009 be referred immediately to the Finance and Public Administration Committee for inquiry and report
by 7 May 2009 (see appendix 6 for a statement of reasons for referral);

(h) the provisions of the Native Title Amendment Bill 2009 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 7 May 2009 (see appendix 7 for a statement of reasons for referral);

(i) the provisions of the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 be referred immediately to the Community Affairs Committee for inquiry and report by 7 May 2009 (see appendix 8 for a statement of reasons for referral); and

(j) the provisions of the Tax Laws Amendment (2009 Measures No. 2) Bill 2009 be referred immediately to the Economics Committee for inquiry and report by 7 May 2009 (see appendix 9 for a statement of reasons for referral).

(3) The committee resolved to recommend—

That the following bills not be referred to committees:

Defence Legislation Amendment Bill (No. 1) 2009
Fuel Quality Standards Amendment Bill 2009
Higher Education Support Amendment (VET FEE-HELP and Providers) Bill 2009
International Tax Agreements Amendment Bill (No. 1) 2009
Migration Amendment (Abolishing Detention Debt) Bill 2009
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009
Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2009
Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009

The committee recommends accordingly.

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

Food Safety (Trans Fats) Bill 2009
International Monetary Agreements Amendment Bill 2009.

Kerry O’Brien
Chair
19 March 2009

Appendix 1
Proposal to refer a bill to a committee
Name of bills: Australian Business Investment Partnership Bill 2009
Australian Business Investment Partnership (Consequential Amendment) Bill 2009
Reasons for referral/principal issues for consideration:
Possible submissions or evidence from:
Committee to which bill is to be referred:
Economics Committee
Possible hearing date(s):
Possible reporting date: 6 May 2009
Whip/Selection of Bills Committee member

Appendix 2
Proposal to refer a bill to a committee
Name of bill: Evidence Amendment (Journalists Privilege Bill 2009
Reasons for referral/principal issues for consideration:
Possible submissions or evidence from:
Committee to which bill is to be referred:
Legal and Constitutional Committee
Possible hearing date(s): June
Possible reporting date:
July
(signed)
Whip/Selection of Bills Committee member

Appendix 3
Proposal to refer a bill to a committee
Name of bill: Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009
Reasons for referral/principal issues for consideration:
Bill deals with transition from Workplace Relations Act to the Fair Work Act.
Possible submissions or evidence from:
Unions
Employer organisations
Employment law academics
Committee to which bill is to be referred:
Education, Employment and Workplace Relations Committee
Possible hearing date(s):
Possible reporting date: 22 May 2009
(signed)
Whip/Selection of Bills Committee member

Appendix 4
Proposal to refer a bill to a committee
Name of bill: Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Bill 2009
Reasons for referral/principal issues for consideration:
Examine the provisions of the bill that relate to the regulation of non-operating holding companies of life insurance companies and the provisions of the bill that relate to the harmonisation of powers for APRA to seek court injunctions.
Possible submissions or evidence from:
Businesses and entities affected by this bill
APRA
Treasury
Committee to which bill is to be referred:
Economics Committee
Possible hearing date(s):
Possible reporting date:
7 May 2009
(signed)
Whip/Selection of Bills Committee member

Appendix 5
Proposal to refer a bill to a committee
Name of bill: Law and Justice (Cross Border and Other Amendments) Bill 2009
Reasons for referral/principal issues for consideration:
Examine the provisions of the bill which set up the new cross-jurisdictional arrangements and also provisions that extend the trans-Tasman arrangements, between Australia and New Zealand.
Possible submissions or evidence from:
State Law Societies - WA, SA and NT
Legal Practitioners
Law enforcement agencies
Committee to which bill is to be referred:
Legal and Constitutional Committee
Possible hearing date(s):
Possible reporting date:
7 May 2009
(signed)
Whip/Selection of Bills Committee member

Appendix 6
Proposal to refer a bill to a committee
Name of bill: National Greenhouse and Energy Reporting Amendment Bill 2009
Reasons for referral/principal issues for consideration:
Examine the provisions of the bill that relate to the power and authority of the GEDO.
Possible submissions or evidence from:
The Greenhouse and Energy Data Officer
Industry Groups that interact with auditors and the GEDO
Auditors registered by the GEDO
Committee to which bill is to be referred:
Finance and Public Administration Committee
Possible hearing date(s):
Possible reporting date:
7 May 2009
(signed)
Whip/Selection of Bills Committee member

Appendix 7
Proposal to refer a bill to a committee
Name of bill: Native Title Amendment Bill 2009
Reasons for referral/principal issues for consideration:
Significant change to the Native Title legislation.
Major institutional change to the NNTT
Possible submissions or evidence from:
NTRBs. Land Councils. CAEPR. HREOC Social Justice Commissioner.
Committee to which bill is to be referred:
Senate Legal and Constitutional Committee
Possible hearing date(s):
Possible reporting date:
(signed)
Whip/Selection of Bills Committee member

Appendix 8
Proposal to refer a bill to a committee
Reasons for referral/principal issues for consideration:
Examine the provisions of the bill to ensure that they adequately meet the needs of carers.
Possible submissions or evidence from:
Carers
Carer groups and peak bodies
State Government agencies involved with carers
Committee to which bill is to be referred:
Community Affairs Committee
Possible hearing date(s):
Possible reporting date:
7 May 2009
(signed)
Whip/Selection of Bills Committee member

Appendix 9
Proposal to refer a bill to a committee
Name of bill: Tax Laws Amendment (2009 Measures No. 2) Bill 2009
Reasons for referral/principal issues for consideration:
Examine all provisions of the bill to ensure that the aims stated in the legislation will be met and it will have no adverse impact on the Australian population.
Possible submissions or evidence from:
ATO
Small business groups
Stakeholders who will be impacted upon by the bill
Treasurer
Committee to which bill is to be referred:
Economics Committee
Possible hearing date(s):
Possible reporting date:
7 May 2009
(signed)
Whip/Selection of Bills Committee member
Ordered that the report be adopted.

Legal and Constitutional Affairs Committee
Report
Senator O’BRIEN (Tasmania) (7.30 pm)—At the request of Senator Crossin, I present the final report of the Senate Standing Committee on Legal and Constitutional Affairs on the exposure draft of the Personal Property Securities Bill 2008, together with
the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**Senator O’BRIEN**—I seek leave to move a motion in relation to the report.

Leave granted.

**Senator O’BRIEN**—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**FAIR WORK BILL 2008**

*In Committee*

Consideration resumed.

**The TEMPORARY CHAIRMAN (Senator Barnett)—**The committee is considering government amendment (2) on sheet RE403.

**Senator FIELDING** (Victoria—Leader of the Family First Party) (7.31 pm)—I was talking to this before the break. This is about inserting terms for long-distance transport workers. I was saying that I could not see a recommendation on this issue in the Senate Standing Committee on Education, Employment and Workplace Relations report on the Fair Work Bill 2008 provisions. Obviously this is a fairly contentious issue and there has been a fair bit of press about the blue-card system in New South Wales. By the same token, you want to make sure that there is safety and security on our roads as far as long-distance transport goes. Considering it is such a contentious issue, I strongly suggest to the committee that we send to a committee a reference—which I foreshadow—for amendment (2) to be looked at and well considered before we go about inserting it at the eleventh hour tonight. I think there are two views that need to be put forward strongly. We have heard the cases from the government and the opposition. We could spend a lot of time here continuing that debate, but I think the best way of resolving this is to send this particular amendment to a committee to be looked at and to have them report back to the Senate.

**Senator ABETZ** (Tasmania) (7.33 pm)—There are still some issues at large in relation to this amendment. The first one, of course, is why the transport industry was not consulted but the Transport Workers Union was. The other issue is why this was not part of the original framework. The reason it was not part of the original framework, I suggest to the minister, is that under award modernisation we were going to have a framework that covered all awards but with this amendment we are carving out certain elements peculiar to the transport industry to give a huge leg-up to the Transport Workers Union in the terms described by Senator Williams before the dinner adjournment.

In this, we understand that safety is going to become an issue in the award. Occupational health and safety should be, I submit, a separate regime and not part of the award system. Once you allow it in for the trucking sector, guess who will be next? Why not, once the principle has been established, the CFMEU and the construction sector or the MUA in stevedoring? This was all about award modernisation—getting it all on the same footing—to ensure that we had a simple system, but here we are, sneaking in not only a special deal for transport but also a new safety principle. It is vitally important, do not get me wrong, but that is dealt with under an occupational health and safety regime, not through industrial awards. As soon as we open that gate again, the Transport Workers Union will be used as the precedent and you will see Kevin Reynolds, the MUA and all the others coming in behind, saying, ‘The precedent’s been set; let’s go for it, boys.’
I very seriously put to the Senate that government amendment (2) needs to be opposed for those reasons. I also think the Senate is entitled to an undertaking from the government—and they cannot give this undertaking—that the New South Wales system will not be transported into the national system and all around the country. Senator Williams outlined some of the corruption—I will use the word—

Senator Hutchins—Why don’t you say it out there?

Senator ABETZ—in relation to the blue card. And a former official of the Transport Workers Union—

Senator Hutchins—I’m not a former official; I used to run it.

Senator ABETZ—There we go! He used to run it. Can I tell you—

Senator Hutchins—Go out there and repeat those words. Go on, you coward!

The TEMPORARY CHAIRMAN (Senator Barnett)—Senator Abetz has the call.

Senator ABETZ—that will have to be withdrawn.

The TEMPORARY CHAIRMAN—Order! Senator Hutchins, I would ask you to withdraw. We will wait until Senator Hutchins returns to his chair.

Senator Hutchins—I withdraw.

Senator ABETZ—Thank you, Mr Temporary Chairman. The interesting thing is, I will use the word ‘corruption’ in relation to these practices. The reason I use the term ‘corruption’ is that the matters outlined by Senator Williams clearly amount to corruption. The minister has not sought to deny that this has, in fact, occurred. We all know that these kickbacks occur. Sure, there might be some legal definition in the Transport Workers Union lexicon that does not make it corruption, that it is just deals among mates. But amongst humble suburban lawyers like me and people that represent the bush so exceptionally well, as Senator Williams does, we know that by the word ‘corruption’.

Let me just go through some of the situations that occur in New South Wales. If this amendment is passed, we will potentially have the Mutual Responsibility for Road Safety (State) Award in all jurisdictions. The consequences of that are that the Transport Workers Union will have the power to enter a workplace even if the company is not affiliated with the union. Union delegates will be free to inspect driving records and to order companies to provide documents as far back as six years. The award forces employees to complete a safety awareness program to obtain this blue card, with the company responsible—surprisingly—for paying all the costs. It is not the driver or anybody else; it is the company that pays for the blue card. As Senator Williams outlined, the company that provides the blue card is affiliated with the union and, of course, the union is affiliated with the Australian Labor Party. Would the money trail be headed that way? Well, methinks so, but let us wait and see.

Employers will be forced to enrol their employees in the union in order to avoid the burden of union inspections in compliance with the award. People in the transport sector are telling us that the government is being told it risks making the road a more dangerous place if it imposes the New South Wales model nationwide. That is how serious this issue is. Keep aside the corruption aspect so well articulated by Senator Williams; you may or may not believe in that. But it is also an issue of road safety. Why do we say that? Because:

The Award specifically prohibits employers from taking disciplinary action in response to drug or alcohol abuse …
Under the Award, employers must invest in counselling, treatment or rehabilitation but cannot take disciplinary action.

Driver remuneration must also be publicly released under the guise of a ‘safe driving plan’—which employers and people like us oppose on privacy grounds. Can somebody explain to me whether somebody sitting behind the wheel of a truck is somehow more roadworthy if he earns $X per hour or $X+2 per hour? I thought we had a safety net under which people could not be paid—there would be award minima. So why would we need this public disclosure of payments? Do you know why? So the union has more power to influence the running of these businesses. The Queensland Transport Association believes it will inflict even more red tape. It really is, as NatRoads said, an industrial instrument that is ‘a legal mechanism to feather the nest of the Transport Workers Union’.

I could go on at some length; I will not. We as a coalition are very serious in relation to this aspect of these amendments. Usually I ask my colleagues on the crossbenches for an indication as to how they may vote, but on this occasion we feel that strongly that we will be dividing the chamber irrespective of support from the crossbenchers. Having said that, I would appeal to my brothers, Senator Fielding and Senator Xenophon in particular, to considering voting with us.

**Senator Siewert**—I’m a lost cause!

**Senator ABETZ**—As to my sister Senator Siewert, I have a funny feeling that, no matter what I said, I would not be able to convince her.

**Senator XENOPHON** (South Australia) (7.43 pm)—I am grateful for the contributions of Senator Williams and Senator Abetz in relation to this. As well as the matters raised by Senator Ludwig, I have had a discussion with the office of the Minister for Employment and Workplace Relations in relation to this, and I am grateful for their assistance, because this is something that, as I understand it, was not part of the committee process. That is something that does concern me, because this amendment was, as I understand it, not subject to the scrutiny of the committee process.

**Senator Williams**—It wasn’t in the bill originally.

**Senator XENOPHON**—It wasn’t in the bill originally, as Senator Williams helpfully points out. Yesterday I was contacted by Mr Steve Shearer from the South Australian Road Transport Association. He is a person who I have dealt with over the years both in my time in state parliament and since I have been here in the Senate, and I have always found him to be a very straightforward person to deal with. He expressed concerns about this particular amendment. His argument has been mirrored in part by Senator Williams. He said that there were very tough fatigue-management laws implemented nationally on 28 September 2008 and that the industry fully supports these laws. As I understand it, there is a concern, as has been expressed by Senator Williams, about the way that the New South Wales award provisions apply.

My first question to the minister is: can the minister advise whether the Deputy Prime Minister will amend the award modernisation request to make it absolutely clear that the AIRC can include safety terms where they currently exist but not otherwise? In other words, can she make it absolutely clear that for all jurisdictions other than New South Wales this will not apply, given that there are already existing occupational health safety laws in other jurisdictions? Can the minister confirm on behalf of the government in explicit terms that it is not intended for this provision to allow duplicate safety laws?
regimes to be included in awards? I have some more questions after those, but I would be grateful if I could receive a response from the minister on those two matters in terms of some very explicit undertakings that what applies in New South Wales will not apply in any other jurisdiction. I have some subsequent questions that are dependent on the answers.

Senator LUDWIG (Queensland—Minister for Human Services) (7.46 pm)—I will answer in part some of the wild allegations made by Senator Abetz. The straw-man reasoning that was being put forward was quite extraordinary. The circumstances are these: we as a government place on the public record that the minister will amend the award modernisation request to make clear that the Australian Industrial Relations Commission can include safety net terms where they exist—that is, in New South Wales—but not otherwise. That means that the Australian Industrial Relations Commission can include safety net terms in New South Wales and not otherwise. To go on from that, it is a matter for the AIRC what those safety net terms are.

Senator Abetz, or the opposition, says that I should know about a whole range of things and that they are corrupt—that is what Senator Abetz was articulating. I am a little bit more careful with my words. I would say that if you were going to make those allegations—which are allegations—you would need to at least have personal knowledge of the facts of the matter before making them. I do not. Even if I had such personal knowledge, they would still only be allegations. I would certainly not assert as a matter of fact that these things existed. In relation to the second part—the question of whether they will be duplicated in existing safety net regimes across various states—these provisions are confined to New South Wales.

The industry has expressed concern that this provision is intended to introduce a new layer of regulation. It is not intended that this provision allow duplication of any other state safety laws to be included in modern awards. I place on record that the minister’s award modernisation request will make this clear. That answers definitively the two matters that Senator Xenophon raised and it deals with what I would call the straw-man reasoning being put forward on the other side.

Senator XENOPHON (South Australia) (7.49 pm)—I am grateful to the minister for his answer. I am guessing that Senator Williams and Senator Abetz may have something to say about the answer in a moment. I want to get some absolute clarity on this. Does that mean that the minister’s request will mean that the current provisions that apply in New South Wales will not apply to other jurisdictions?

Senator LUDWIG (Queensland—Minister for Human Services) (7.50 pm)—That will be the effect, yes.

Senator XENOPHON (South Australia) (7.50 pm)—It seems to me that the debate boils down to this, and I direct this also to Senator Williams and Senator Abetz: is it the case that, if this amendment fails, any provisions relating to safety that currently apply in New South Wales will no longer apply and, in the absence of occupational health and safety laws applying, there may well be some legal vacuum or hiatus? Is that what the government is saying? I would be grateful for any assistance from Senator Abetz or Senator Williams in relation to that, because I have to say that on the basis of what Senator Williams has said there are some issues of concern. I am not going to use the language that Senator Abetz used. In terms of what Senator Williams has raised, there are some concerns about the operation of those provisions in New South Wales and the im-
impact on the New South Wales transport industry that may need—and I am putting this in fairly neutral terms—some tidying up sooner rather than later.

Senator WILLIAMS (New South Wales) (7.51 pm)—In response to the questions from Senator Xenophon, the correspondence that I have from the representatives of the transport industry says that this amendment allows a mirroring of the system which exists in New South Wales today. In New South Wales the Staysafe Committee is about to review the regulations in New South Wales because they say it is simply not working, it is a bundle of red tape and it has put extreme costs and pressures on the transport industry. That is why the Staysafe Committee will soon review these regulations.

Surely, no matter what the minister says today, he cannot guarantee that some other jurisdiction will not adopt similar policies. If this was to be wholly and solely in New South Wales, as it has been since 2005, why is it even in this chamber here now? New South Wales has had the regulations for almost four years and the minister is saying that this is to allow for some sort of concreting process for New South Wales laws. I do not think that is the case at all. The situation is that it is here now, it was not in the original Fair Work Bill and it has been slipped in by the government as an amendment, hence I will not support it in any way unless the minister gives an absolute, 100 per cent guarantee that this amendment in this bill will not allow this to proceed in any other state. But of course the minister cannot give that guarantee because any other state can bring in OH&S regulations whenever they want. That is the situation as I see it.

Senator LUDWIG (Queensland—Minister for Human Services) (7.53 pm)—Clearly, the award modernisation process was not designed to wipe out occupational health and safety provisions existing in, in this instance, New South Wales, dealing with the range of matters that I discussed earlier this evening. It is not the intention of this government to destroy existing occupational health and safety provisions. It may be the opposition’s desire to do that. But having identified an issue it is incumbent upon this government to address that. We are addressing it in a narrow way. It is not saying that the award provision that exists in New South Wales will be mirrored; it is a matter for the Australian Industrial Relations Commission. What we are saying is that safety terms can be included.

As to what happens in other jurisdictions in relation to all of these things, I understand that you might want to put a fence around your industrial relations systems, hold on to Work Choices and hold on to today’s industrial relations provisions, but I cannot and would not guarantee to you what will happen tomorrow or the next day or the day after that if it means improvements to occupational health and safety across this country, particularly in industries such as the long-haul transport area. Why would I? And I would be surprised if the opposition were against improved occupational health and safety in long-haul transport. If you are not, then all this provision does is exactly that. If you have a problem with particular issues, if you think they are corrupt and you make the allegation that they are corrupt, there are plenty of places you can air that. You can air it in here at will or you can go outside, as I think you were invited to do. Neither of those options is what I am inviting you to do. If you think those things exist then take them up with the appropriate authorities to have them investigated. That is what I have always argued and that is the sensible course of action. If anybody would refute that then I question their motive.
Senator ABETZ (Tasmania) (7.56 pm)—I indicate to Senator Xenophon that in New South Wales the Occupational Health and Safety Act deals with long-distance fatigue—there is a long-distance fatigue regulation under the act. There are also the Roads and Traffic Authority fatigue guidelines and National Transport Commission fatigue regulations. So we have a legislated framework for long-distance fatigue and travel occupational health and safety. But we also have this bizarre blue card system on top of all of that. Does it make the roads safer? We submit that it does not. Does it add to bureaucracy and red tape, which impinge on the viability of small business? Yes, it does. Does the blue card also give extra powers—excessive powers—to the Transport Workers Union, which is another one of the tests I have been on about during this debate? We say, unequivocally, yes, it does.

Interestingly enough the minister has not really sought to defend why you need, in effect, a belt-and-braces situation in relation to long-distance transport. What he is saying is that the National Transport Commission regulations are not good enough, the Roads and Traffic Authority fatigue guidelines are not good enough and the Occupational Health and Safety Act long-distance fatigue regulations are not good enough, so we need the award. Every other state seems to have been able to deal with these issues without dealing with them in this—I will not use the word ‘corrupt’ on this occasion—peculiar manner. People can read into that what they like. Also, this New South Wales award will, as I understand it, expire in 2014. What happens then?

Senator Williams interjecting—

Senator ABETZ—Chances are the blue card will be dispensed with because, as Senator Williams just quietly interjected, the Transport Workers Union will have enough money by then. Whether that is the case or not, the question is: what is going to happen with the road safety regulations after that?

I suggest that the legislated regulations under the various acts that I have already referred to are sufficient and that the blue card is simply a front for the funding purposes that I have outlined. If it were so vital you would think there would be a mechanism to ensure that the New South Wales award, which is peculiar in this regard, would continue beyond 2014. I say to the Senate that the New South Wales system is a disgrace and, if the Senate were to vote, by implication, that it is an okay system, I think it would be a very sorry day for the Senate.

Senator XENOPHON (South Australia) (8.00 pm)—My position is as follows. I am grateful to the minister for the very clear undertakings that have been given. However, I think that there are still some concerns that have been raised by Senators Williams and Abetz in relation to this. So out of an abundance of caution I will not support this amendment. But I can indicate that I am prepared to continue to discuss this with the government overnight, because I figure we are going to be back here tomorrow. I do not know whether Senator Ludwig is smiling or—

Senator Abetz—Grimacing.
Senator XENOPHON—Grimacing.
Senator Siewert—We’ll be here on Sunday at this rate.

Senator XENOPHON—I have taken Senator Seiwer’s interjection about being here on Sunday; therefore I will sit down because I have already indicated my position.

Senator SIEWERT (Western Australia) (8.00 pm)—Does the government intend to move these amendments together or are we going to separate out (2)? We have been con-
fining our discussion to amendment (2). Are we going to go on to discuss the rest of the amendments on this sheet or do you want to deal with this one and then do the other ones?

Senator ABETZ (Tasmania) (8.01 pm)—Can I assist the Senate? The minister, before dinner, was very, very uncooperative in relation to a very, very sensible opposition request that we deal with the issue of what number of employees constitutes a small business, as a result of which we indicated that we would, in union terms, do a ‘go slow’ on the matter!

Senator Jacinta Collins interjecting—

Senator ABETZ—No, go slow. As a result, we were dealing with each amendment in turn, rather than en bloc. The minister has now indicated that after this tranche we will go to the issue of small business. Therefore I can indicate to Senator Siewert that, yes, we do want a separate vote on government amendment (2) but after that we would be happy to deal with them en bloc.

The TEMPORARY CHAIRMAN (Senator Moore)—I have been advised that amendment (2) only is before the chair.

Senator SIEWERT (Western Australia) (8.02 pm)—In that case I indicate the Greens’ support for amendment (2). I do want to speak to the rest of the items on this sheet but I will just say that we are supporting (2).

The TEMPORARY CHAIRMAN—The question is that government amendment (2) on sheet RE403 be agreed to.

The committee divided. [8.07 pm] (The Chairman—Senator the Hon. AB Ferguson)

Ayes............. 28
Noes............. 30
Majority........ 2

AYES

Bilyk, C.L.
Brown, B.J.
Cameron, D.N.
Crossin, P.M.
Feeley, D.
Furner, M.J.
Hutchins, S.P.
Ludwig, J.W.
Marshall, G.
McLucas, J.E.
Moore, C.
Polley, H.
Siewert, R.
Sterle, G.

NOES

Abetz, E.
Barnett, G.
Birmingham, S.
Brandis, G.H.
Cash, M.C.
Eggleston, A.
Fielding, S.
Fifield, M.P.
Heffernan, W.
Johnston, D.
Mason, B.J.
Minchin, N.H.
Ronaldson, M.
Scullion, N.G.
Williams, J.R.

PAYERS

Arbib, M.V.
Carr, K.J.
Conroy, S.M.
Evans, C.V.
Faulkner, J.P.
Hogg, J.J.
Hurley, A.
Sherry, N.J.
Wong, P.

* denotes teller

Question negatived.

Senator LUDWIG (Queensland—Minister for Human Services) (8.09 pm)—I move government amendment (3) on sheet RE403:
Page 142 (after line 8), after clause 145, insert:

**145A Terms about consultation and representation**

Without limiting paragraph 139(1)(j), a modern award must include a term that:

(a) requires an employer to whom the award applies to consult the employer’s employees to whom the award applies about major workplace changes that are likely to have a significant effect on the employees; and

(b) allows for the representation of those employees for the purposes of that consultation.

This amendment recognises the importance of consultation with employees in circumstances where an employer has decided to introduce major changes that are likely to have a significant effect on employees. It is longstanding industrial practice that awards provide for consultation in these circumstances. For example, in the important matter of redundancy, the 1984 redundancy test case recognised that consultation about major change is highly desirable and that representation in this process is appropriate. The arrangements worked well for over 20 years, until consultation clauses were rendered non-allowable by the Workplace Relations Act.

There are a couple of matters that it is important to note in this debate. Firstly, the provision allows Fair Work Australia to determine the most appropriate arrangements for consultation and representation. It is a matter for Fair Work Australia to make those decisions. Secondly, the proposed amendment requires awards to provide a process for consultation and requires representation as part of that process. It would not impinge on employers’ ability to manage their businesses and would not allow for arbitrated outcomes to be imposed on businesses.

Those are two very important matters that we should recognise.

**Senator ABETZ** (Tasmania) (8.11 pm)—The opposition opposes this amendment as well. This amendment will change the situation in relation to modern awards. The opposition says that there is no requirement for this provision as the draft modern awards already contain such a provision. But, importantly, it removes the qualification in the modern awards system that no employer is required to disclose confidential information if such disclosure would be contrary to the employer’s interests. This allows for the representation of those for the purposes of that consultation. Matters in relation to, let us say, a publicly listed company could potentially be divulged prior to the stock market and shareholders being advised, and we do not think that is a good course of action. This is another one of these amendments that have been rushed in at the end and that were not properly aired at the Senate committee.

**Senator Jacinta Collins**—Yes, it was.

**Senator ABETZ**—I said ‘properly’ aired, and—

**Senator Jacinta Collins**—Wasn’t it simple enough for you, Eric?

**Senator ABETZ**—I do not think Senator Collins is sitting in her usual seat. Undoubtedly she has had an enjoyable sojourn out of the chamber and is now back to make a contribution, which is always interesting. We say that the first aspect of the amendment is unnecessary and we are concerned about the consequences, especially when it says that an award must include a term that ‘requires an employer to whom the award applies to consult the employer’s employees to whom the award applies about major workplace changes that are likely to have a significant effect on the employees’. It makes sense that those sorts of changes may also have a significant effect on the share price, and there
we have the conflict. That is why we as an opposition are opposed to this clause.

Senator SIEWERT (Western Australia) (8.14 pm)—The Greens strongly support this amendment. You can bet that if the opposition oppose it we will be supporting it. We believe it is an important amendment allowing an important and longstanding term in the modern awards, particularly important in the current economic circumstances in which many businesses will in fact be restructuring. But it is also important at all times when businesses make such significant decisions. So we will be strongly supporting government amendment (3).

Senator LUDWIG (Queensland—Minister for Human Services) (8.15 pm)—The position that is now being put by the opposition about this clause is, frankly, quite extraordinary. If it meant what the opposition thought, then surely that was the main argument put by the employers in 1984, which was the redundancy test case. But, clearly, it did not persuade them to not deal with the redundancy test case, which recognised that consultation about major change is highly desirable and that representation in this process is appropriate. If there are laws which require things such as market sensitive information to be released at a particular time, then I have no doubt that the company or the corporation will abide by those. They may go to the employees at the same time, if the provision allows for it, or shortly thereafter, if the provision allows for it. It is common sense to allow it to really come to the fore, because to do otherwise would say that the employer would not be able to consult about major change because it could be market sensitive. I do not know what those circumstances may or may not be. I do know that it is important to consult. The corporation does have an overriding requirement to meet the relevant corporations legislation, and I have got no doubt they would not breach their Corporations Act requirements. But it does not mean that they should rule out, as a consequence, talking to their employees about the major change, especially where the major change is going to impact upon and have a significant effect on the employees. I think it is an unsurprising clause. I am sorry if the opposition have read more into it than is there.

It is about consultation. But then, when you look at the history of what the Liberals did in relation to these provisions about consultation, clearly what is at the heart of the Liberals is a born-to-rule mentality which says: we have a right to manage our business the way we want to manage it and we do not want to consult with anyone, even our employees, about our business. That seems to be what is at the very heart of the provisions. That seems to be why consultation was ripped from the Workplace Relations Act. It seems to be why the Liberals think consultation is such an anathema, especially when it comes to employees. It seems to underscore the view that they do not want to consult with employees at all, because, if that were the case that Senator Abetz was putting, then I would say to him: describe the circumstances where it is okay to consult—otherwise, is it that clear that you do not want consultation at all? What this clause does is allow for consultation to be included, and of course it is a term that must be included in an award so that it ‘requires an employer to whom the award applies to consult the employer’s employees to whom the award applies about major workplace changes’. I think it is unsurprising. I think what it means is reasonably plain, and it does allow for those employees to be represented. There is little more that I can add in respect of that other than to comment that it is not surprising to me that the Liberals on the other side are opposed to consultation.
Senator ABETZ (Tasmania) (8.20 pm)—I think this evening we have got the great juxtaposition in Australian politics. We on the coalition side actually believe that consultation means that you talk through the issues with people before you announce the decision. We have now heard from the minister that, for the Labor Party, consultation includes the possibility of making the decision, going to the share market and announcing it, and then talking to the workers. Silly me! I thought consultation actually meant talking to people about the issues before you made the final decision! What the minister has now put up in lights—very effectively—is the different approaches of the coalition and the Labor Party in relation to the issue of consultation. If it is as the minister asserts, and I see no legal precedent for this, he has basically admitted that the corporations power may require the employer not to consult beforehand with the employees—that point was basically accepted—and he said common sense would need to prevail. I happen to agree with that. But if there is a conflict, which one is to prevail? I was foolish enough to think consultation meant you actually had to talk through the issues with people before you made the decision. If consultation does not mean that, that is reassuring, but I think that is the Labor interpretation of the term, as opposed to the legal interpretation of the term. It is, in fact, the legal interpretation of the term that we have to concentrate on and deal with this evening. Given what the minister has said, I think it has, in fact, strengthened very substantially the case for the opposition to oppose amendment (3).

Senator XENOPHON (South Australia) (8.22 pm)—I do not know if it is helpful for Senator Ludwig to talk about the opposition having a ‘born-to-rule’ mentality, although right now going through this debate I feel it is a case of ‘born to ruin’ on my part. I read this amendment relatively narrowly. What it requires is for an employer to have a discussion and to consult with workers about changes that are being planned, not prior to the changes being planned, but to inform them: ‘These are the changes. We are letting you know we are going to discuss them and consult with you about them.’ I read the amendment relatively narrowly, closer to the government’s position, and I indicate my support for this amendment.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.23 pm)—I have listened carefully and I have had some notes from both sides on this issue. There are two ways of reading this. I am all for consultation but, as we know, sometimes minds are made up even before the consultation is done. I think employers know how to run their business and, if we start assuming employers do not do the right thing, you can see a need for creating a lot more of these sorts of amendments. If you also came from the perspective that workers do not do the right thing, you would end up with a heck of a lot more clauses. I have weighed it up and I do not think that the insertion of this amendment is that necessary. I am persuaded by the opposition in this regard so I will not be supporting this amendment.

Senator ABETZ (Tasmania) (8.24 pm)—If I may circumvent this: I know I am now doing this on my feet—and I thank Senator Fielding for his indication of support, which would have meant that we could have bowled over this amendment—nevertheless, I have been taking a very reasonable and measured approach, as is my want. I had to say it, Minister, as nobody else would! Could we add a subclause that says, ‘No employer is required to disclose confidential information, the disclosure of which would be contrary to the employer’s other legal obligations, in particular under the Corporations Act’? That is our concern. If that would be
acceptable to the government, then we could have a way through this.

Minister, I have a hunch that this might come back to the Senate in any event. If that were to be the case then we could knock out this amendment but indicate the opposition’s willingness to revisit it on its return for the purposes of putting in an amendment which, of course, allows for consultation. You would expect a good employer to do that in any event, but we do not want the consultation mandated in the legislation in circumstances where the good employer might say, ‘Well, under this act I have to, but under another one, if it gets out, I would be in breach of the Corporations Act.’ So I give that as an option to the minister as to which way he would prefer to handle it.

Senator LUDWIG (Queensland—Minister for Human Services) (8.26 pm)—In this instance I used the Corporations Law because it would prevail over an award. Therefore, if there were a duty to abide by the corporations act, the corporation will do that in respect of the matter. If I am wrong about that then, obviously, we will get an opportunity to have a look at this overnight. That would be my understanding of how it would work. It is a source and stream argument. An award is not equal to, in that sense, a corporations act. You would expect the corporations act to be the relevant piece of legislation that the Corporations Law would have to apply to.

It looks like I do not have Senator Fielding on my side. On that basis we will have a division and I think the government will probably lose this amendment, but we will have overnight to consider how we do what I would call a belt-and-braces effect, to see if we can save the important part of consultation. I am sure these were probably arguments that were run back in 1984, which is a bit Orwellian, I have to say. The position would have been made clear. It read then and still reads today that, when an employer has made a definite decision to introduce major changes to production, programs, organisation structure or technology that are likely to have a significant effect on employees, the employer shall notify the employees who may be affected by the proposed change in their union or unions. It goes on to explain what ‘significant effects’ are. It contemplates notification in this instance about a TCR provision. It is expressed in similar terms, although we have used the term ‘employee’s representatives’.

We note the provisions are also mandatory in certified agreements, but they have not been picked up. We have said that they are, in effect, mandatory. We have said in respect of our position that a modern award must include the term ‘requires’. It is the same in the sense that TCR provisions are also mandatory, and so is this. It is about the heart of the issue, which is consultation. It is about ensuring employers consult with employees in these circumstances. I think it boils down to nothing more nor less than that.

You can argue about what might be of concern to some employers, but my experience tells me, after many, many years, that employers will always throw up some red herring, some reason why they cannot consult, because ultimately they do not want to consult about major change which may impact or significantly affect their employees. It would have been argued back in 1984. It was removed from the Workplace Relations Act by the Liberals and now we are simply seeking to ensure that we go back to a circumstance where employees do get to be consulted about these provisions. As I have said—and I will not keep the debate going any longer—we will test it and then we might have a look at it overnight.
Senator ABETZ (Tasmania) (8.30 pm)—Without delaying any further, any advice that the minister gets and cares to share with me tomorrow would be helpful in that regard. The clause that the minister read out, interestingly, as I heard it, had the words ‘has made’. When it says ‘employer has made’, that suggests that the change has already been made, whereas in this we are talking about changes that are ‘likely to have a significant effect’, and that suggests the future. That is the bind that I foresee employers being in. Requiring them to consult after a decision has been made as to how it will all work out makes good sense—I agree with that—but requiring them to consult beforehand, in circumstances where that could impact on the share price, would mean they would be between two Commonwealth laws.

In relation to the impact of an award, if it were simply an award that said it, that would be fine. But the problem is that this legislation is also Commonwealth legislation and is mandatory inasmuch as it says—without limiting a certain paragraph—‘a modern award must include’, and then there is the provision. So that award will be clothed with the authority of a Commonwealth piece of legislation which actually mandates it. Therefore, I am not sure that the argument of the minister would be upheld. Having said that, if the government has good advice for us tomorrow, I am more than open to reconsider my position. That is all I have to say. I suggest we move to the vote.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that government amendment (3) on sheet RE403 be agreed to.

The committee divided. [8.37 pm]
(The Chairman—Senator the Hon. AB Ferguson)

Ayes…………… 29
Noes…………… 29
Majority……… 0

AYES

Bilyk, C.L. Bishop, T.M.
Brown, B.J. Brown, C.L.
Cameron, D.N. Collins, J.
Crossin, P.M. Farrell, D.E.
Feeney, D. Forshaw, M.G.
Furner, M.L. Hanson-Young, S.C.
Hutchins, S.P. Laidlam, S.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A. *
McLucas, J.E. Milne, C.
Moore, C. O’Brien, K.W.K.
Polley, H. Pratt, L.C.
Siewert, R. Stephens, U.
Sterle, G. Wortley, D.
Xenophon, N.

NOES

Abetz, E. Back, C.J.
Barnett, G. Bernardi, C.
Birmingham, S. Boyce, S.
Brandis, G.H. Bushby, D.C.
Cash, M.C. Colbeck, R.
Coonan, H.L. Fife, S.
Ferguson, A.B. Fifield, S.
Fierravanti-Wells, C. Humphries, G.
Heffernan, W. Kroger, H.
Johnston, D. McGauran, J.J.
Mason, B.J. Parry, S.
Minchin, N.H. Ryan, S.M.
Ronaldson, M. Troeth, J.M.
Sculion, N.G.
Williams, J.R. *

PAIRS

Arbib, M.V. Adams, J.
Carr, K.J. Cormann, M.H.P.
Conroy, S.M. Joyce, B.
Evans, C.V. Fisher, M.J.
Faulkner, J.P. Macdonald, I.
Hogg, J.J. Boswell, R.L.D.
Hurley, A. Nash, F.
Sherry, N.J. Payne, M.A.
Wong, P. Trood, R.B.

* denotes teller

Question negatived.
Senator LUDWIG (Queensland—Minister for Human Services) (8.39 pm)—by leave—I move government amendments (4) to (14) on sheet RE403:

(4) Clause 154, page 144 (line 27), omit paragraph (1)(b), substitute:

(b) are expressed to operate in one or more, but not every, State and Territory.

(5) Clause 287, page 257 (line 21) to page 258 (line 4), omit the clause, substitute:

287 When national minimum wage orders come into operation etc.

Orders come into operation on 1 July

(1) A national minimum wage order that is made in an annual wage review comes into operation on 1 July in the next financial year (the year of operation).

Setting of different wages or loadings only permitted in exceptional circumstances

(2) The national minimum wage or the casual loading for award/agreement free employees set by the order must be the same for all employees, unless:

(a) FWA is satisfied that there are exceptional circumstances justifying setting different wages or loadings; and

(b) the setting of different wages or loadings is limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate.

(3) A special national minimum wage set by the order for a specified class of employees must be the same for all employees in that class, unless:

(a) FWA is satisfied that there are exceptional circumstances justifying setting different wages; and

(b) the setting of different wages is limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate.

Adjustments taking effect during year of operation only permitted in exceptional circumstances

(4) The order may provide that an adjustment of the national minimum wage, the casual loading for award/agreement free employees, or a special national minimum wage, set by the order takes effect (whether for some or all employees to whom that wage or loading applies) on a specified day in the year of operation that is later than 1 July, but only if:

(a) FWA is satisfied that there are exceptional circumstances justifying the adjustment taking effect on that day; and

(b) the adjustment is limited just to the particular situation to which the exceptional circumstances relate.

When orders take effect

(5) The order takes effect in relation to a particular employee from the start of the employee’s first full pay period that starts on or after 1 July in the year of operation. However, an adjustment referred to in subsection (4) takes effect in relation to a particular employee from the start of the employee’s first full pay period that starts on or after the day specified as referred to in that subsection.

(6) Clause 289, page 258 (line 27) to page 259 (line 2), omit subclauses (2) and (3), substitute:

(2) FWA must publish all submissions made to FWA for consideration in the review.

(3) However, if a submission made by a person or body includes information that is claimed by the person or body to be confidential or commercially sensitive, and FWA is satisfied that the information is confidential or commercially sensitive, FWA:

(a) may decide not to publish the information; and
(b) may instead publish:
   (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or
   (ii) if FWA considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.

(4) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).

(5) FWA must ensure that all persons and bodies have a reasonable opportunity to make comments to FWA, for consideration in the review, on the material published under subsections (2) and (3).

(6) The publishing of material under subsections (2) and (3) may be on FWA’s website or by any other means that FWA considers appropriate.

(7) Clause 306, page 266 (lines 29 and 30), omit all the words from and including “to the extent” to and including “equal remuneration order”, substitute “in relation to an employee to the extent that it is less beneficial to the employee than a term of an equal remuneration order that applies to the employee”.

(8) Clause 324, page 282 (line 2), before “An”, insert “(1)”.

(9) Clause 324, page 282 (after line 22), at the end of the clause, add:
   (2) An authorisation for the purposes of paragraph (1)(a):
       (a) must specify the amount of the deduction; and
       (b) may be withdrawn in writing by the employee at any time.

(3) Any variation in the amount of the deduction must be authorised in writing by the employee.

(10) Clause 326, page 283 (line 6), omit “the”, substitute “an”.

(11) Clause 326, page 283 (lines 10 to 12), omit all the words from and including “the deduction” to the end of subclause (1), substitute:
   either of the following apply:
   (c) the deduction or payment is:
       (i) directly or indirectly for the benefit of the employer, or a party related to the employer; and
       (ii) unreasonable in the circumstances;
   (d) if the employee is under 18—the deduction or payment is not agreed to in writing by a parent or guardian of the employee.

(12) Clause 333, page 289 (line 9), omit “The”, substitute “(1) Subject to this section, the”.

(13) Clause 333, page 289 (after line 10), at the end of the clause, add:
   (2) A regulation made for the purposes of subsection (1) has no effect to the extent that it would have the effect of reducing the amount of the high income threshold.

(3) If:
   (a) in prescribing a manner in which the high income threshold is worked out, regulations made for the purposes of subsection (1) specify a particular matter or state of affairs; and
   (b) as a result of a change in the matter or state of affairs, the amount of the high income threshold worked out in that manner would, but for this subsection, be less than it was on the last occasion on which this subsection did not apply;
   the high income threshold is the amount that it would be if the change had not occurred.
(14) Page 289 (after line 10), at the end of Division 3, add:

333A Prospective employees

If:

(a) an employer, or a person who may become an employer, gives to another person an undertaking that would have been a guarantee of annual earnings if the other person had been the employer’s or person’s employee; and

(b) the other person subsequently becomes the employer’s or person’s employee; and

(c) the undertaking relates to the work that the other person performs for the employer or person;

this Division applies in relation to the undertaking, after the other person becomes the employer’s or person’s employee, as if the other person had been the employer’s or person’s employee at the time the undertaking was given.

The government proposes a series of amendments in relation to the provisions dealing with modern awards and wages. The amendments provide limited scope for Fair Work Australia to delay wage increases through national minimum wage orders, similar to that which already exists in the bill for award wage rates; provide additional protection for employees in relation to deduction from wages; and ensure that the amount of the high-income threshold cannot be reduced through regulation. The high-income threshold determines when an award ceases to apply to an employee with guaranteed annual earnings and whether an award- or agreement-free employee has access to an unfair dismissal remedy. It also enables an employer and prospective employee to agree to a guarantee of annual earnings before the prospective employee commences employment. There are other minor technical amendments that flow as a consequence of that.

The Greens propose to remove the high-income threshold, which is the conflict between these amendments and their items (21) and (24) on sheet 5729. If it helps the debate, I indicate in advance that we will not be supporting that position.

Senator ABETZ (Tasmania) (8.42 pm)—Without delaying the Senate too long, this tranche of amendments has items in it that we think are good but also items that we think are bad. On balance, we will be voting against them—I indicate that, in case there is support from the crossbenches for that on the voices. We are concerned that these further amendments will permit awards to retain state based differences based on certain peculiar circumstances. This, of course, is a substantial wind-back of the position that awards should provide a national uniform safety net for an industry without state based differences. This will, we believe, permit union friendly deals in a particular state to be retained regardless of whether they are an appropriate safety net. Of course, we have had that discussion already in relation to item (2). I will leave my comments there.

Senator SIEWERT (Western Australia) (8.43 pm)—I have a question of the minister, through you, Madam Temporary Chairman, on item (5). Regarding the timing of national wage orders and allowing the timing to be varied in exceptional circumstances, would the minister please give an outline of the types of circumstances this amendment is directed to.

Senator LUDWIG (Queensland—Minister for Human Services) (8.44 pm)—It could happen. I do not want to be confined to particular examples, but it could happen to a particular section of an industry which was suffering severe economic conditions at the time, depending on the circumstances. These
are matters that would have to be put before the AIRC as a case, and you would have to persuade the AIRC—or, following on from that, Fair Work Australia—to accept those arguments. My recollection is, unless the advisers can tell me otherwise, that many of these types of arguments have been run in commissions over many, many years. Significant drought might be another example—a lengthy, sustained drought where exceptional circumstances have applied and the industry is suffering significant hardship as a consequence. You could imagine those types of arguments would be examples of where the commission may take that into account.

Senator SIEWERT (Western Australia) (8.45 pm)—I thank the minister for his answer. I just want to indicate that the Greens will be supporting these amendments, even though we are not very happy, as you can tell from our amendment, which we will be discussing later on, in terms of the high-income threshold. But we will be supporting (12) and (13), particularly because we think that the provision, given that it is going to exist, is an important protection against future governments actually undermining the award system by lowering the threshold. As I said, we think a preferable amendment is the one that we will be moving, even though the government have already signalled that they will not be supporting it. As we are unlikely to persuade the chamber about our approach, we think it is good to put these protections around it, so we will be supporting these amendments.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that government amendments (4) to (14) on sheet RE403 be agreed to.

Question agreed to.

Senator ABETZ (Tasmania) (8.47 pm)—by leave—I move opposition amendments (2) to (5) on sheet 5739 revised:

(2) Clause 23, page 41 (line 31), omit “15 employees”, substitute “25 employees”.

(3) Clause 23, page 42 (line 5), at the end of subclause (2), add:

; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and

(d) the regulations must prescribe a method for the calculation of full-time equivalent positions for the purposes of this section.

(4) Clause 121, page 122 (line 5), omit “Section”, substitute “(1) Section”.

(5) Clause 121, page 122 (after line 11), at the end of the clause, add:

(2) Subsection 23(1) has effect in relation to this section as if it were modified by omitting “25 employees” and substituting “15 employees”.

(3) Subsection 23(2) has effect in relation to this section as if it were modified by omitting paragraphs (c) and (d).

We are now coming to that part of the debate as to what is the appropriate size of a small business. I know that my colleague Senator Boyce wants to make a contribution and will be indicating to the Senate some excellent research she has done on what others consider to be the appropriate number in relation to a small business. We as an opposition say that the number should be 25. We note that Senators Fielding and Xenophon are of the view that it ought be 20 and the government is at this stage, I think along with the Greens, saying that it ought be 15.

Is there any magic around any particular figure? No, there is not. The question really is, from our point of view: what is the figure that is most conducive to seeing employment growth in the small-business sector? We have been concerned to ensure that some of the obstacles that have been in the way of small business employing people be removed. Whilst I will not traverse that which
has now been rejected and thrown out, one of the motivations in the past for the threshold of 100 by the then government was that it would see a huge growth in employment. I still remember when the change was made, when unemployment was where it is today, that we said we dared to hope to have unemployment with a figure of four in front of it. When we left office we had failed: the unemployment level did not have a four in front of it. In fact, it had a three in front of it: 3.9 per cent. It was beyond that which we had dared to dream about—and, of course, each part percentage point that unemployment came down meant thousands more of our fellow Australians had gainful employment.

When you talk to small business, there is no doubt about the unfair dismissal laws as they were coupled with the prospect of go-away money. I think Mr Beazley and Mr Rudd even admitted, during the election campaign and in the lead-up to it, that go-away money was a problem. A small business would be told, ‘Unless you pay us $2,000 or $3,000 we will be requiring you to front up, with a union representing us’—as a result, no legal fees—but the small business, of course, would have to engage a lawyer. I remember circumstances such as this, even when a small business won, when as a lawyer I had to say to people, ‘We can win this case, but you’ll have to pay me possibly $5,000 to $10,000, so a commercial decision is to offer them three or four and do a deed of release’—and each time it worked a treat. It was unfair and unreasonable, and within the small business community it led to people saying, ‘We will not employ people.’

Can I say that, even with the figure of 15, and how the government is now approaching it, we have seen a seismic shift in the thinking of the Labor Party in relation to unfair dismissal laws and the regime—and we in the coalition welcome that. We say the seismic change to 15 is not quite far enough, but we do accept the verdict of the Australian people that they viewed the figure of 100 as excessive. I know Senator Boyce will give us some interesting information about what others think the appropriate threshold is. I recall previously in this debate reminding people that the ILO, the International Labour Organisation, considers a small business to be one that employs 50 people or less. So the coalition going for a threshold of 25 is very, very modest and moderate in comparison to that which the International Labor Organisation itself recognises. But we do accept the verdict of the Australian people. While the figure of 100 had, I believe, a great impact and was very beneficial in providing employment opportunities, a lot of people said it came at a cost that was unacceptable to the Australian people in relation to uncertainty. We accept that. That is why we think in the wash-up a figure of 25 is reasonable.

To conclude on this: undoubtedly the government will say to us that they have a mandate. They went to the election in relation to Forward with Fairness which mentioned the number 15. I say to the government: I think they would have had us snookered if they had come into this place with legislation that only replicated Forward with Fairness. But of course they have not. Labor made very strong promises in relation to the right of entry, when Ms Gillard was even willing to do something with her mother—I am not quite sure what it was, but she was willing to offer her mother if she were to break this solemn promise to the Australian people in relation to uncertainty. We now know in the legislation before us that she has in fact broken that promise, albeit the latest amendments are getting back towards that promise.

Unfortunately, the government can now no longer claim that it has a mandate, because if it were to assert the mandate argu-
ment it would have to present legislation which was identical to Forward with Fairness—and I think all of us around this chamber know that that is not the case. Therefore, I think they have disallowed themselves from using the mandate argument. But, as I say, they may well have been able to snooker us on that if their legislation had only been Forward with Fairness. What they have done is said, ‘We do have to adjust it a bit here and there to accommodate certain other considerations.’ We say, ‘Well, if you are going to engage in that game, it is open to everybody to engage in that game; we therefore suggest the figure of 25.’

Senator BOYCE (Queensland) (8.55 pm)—As Senator Abetz has ably pointed out, we have moved our amendments because we think they improve the provisions of this Fair Work Bill. I think we need to look at why there is an exemption from the unfair dismissal provisions for small business. It is about whether small business has the resources and the capacity to fulfil the legal, the technical and the regulatory requirements that, as Senator Abetz pointed out, can cost companies over and over again. I would like to go through what some other countries do in terms of what constitutes a small business. As Senator Abetz pointed out, by international standards our definition of a ‘small business’ is very low. The ABS defines a small business as having 20 or fewer workers and a medium businesses as having 20 to 199. But the majority of world regulatory agencies define a small business as having up to 50 employees. The OECD, the ILO and the World Bank all define a small business as fewer than 50 employees and, if you do the translation on the turnover, it is about A$20 million in turnover. Those agencies all say 50 employees and a turnover of under $20 million. That is vastly different from what we allege will give business the sorts of resources to cope with the regulatory framework of unfair dismissal provisions.

A Canadian business is actually considered small if it employs under 100 workers, and that might give you an idea of where some of the earlier legislation came from. As I said, the OECD says that a small firm is fewer than 50 employees and micro-enterprises up to 10. The ILO—which, as I have said here before, can hardly be seen as an economically conservative organisation—says that small firms are considered to be those with fewer than 50 employees, and it puts an upper limit of 200 on a medium sized business. The World Bank goes for a turnover of about A$15½ million and fewer than 50 employees. We could go on and on.

In the US they have gone for a somewhat more complicated system which recognises that some businesses may have a lot of employees but not a lot of capacity. A highly labour intensive business such as a factory, a milk bar or a sandwich shop might employ a lot more people than, for instance, an IT organisation which has much higher turnover, much fewer staff. So for a small business in the US they work on the sort of business. For most manufacturing and mining industries, up to 500 employees and a turnover of about A$11 million is considered a small business. It goes on: for wholesale traders, they work on a definition of under 100 employees and with annual receipts below A$52 million. They have tailored the cloth to suit the type of business—certainly not something we have done here.

Industry Canada, as I pointed out, says that a small business is any business with fewer than 100 employees and a medium business works on 100 to 500 employees—vastly different from the figures that we have here. We have worked on the basis that we think we can improve this legislation by proposing that it move to 25 full-time employ-
ees, not 15 head count. I suggest that 15 head count does not represent the sort of business that has the capacity to understand regulation and spend their time worrying about the legal side of how to undertake a dismissal—not ‘fairly’ but according to the rules, which is far more what it is about. The vast majority of employers would wish to dismiss someone simply because they do not suit the job; they would wish to dismiss them fairly. But if they do not tick all the right boxes at all the right times, they can end up being subject to the sorts of prosecutions and costs that Senator Abetz talked about before.

I think that if this government wants to persist with going for an unfair dismissal exemption limit of 15 head count they should just come clean. Why do they not just honestly say, ‘We want to get rid of the unfair dismissal exemptions altogether’? When you get down to a head count of 15, you are talking about busy milk bars, sandwich bars and other organisations that might have two or three full-time employees—perhaps even husband and wife—and a lot of casuals coming in to help out. These are not the sorts of organisations that have the resources and the capacity. This government does not really care about whether businesses have resources or capacity to undertake the technical aspects of meeting unfair dismissal requirements; what they really care about is making the playing field as uneven as possible for small business. Why not just be honest and say, ‘We want to get rid of the exemption altogether; we want everyone to be immediately liable to meet the unfair dismissal provisions’?

Senator FIELDING (Victoria—Leader of the Family First Party) (9.02 pm)—I will not speak long on this point, because I will speak longer on the amendment that Family First will bring on next, which is to have ‘small business’ defined as 20 full-time equivalents. I think we all pretty well agree around the chamber that small businesses need to be treated specially and differently, so that is not the debate on this point. It is just defining what a small business is, and I will speak on that further. Without pre-empting the will of the chamber, I think we will find that there may be more support for 20 than for 25 employees.

Senator XENOPHON (South Australia) (9.03 pm)—Whilst I will formally move my amendment shortly, subject to the other amendments of the coalition and Senator Fielding, I am grateful to Senator Boyce for a world tour of thresholds for small businesses. My position is this: a reasonable definition for a small business in the context of unfair dismissal legislation would be 20 full-time employees. This is about taking into account the difference between the capacity of a small business to deal with an unfair dismissal claim and that of larger businesses which may have HR resources and the capacity to fight a claim. I think Senator Abetz makes a point about unfair dismissal claims—and I have done a few in my time, many years ago, for both employers and employees—that there is in those claims an element of commercial decisions being made where the merits were not the primary consideration. That is certainly unfortunate.

I believe that, as Senator Boyce says, Australia is out of kilter with other countries on the threshold; that 50 seems to be the ILO, EU and UK threshold for small businesses; and that there is a real issue with the hospitality sector, where, if you have two or three full-timers and 14 or 15 casual staff, some doing only six hours a week regularly, you would go over that threshold. But I feel comfortable about putting a figure of 20 full-time equivalents to the chamber. Unlike Work Choices, where there was no protection whatsoever for a business of less than 100, there is protection here even for employees of small businesses. It is administratively
simpler and there is a fair dismissal code, and I think it is important that we take that into account. Workers in a small business will still have a statutory protection. There will still be a requirement for a warning in accordance with the code. There still will be a provision for natural justice. There still will be an ability to access relief if it is unfair. But it makes it simpler for small businesses, without the fear of being embroiled in costly litigation, as long as they comply with the code and do the right thing.

I will say more about my amendment when I formally move it, but the fundamental difference between my amendment and Senator Fielding’s amendment, which both seek 20 full-time employees, is this: unlike Senator Fielding’s amendment—and this is not a criticism—my preferred approach is to exclude the redundancy provisions. Whilst the government says there ought to be some consistency in the number 15 for redundancies and unfair dismissal claims, I see as two distinct concepts the entitlement for redundancy payout and the ability to make a claim for an unfair dismissal, whether those are via the code or not. My position is that the two should be kept separate. I do not want to see any change to the redundancy provisions that are currently proposed. I do not want us to shift from the figure of 15, but unfair dismissal claims are a separate matter altogether and I ask the chamber to consider that difference between my amendment and that of Senator Fielding. Again, it is not a criticism of Senator Fielding, but it is a different approach with respect to that.

Senator ABETZ (Tasmania) (9.07 pm)—If I may briefly suggest a procedural issue: it seems to me that there will potentially be a number of divisions. Can I suggest that we have a cognate debate in relation to the proposed amendments of the opposition, of Senator Xenophon and Senator Fielding so we air them all? Then we can have rolling divisions to save senators being brought back and forth to the chamber, and have those divisions straight after. The difference between the amendment proposed by Senator Xenophon and that proposed by Senator Fielding has been recognised by the coalition. In our raft of amendments on sheet 5739 revised 2, we did have that provision for redundancy to which Senator Xenophon refers.

The TEMPORARY CHAIRMAN (Senator Humphries)—Is it the wish of the Senate that we conduct ourselves in the way suggested by Senator Abetz? That being the wish of the Senate, we will do so.

Senator LUDWIG (Queensland—Minister for Human Services) (9.08 pm)—I was going to address all of the matters in one go. Quite frankly, I think they are all in the same area. Let me start from the beginning of this debate. One of the defining issues in the lead-up to the 2007 federal election was workplace relations. The Rudd government, when in opposition, took a particular position on workplace relations and argued it daily across the country—from every opposition frontbencher, from every backbencher, from the Leader of the Opposition and from the Deputy Leader of the Opposition. We released our Forward with Fairness policy in April 2007 and the policy implementation plan in August 2007. It was not something we put under the carpet. It was not something we did not tell the electorate we were going to do. We made it central to our election platform for the November 2007 election—central; it was a key part of Forward with Fairness. The key part: the unfair dismissal provisions contained within it. It was a chapter of its own. The Howard government took away most from Australian workers any right to challenge a dismissal that was harsh, unjust or unfair.

I think it is important at this point to clearly expand on another key element of the
government’s unfair dismissal provisions, which were also taken to the Australian people in November 2007 and which are contained in this bill: small businesses with fewer than 15 employees will have a 12-month period of grace free from an unfair dismissal claim to determine whether an employee fits in their business. For businesses with 15 or more employees, that period is six months. I think by any measure that is enough time to judge whether an employee is going to work out or not. However, just to ensure that the process remains simple, fair and flexible for employers and employees, we said we would develop a streamlined small business fair dismissal code. If employers need to get rid of an employee because they are not doing their job properly, once again, the Fair Work Bill fulfils this election commitment.

It is about ensuring that there are simple, fair and flexible rules. Again, it passes what I would call the common-sense test. For all the users of a system—large and small employers and their employees, and for all of those that Senator Boyce would sentence to ignorance—we promised a better process in Fair Work Australia to ensure that employers and employees were brought together quickly and professionally to deal with these claims in a non-legalistic manner. The Deputy Prime Minister repeatedly pointed this out. On page 18 of Forward with Fairness: policy implementation plan, it clearly states that the special small-business arrangements that I have outlined above will apply to small businesses with fewer than 15 employees. During 2007, the definition of ‘small business’ as ‘fewer than 15 employees’ was a significant counterpoint to the former Howard government’s unfair dismissal provisions contained in Work Choices, which stated that any business with 100 or fewer employees could sack any worker at any time and give no reason whatsoever. It was emphasised repeatedly in debates. On 24 November, the Australian people voted for the Australian Labor Party and voted in favour of the definition of ‘small business’ being ‘fewer than 15 employees’ as the benchmark between the two processes.

At this point in the debate, I think it is important to remind the Senate why this definition of ‘small business’ was chosen. It was chosen as a definition based on a headcount, counting full-time, part-time, and regular and systematic casual employees. There are sensible and logical reasons as to why this number and method of counting was chosen. The formulation of fewer than 15 full-time, part-time, and regular and systematic casual employees reflects a long-standing definition of ‘small business’ in the workplace relations arena. It was adopted by the full bench of the Australian Industrial Relations Commission in 1984 in the TCR—termination, change and redundancy—test case. It has been part of industrial relations practices for over 20 years.

We chose the same benchmark for the application of the small business unfair dismissal procedures so that small businesses would have a simple and easy to understand scheme. They can look at a roster, count their staff by name and know whether they are in the unfair dismissal process or whether they are not. This definition remained for redundancy pay eligibility even under the coalition. They kept that provision until 2005, when the former Howard government, without reference to the Australian people, introduced Work Choices, which, bizarrely, changed it to any small business with fewer than 100 employees.

The opposition, Senator Xenophon and Senator Fielding have all put this evening their own changes to the definition of small business in regard to unfair dismissal. They may forgive me for saying this, but there is
no logic or rationale to any of the proposals they put forward. They are complex, unwieldy, uncertain and quite frankly unworkable. The opposition wants a small business to be defined as having fewer than 25 full-time equivalent employees for the purposes of unfair dismissal and fewer than 15 employees based on a head count for redundancy. The logic escapes me. Senator Xenophon wants a definition of fewer than 20 full-time equivalent employees for the purposes of unfair dismissal and a head count of fewer than 15 employees for redundancy. Senator Fielding wants a definition of fewer than 20 full-time equivalent employees for the purposes of unfair dismissal and fewer than 15 full-time equivalent employees for redundancy.

Each of these versions of these amendments propose that the number be calculated in terms of full-time equivalent positions, not in terms of the count of individual employees. But in the debate no-one has attempted to explain how full-time equivalent positions will be worked out. They have said in part that it will be left to regulation—'Let someone else work it out; let someone else figure out how we’re going to do this.' In other words, they will put it into the hands of a writer of regulations to sort out how this will actually work.

It could be too hard, especially for hard-working businesses. We hear the argument from the other side that small businesses are under the pump. We accept that. We hear that they have little time, because they are too busy running their business. We accept that. We hear that they will have little time to address some of these matters. We accept that. So what does the Labor Party propose? We propose fair and simple ways for them to deal with unfair dismissal. They can use the small business code to dismiss employees. It is simple to work out whether you are subject to this in the first six months or 12 months by counting your employees. In a small business, you know them by name; you know each and every one of them by name. That is a very simple process. You can see them, you can count them and you can easily write down on a sheet how many you have.

A definition based on full-time equivalent employees would require a complex regulation to begin with. But just think about what the regulation would have to deal with. What are ordinary full-time hours? How will overtime hours be treated? What about a business with a seasonal work force or a business with fluctuating hours from week to week? Over what period will the hours be averaged—a week, a month or a year? And so it goes on. I do not have to use just those examples. I am sure that all around here can think up many more that show why it would (a) be difficult, (b) be complex and (c) not always provide the right answer. It might change and vary, and that leaves it open for debate as to whether or not you have those employees there or not.

If any of these proposals were adopted, an employer could never say with any certainty whether they were in or out of the small business scheme at any given time. These amendments make it more complicated, not simpler. We want to be able to provide a special guide for small businesses on all the laws related to termination of employment on redundancy and unfair dismissal.

One of the reasons why the opposition and, it appears, Senator Xenophon and Senator Fielding say that they want to make these amendments is because of the economic climate. On this side of the Senate, we think that in good economic times and difficult economic times employees are entitled to job security. They need some protections. Small business owners need to be able to walk into their staffrooms, count the people in there
and know what their legal obligations are
without spending hours of their time on a
computer with pay records to work out what
their full-time equivalents are or could be.

The opposition says that they will judge
this legislation on a number of tests. We have
heard them iterate those tests this evening.

Does it extend union power? Clearly, no.
This is about small business and about ensur-
ing that there is a small business code. It is
about ensuring that small business has cer-
tainty. So, tick, it meets that; it does not fall
under that wheel. Does it provide a disincen-
tive for employment? No; clearly, it does not.

Every business has a minimum of six months
to test a new employee to make sure that
they fit in with their business. All the evi-
dence set out in the explanatory memoran-
dum makes it clear that employment security
law has no significant effect on employment
decisions. Another test that the opposition
use is: does it go beyond what the Labor
Party took to the last election? No. It meets
our policy commitments to the letter.

But we know that this is not about the
tests that the opposition have set in this de-
bate. I listened closely to Senator Boyce’s
contribution. Curiously, it reminded me of
what Senator Joyce said this morning at the
Senate doors. He said that opposition policy
was about providing that small businesses
with fewer than 25 employees should be ex-
empt from unfair dismissal laws and so the
definition of ‘small business’ must be
changed. Senator Boyce harked to the same
argument, using the term ‘exempt’. The op-
position want to exempt small business from
the operation. Examples from across the
globe were given using the phrase ‘exempt-
ing small business’. There were arguments
about whether it should be 50, and a range of
other proposals were put forward.

I have news for both Senator Boyce and
Senator Joyce. They are not exempt. It is
simply a modified scheme that applies to
employees of small business. The opposition,
as demonstrated by both Senator Joyce and
Senator Boyce, argue and completely expose
their inability to grasp the basic element of
the unfair dismissal scheme we put forward,
which shows that this debate is not about
good public policy from the opposition and it
is not about principle from the opposition; it
is in their very heart that they cannot let
Work Choices go. They want to argue and
argue about maintaining unfair dismissal in
the way that they have reflected it by ex-
empting small business, and they continue to
make that point even this evening.

Senator SIEWERT (Western Australia)
(9.23 pm)—The Greens will not be support-
ning these amendments. The Greens position
very strongly is that we believe in universal
access to unfair dismissal laws and in fact we
do not really support the government’s level
of 15, and we have made that extremely
clear. But we have said that we are prepared
to wear that because they did go to the elec-
torate with that figure during the election.
We will not be supporting any move above
15 because we do not believe that people
working in small business should have dif-
ferent rights with respect to unfair dismissal
rules.

Senator Boyce asked why the ALP does
not just come out and say that everybody
should have access to unfair dismissal rules.
That is about the only thing that Senator
Boyce has said that I agree with. I think they
should give it to everybody and get rid of the
15-person limit.

Senator Abetz—At least you are honest
about it.

Senator SIEWERT—We have said that
the whole time. We in fact went to the elec-
tion with that policy. The ILO was again
used by the coalition to justify their position.
They used it last night, although I will again
note that they did not support the Greens’ very sensible amendment to ensure that the fair work legislation was in fact consistent and gave effect to ILO conventions. However, after having knocked our amendments off, the coalition still uses the ILO definition. It is interesting to look at the ILO definition. Their resolution states that small- and medium-sized enterprises are defined according to national custom and practice. This bill is setting the national custom and practice at 15. The Greens do not happen to agree with the level of 15, but that is what this bill is doing. So it is not fair or right to be quoting the ILO definition for a small enterprise at a certain level when it is in fact up to us to set that. Australia’s custom and practice has, since 1984, been 15. We do not agree with the practice but this bill is giving effect to that custom. The ILO convention in relation to this issue also states that exclusions are permitted in relation to:

… other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or the nature of the undertaking that employs them.

This has been understood to refer to workers employed in genuinely— and I emphasise the word ‘genuinely’— small or family businesses along with managers, apprentices and agricultural workers. What we do not accept is that businesses of 20 staff, or particularly of 20 full-time-equivalent employees, have special problems of a substantial nature in relation to the scheme for unfair dismissal in this bill.

So can we please drop any reference to and abuse of ILO conventions to justify your definition of small business to try to jack it up to 20 or 25 full-time-equivalent employees, which we all know exceedingly well means that in reality you want to hike it up to 50 or 60 because full-time-equivalents means counting in part-time and casual people so that of a sudden we will have businesses included here that have 50 or 60 employees. I think we are getting closer and closer to that magic number of 100 again, don’t you? That is exactly what they are trying to do. They are trying to undermine the government’s election promise of 15, which the Greens were never supportive of—but we think it is a hell of a lot better than 20 or 25 full-time-equivalent employees. So we will not be supporting any move away from that number.

I will note, as Senator Xenophon and Senator Ludwig mentioned, that in the revised amendments sheet the opposition have changed their amendments so that the exemption for redundancy pay is limited to 20 staff, and that is on a head count. Senator Fielding’s figure—I am sure he will correct me—is 15. This makes it inconsistent. It is messy to have two different definitions of small business, but of course it achieves their objective of trying to hike it up so that more and more people do not have proper access to unfair dismissal rights.

We are talking about small businesses, in particular those in retail and hospitality that employ a lot of part-time and casual workers. And guess what? These are the jobs of the most vulnerable workers—women, young people and quite often non-English-speaking people. Guess which workers were affected most by Work Choices? You got it—the vulnerable workers. Research has shown that it was the vulnerable workers—women, young people and those in vulnerable jobs—who were the most affected by Work Choices. And here we have the coalition—and, yes, I am going to bring out the dead body again, because we have to keep reminding people that that is what is driving this agenda—who keep saying they have put the knife in the heart of Work Choices, but in fact they have not. They keep trying to drag it back. This
amendment will once again affect the most vulnerable workers in our community, the same way Work Choices does. That is why the coalition want to raise this limit to 20 or 25. The Greens will not be supporting it. We put the government on notice very clearly—we have in the past and we will once again—that we will not be supporting any move to increase this threshold from 15.

The coalition and the two Independents are not only trying to raise this threshold, but they are making the threshold full-time equivalents, not heads counted. The Greens will not support it. We will not wear it. This is a return to Work Choices, which clearly undermined workers’ rights and clearly enabled people to be unfairly dismissed. We will not support it. It is not part of a fair industrial relations system and it is taking us back to Work Choices.

Senator XENOPHON (South Australia) (9.31 pm)—Since we will be voting for the amendments in a rolling block, in a sense, I will indicate that in terms of the psychology of small businesses there is a level of apprehension out there in the smaller cafes and the businesses that employ a lower number of employees. This is about supporting them, and job creation, in terms of their confidence. I think it is fair to say that I would not be moving this if it meant that there was no protection. But instead there is a simplified code—a fair dismissal code—which I think will give those small employers comfort in terms of dealing with these matters in a streamlined fashion. It is about giving those small businesses the confidence to continue to take on people. A threshold of 15 is simply too low.

Senator Boyce has mentioned the ILO, the OECD and the EU in terms of definitions of small business but can I indicate that the definition of 20 persons—it is not 20 FTE; I do not want to mis-state the position at all—which is the definition here in Australia, is accepted by the Australian Bureau of Statistics and it is the threshold used by the Tele- com Ombudsman for a number of disputes. The Small Business Coalition supports it as does the Council of Small Business Organisations of Australia. ASIC, I think, uses it in terms as a criterion for grants. The Commonwealth uses it for grants for TCF, and DEEWR uses it for employment skills in relation to disabilities. Twenty is the threshold; it is a consistent figure in legislation. So 15 is out of kilter with respect to the definition that has been established over many years in Australia, albeit much lower than what has occurred in other jurisdictions. I think that 20 is much more reasonable.

And I believe that number is much more reasonable in the context of the current economic circumstances. I know the government says that this should be for both the good times and the bad times, and I accept that, but given that the government has had two stimulus packages, and the thrust of those was about making sure that there was confidence in the economy, I think that it is important that we do not lose sight of the nervousness of small businesses to take on staff. And the fact is that there will be a statutory safeguard through the unfair dismissal code—and that, to me, is a fundamental issue to be considered in relation to this.

In terms of the onerousness or otherwise of having a full-time equivalent calculation, COSBOA, the Council of Small Business of Australia has indicated in their correspondence to me that they feel that that is not a significant issue. That is something that can be calculated and the amendment does provide for regulations to put that in place. I respect the Greens’ position and I respect the government’s position but I think the figure 20 is more realistic in the context of what a definition of a small business is in this country.
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.35 pm)—The question is: is the government right to stand by 15, endorsed by the people of Australia, in a defining election which rejected Work Choices, when it is not endorsed by the Senate? I think it should. The debate we have had is about whether the threshold should be 15, 20 or 25, and whether it be full-time, full-time equivalent or simply a head count of the people working in an enterprise. One gets the clear impression that it would not matter what number was put forward by the government here, there would be argument, from the opposition at least—if not the Independents on the cross bench—that it ought be higher. Of course, the same lobbying forces would apply. But here is the question to Senator Xenophon, Senator Fielding and the opposition: are you really prepared to force a double dissolution on the definition of small business being 20, rather than 15 as endorsed by the people of Australia at the election of 2007?

Senator Boyce shakes her head to say yes. I ask that a little bit of thought be given to that, and I ask that a little bit of probity and responsibility be brought to this question. There are important issues in this legislation about the relationship between employers and employees in a country which is defined by the term—to quote the frequent statement of the last Prime Minister—‘a fair go’. Is it a fair go to have the Australian people back at the ballot box because the opposition and two crossbenchers in this place did not accept the adjudication of the Australian people at the last ballot box? I do not think so. I think it would be very easy to get locked into a pursuit of supplanting the figure 15 with 20 or 25 as a test of wills, but the consequences would be quite great, if not quite grave. I do not think the Australian people want to be confronted with a vote again by an intransigent opposition or two members of the crossbench on this defining matter.

The government was elected by the Australian people, above all issues, rejecting Work Choices. The government made it clear—and who of us watching this matter can forget—that it would define ‘small business’ in the context of this legislation as one with 15 or fewer employees. It was very, very clear to the Australian people in 2007, and they endorsed it.

I say to my colleagues in this place who might want to make a stand on this: this is not the issue that should bring down this legislation. If there is some other matter then let it be brought forward. The argument will be had about why the number of employees should be five or indeed 10 higher. We will hear about the changed economic climate, but the argument goes both ways. That economic climate also makes it tougher on employees. We are talking about circumstances in which, for every employer, there are 15 employees. All components of this Senate recognise that 15 is not the cut-off as far as a rejection of any further unfair dismissal provision is concerned. They are simplified but they remain there, as Senator Xenophon just pointed out.

So that is it—this is a defining issue. I put it to my fellow senators: are we really going to obstruct the government on an issue on which the people clearly backed this government, to the point where another election may be forced later this year? Let me counsel members thinking about that to go down that road and think about the consequences. It would be unfair to the Australian people, who have made a judgment on this. It would not be responsible as far as electoral politics are concerned. Sure, if this was new, if this was an issue that had not been canvassed, if this government had been elected on other matters and were suddenly bringing this in
here—like the Howard government was elected on other matters and brought Work Choices in here—the people might judge that badly at the next election. But I can tell you what will happen at the next election if this becomes a stumbling block: the people will judge those who made it a stumbling block—and the Senate is the clear arbiter on this matter—very badly indeed. Like my colleagues, I could go into the minutiae—and they are important—about these numbers. But, ultimately, the people have voted on this matter, and I do not think the Senate should defy the people’s judgment. That would be very unwise. So my counsel is that, while the argument is being put forward to change the numbers, the Senate think about this and accept the judgment of the people in 2007—or face the ire of the people in 2009. That is what we are really debating here.

I ask my fellow crossbenchers, Senator Fielding and Senator Xenophon, to think carefully about that. But I ask that particularly of the opposition—you were punished over Work Choices. You were punished over this Senate being turned into a failure of a watchdog—

Senator Boyce—A watchdog!

Senator BOB BROWN—and you ought not forget that lesson. Yes—the watchdog of the interests of the people—

Senator Boyce—Exactly!

Senator BOB BROWN—Senator Boyce, let me tell you: there is never a more important function of a watchdog than to stand by the people when they have made their judgment. It does not always happen, but in this particular circumstance—

Senator Abetz—Like you did on the GST—come on! Your own voting record shows you are wrong.

Senator BOB BROWN—Senator Abetz, let me tell you about the GST: the Greens made our position clear and were elected into this place on our stand on the GST; and we carried it through faithfully. On Work Choices, you were punished; you were put out of office on the matter. As Santayana said, if you do not learn from history then history will punish you. That is my counsel—you can take it or leave it. We are arbiters of this matter, ultimately. There are good arguments for 20; there are good arguments for 25. When Work Choices was being debated in here, it was 50; it was 100 when it was being formulated. But the people accepted 15. It is part of a suite of measures that the people accepted, and I would counsel that we take their judgment on the matter.

Senator LUDWIG (Queensland—Minister for Human Services) (9.44 pm)—I do not want to let this go without addressing Senator Xenophon and Senator Fielding. It seems to me, from the argument that they have put, that they are wedded to full-time equivalence. Can I say, and it is part of the argument that I put earlier and it is still sustainable, that I have not heard from Senators Xenophon and Fielding about how workable full-time equivalence will be for small business. My submission is it will be completely unworkable. It will be at the margin where the most pain will come, because employers will not be able to say, ‘Jane, Bob, Joe—I have got full-time, part-time and systematic casuals in place.’ They will have to be able to work out what full-time equivalence will be. And that will depend on what business cycle they are in; what seasonal business they are in, if it is seasonal; what period of the month it is; and whether it is over Christmas or New Year. But under our proposal there will be certainty at that point that they can go to the commission and say, ‘Here are my books. Here are the circumstances that I am confronted with.’ Oddly, Senator Boyce laughs. Unfair dismissal is not a laughing matter. In fact, I think you are so wedded to Work
Choices that is why you laugh. You laugh because you think—

Senator Boyce interjecting—

The TEMPORARY CHAIRMAN (Senator Humphries)—Order! The senator should be heard in silence.

Senator LUDWIG—You laugh and insult those people who are trying to ensure that there would be a fair dismissal code for small business that would ensure that there would be flexible, simple arrangements to allow small business to be within the system. That is unlike the position that I think the opposition argued—that it was exempt, that it was outside.

But, going back to the point that I was making, in relation to small business it is my submission that it is critical that you adopt the position that the Labor Party took to the election. We campaigned up hill and down dale on it. The position we put was crystal clear to the electorate. It was crystal clear what we were going to do when we got into office. I am fortunate enough to be in the position here today arguing for that, and I am not going to let it go without knowing in my heart that I have said everything that I could possibly say to make this happen.

We argued for Work Choices to be gone, to be got rid of. We argued for AWAs to be gone. We argued that there would be unfair dismissal laws. We argued against 100 employees being exempt from the system. We argued for our policy and it was clear. We put more detail in our platform and in the policies that we took to the election than you would expect. We put in the detail of what we would actually do, and I am here now doing just that. What you argue is that outside the industrial relations arena you might know better. You might know that the ombudsman from the telecommunications industry might have a different measure. You argue that there might be a more practical measure somewhere else. I am arguing from the industrial relations framework that has existed in this country for many years. It has used 15. It has used full-time employees and it has used part-time employees and it has used systematic casual employees. Why? Because they know what the terms mean as they have dealt with them over the years. The Australian Industrial Relations Commission—and in the future Fair Work Australia will—know how to deal with it. They know the sense of it. They will then ensure that it operates fairly and that it will operate easily for small business.

What you are both now doing, with respect, is adding a complication that should not get up, that is unnecessary, that is unworkable and that the commission will have to turn their mind to at the margin as to how it will operate. You will provide uncertainty to small business in this area, particularly small business at the margin. That is what you will do, and if I can argue you out of it in this chamber then I will do everything that I possibly can to convince you as to the right position to adopt. That is the position that we have put forward in our bill, not only because it is what we took to the election but also because it is simple, it is fair and it works. It has worked, because we know that the commission have used these terms before. They know what they mean and they can engage small business. Small business will be able to work with them—because, unlike Senator Boyce, I think that small business in this country is clever. It does work hard and it will be able to use these laws to ensure that it can dismiss people when it needs to and it can employ people when it needs to, and it will go on being profitable in this country.

We know that what you are now trying to do will be difficult to put in regulation and will be difficult to make work. It will be difficult to ensure that we have a certain posi-
tion for small business. What I have learnt over many years from small business, having dealt with small business from a range of places—from both the Public Service and the union movement—is that they want certainty in their life: certainty about what the industrial relations laws are, certainty about what the tax laws are and certainty about a whole raft of legislation. So they argue for certainty. Why? Because if it is certain they do not have to consider it, they do not have to think about it, they know what the rule is and they operate under it.

I will not labour the point anymore. If I have not convinced you, I am sorry, because it is just so critically important for this government to ensure that we do change these industrial relations laws, get rid of the last vestiges of Work Choices and make sure that we can have a fair, simple and flexible system for small business.

Senator XENOPHON (South Australia) (9.51 pm)—If I can focus on the issue of the calculation that Senator Ludwig has articulated so well, the Council of Small Business Organisations of Australia, COSBOA, to paraphrase an email that they sent to me, essentially say that unfair dismissal is not something that happens often or on a whim. They say that, if the occasion arises when a small business employer wants to dismiss someone and is concerned that it could be construed as unfair dismissal, they should be advised to contact Fair Work Australia before taking the action and it is unlikely to be too onerous to add up the hours of work of various employees in terms of full-time equivalence. I am just putting simply what the peak body for small businesses in this country has said. I restate my position that it is a concern where there is a lack of confidence by small businesses in dealing with these claims. If that is an impediment to taking on a few extra workers, that is a real concern to me. But, again, we do have that fundamental protection of the fair dismissal code, which will contrast significantly with Work Choices.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.52 pm)—I have listened carefully to the arguments. I find it interesting that Senator Collins may have brought in the mascot for the Labor Party, called a goose I think. I don’t know whether it is your mascot, but that just shows how seriously you are treating this debate.

Senator Jacinta Collins—What are you talking about?

Senator FIELDING—We will get back to the substantial issue here. I agree with the Labor Party that the small business people are clever; they are not dumb. I also believe that workers are clever and are not dumb. When you think about it the Australian public are also quite smart. Maybe what the minister should do tonight is tell this chamber how he is going to go to the public with a double dissolution around the number 15. Tell us how you are going to do that. Are you sure that when the Australian public voted at the last election they were voting for 15 employees as a definition of small business?

The whole idea about the Senate is that you review and you scrutinise. A government has a mandate but the Senate also has a mandate to review and scrutinise. So you just cannot say that it was 15 and we had it as a policy going through the election. The Australian public did not vote for you for that. We all voted on a couple of issues in the last election, one was Work Choices and Family First is on the record as voting against it. We all voted on a couple of issues in the last election, one was Work Choices and Family First is on the record as voting against it. And the majority of the Australian public were against it. The second issue was the environment. Those two issues were pretty important at the last election.

This Senate is doing its proper job. When this bill gets passed in this chamber, in whatever shape or form, it will send a signal that Work Choices has gone. But we need to
make sure that we actually use the proper process. You cannot circumvent it. You cannot try to take shortcuts. That is when you get problems. That is what happened last time when there was a majority held by one party in the Senate. There was the lack of scrutiny and lack of genuine debate going back and forward. It is good that we can have these debates—15, 20, 25, effective full-time; these are important issues we must get right.

The GFC that the Prime Minister mentions so often frightens small business too, and a lot of them are family based businesses. We have to get the balance right with this particular legislation that impacts on all Australians in some way. These are the workplace laws for this country and we should make sure that the Senate does its job by scrutinising what the government puts forward. It is extremely important and we should all have a very high regard for that.

The TEMPORARY CHAIRMAN (Senator Humphries)—We are considering opposition amendments (2) to (5) on sheet 5739 together, Family First amendments (1) and (2) together and Senator Xenophon’s amendments (1) to (4) together. I remind the Senate that the intention of a cognate debate is that we deal with the debate on all of those amendments at the one time and vote sequentially and without interruption on those amendments. If there is no further debate on these amendments, the question now is that the motion of Senator Abetz on opposition amendments (2) to (5) on sheet 5739 revised be agreed to.

Question put.

The committee divided. [10.02 pm]

(The Chairman—Senator the Hon. AB Ferguson)

| Ayes | 29 |
| Noes | 31 |
| Majority | 2 |

**AYES**

Abetz, E.  
Barnett, G.  
Birmingham, S.  
Brandis, G.H.  
Cash, M.C.  
Coonan, H.L.  
Ferguson, A.B.  
Fifield, M.P.  
Heffernan, W.  
Johnston, D.  
Mason, B.J.  
Minschin, N.H.  
Ronaldson, M.  
Scullyon, N.G.  
Williams, J.R. *

**NOES**

Arbib, M.V.  
Bishop, T.M.  
Brown, B.J.  
Brown, C.L.  
Collins, J.  
Farrell, D.E. *  
Fielding, S.  
Furner, M.L.  
Hutchins, S.P.  
Ludwig, J.W.  
Marshall, G.  
McLucas, J.E.  
Moore, C.  
Polley, H.  
Siewert, R.  
Sterle, G.  
Xenophon, N.

**PAIRS**

Adams, J.  
Boswell, R.L.D.  
Cormann, M.H.P.  
Joyce, B.  
Macdonald, I.  
Nash, F.  
Payne, M.A.  
Trood, R.B.  
Crossin, P.M.  
Carr, K.J.  
Conroy, S.M.  
Faulkner, J.P.  
Hurley, A.  
Sherry, N.J.  
Wong, P.

* denotes teller

Question negatived.

CHAMBER
Senator FIELDING (Victoria—Leader of the Family First Party) (10.05 pm)—by leave—I move Family First amendments (1) and (2) on sheet 5733 revised 3:

(1) Clause 23, page 41 (line 31), omit “15 employees”, substitute “20 employees”.

(2) Clause 23, page 42 (line 5), at the end of subclause (2), add:

; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and

(d) the regulations must prescribe a method for the calculation of full-time equivalent positions for the purposes of this section.

Question negatived.

Senator XENOPHON (South Australia) (10.06 pm)—by leave—I move amendments (1) to (4) on sheet 5760:

(1) Clause 23, page 41 (line 31), omit “15 employees”, substitute “20 employees”.

(2) Clause 23, page 42 (line 5), at the end of subclause (2), add:

; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and

(d) the regulations must prescribe a method for the calculation of full-time equivalent positions for the purposes of this section.

(3) Clause 121, page 122 (line 5), before “Section”, insert “(1)”.

(4) Clause 121, page 122 (after line 11), at the end of the clause, add:

(2) Subsection 23(1) has effect in relation to this section as if it were modified by omitting “20 employees” and substituting “15 employees”.

(3) Subsection 23(2) has effect in relation to this section as if it were modified by omitting paragraphs (c) and (d).

Question put:
Nash, F. Hurley, A.
Payne, M.A. Sherry, N.J.
Trood, R.B. Wong, P.
* denotes teller

Question agreed to.

Senator ABETZ (Tasmania) (10.10 pm)—If it were to suit the Senate’s convenience, it might be an appropriate time to start our way through the right-of-entry amendments. I understand that there has been cooperation between all the parties as to how these matters ought be dealt with in some sensible order. If that happens to be agreed, then I think Senator Fielding would have the first call to deal with his amendments (4) and (R5) on sheet 5733. If the minister is agreeable, let’s flick to Senator Fielding.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.11 pm)—by leave—I move Family First amendments (4) and (R5) on sheet 5733 revised 3 together:

(4) Clause 479, page 390 (line 23), after “ordinary meanings”, insert “subject to section 480A”.

(R5) Page 391 (after line 9), at the end of Division 1, add:

480A Application of this Part
(1) This Part, other than Subdivision B of Division 2 and any provisions relating to that subdivision, does not apply in relation to small business employers or their employees.

(2) In this Part:

member of the permit holder’s organisation does not include an employee of a small business employer.

premises does not include premises occupied by a small business employer.

(3) Nothing in this Part authorises a permit holder to enter premises occupied by a small business employer.

These amendments relate to right-of-entry provisions for small businesses. The government has already set as a principle that small businesses should be treated differently under the Fair Work Bill. That principle has been applied because they know that small businesses actually need to be treated differently. Family First is seeking to extend the treatment of small businesses as being different to other businesses through the right of entry.

The issue here is that, if you go and ask a lot of small businesses around your local area whether they would like the unions to be entrenched—that is the word I would use—as the policeman of workplace contravention, in other words, to walk in, after being authorised to do so, and say, ‘Something is not quite right in your workplace,’ most small businesses would say, ‘You’ve got to be kidding.’ There is a Workplace Ombudsman. There is Fair Work Australia. These are statutory bodies that have powers to investigate breaches of the workplace—and quite rightly so.

What Family First is seeking to do here is allow small businesses to not be overly burdened by having to worry about someone else, which could a union, being authorised to go in as a so-called policeman. We think it needs to be an accountable statutory body, like the Workplace Ombudsman and Fair Work Australia. They have those powers and they are accountable as statutory bodies. I must say here that I am not against workers, I am not against unions and I am not against businesses. But with the Fair Work Bill we need to get the power balance right between workers, businesses and unions. We had a similar debate about getting the balance right with Work Choices, and quite clearly the balance of power there was wrong—it swayed too far to businesses at the expense of workers. Now we are faced with new industrial relations laws for this country, we need to look at the balance of power and get it shared. Too much power with any one of
those three groups means that, all of a sudden, one can take advantage of the other.

The government has given special treatment to small businesses with regard to unfair dismissals. We want to extend special treatment to small businesses with regard to right of entry for workplace contraventions. This is not about people in a union not having access to the union. They can still have that access and have the union work through their issues with them. But, at the end of the day, do we actually want to have entrench the unions as the next lot of police on the workplace? There could be some argument that that power is already there. But what we are discussing are whole new workplace laws for Australia and they have to be considered in their totality. Workers can no longer be ripped off like they could under Work Choices because of the National Employment Standards and the awards. It is good that they have the National Employment Standards and awards and that those awards are being modernised, so workers have those protections.

If there is a contravention of the workplace laws, then any worker, whether a union member or a non-union member, has the right to go confidentially to the Workplace Ombudsman and get them to investigate the circumstances. If they are not sure, they can go and consult a union, if they are a member, and discuss the issue with them. But, at the end of the day, it should be reported to a statutory body or authority because that is the right place—we can hold them to account. As I said, I am not against unions, but they are not accountable to anyone other than themselves. I cannot call them in to Senate estimates. They are not accountable to parliament. Statutory bodies are, and they have the powers to go and inspect certain things relating to non-union members.

What Family First is seeking to do is to treat small business as special with regard to right of entry. That is what we are proposing through (R5)(1), which reads:

This Part, other than Subdivision B of Division 2 and any provisions relating to that subdivision, does not apply in relation to small business employers or their employees.

So what the two amendments I am moving basically do is say that union members can still speak freely with their union, but they take the policing of workplace contraventions for small businesses away from unions and move it to only the Workplace Ombudsman and the Fair Work Australia. I would say that, if you go down to your local shopping strip or other small businesses and ask them if they really want the unions to be entrenched as the police force for workplace contraventions, their answer will be no.

Senator ABETZ (Tasmania) (10.20 pm)—I can indicate that the opposition will be opposing both lots of amendments by Senator Fielding. First of all, in relation to exempting small business, can I say to Senator Fielding—and I forewarned him I would be saying this—that it is somewhat passing strange that you would vote against a clause that would allow small business to claim conscientious objection, that you would say that should not be allowed, but then say, ‘No small business should be subjected to a union right of entry.’ I confess I do not get it. I want to place that on the record. I do not want to revisit the debate that we had—whenever it was; it seems a long time ago but it was yesterday. But, quite frankly, I remember that when I was in student politics and railed against compulsory student unionism, the first concession that was made was to say, ‘Well, all right, we’ll at least provide conscientious objection.’ That was seen as a concession along the road. So I cannot see why you would vote against that concession if you then say, ‘No union should be allowed
into a small business.’ I have made that point. Draw a line under that; move on.

Senator Fielding—I did not say the union was not allowed in the workplace; it was just for workplace contravention.

Senator ABETZ—I accept that point but still draw a line and move on. It is interesting that in Senator Fielding’s contribution he told us that the previous government had gone too far, and yes we accept that—we did. But, interestingly in saying that we had gone too far, Senator Fielding now puts in amendments that go further than we even did. So I confess I do not quite understand the thread of logic that is going through Family First in relation to these matters.

We believe and always have believed that there is a role for unions to play—but under restricted circumstances. That is why, for example, we did believe in conscientious objection just as a little restraint in one area, which Senator Fielding voted down. But to say there should be no right of entry at all we say basically goes too far, and then to require that there be 72 hours notice as opposed to what is in the current law, which we legislated, namely 24 hours, we think is the right measure. What it highlights and again using that test that I have applied throughout this: if it is going to be anti small business and allow excessive union power, then we would be very negative to whatever the proposition might be.

But in relation to these two amendments, if the appropriate restrictions are put on at a later time—and we will be going through that—can I compliment the government on the considerable movement they have made with their proposed amendments in relation to right-of-entry provisions. I think that was to save Ms Gillard from having to sell her mother by that backtracking, but we do welcome those changes. Given the regime that I think will come out of the Senate at the end of this discussion, there will be the appropriate checks and balances that do provide the trade union movement with the opportunity to undertake a role that it has traditionally undertaken but within appropriate parameters. I think Senator Fielding’s two amendments would hogtie the unions too much. In this place you hardly ever hear me say that, because the propositions being put up by us we always think are fair and reasonable and the Labor Party usually go in the opposite direction to give more power to the unions. But on this occasion I have to say to Senator Fielding that we as a coalition believe that it does hogtie the unions too much. Therefore, we are minded to oppose these two amendments.

Senator SIEWERT (Western Australia) (10.25 pm)—The Greens will not be opposing either of these sets of amendments as they relate to right of entry. These amendments go further than restricting right of entry than Work Choices—

Senator Abetz—You will be opposing?

Senator SIEWERT—We will be opposing these two sets of amendments.

Senator Abetz—You said ‘will not be’. Senator SIEWERT—Sorry, did I say ‘will not be opposing’?

Senator Abetz—Yes.

Senator SIEWERT—I beg your pardon. Let me very, very clearly state that we will be opposing these amendments.

Senator Abetz—I thought that would be the case.

Senator SIEWERT—Thank you for that, Senator Abetz. These amendments go further than restricting the right of entry than Work Choices did. We believe right of entry is a critical right of freedom of association in ensuring that employees’ rights and conditions at work are complied with by their employers. We note that the ILO Committee of
Experts most recent general report which states:

The committee recalls that the right of trade union officers to have access to places of work and to communicate with management is a basic activity of trade unions which should not be subject to interference by the authorities and should not be limited to communication with “eligible” employees, as trade unions should be able to apprise non-unionised workers of the potential advantages of unionisation or of coverage by a collective agreement.

We note in a revised version of the amendments the restriction on the right of entry is limited to investigating suspected breaches. This still amounts to a fundamental breach of the right of freedom of association. If an employee is a member of a union they should be able to enjoy the benefits of that membership, and that includes the legitimate role of a union in enforcing their members’ entitlements.

We believe that these amendments would turn back our industrial relations system very significantly and, as I said, it goes even further than Work Choices dared to go in restricting the freedom of association of Australian workers. Let me be very clear: we will not be supporting any of these amendments.

Senator LUDWIG (Queensland—Minister for Human Services) (10.28 pm)—It seems that everything to be said has been said and it has left me little to say. If I could add this to the debate: under Forward with Fairness the government promised:

Fair Work Australia will ensure there are appropriate arrangements in place to enable duly authorised permit holders to meet with those workers who are eligible and who want to meet with them, in accordance with right of entry laws. The government intends to meet that election commitment. Employees have a right to representation irrespective of the size of the business that they work for. The bill’s right-of-entry provisions balance that right of employees to be represented by their union with the right of employers to get on with the job of running their business.

We do not support the amendments that are being put forward by Family First. We understand that there have been longstanding roles under the industrial relations legislation, including under Work Choices, to investigate suspected breaches of awards and to take recovery action to make sure employees are paid correctly. There has never been a small business exemption from right-of-entry laws. Small business employees should have the same access to their unions as employees of large businesses. Any attempt to exclude small businesses from the right-of-entry laws would be contrary to the spirit of freedom of association principles and would go even further, as I said, than Work Choices in restricting union access.

The provision for 72 hours notice of entry goes further than Work Choices. Work Choices required 24 hours notice. The government considers the existing 24-hour notice period to be sufficient for an employer to prepare for a visit from a permit holder. It strikes the right balance amongst business concerns, freedom of association and ensuring that employees are able to access their union representatives. I will not add any further to this debate; I think it is quite clear that these amendments are not supported by the government. They go too far. They do not strike the right balance and, in fact, deprive many employees of fair access to their union.

Question negatived.
(13) Clause 495, page 400 (line 30), omit “24 hours”, substitute “72 hours”.

I think the chamber has already debated these. I do not want to prolong it any further.

Question negatived.

Senator ABETZ (Tasmania) (10.31 pm)—I move opposition amendment (27) on sheet 5739 revised 2:

(27) Clause 484, page 394 (lines 20 to 25), omit the clause, substitute:

**484 Entry to hold discussions**

(1) Subject to subsections (2) and (3), a permit holder may enter premises to hold discussions with one or more persons:

(a) who perform work on the premises; and

(b) whose industrial interests the permit holder’s organisation is entitled to represent; and

(c) who wish to participate in those discussions.

(2) If each person mentioned in subsection (1) is a member of the permit holder’s organisation—the requirements of this section are satisfied.

(3) If any of the persons mentioned in subsection (1) is not a member of the permit holder’s organisation, the permit holder must not enter the premises for the purpose of holding discussions with such persons, and must not hold discussions with such persons if otherwise authorised to enter the premises, unless:

(a) the occupier of the premises authorises the permit holder, in writing, to do so; or

(b) the majority of persons who perform work on the premises agree that the permit holder may do so, and that agreement is communicated to the permit holder, in writing, by the occupier of the premises; or

(c) the permit holder obtains a majority support entry determination.

**484A Majority support entry determinations**

(1) A permit holder may apply to FWA for a determination (a *majority support entry determination*) that a majority of persons who perform work on the premises support the entry of the permit holder to hold discussions.

(2) The application must:

(a) specify that the permit held by the applicant is valid; and

(b) specify that the permit holder’s organisation is entitled to represent the industrial interests of one or more persons with whom discussions are sought; and

(c) contain a declaration that the permit holder has requested, but not obtained, the express authorisation of the occupier of the premises; and

(d) be made in accordance with the regulations.

**484B When FWA must make a majority support entry determination**

(1) If a permit holder has applied for a majority entry support determination under section 484A, FWA must make the determination if it is satisfied that:

(a) a majority of persons who perform work on the premises genuinely authorise the permit holder to enter and hold discussions; and

(b) the permit holder’s organisation is entitled to represent the industrial interests of the employees with whom discussions are sought; and

(c) the historical coverage and representation by employee organisations of persons at the premises will not be disturbed.

(2) For the purposes of paragraph (1)(a), FWA may work out whether a majority of employees authorise the permit holder to enter and hold discussions us-
ing any method that FWA considers appropriate.

(3) For the purposes of paragraph (1)(c), FWA must have regard to:

(a) the industrial instrument or instruments covering the employees at the premises to which entry is sought; and

(b) the history of enterprise agreement making at the premises to which entry is sought; and

(c) the rules of the permit holder’s organisation.

In moving this amendment, the opposition believes that there should be some further provision in the right of entry in relation to holding discussions. Subclause (1) in our amended clause 484 is a mirror image of that which is in the bill, but we make it subject to subsections (2) and (3), which are the new parts of clause 484. We are saying that if each person mentioned in subsection 1 is a member of the permit holders’ organisation—in other words, if they are trade union members—the situation in subparagraph (1) is deemed to be satisfied. That puts that beyond doubt. We then say that if any of the persons mentioned in subparagraph (1) are not members of the permit holders’ organisation—in other words, if they are not a union member—the union official must not enter the premises for the purposes of holding discussions with such persons and must not hold discussions with such persons if otherwise authorised to enter the premises. This is unless they have the written permission of the occupier of the premises to do so, the majority of persons who perform work on the premises agree that the permit holder may do so or the permit holder obtains a majority support entry determination.

We then move on to go through how that majority support entry determination might be obtained. That would be by virtue of a determination by Fair Work Australia. If there is some dispute about what the majority of the workers want in that particular workplace, that matter could be resolved by Fair Work Australia. As I have been saying throughout this debate, the issue from our point of view is about excessive union power and how that might interact. We believe that there would be excessive union power if the clause as currently printed stands. We believe there should be a limit. We believe it is a modest limit. Basically, if the employer does not want the entry, or the majority of people who work on the premises agree that the union should not be on the premises, that should be the end of the matter. We believe that is both fair to the employer and democratic for the workforce. If a majority of workers vote for it, they can have that visitation by the union official. I commend the amendment to the Senate.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.35 pm)—I draw the attention of the opposition to the fact that they seem to have gone a step further than Family First even though they complained about Family First going too far. We never restricted non-union members from talking to a union. I am trying to work out why Senator Abetz would go a step further than the Family First amendment when he says that Family First went too far. We were stopping unions being the policemen, but you have gone a step further. That does not make sense to me at all.

Senator LUDWIG (Queensland—Minister for Human Services) (10.36 pm)—What we are looking at, of course, is entry for discussion purposes. It currently only requires that there are eligible employees in the workplace. These amendments would therefore be more restrictive than Work Choices; there is no argument about that. They add a layer of complexity that does not exist in either Work Choices or the Forward
with Fairness bill. Any measure which requires majority support in the workplace before a union could enter to talk to employees would result in minority groups of employees being disenfranchised and would be likely to breach international obligations in relation to freedom of association.

The government cannot support this amendment. It is about a proposal to allow employees to decide—the opposition says democratically—if they want a union representative to meet with them in the workplace, and which union that ought to be, before entry can occur. I am not sure what motivates the opposition to think that they can add their own style of democracy to this provision. It is much easier to allow the provision as it stands, and as it continued on, to be the relevant provision—that is, you can have entry for discussion but you have to give 24-hours notice. That is sensible. It is sensible to ensure that the current provision is reflected, which is what the Fair Work Bill contains.

Senator SIEWERT (Western Australia) (10.38 pm)—The Greens will also be opposing—I want to be very clear—these amendments. In fact, we very strenuously oppose them. We believe these amendments are contrary to the freedom of association, to the ILO conventions on the right to organise and to our industrial history. We do not believe that there is evidence that proves these changes are necessary, and, as I stated earlier, the ILO in its most recent report states:

The Committee recalls that the right of trade union officers to have access to places of work and to communicate with management is a basic activity...

I will not read out the whole passage again, but you get the basic idea. We think these changes go too far. They are contrary to the freedom of association provisions and ILO conventions, and we will not be supporting these amendments.

Senator XENOPHON (South Australia) (10.39 pm)—Can I indicate briefly that I will not be supporting these amendments. There is a fundamental right of association for employees. In terms of this whole right-of-entry discussion, let us put this in perspective. Pre Work Choices, a union official could, using a designated path, go to a designated place at a place of employment in order to hold discussions with employees during lunchtime or at other suitable times. I think that is quite reasonable. No employee is forced to go to the lunch room or the room that is designated to meet with the union officials. I think the government’s position is reasonable, and I do not think this amendment is reasonable.

Senator ABETZ (Tasmania) (10.40 pm)—Just, very briefly, to respond: all that would be needed is for one employee to be a member of the union and the right of entry would exist.

Senator Xenophon interjecting—

Senator ABETZ—I know they do not have to turn up. But, in circumstances where subclause (3)—‘if any of the persons’—applied, that would, in effect, mean that, for that particular category of people, if there are no union members then it would be a vote of the majority of the workers. We have already clarified in subclause (2) that for each person mentioned in subclause (1) that is a member of the permit holder’s organisation then their right of entry is assumed. What we are dealing with is a situation where there are no people who are actually members of the union. One of the difficulties that have been encountered is where a union asserts that they may have the right of entry because they have the capacity to represent somebody ‘whose industrial interests the permit holder’s organisation is entitled to represent’.

Those of us who were at the hearings heard that, for some workers, that might be a multiplicity of unions. In fact, one of the un-
ion officials said that they have about 27 pages of rules determining whether or not somebody can be a member of their union. In those circumstances, you could potentially have a rolling number of entries for the same employees. What we are saying is that, where you do not have union members, either the employer says yes or the majority of workers can indicate that they are interested. Of course, in this day and age of communications, if somebody does want to communicate with a union, it is not that hard to look up the phone number and make contact outside of work hours and meet them after work or at lunchtime et cetera. This is about coming into the workplace and the potential for the associated intimidation that goes along with that. Once again, we are talking about, if I might say, those circumstances where union officials are not behaving as one would expect and hope a union official would behave. That is why you have to have these sorts of clauses. We do know of examples; indeed, we just had one on, I think, page 2 of today’s Australian. Sure, it is different to a right of entry, but it is the sort of behaviour—picketing et cetera—where genuine intimidation of workers by trade unions occurs.

We believe that our amendment would provide appropriate balance and protection for small businesses, but we note that the numbers are against us. In those circumstances, I suggest we move and we will be voting simply on the voices.

Question negatived.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.44 pm)—by leave—I move Family First amendments (7) to (10) on sheet 5733 revised:

(7) Clause 482, page 393 (line 1), before “require”, insert “subject to subsection (1A), “.

(8) Clause 482, page 393 (after line 10), after subclause (1), insert:

Permit holder must not access non-member records

(1A) The permit holder may not require, inspect, or make copies of any employee record (however described) of an employee who is not a member of the permit holders organisation, except with the written consent of the employee.

(9) Clause 483, page 393 (line 25), omit “The”, substitute “Subject to subsections (1A) and (1B), the”.

(10) Clause 483, page 393 (after line 28), after subclause (1), insert:

Conditions relating to non-member records

(1A) The permit holder may not require, inspect or make copies of any employee record (however described) of an employee who is not a member of the permit holder’s organisation, except with the written consent of the employee.

(1B) If the record or document is an employee record (however described) of an employee who is not a member of the permit holders organisation, the permit holder may apply to FWA for an order requiring the affected employer to provide a copy of the record or document to FWA.

(1C) FWA may make any order it thinks appropriate in relation to an application made under subsection (1B).

(1D) If FWA orders under subsection (1B) that the affected employer must provide a copy of a record or document:

(a) the affected employer must provide a copy of the record or document to FWA within the period specified in the order; and

(b) FWA must determine whether, and in what form, to provide the permit holder access to information contained in that record or document.

(12) Clause 494, page 400 (after line 22), at the end of the clause, add:
Permit holder must not access non-member records

(4) The permit holder may not require, inspect or make copies of any employee record (however described) of an employee who is not a member of the permit holders organisation, except with the written consent of the employee.

These amendments are about unions having access to records of non-union members. The issue is unions accessing the confidential information of non-union employees that would see a breach of people’s privacy. I know that you can debate this until the cows come home, so we could be here all day, but I still think that unions should not be accessing the records of non-union members. Someone else should authorise that and I believe that Fair Work Australia is the impartial body that should be arbiter of whether or not this should occur. The amendments are basically along the lines that there should not be unfettered access and that Fair Work Australia should adjudicate before any access to the records of non-union members. I will leave it there.

Senator ABETZ (Tasmania) (10.46 pm)—I will make a procedural suggestion. It seems to me that the Family First amendments that were just moved could be part of a cognate debate with the opposition amendments that appear immediately under that and also government amendments under that, if that were agreeable. They do cover very much the same territory. If that is agreed around the chamber, which I think it is—

The TEMPORARY CHAIRMAN (Senator Moore)—So they would be debated at the same time but voted on separately?

Senator ABETZ—Yes, that is right.

The TEMPORARY CHAIRMAN—That has the agreement of the chamber, Senator Abetz. From now on, we will be debating those three groups together but having the votes separately.

Senator ABETZ—The opposition position is that we believe, not surprisingly on this occasion—although we did concede that on greenfields the government had superior amendments—that ours are superior. In those circumstances, we would be opposed to Family First’s amendments. If ours were to be defeated, we would be minded to support the government’s amendments. I say that with due respect to Family First. In reading through them, we think that the government’s amendments are better than those of Family First.

The government have moved a very long way in relation to the issue of access to the records of non-members. In this day and age the parliament is being broadcast in all sorts of manners and ways. I recall in my second reading contribution making a comment about the importance of providing protection for non-union members. I got this email from somebody attacking me most vociferously and employing the language of—

Senator Marshall—As well as mine?

Senator ABETZ—No. They called me a neoliberal and said that I should not be hiding behind this nonsense about the privacy of non-union members and that is was just outrageous. I confess that I did have some delight in emailing back in recent times saying that I think that this government may have certain neoliberal tendencies in relation to these matters.

More seriously, we as a coalition treat very seriously the right of workers to privacy. We believe that access should not be provided to employees’ records. The fact that Ms Gillard tried to get away with this is, we believe, not a good reflection on her. But
somebody clearly must have mugged her with the reality that the Australian community, with its sense of a fair go, would not accept the sort of regime that was originally proposed in the bill—especially, might I add, in circumstances in which Ms Gillard made a very strong promise to the Australian people before the election. In fact, on 7 November 2007, at a debate at the National Press Club, she said this:

If you’d like me to pledge to resign, sign a contract in blood—

I am not sure that she would necessarily be able to sustain that one, but that is what she said—

take a polygraph ... give you my mother as a hostage, whatever you’d like. We will be delivering our policy as we have outlined.

Later she said, ‘Current right-of-entry laws will be maintained.’ That was a very strong promise. On 28 August, the Labor Party said, ‘Labor will maintain the existing right of entry provisions. Right-of-entry rules remain.’ It made similar commitments the same day. Interestingly, even after the election, on 28 May, speaking to the Master Builders Australia dinner, Minister Gillard said:

We promised to retain the current right of entry framework and this promise too will be kept.

That was as late as 28 May, after they were elected. The bill that was presented to us clearly did not abide by those fundamental election commitments.

If nothing else, Ms Gillard’s mother must have said, ‘Look, I don’t like the idea of being taken as a hostage. You’d better wind back this right of entry nonsense and allow me to enjoy my life.’ Ms Gillard has wound it back and we congratulate the government. Whatever the motivation was, having had a very consistent line over many years on the right to privacy, we welcome the change and place on the record that those people who make a decision not to join a union now have their right to privacy protected.

Senator LUDWIG (Queensland—Minister for Human Services) (10.52 pm)—The main difference between the various sets of amendments is that the drafting of the government is, in the government’s view, more concise and consistent with the position that we want to argue in our amendment around the right of entry provision. Therefore, we will not be supporting the Family First provision.

I will outline the position in the debate. The amendments would provide that a permit holder cannot inspect non-member records unless the relevant employee consents in writing or FWA orders that access be provided. Amendments would not apply to entry with respect to the TCF outworkers or entry under a state or territory OH&S law. I think that is clear. A non-member’s record would be defined as a record that relates to the employment of a person who is not a member of the union. The amendments also provide that a permit holder will not be able to require access to non-member records. A permit holder will be able to seek an order from FWA giving them access to non-member records. FWA will be able to grant such an order only if it is satisfied that access is necessary to investigate a suspected breach relating to a member. And I note that the opposition have indicated that they are not minded to support Senator Fielding’s motion. They do prefer ours at the end of the day, if nothing else for its conciseness and its accurate reflection of the policy.

Senator SIEWERT (Western Australia) (10.54 pm)—I will address all the amendments together. We do not support any of the amendments. We oppose barriers being placed in the way of unions accessing non-member records. As it stands, union officials can only access relevant records and face
civil penalties and lose their permit if they misuse their rights. We believe that this is sufficient protection and we do not need further Work Choices type restrictions continuing so we oppose the whole group of amendments.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that Family First amendments (7) to (10) and (12) on sheet 5733 revised 3 be agreed to.

Question negatived.

Senator ABETZ (Tasmania) (10.55 pm)—by leave—I move opposition amendments (24) to (26) on sheet 5739:

(24) Clause 482, page 393 (after line 6), at the end of subclause (1), add:
(d) paragraph (c) does not apply in relation to any record or document pertaining to any person who is not a member of the permit holder’s organisation, unless:
(i) the person provides consent in writing to the occupier or affected employer; or
(ii) the permit holder has obtained an order pursuant to paragraph 483A(1)(a).

(25) Clause 483, page 393 (after line 28), after subclause (1), insert:
(2) Subclause (1) does not apply in relation to any record or document pertaining to any person who is not a member of the permit holder’s organisation, unless:
(a) the person provides consent in writing to the affected employer; or
(b) the permit holder has obtained an order pursuant to paragraph 483A(1)(b).

(26) Page 394 (after line 17), at the end of Subdivision A, add:

483A Application to FWA for access to non-member records
(1) The permit holder may, for the purposes of investigating the suspected contravention, apply to FWA for either or both of the following orders:
(a) an order to allow the permit holder to enter the premises and to inspect, and make copies of, any record or document pertaining to a person who is not a member of the permit holder’s organisation that is relevant to the suspected contravention;
(b) an order to require an affected employer to produce, or provide access to, such records for inspection.

(2) FWA may make such an order if it is satisfied that the order is necessary to the investigation of the suspected breach. Before doing so, FWA must have regard to the conditions (if any) that apply to the permit holder’s permit.

(3) An application for an order under this section:
(a) must be in accordance with the regulations; and
(b) must set out the grounds on which the application is made.

Question negatived.

Senator LUDWIG (Queensland—Minister for Human Services) (10.56 pm)—by leave—I move government amendments (1) to (5) on sheet PV373:

(1) Clause 12, page 21 (after line 26), after the definition of non-excluded matters, insert:

non-member record or document: see subsection 482(2A).

(2) Clause 482, page 393 (line 3), after “document”, insert “(other than a non-member record or document)”.

(3) Clause 482, page 393 (after line 18), after subclause (2), insert:

Meaning of non-member record or document
(2A) A non-member record or document is a record or document that:
(a) relates to the employment of a person who is not a member of the permit holder’s organisation; and
(b) does not also substantially relate to the employment of a person who is a member of the permit holder’s organisation;

but does not include a record or document that relates only to a person or persons who are not members of the permit holder’s organisation if the person or persons have consented in writing to the record or document being inspected or copied by the permit holder.

(4) Clause 483, page 393 (line 26), after “document”, insert “(other than a non-member record or document)”.

(5) Page 394 (after line 17), after clause 483, insert:

483AA Application to FWA for access to non-member records

(1) The permit holder may apply to FWA for an order allowing the permit holder to do either or both of the following:
   (a) require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, specified non-member records or documents (or parts of such records or documents) under paragraph 482(1)(c);
   (b) require an affected employer to produce, or provide access to, specified non-member records or documents (or parts of such records or documents) under subsection 483(1).

(2) FWA may make the order if it is satisfied that the order is necessary to investigate the suspected contravention. Before doing so, FWA must have regard to any conditions imposed on the permit holder’s entry permit.

(3) If FWA makes the order, this Subdivision has effect accordingly.

(4) An application for an order under this section:
   (a) must be in accordance with the regulations; and
   (b) must set out the reason for the application.

Question agreed to.

The TEMPORARY CHAIRMAN—We now move to Family First and government amendments, which are identical.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.56 pm)—I am happy for the government to move the amendments. We have been in discussions with the last lot and with this lot as well so there is some consistency there and I am happy for the government to move them.

Senator LUDWIG (Queensland—Minister for Human Services) (10.57 pm)—by leave—It would be better if I move them. I move government amendments (1) and (2) on sheet PV374:

(1) Clause 481, page 392 (after line 22), at the end of the clause, add:

Note: A permit holder who seeks to exercise rights under this Part without reasonably suspecting that a contravention has occurred, or is occurring, is liable to be penalised under subsection 503(1) (which deals with misrepresentations about things authorised by this Part).

(2) Clause 508, page 406 (lines 18 to 25), omit subclause (4), substitute:

(4) Without limiting subsection (1), an official misuses rights exercisable under this Part if:
   (a) the official exercises those rights repeatedly with the intention or with the effect of hindering, obstructing or otherwise harassing an occupier or employer; or
   (b) in exercising a right under Subdivision B of Division 2 of this Part, the official encourages a person to become a member of an organisation.
and does so in a way that is unduly disruptive:

(i) because the exercise of the right is excessive in the circumstances; or

(ii) for some other reason.

These amendments would clarify when a permit holder would be considered to have misused rights conferred on them by the right of entry part. The amendments would make it clear that permit holders who seek to enter premises for investigation purposes without reasonable suspicion that a breach of the act or a Fair Work instrument is occurring would be liable to be penalised under the provisions of the bill prohibiting the misrepresentation. An inspector or a person affected by the misrepresentation would be able to bring proceedings in the Federal Court or the Federal Magistrates Court seeking penalties against a permit holder of up to $6,600 for an individual person or up to $33,000 for a permit holder’s union. These amendments would also clarify that an official who repeatedly exercised his entry rights with the intention or effect of hindering or obstructing or harassing an occupier or employer would be taken to have misused the right conferred on them by the right of entry part.

There are serious repercussions under clause 508 of the bill for officials, and their unions, who misuse their rights. If satisfied that a misuse has occurred FWA may restrict the right of an official or an entire union by imposing conditions on entry permits, revoking or suspending entry permits or making any other order it thinks fit. The government considers that both amendments clarify the existing right of entry provisions and we commend the amendments to the Senate.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.59 pm)—Family First have been in discussions on the previous amendments and on these and we obviously support them because they are identical to ours.

Senator ABETZ (Tasmania) (10.59 pm)—The opposition supports the amendments.

Senator SIEWERT (Western Australia) (10.59 pm)—The Greens do not support these amendments.

The TEMPORARY CHAIRMAN—The question is that government amendments (1) and (2) on sheet PV374 be agreed to.

Question agreed to.

Senator SIEWERT (Western Australia) (11.00 pm)—by leave—I move Green amendments (45), (46) and (47) on sheet 5729:

(45) Clause 492, page 398 (after line 20), after subclause (2), insert:

(2A) Without limiting when a request under subsection (1) might otherwise be unreasonable, similar considerations to those set out in paragraph (2)(b) apply in determining whether a request under paragraph (1)(b) is unreasonable.

(46) Division 3, clauses 494 to 499, page 399 (line 1) to page 401 (line 26), TO BE OPPOSED.

(47) Subdivision C, clauses 508 and 509, page 405 (line 22) to page 406 (line 29), TO BE OPPOSED.

We have had a substantive debate around right of entry. There are a couple of points I would like to raise before going on to the specific amendments. I have already spoken about the ILO Committee of Experts’ most recent report. In that report they also went on to request the government to indicate measures taken to amend the legislation ‘to lift the restrictive conditions set out for granting a permit giving right of entry to the workplace, and ensure that the group of workers with whom a trade union representative may meet at the workplace is not artificially restricted’.
The conditions the ILO wanted lifted have been kept in the bill at clause 513. We have some strong concerns about that. We keep hearing that we are moving away from Work Choices but there are some clear examples of where we are not.

With respect to amendment (45), as I said earlier, we are pleased that while the bill keeps some elements of Work Choices, there has been movement on right of entry, and we are pleased that the government has placed some reasonableness criteria around the ability of the employer to dictate where unions meet employees. The Work Choices provisions operated to essentially deny workers freedom of association. During the committee inquiry we heard extensively about where employees had been forced to meet—under camera surveillance, in an office next door to the boss, in the tearoom and, in one instance we heard of, in the toilet.

We are pleased that the government has moved to deal with that; however, we believe the reasonableness factors should be extended to where the employer chooses the route the union representative must take. Again, during the inquiry we heard stories about the routes union representatives were forced to take to get to meetings. There was a lot of concern raised about that. We think it is reasonable to extend those provisions to include the route the union representative must take.

Turning to amendment (46) the Greens oppose, as we did with Work Choices, the requirement that union officials have a federal permit for entering under state occupational health and safety laws. State laws are state laws and should be regulated by state authorities. We see this as a hangover from Work Choices, and yet another unwarranted extension of jurisdiction.

In amendment (47) we also oppose the Work Choices provision that unions as a whole can be punished for the actions of their officials in breaching permit conditions. Punishment should lie with the individual who committed the breach. You would be surprised to hear that we think that these items improve the right-of-entry provisions in the Fair Work Bill and commend them to the Senate!

Question negatived.

The TEMPORARY CHAIRMAN (Senator Humphries)—The second question is that clauses 494 and 495 as amended, clauses 496 to 499 and clauses 508 and 509 stand as printed.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Human Services) (11.05 pm)—by leave—I move amendments (1) to (44) on sheet QW366 revised:

(1) Clause 12, page 10 (after line 15), after paragraph (a) of the definition of affected employer, insert:

(aa) in relation to an entry under section 483A other than a designated outworker terms entry: see paragraph 483B(3)(a); and

(ab) in relation to a designated outworker terms entry under section 483A: see paragraph 483B(3)(b); and

(2) Clause 12, page 10 (line 17), omit “subsection 495(2)”, substitue “paragraph 495(2)(a)”.

(3) Clause 12, page 10 (line 17), at the end of the definition of affected employer, add:

; and (c) in relation to a State or Territory OHS right to inspect or otherwise access an employee record: see paragraph 495(2)(b).

(4) Clause 12, page 14 (before line 3), before the definition of discriminatory term, insert:

designated outworker terms entry: see subsection 483A(5).

(5) Clause 12, page 28 (after line 20), after the definition of step-child, insert:
TCF award means an instrument prescribed by the regulations for the purposes of this definition.

(6) Clause 12, page 28 (before line 21), before the definition of termination of industrial action instrument, insert:

TCF outworker means an outworker in the textile, clothing or footwear industry whose work is covered by a TCF award.

(7) Clause 478, page 390 (line 10), after “instruments.”, insert “The Division makes special provision in relation to TCF outworkers.”.

(8) Clause 478, page 390 (line 12), after “employees”, insert “and TCF outworkers”.

(9) Clause 480, page 391 (line 6), after “employees”, insert “and TCF outworkers”.

(10) Clause 482, page 393 (line 3), before “relevant”, insert “that is directly”.

(11) Clause 482, page 393 (line 3), after “contravention”; insert “and”.

(12) Clause 482, page 393 (lines 7 to 10), omit the note, substitute:

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988.

(13) Clause 482, page 393 (after line 10), after subclause (1), insert:

(1A) However, an occupier or affected employer is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

(14) Clause 483, page 393 (line 26), before “relevant”, insert “that is directly”.

(15) Clause 483, page 393 (after line 28), after subclause (1), insert:

483A Entry to investigate suspected contravention relating to TCF outworkers

(1) A permit holder may enter premises and exercise a right under section 483B or 483C for the purpose of investigating a suspected contravention of:

(a) this Act, or a term of a fair work instrument, that relates to, or affects, a TCF outworker:

(i) whose industrial interests the permit holder’s organisation is entitled to represent; and

(ii) who performs work on the premises; or

(b) a designated outworker term that is in an instrument that relates to TCF outworkers whose industrial interests the permit holder’s organisation is entitled to represent.

Note: Particulars of the suspected contravention must be specified in an entry notice, unless the entry is a designated outworker terms entry (see subsection 518(2)).
(2) The permit holder must reasonably suspect that the contravention has occurred, or is occurring.

(3) The burden of proving that the suspicion is reasonable lies on the person asserting that fact.

(4) Subsections (2) and (3) do not apply in relation to a designated outworker terms entry.

(5) A designated outworker terms entry is an entry under paragraph (1)(b) for the purpose of investigating a suspected contravention of a designated outworker term.

483B Rights that may be exercised while on premises

(1) While on the premises, the permit holder may do the following:

(a) inspect any work, process or object relevant to the suspected contravention;

(b) interview any person about the suspected contravention:

(i) who agrees to be interviewed; and

(ii) whose industrial interests the permit holder’s organisation is entitled to represent;

(c) require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, any record or document that is directly relevant to the suspected contravention and that:

(i) is kept on the premises; or

(ii) is accessible from a computer that is kept on the premises.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988.

(2) However, an occupier or affected employer is not required under paragraph (1)(c) to allow the permit holder to inspect, or make copies of, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

Meaning of affected employer

(3) A person is an affected employer:

(a) in relation to an entry onto premises under section 483A other than a designated outworker terms entry, if:

(i) the person employs a TCF outworker whose industrial interests the permit holder’s organisation is entitled to represent; and

(ii) the TCF outworker performs work on the premises; and

(iii) the suspected contravention relates to, or affects, the TCF outworker; or

(b) in relation to a designated outworker terms entry under section 483A, if the person is covered by a TCF award.

Occupier and affected employer must not contravene requirement

(4) An occupier or affected employer must not contravene a requirement under paragraph (1)(c).

Note: This subsection is a civil remedy provision (see Part 4-1).

483C Later access to record or document

(1) The permit holder may, by written notice, require the occupier or an affected employer to produce, or provide access to, a record or document that is directly relevant to the suspected contravention on a later day or days specified in the notice.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

(2) However, an occupier or affected employer is not required under subsection (1) to produce, or provide access
to, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

Other rules relating to notices

(3) The day or days specified in the notice must not be earlier than 14 days after the notice is given.

(4) The notice may be given:

(a) while the permit holder is on the premises; or

(b) within 5 days after the entry.

Occupier and affected employer must not contravene requirement

(5) An occupier or affected employer must not contravene a requirement under subsection (1).

Note: This subsection is a civil remedy provision (see Part 4-1).

Where record or document may be inspected or copied

(6) The permit holder may inspect, and make copies of, the record or document at:

(a) the premises; or

(b) if another place is agreed upon by the permit holder and the occupier or affected employer—that other place.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988.

483D Entry onto other premises to access records and documents

(1) A permit holder who may enter premises under paragraph 483A(1)(a) for the purpose of investigating a suspected contravention may enter other premises and exercise a right under subsection (2) or section 483E if the permit holder reasonably suspects that records or documents that are directly relevant to the suspected contravention:

(a) are kept on the other premises; or

(b) are accessible from a computer that is kept on the other premises.

Note: Particulars of the suspected contravention must be specified in an entry notice (see subsection 518(2)).

Rights that may be exercised while on premises

(2) While on the other premises, the permit holder may require the occupier to allow the permit holder to inspect, and make copies of, any such record or document.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988.

(3) However, an occupier is not required under subsection (2) to allow the permit holder to inspect, or make copies of, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

Occupier must not contravene requirement

(4) An occupier must not contravene a requirement under subsection (2).

Note: This subsection is a civil remedy provision (see Part 4-1).

483E Later access to record or document—other premises

Later access to record or document

(1) The permit holder may, by written notice, require the occupier of the other premises to produce, or provide access to, a record or document that is directly relevant to the suspected contravention.
on a later day or days specified in the notice.

(2) However, an occupier is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

Other rules relating to notices

(3) The day or days specified in the notice must not be earlier than 14 days after the notice is given.

(4) The notice may be given:

(a) while the permit holder is on the other premises; or

(b) within 5 days after the entry.

Occupy must not contravene requirement

(5) An occupier must not contravene a requirement under subsection (1).

Note: This subsection is a civil remedy provision (see Part 4-1).

Where record or document may be inspected or copied

(6) The permit holder may inspect, and make copies of, the record or document at:

(a) the other premises; or

(b) if another place is agreed upon by the permit holder and the occupier—that other place.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988.

(18) Clause 484, page 394 (line 20), omit “to hold”, substitute “for the purposes of holding”.

(19) Clause 484, page 394 (line 21), omit “persons”, substitute “employees or TCF out-workers”.

(20) Clause 486, page 395 (line 27), omit “Neither Subdivision A nor B authorises”, substitute “Subdivisions A, AA and B do not authorise”.

(21) Clause 487, page 396 (after line 1), before subclause (1), insert:

Entry under Subdivision A or B

(22) Clause 487, page 396 (line 11), after “notice”, insert “for an entry under Subdivision A or B”.

(23) Clause 487, page 396 (after line 20), at the end of the clause, add:

Entry under Subdivision AA

(5) If the permit holder enters premises under Subdivision AA, the permit holder must, either before or as soon as practicable after entering the premises, give an entry notice for the entry to the occupier of the premises or another person who apparently represents the occupier if the occupier or other person is present at the premises.

(24) Clause 489, page 396 (line 25), after “A”, insert “or AA”.

(25) Clause 489, page 396 (lines 30 and 31), omit “under paragraph 482(1)(c) or subsection 483(1)”, substitute “under:

(i) paragraph 482(1)(c) or 483B(1)(c), or subsection 483D(2); or

(ii) subsection 483(1), 483C(1) or 483E(1)”.

(26) Clause 489, page 397 (lines 1 to 3), omit the note, substitute:

Note: Paragraphs 482(1)(c) and 483B(1)(c) and subsection 483D(2) deal with access to records and documents while the permit holder is on the premises. Subsections 483(1), 483C(1) and 483E(1) deal with access to records and documents at later times.

(27) Clause 489, page 397 (line 7), omit “A”, substitute “A, AA”.

CHAMBER
(28) Clause 490, page 397 (line 15), omit “A”, substitute “A, AA”.

(29) Clause 490, page 397 (line 19), omit “A”, substitute “A, AA”.

(30) Clause 495, page 401 (lines 2 to 4), omit subclause (2), substitute:

(2) A person is an affected employer:
   (a) in relation to an entry onto premises in accordance with this Division—if one or more of the person’s employees perform work on the premises; and
   (b) in relation to a right to inspect or otherwise access an employee record in accordance with this Division—if the person employs the employee to whom the record relates.

(31) Clause 502, page 402 (line 18), omit “483(5)(b)”, substitute “483(5)(b), 483C(6)(b) or 483E(6)(b)”.

(32) Clause 504, page 403 (lines 3 to 14), omit the clause, substitute:

504 Unauthorised use or disclosure of information or documents

A person must not use or disclose information or a document obtained under section 482, 483, 483B, 483C, 483D or 483E in the investigation of a suspected contravention for a purpose that is not related to the investigation or rectifying the suspected contravention, unless:

(a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent:
   (i) a serious and imminent threat to an individual’s life, health or safety; or
   (ii) a serious threat to public health or public safety; or
(b) the person has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the information or document as a necessary part of an investigation of the matter or in reporting concerns to relevant persons or authorities; or
(c) the use or disclosure is required or authorised by or under law; or
(d) the person reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by, or on behalf of, an enforcement body (within the meaning of the Privacy Act 1988):
   (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
   (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
   (iii) the protection of the public revenue;
   (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
   (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
   (e) if the information is, or the document contains, personal information (within the meaning of the Privacy Act 1988)—the use or disclosure is made with the consent of the individual to whom the information relates.

Note: This section is a civil remedy provision (see Part 4-1).

(33) Clause 510, page 407 (line 11), omit “subsection 504(1)”, substitute “section 504”.

(34) Clause 510, page 407 (lines 12 and 13), omit “employee records”, substitute “information or documents”.

(35) Clause 510, page 407 (lines 16 to 18), omit “an employee record of an employee obtained under section 482 or 483”, substitute
“information or documents obtained under section 482, 483, 483B, 483C, 483D or 483E”.

(36) Clause 518, page 412 (lines 25 and 26), omit “481 (which deals with entry to investigate suspected contraventions)”, substitute “481, 483A or 483D”.

(37) Clause 518, page 413 (line 1), before “specify”, insert “unless the entry is a designated outworker terms entry under section 483A—”.

(38) Clause 518, page 413 (line 3), before “contain”, insert “for an entry under section 481—”.

(39) Clause 518, page 413 (after line 10), after paragraph (2)(c), insert:

  (ca) for an entry under section 483A other than a designated outworker terms entry—contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of a TCF outworker, who performs work on the premises, and:

      (i) to whom the suspected contravention or contraventions relate; or

      (ii) who is affected by the suspected contravention or contraventions; and

  (cb) for a designated outworker terms entry under section 483A—contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of TCF outworkers; and

  (cc) for an entry under section 483D—contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of a TCF outworker:

      (i) to whom the suspected contravention or contraventions relate; or

      (ii) who is affected by the suspected contravention or contraventions; and

(40) Clause 518, page 413 (line 12), at the end of paragraph (2)(d), add “or TCF outworker”.

(41) Clause 518, page 413 (line 20), omit “a person”, substitute “an employee or TCF outworker”.

(42) Clause 518, page 413 (line 23), omit “person”, substitute “employee or TCF outworker”.

(43) Clause 539, page 435 (table item 25, column 1), after “483(4)”, insert:

| 483B(4) |
| 483C(5) |
| 483D(4) |
| 483E(5) |

(44) Clause 539, page 435 (table item 25, column 1), omit “504(1)”, substitute “504”.

These amendments will introduce a separate subdivision within the right of entry part of the bill to provide specific rights of entry to investigate breaches of entitlements relating to TCF outworkers. The bill currently allows permit holders to enter workplaces to investigate a suspected breach of entitlement if the breach relates to a member of the permit holder’s organisation and a member works on those premises. Permit holders must provide at least 24 hours notice of their entry. These requirements may make it difficult for unions who represent TCF outworkers to investigate whether these workers are receiving their lawful entitlements. Firstly, these vulnerable workers may not be union members or may be fearful of being identified as such. Secondly, the nature of outwork itself means that an outworker does not work at an employer’s premises. Thirdly, providing 24 hours notice may result in evidence being destroyed or the employer attempting to prevent the union from investigating premises where there were alleged breaches.

The government considers that special provisions are necessary to deal with the
acutely at-risk sector of the Australian workforce. These amendments enable a permit holder from a union which is entitled to represent outworkers to enter premises, irrespective of whether a union member is present. In addition, the permit holder would be able to enter other premises where documents that were directly relevant to the breach may be kept. This reflects the fact that relevant documents are often kept at different premises from where the work is done.

There will also be special entry rights in relation to entry to investigate breaches of designated outworker terms. These are certain terms in modern awards that impose particular obligations in relation to the use of outworkers. The TCF award creates a regulatory framework that applies to employees and entities that arrange for work to be carried out by outworkers, and unions do have a role in monitoring compliance with these obligations under the award.

For this sort of entry there will be no requirement that an outworker be working at the premises. There will also be no requirement that a permit holder reasonably suspect a breach or have the burden of establishing reasonable suspicion. This is because the nature of these terms means it will often be impossible to know whether or not a breach has occurred. For instance, a designated worker term would include a requirement for a person to lodge records relating to their contracting out of TCF work. If such records were not lodged then not only would it be a breach but a permit holder would therefore be unlikely to know that the person was involved in arranging for TCF outwork to be performed.

For both forms of TCF outworker specific entry, a permit holder would not have to give 24 hours notice but instead would be required to notify occupiers of their entry either before or as soon as practicable after entering the premises. In addition to investigation rights, the amendments would also provide for entry to hold discussions with non-employee TCF outworkers. We should note that the decision to remove the requirement to give 24 hours notice was incorporated by the government after discussions with Senator Xenophon. While these amendments do grant special rights in relation to TCF outworkers, it should be noted that the same conditions on conduct during entry and use of information will apply to this type of entry as apply to other forms of entry.

I will deal with amendments (12), (13), (15) and (16). One of the main concerns raised by the Privacy Commissioner in her submission to the Senate committee inquiry into the bill was that the application of privacy protections when permit holders are exercising investigation and entry and inspecting documents is not clear under the bill. Let me be clear on this point: the Privacy Act 1988 does apply to permit holders who collect personal information about employees where the permit holders’ union is an organisation within the meaning of the Privacy Act. This is made crystal clear in the Privacy Commissioner’s submission. The Privacy Act does not apply to organisations with an annual turnover of less than $3 million. While very few unions, if any, would fall into this category, the government intends to put beyond doubt that the Privacy Act applies to all unions. We will therefore be accepting the Privacy Commissioner’s recommendation to deem unions to be covered by the Privacy Act, and this will be in place from the commencement of the bill on 1 July 2009.

Amendments (12) and (16) will insert legislative notes to indicate that the Privacy Act applies to permit holders under the provisions of the bill which authorise the inspec-
tion or copying of documents or records. Amendments (13) and (15) would insert new provisions to exempt an employer or occupier from disclosing a document or record if doing so would breach another law. This means, for example, that a permit holder would not be entitled to examine records that showed an employee was making child support payments as the disclosure of such information is prohibited by the Child Support (Registration and Collection) Act 1988.

In respect of government amendments (32) to (35) and (44), the effect of these amendments is to deal with existing clause 504 of the bill, which prohibits a person from disclosing employee records obtained by a permit holder if the disclosure of those records would breach the Privacy Act 1988. The amendment would address the concerns that were raised by the Privacy Commissioner about the operation of this clause and the scope of information protected by it by replacing clause 504 with a new civil penalty provision. The new provision would be broader in its application and would prohibit any person from disclosing information obtained by a permit holder while investigating a suspected breach of the act, a fair work instrument or a designated outworker term. A person would only be able to disclose the information if it were necessary to resolve a suspected breach or in certain other limited circumstances that are set out in paragraphs (a) to (e) of the provision. The provisions would attract penalties of up to $3,300 for individual permit holders. In addition, the FWA must revoke or suspend the permit of a permit holder found to have breached this new provision.

The new anti-disclosure provisions would address the Privacy Commissioner’s concern while also protecting a broader range of information. They would apply to any information obtained during an investigation by a permit holder, not just employee records. They would not be limited to information protected under the Privacy Act framework. They would protect both personal information about an employee and commercially sensitive information of the employer. The exceptions to these provisions are based on similar provisions in the Privacy Act. They ensure that a person is not liable for a civil penalty if information is disclosed to, for instance, prevent an imminent threat to another person’s life or where the disclosure is authorised by another law. The latter exception would only operate where the other law expressly required or allowed the disclosure to be made. It would not be sufficient for these provisions for the other law to simply allow the disclosure by not making it unlawful. With those short words, I think we have got through that provision.

Senator ABETZ (Tasmania) (11.14 pm)—I make no reflection but, just in case Senator Fielding is listening, his presence in the chamber would be helpful in relation to my consideration of this raft of 44 separate items. I can indicate that we in the opposition support amendments (10), (11), (12), (13), (14), (15), (16), (30), (32), (33), (35) and (44). I think it has already been indicated that Senator Xenophon has a certain attitude in relation to all the amendments. Therefore I would not seek to delay the chamber for too long, in explaining why the opposition has certain views on other of the amendments, if Senator Fielding were to be so minded as Senator Xenophon. But, whilst we give him the opportunity to return to the chamber—and I fully accept that there would be reasons why he had to leave the chamber, so that is not a reflection on him at all—I will say this to any judicial officer in this country in the event that they ever have to interpret item 10 of the amendments. These days, I understand, judicial officers or the judiciary cast far and wide to assist them in interpretation, but what I would invite them not to do is to
go to Senate practice to determine how to interpret the term ‘directly relevant’. In ses-
sional orders we now have the term ‘directly relevant’, which ministers are required to be
during question time. If judicial officers were
to see the practice in the Senate and say,
‘Yep, this is how we get to understand what “directly relevant” means,’ I think it would
give very wide powers in relation to this par-
ticular clause. So, in the event any judge, in
trying to determine how to interpret this,
happens to read the Hansard, I would dis-
suade him or her from looking at Senate
practice in relation to this.

It looks as though we will not have the
presence of Senator Fielding, as I was ex-
pecting, so I will briefly say that, whilst we
as a government—and I remember taking a
certain piece of legislation through this
chamber—made special amendments and
provisions for the TCF sector, and we be-
lieve that it is a special sector with special
requirements, we do believe, on balance, that
many of the extra provisions in relation to
right of entry et cetera go beyond that which
we would find acceptable. We believe that
the right-of-entry restrictions in relation to
the general framework are appropriate and
we do not support these extra powers. We do
understand the difficult and different circum-
stances in the TCF outworkers section. Coa-

tition committee members had certain rec-
mendations and submissions put to us
from those engaged in that sector and they
did make a good and powerful case. Yet I do
say that, on balance, we are minded not to
support all those other changes that were not
included in the list of those that I indicated
we support. The reason I read out the list of
those that we support is that that is a substan-
tially shorter list, but we would not seek to
delay the chamber or divide on it unless
there was an indication that Senator Fielding
was minded to support us in that.

Senator XENOPHON (South Australia)
(11.19 pm)—I indicate that I support the
government’s amendments. They are a sig-
ificant and substantial improvement on the
original bill, and I think that is a good thing.
They take into account the Privacy Commis-
ioner’s concerns, so the government has
done that. I think, to put this in historical
perspective, these rights are not significantly
different from those that existed pre Work
Choices but, in fact, they have been tem-
pered by the privacy provisions and the pen-
alties that are anticipated in these amend-
ments—and that is a good thing in terms of
getting that balance right.

I express my thanks to the government for
agreeing to the amendment on the right of
entry with respect to TCF outworkers, be-
cause I believe that is a different category
and that the requirement for 24 hours notice
ought to be waived. If you look at what the
right of entry is supposed to do, it is to en-
able investigation of potential breaches. As
for the outworkers provision, if you give the
fly-by-night operators, the sweatshops—to
use that term—or the backyard operators 24
hours notice, there will be nothing to see,
nothing to investigate, no books and no re-
cords. That is why I think it is fundamentally
important that, if we look at some of the
most exploited and vulnerable workers, those
TCF outworkers, there be an opportunity for
a right of entry that is not contingent upon 24
hours notice. So I believe that is a fundamen-
tal improvement.

It would be anomalous indeed if this
clause were not passed, because it would
mean that outworkers would not have any
real protection in terms of the benefits that
would arise from a right of entry. I commend
that to my colleagues, although I do not think
I need to convince my colleagues in the
Greens about those particular provisions. I
think we have got an improved set of provi-
sions in relation to the right of entry, taking
into account the privacy considerations as set out by the Privacy Commissioner in the inquiry process, which was a very useful exercise. So I am hoping that this set of amendments will be passed.

Senator SIEWERT (Western Australia) (11.22 pm)—The Greens will be supporting these amendments. We do not think they go far enough in respect to sweatshops, although we acknowledge that the amendment that Senator Xenophon has managed to persuade the government on is a step in the right direction. As we said in our minority report, we think parliament must use the opportunity presented by this bill to get regulation of the TCF industry and outworkers right. It has been an ongoing issue and I know that generally there has been cross-party recognition of the issues around the TCF industry and outworkers. We believe that parliament has acknowledged there do need to be special protections for these vulnerable workers. As I said earlier we are not satisfied the government amendments do what they need to do to ensure adequate protection of TCF outworkers and sweatshop workers.

The right of entry is a particularly important issue in the TCF industry, as has already been outlined by Senator Xenophon, with well-recognised compliance concerns. Unions must have the capacity to exercise appropriate right of entry in relation to outworkers and people working in sweatshops. We are particularly pleased to see in the revised sheet at amendments (21) to (23) that the government has removed, as Senator Xenophon has just said, the requirement for 24 hours notice for entry relating to TCF workers. The committee heard, again as Senator Xenophon articulated, a great deal of evidence about how the 24 hours notice requirement was inappropriate for TCF workers, where the setup can be very mobile and a notice period can often lead to a sweatshop no longer existing in the same place. However we are not convinced the government’s amendments adequately address the recommendations of the majority Senate report in relation to TCF workers. We put the government on notice that we will be keeping a very close eye on whether they do in fact move to address all the issues that were raised in the majority report, particularly in relation to sweatshops, and we expect to see all these outstanding issues resolved.

I also would like to refer to the amendments moved and passed on Tuesday night on sheet PV414, which also addressed the issues around outworkers. As I indicated, we are very supportive of the amendments as an attempt to deal with the important issues raised by the TCFUA over definitions and the protection of award provisions. However, again, we are not convinced that the amendments passed were, in fact, adequate and we are concerned to ensure that all relevant award conditions are protected. Similarly to the right of entry provisions, we will be keeping a close eye on the government to make sure all these outstanding issues are resolved. I would particularly like to mention and thank Asian Women at Work for the excellent evidence that they gave to the inquiry. I think that the issues they raised were particularly important and they gave very clear examples of why these sorts of provisions are absolutely essential. I indicate that the Greens will be supporting these amendments.

Senator FIELDING (Victoria—Leader of the Family First Party) (11.25 pm)—These amendments are extremely difficult for me. Some of the stories that we heard through the committee process cause concern. The question here though is one of balancing out power and how far it goes, and I am torn between both. I think in the end I am not going to support these amendments because I am worried about the power going too far with the unions. Maybe there is an-
other way to solve this; I do not know. But I
do know that tonight I feel uncomfortable
with some of the powers here. I will proba-
bly have further discussions on this, but at
this stage I do not feel comfortable support-
ing the amendments and I also feel uncom-
fortable knowing some of the stories that we
heard through the committee process.

Senator ABETZ (Tasmania) (11.27
pm)—I might come in too, Senator Fielding.
Having gone through the amendments, I
think relatively carefully, we would be
minded, as I indicated earlier in your ab-
sence—and no criticism of that; it is fully
understood—

Senator Fielding—The numbers.

Senator ABETZ—You would be support-
tive of them as well?

Senator Fielding—The numbers that you
mentioned.

Senator ABETZ—You would support
those amendments?

Senator Fielding—Yes.

Senator ABETZ—In those circumstances
can I then indicate to the chair just for the
procedure and for any other contribution that
it looks as though there is agreement around
the chamber in relation to amendments (10)
to (16) inclusive, (30), (32), (33), (35) and
(44). We will be seeking to divide on what-
ever the remaining amendments are.

Senator MARSHALL (Victoria) (11.28
pm)—I am disappointed that the opposition
and Senator Fielding are not going to support
all of the amendments. Senator Fielding in-
dicated that he was concerned with some of
the stories that he heard during the inquiry,
and he should be. He should be concerned
because this is an industry where there is
massive exploitation. This Senate has looked
at this issue over the last 20 years. There
have been Senate inquiries, there has been
tependence and an obligation as legislators to legis-
late to have a practical effect to end that ex-
ploration. We can argue about the powers
and whether they go too far. In the normal
sense of things, that is the proper political
debate that we have in this place, but when
we know that there is exploitation going on,
and that is not disputed, we have an obliga-
tion to fix it. If we have to go further in this
particular industry than we do for any other
industry, we should do so.

Senator Fielding, I would ask you to re-
consider. If you think it has gone too far and
if we find that, all of a sudden, outworkers
are driving BMWS, wearing gold chains and
buying multiple houses, I will come back in
this place and say, ‘You’re right; we went too
far,’ but I suspect, even with the amendments
that the government proposes, there will still
be massive exploitation. I am hopeful that
these amendments, as a lot, will take us a
large step forward in ending the exploitation
which has been well known and well docu-
mented by the Senate. We have tried to legis-
late in a bipartisan way before to get a good result, but it has not been enough. We have to take the extra step, we have to go further, because I do not want the Asian Women at Work group, Fair Work Australia and all the people who have constantly come to the Senate committee process and told us their stories, inquiry after inquiry after inquiry, to keep coming back, telling us their stories and asking us why we have not been able to fix the problem.

I just want to emphasise again: it is not because of the lack of effort, commitment or dedication of those who care about that industry and try to fix it. You have met those people—you know how dedicated they were. It is because there is a lack of legislation and a lack of power to give those people the right to do those investigations, the right to just give those people the most basic, minimum standards. That is what we need to do. I ask you, Senator Fielding: reconsider and support the whole tranche of the government’s amendments.

Senator XENOPHON (South Australia) (11.32 pm)—I will follow on from the remarks of Senator Marshall. I indicate that Senator Fielding has managed to negotiate—if that is the right word—a number of very helpful changes in relation to the issue of privacy. The concerns that he and others had with respect to privacy, I think, have been fundamentally addressed—and I commend him for that—without in any way, I believe, undermining the integrity or the intention of the right of entry provisions. Now, generally, there will have to be 24 hours notice, and there are safeguards in getting the permit in the first place. You have to give the reason why you are going in and, also, Fair Work Australia has a supervisory role in relation to all this—the decision can be contested. But there is a fundamental difference. The point has just been made very well by my colleague: this particular industry is an exception. It is not like any other type of industry. We are not talking about premises where there is a sign out the front, where there is a registered office or where, for the purpose of the Income Tax Act and the Corporations Law, the liability is attached to a particular address. These are backyard operators; these are operators where there is no safety net. These are operators who can just pack up and go elsewhere with literally a few hours notice.

Senator Marshall talked about effectiveness and made a very good point: what is the point of passing a law unless it is going to have some teeth and be effective? I know that Senator Fielding, in his advocacy for the vulnerable in the community, has a genuine concern for people—families—who are vulnerable. This particular amendment will make it effective. There are still safeguards in the legislation with respect to being required to obtain a permit or being required to reasonably suspect that the contravention has occurred or is occurring. If it is abused, then there are inbuilt sanctions with Fair Work Australia. But, if we want to tackle the evil of exploitation of outworkers by backyard operators and sweatshops, then this is an important and fundamental reform in order to do it. With the greatest respect, I urge Senator Fielding to consider this and give this a go because it is an important reform in relation to some of the most vulnerable and exploited workers in the community.

Senator ABETZ (Tasmania) (11.36 pm)—I thank the minister for providing the assistance of the very long-suffering advisers from the government side, and there are those of the opposition and all around the chamber, including the staff of Senator Fielding, Senator Xenophon and the Greens, who have been assisting throughout this debate. On this particular point, the advice that we have received has convinced us that, in the list of the amendments we support, we
should in fact be adding items (18) and (19), subject to a small amendment, which would be to delete at the end of item (19) the words ‘or TCF outworkers’. I indicate that that makes good procedural sense. I understand that the clerks might want me to do something.

The TEMPORARY CHAIRMAN (Senator Humphries)—Senator Abetz, would you care to move that amendment to government amendment (19) now?

Senator ABETZ—In fact, if we do not reject the other amendments, then, of course, the words ‘or TCF outworkers’ should stand.

The TEMPORARY CHAIRMAN—We will return to this issue after we have dealt with the contentious amendments, I think, Senator Abetz.

Senator LUDWIG (Queensland—Minister for Human Services) (11.37 pm)—One of the difficulties that we now have in the chamber is that these are broad provisions designed to assist the TCF industry. I may not agree with Senator Xenophon on all issues, but on this issue I do. It is an area where you do need special provisions to ensure that the legislation works effectively. To achieve that, you rebalance the scales. You cannot take what you might consider to be reasonable circumstances and apply them across the board because in this industry we know from long experience, from advice and from being told not only by employees but by the TCF industry unions themselves that employers in this area are not the best. They accept that these types of special powers are required to address some of the circumstances that vulnerable people will find themselves in.

That is the critical issue. It is about whether you accept that those people who are vulnerable in our society, the families that do the outwork—who are trying to do their best to find income and send their kids to school—deserve special measures. Our submission is that they do. We agree with Senator Xenophon that they do. It is about ensuring that they can provide for their families and their kids. It is about ensuring that the income they earn is reasonable for the work they do. In other words, it is a fair go for them too, because we know from long experience that they do not always get a fair go. That is not to condemn all outwork employers, but we know that at the bottom end of that market some very awful practices go on. For those areas we think the powers should be weighted a little bit more towards protection. This measure does not go as far as some might want it to go. What it does do is try to address the circumstances which TCF outworkers might find themselves in and try to bring those back a little and provide some fairness.

It is no wonder that those opposite do not want to support all of the provisions. I suspect they think that some of them go too far and are weighted more towards the employee than the employer. But I think Senator Xenophon has demonstrated in the debate tonight that he understands where the balance lies, and I would ask Senator Fielding to support all of the amendments so that we can achieve a reasonable balance. I understand that you may not want to, but I would ask you to reconsider.

Senator SIEWERT (Western Australia) (11.41 pm)—I knew this debate was going to be long and tempers were going to be tried, and I can tell you that my temper right now is being very seriously tried. I cannot understand the coalition not accepting these amendments, but, I am sorry, I cannot understand Senator Fielding not getting this. These are so important to deliver fair outcomes for TCF workers—they really are very important. TCF workers are our most vulnerable workers. In the past there have been some differences of opinion, but, as I said when I
first addressed these amendments, there has genuinely been really strong cross-party support for strong and fair TCF amendments. During the Senate inquiry the submissions contained story after story of abuses of outworkers. Progressively in Australia we have tightened our laws to offer protections to our most vulnerable workers.

As I also said earlier, these amendments do not go as far as we think they should go to protect TCF outworkers, but at least they put in place some protections. These are the workers that are most easily exploited because, as Senator Xenophon, Senator Ludwig and I have articulated, the sweatshops in particular are so easy to move. It is very hard to pin them down. During the inquiry process we heard stories that they do not even keep proper records of their employees or of the work that is done, so it is very hard to tell if the workers are being paid properly. The experience of a number of years has shown that, as a Senator Ludwig said, we need special protection for these workers. These provisions and this type of approach have developed over the years to ensure that we do give the best protection possible to these our most vulnerable workers.

As we heard during the committee inquiry, these people are often non-English speakers and they do not actually know what the laws are. They do not know what protections they have under Australian laws. They are easily exploited. Often, they have families to support and they are new arrivals in Australia. As I said, they do not necessarily understand the provisions or protections in our laws, and often they do not know who to go to for help. The committee heard incredible stories about some of the treatment they receive from their bosses. Senator Marshall will confirm the stories we were told about how some of these workers are treated. It is simply outrageous. As I said, they are the easiest to exploit. They are our most vulnerable workers. It is essential that we protect them.

I have said that the Greens do not think these amendments go far enough, but we are strongly supportive of them as far as they go. I seriously urge Senator Fielding to have another think about these amendments. They are the least that we can do to offer protections to these most vulnerable workers. If we do not pass them we will be condemning TCF workers and outworkers to exploitation, and of course that means their families are also affected. It is essential that we protect these workers and their families.

I remember one lady who came with the Asian Women at Work organisation to tell the committee her story. She was a clothing worker and told us how she and her daughter suffered because she was not getting adequate pay and was being required to make up pieces in totally unrealistic time frames. When she could not make those time frames she was being penalised. She and her daughter were essentially living in one room while she was trying to meet that totally unacceptable workload and was being unfairly treated. I cannot believe that in 2009 we do not think these amendments are absolutely essential to provide protection for TCF workers and for outworkers. I urge the coalition and Senator Fielding to please reconsider and support these amendments.

Progress reported.

BUSINESS

Rearrangement

Senator Ludwig (Queensland—Manager of Government Business in the Senate) (11.48 pm)—by leave—I move:

That the Senate continue to sit at 12 midnight and the sitting of the Senate be suspended when the third reading the Fair Work Bill 2008 has been determined.

Question agreed to.
FAIR WORK BILL 2008

In Committee

Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Humphries)—We are dealing with government amendments (1) to (44) on a sheet QW366. I propose to divide the question that the committee is considering so that we deal first of all with those amendments—

Senator ABETZ (Tasmania) (11.49 pm)—Chair, with your indulgence, Senator Sherry did say earlier to Senator Ludwig if he kept talking he might talk himself out of support for a particular proposition. On this occasion, Senator Ludwig has in fact talked himself into gaining some support. I should indicate that, on the basis of the advice we have received items (2) and (3) are now supported by the opposition as well.

The TEMPORARY CHAIRMAN (Senator Humphries)—On that basis, I propose to put first of all those government amendments on which I understand there is not agreement. I then propose to entertain an amendment from Senator Abetz to amend amendment (19) and then to deal with the remainder of the amendments in that bracket (1) to (44), where I understand that there is support from the whole committee.

Senator ABETZ (Tasmania) (11.51 pm)—I am sorry to do this, and once again I am very indebted for the advice we are receiving, but we are now also indicating support in relation to item (34); item (40) with a change, but we can deal with in the next tranche; and item (41) with the change.

The TEMPORARY CHAIRMAN (Senator Humphries)—The question is that government amendments (1), (4) to (9), (17), (20) to (29), (31), (36) to (39), (42) and (43) on sheet QW366 be agreed to. I understand these are amendments are not fully supported in the chamber.

Question put.
Thursday, 19 March 2009

Sherry, N.J. Cormann, M.H.P.
Stephens, U. Ferguson, A.B.
Wong, P. Joyce, B.

* denotes teller

Thursday, 19 March 2009

Senator FIELDING (Victoria—Leader of the Family First Party) (12.01 am)—As I said earlier, the issue of outworkers is a difficult one. Obviously the outworkers have a case. I was thinking about the amount of power that would be given under this legislation and I have to say that Senator Marshall made some sense in his plea. Rechecking my conscience, I think that erring on the side of looking out for those workers is the right thing to do. I apologise for wasting the time of the chamber for four or five minutes, but I appreciate the plea that Senator Marshall made.

Senator TROETH (Victoria) (12.03 am)—Like Senator Fielding, I thought very hard about what I would do during that amendment because I too, particularly during my experience as previous Chair of the Employment, Workplace Relations and Education Legislation Committee, had dealings with the outworkers during the last round of industrial relations legislation. I would suggest to the government that, when the legislation goes back to the House of Representatives, they look at arming the ombudsman with more power to deal with some of the endemic problems within the outworker industry. We on this side see the amendment that has just been voted on as probably giving too much power to the union in that sense. But we would like to strengthen the role of the ombudsman. I suggest something along the lines of a flying squad or something within the ombudsman’s office to specifically deal with the problem of low-paid non-English-speaking background workers who are paid a very low rate of wages and who do not necessarily belong to the union. I think the coalition would be able to view this, without speaking for anyone but myself, more favourably. I hope that can be looked at.

Senator ABETZ (Tasmania) (12.05 am)—If I may, I want to acknowledge Senator Troeth’s excellent record in this area. As I indicated, the opposition were considering these matters on balance. As we were discussing these matters, a number of issues were explained to us further, which allowed us to be more supportive of some of these government amendments. Given the vote of the committee that has just taken place, the notice of amendment that I gave of course needs to be withdrawn because it would be inconsistent with that vote. I can indicate that the coalition has no difficulty with the rest of the amendments and supports the next raft.

The TEMPORARY CHAIRMAN (Senator Forshaw)—The question is that amendments (2), (3), (10) to (16), (18), (19), (30), (32) to (35), (40), (41) and (44) be agreed to.

Question agreed to.

Senator ABETZ (Tasmania) (12.06 am)—by leave—We have withdrawn amendment (21). I move opposition amendments (22) and (23) on sheet 5739 revised 2 together:

(22) Clause 262, page 235 (after line 28), at the end of the clause, add:

Genuine agreement

(6) FWA must be satisfied that the making of a determination is by consent of the bargaining representatives and that such consent was reached by genuine agreement.

(23) Clause 269, page 241 (line 12), after paragraph (1)(c), insert:

and (d) the bargaining representatives have genuinely agreed to seek a workplace determination;

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(23) Clause 269, page 241 (line 12), after paragraph (1)(c), insert:

and (d) the bargaining representatives have genuinely agreed to seek a workplace determination;
The opposition is understanding of what may well occur in the vote on this matter. We still want to indicate that we believe that if these provisions in relation to arbitration are to be part of the framework then the issue of what genuine agreement means should be identified. We are suggesting that Fair Work Australia must be satisfied that the making of a determination is in fact by consent of the bargaining representatives and that such consent was reached by genuine agreement. The government went to the last election saying that there would be no forced agreements placed on parties. Indeed, on 30 May Ms Gillard said to the National Press Club: Our policy clearly states that no one will be forced to sign up to an agreement where they do not agree to the terms.

What the government has now done is to go back on that promise.

Another promise was made in Forward with Fairness that good faith bargaining would not require bargaining participants to make concessions or sign up to an agreement where they did not agree to the terms. The legislation now before us, however, allows Fair Work Australia to make a determination in matters where it is asserted that good faith bargaining has not taken place. We say that the provisions in relation to good faith bargaining are in fact putting in compulsory arbitration through the back door. We also say very clearly to the government that if it is willing to abide by the promises and undertakings that it provided. So what we propose is to retain the new provisions but ensure that compulsory arbitration is only available where the bargaining representatives genuinely consent to such a determination being made.

Senator SIEWERT (Western Australia) (12.11 am)—In his opening comments, Senator Abetz articulated his thought that he was not going to get much support for this amendment. He is right: he is not. We oppose these amendments. We believe that last resort arbitration is essential for a fair bargaining system. In fact, as people would pick up from both my speech in the second reading debate and some of the amendments we have put, we believe that this bill has gone too far in taking out arbitration. We think that it should be going in the opposite direction to the one which the coalition wants to take. We will be strenuously opposing these two amendments.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (12.13 am)—On behalf of the government, I indicate that we are opposed to these amendments. What the opposition seeks to do is impose an additional requirement that special low-paid workplace determinations can only be made where all bargaining representatives agree fundamentally. That undermines the whole concept of the provisions here. These determinations are for the purpose of allowing Fair Work Australia to resolve a deadlock in bargaining where the parties are genuinely unable to reach agreement. The threshold high jump for this is already very high. It can only be made where strict criteria are met. They include the terms and conditions of employers to be covered by the determination, a substantially equivalent safety net, that making a determination will promote future bargaining and productivity and efficiency in enterprise, and that it
is in the public interest to make the determination. This, in a very small number of cases, allows Fair Work Australia to resolve a situation where there has not been bargaining in good faith and gives effect to the intention of this stream—to provide some protection for those particularly low-paid workers to get some justice in terms of their wages and conditions. So it is a very important part of the legislation. Certainly, it is one of the pieces of the legislation that I am personally most committed to. It is fortuitous that Senator Ludwig wanted a break when this clause was being considered because I am very pleased to be associated with the government’s position on this particular area. I think it is very important that the opposition amendments be defeated because they would undermine fundamentally what is a very important initiative as part of this legislation.

Senator ABETZ (Tasmania) (12.15 am)—Quickly summing up, I understand what Senator Siewert said but, having listened to a homily about how the government had an absolute mandate, had a right and should be supported in bringing in policies for which it stood at the last election in relation to a previous matter, I remind the chamber that this was the cast-iron guarantee given under Labor’s policy:

Our policy clearly states that no one will be forced to sign up to an agreement where they do not agree to the terms.

This is a complete breach of faith with the Australian people and with what was promised. The government, at that time in opposition, promised this so as to clothe themselves in the economic conservative apparel that they were trying to clothe themselves in. Of course, now that the election is over, they are trying to rip it off as quickly as possible. The problem for Ms Gillard and the government is that these words are actually recorded. I note, with interest, that the minister does not deny the words that I quoted out of Forward with Fairness and does not deny that she made those promises. What we say is that negotiating an agreement is about trying to find areas on which you can agree. If you cannot agree on something, then you should not be forced under law to have someone else impose an agreement on you—especially in these circumstances, where there is the strong safety net of the National Employment Standards that has been created by the bill. What this is doing is introducing compulsory arbitration in circumstances where Labor gave a cast-iron guarantee not to introduce such a regime.

Question negatived.

Senator ABETZ (Tasmania) (12.19 am)—We will not be pursuing opposition amendment (16). I move opposition amendment (17) on sheet 5739:

(17) Clause 134, page 132 (after line 13), after paragraph (1)(d), insert:

(da) the requirement not to disadvantage employees; and

(db) the requirement not to increase costs for employers.

This is a very simple amendment and it will put the acid on the government. Ms Gillard made the promise to the Australian people that award modernisation would not disadvantage any employee. She also said to the Australian people—a another one of these cast-iron guarantees that somehow have rusted away since 27 November—that there would be no increased costs for employers under award modernisation. They were the two solemn promises. We want to test and see whether the government is going to be true to its word and support the words of Ms Gillard or whether it is going to vote against her words and the promise that she made to the Australian people. Quite frankly, it was a promise that she must have known she could not keep. It was an impossible proposition to put to the Australian people. I personally
believe that Ms Gillard knew that what she was saying was undeliverable, but I am willing to be corrected. The way that I will be corrected is when the government says, ‘Yes, Ms Gillard’s promise is deliverable and we will vote for these amendments.’ Somehow, by weaving some sort of industrial magic, we can have award modernisation which does not disadvantage any employees and does not increase costs for employers. In those circumstances, I am sure it is very easy for Labor to support the amendment and indicate that it has full support and faith in Ms Gillard’s comments to the Australian people before the last election.

Senator JACINTA COLLINS (Victoria) (12.22 am)—On behalf of Senator Evans, I can indicate the government’s position on this amendment. We will oppose the amendment. The Australian Industrial Relations Commission is required by the award modernisation request of the Minister for Employment and Workplace Relations to take into account the intention that modern awards not increase costs for employers or disadvantage employees. This enacts the commitment that, indeed, the Deputy Prime Minister has made. The transitional and consequential bill which was introduced yesterday provides for the Australian Industrial Relations Commission to continue and to complete the award modernisation process. We are indeed, Senator Abetz, dealing with the award modernisation process here rather than the ongoing basis for modern awards, which is our difficulty with your amendment.

The Australian Industrial Relations Commission is required to comply with the award modernisation request and to take into account the intention that modern awards not increase costs for employers or disadvantage employees. The appropriate stage for these considerations is the process being undertaken by the commission in making modern awards. These considerations are of primary importance when rationalising a large number of instruments, both federal awards and notional agreements preserving state awards. Modern awards will commence on 1 January 2010. The commission will have completed making modern awards by that time.

Although the bill does not prescribe the opposition’s proposed objective, the bill provides a modern awards objective which is balanced, comprehensive and appropriate. The modern awards objective was considered by both employer and employee representatives as part of the considered process of the Senate Standing Committee on Education, Employment and Workplace Relations for the Fair Work Bill 2008. The modern awards objective appropriately includes considerations to ensure both employees and employers benefit from a safety net which is fair and relevant. Indeed, as I highlighted, the request to the Australian Industrial Relations Commission meets the Deputy Prime Minister’s commitment which you are seeking to deal with in this matter.

Senator FISHER (South Australia) (12.24 am)—I have a question of the minister. Are there any independent estimates of the costs of modernising the Australian award system?

The TEMPORARY CHAIRMAN (Senator Forshaw)—Is someone seeking the call? Otherwise, I will put the question on the amendment.

Senator FISHER—I am waiting for an answer to my question.

The TEMPORARY CHAIRMAN—I appreciate that, Senator Fisher. I expect that Senator Ludwig is seeking the call.

Senator LUDWIG (Queensland—Minister for Human Services) (12.26 am)—There are a couple of appropriate opportunities to ask that question. Firstly, the Australian Industrial Relations Commission can be asked that question at estimates, and I am
sure, if you have not already done so, you will do that. The other answer in part, of course, is annual reports. The Industrial Relations Commission is an independent commission. It will deal with the costs of how it operates, and it will work within its budget.

Senator Abetz—No, the economic costs.

Senator LUDWIG—I am sorry; I thought it was just the costs. Is it that modelling question again? I think I have answered it earlier, if not today then—

Senator Abetz—Which was? Remind us.

Senator LUDWIG—I will go through the excursion again. I am not sure why we are wasting this much time when I have answered it. I think you asked it when we started off the committee stage of the Fair Work Bill.

Senator Abetz—No, I didn’t; I’m sorry.

The TEMPORARY CHAIRMAN (Senator Forshaw)—Senator Abetz, the minister has the call, and this question and answer across the chair does not help.

Senator LUDWIG—I had gone through what this government has done, unlike what the opposition did in relation to Work Choices, unlike what the opposition did in respect of their position, because of course they did no modelling. We on this side provided a regulatory analysis. It went through significant issues, such as the regulatory impact. It not only went through the consultation that went forward but also included the proposals plus an outline, together with a range of information that is available about modern awards and the provisions within them, plus the impact analysis of those. I could take you to page xxix as part of that. This government has done a significant amount of work to deal with the broad issues surrounding this bill, including the regulatory impact. I think I gave a more fulsome answer when this debate began. If the advisers are happy to dig back and find what I said earlier, I can continue with that or we can get on with the amendments. I am in your hands.

Senator FISHER (South Australia) (12.29 am)—Minister, I am happy to move on to my next question. In the face of employer concerns about increased costs to be caused by the award modernisation provisions and in the face of concerns being expressed by both the business community and the worker community about the potential for job losses to flow from the award modernisation provisions, I would have thought that the government might have thought that a regulatory impact statement is hardly an independent assessment and is hardly an independent economic modelling of the costs to be experienced by business, the costs to be experienced by the workforce and the costs to be experienced by the country from the award modernisation provisions. Minister, where does the Fair Work Bill legislate the government’s stated intent of some 12 months ago that modern awards would not disadvantage employees?

Senator LUDWIG (Queensland—Minister for Human Services) (12.30 am)—If I could deal with the two matters that you raised—they were not questions; I think they were statements that you were making—I reject them at the outset. It is late in the evening, whichever way you want to look at it, but on the substantive question that is being asked the issue of award modernisation is contained within the minister’s direction, which is available, which I am sure you have read and which I am sure that you have gone through with a fine tooth comb—as you would. You probably already know the answer that I have already given to that question. The adviser is looking for the request itself. We can certainly make it available. It is on the public record, as I understand it.
Senator Fisher—I have a copy in front of me.

Senator LUDWIG—I am really surprised!

Senator FISHER (South Australia) (12.31 am)—Minister, it was to that request of the President of the Industrial Relations Commission that I referred in asking: where does the Fair Work Bill legislate that request, given that that request is a statement of intent and given that that request stated the government’s intention but did not legislate it? Some 12 months ago that request stated the government’s intention that award modernisation not disadvantage employees. Where does the Fair Work Bill legislate that intention?

Senator LUDWIG (Queensland—Minister for Human Services) (12.32 am)—If you think about it, the request is under section 576C(1), so this is part of the legislative program. If you look at what the document says, you see that it is the award modernisation consolidated version, and the objects of that does set it out. I will go to the issue that you refer to. It is set out at 2(c), which says that the creation of modern awards is not intended to disadvantage employees. It is contained in what I will call, in shorthand, the direction by the minister. I think it is plain. Quite frankly, I am sure you already knew that answer too.

Senator FISHER (South Australia) (12.33 am)—As I understand it, they were provisions under the Workplace Relations Act. You were referring to section 576. Is there any provision in the Fair Work Bill that requires that modern awards not disadvantage employees?

Senator LUDWIG (Queensland—Minister for Human Services) (12.33 am)—You may not have caught up with this yet—I would be surprised if you had not—but the Fair Work (Transitional Provisions and Con-sequential Amendments) Bill 2009 on page 53 says at part 2—the WR Act modernisation process—‘AIRC to continue and complete the award modernisation’:

(1) The Australian Industrial Relations Commission is to continue and complete the award modernisation process provided for by Part 10A of the WR Act (the Part 10A award modernisation process).

(2) For that purpose, Part 10A of the WR Act continues to apply on and 9 after the WR Act repeal day in accordance with this Part.

(3) Without limiting subitem (2), the request under section 576C—

which is the one I referred to earlier—of the WR Act continues to apply on and after the WR Act repeal day, and may be varied in accordance with that section.

And it goes on. So those transitional provisions, if I can call them that in shorthand, continue on with that so that it does not disappear. So, when we do get to the transitional provisions, and I am sure it will have the support of the opposition, it will then, should it pass—and I do not want to foreshadow that debate when it should happen—continue those provisions.

Senator FISHER (South Australia) (12.35 am)—I note your reference to the transitional bill in respect of disadvantaging employees. Where does the Fair Work Bill legislate the government’s statement of intent, made some 12 months ago through the minister’s request of the Industrial Relations Commission, that modern awards not increase employers’ costs?

Senator LUDWIG (Queensland—Minister for Human Services) (12.35 am)—The detail is set out in the request. I think that is the answer you are looking for, and that is plain.

Senator FISHER (South Australia) (12.36 am)—Do I understand from the min-
ister’s response that there is no provision in the Fair Work Bill that legislates the government’s 12-month-old promise that award modernisation not increase employers’ costs? I take it that there are no provisions in the Fair Work Bill that legislate that promise. Is that right?

Senator LUDWIG (Queensland—Minister for Human Services) (12.36 am)—No. The Fair Work Bill provides for the request. The request provides for what I have set out, which is that the creation of modern awards is not intended to—and the relevant provision is (c)—disadvantage employees. I am sure that you are familiar with how legislation works, but to be simple you could compare it to a situation akin to a regulation made under an act. I am sure you are familiar with those terms.

Senator FISHER (South Australia) (12.37 am)—In your answer, you did indicate that the Workplace Relations Act refers to the government’s stated intention that award modernisation not increase costs for employers. Can I confirm, please, that the Fair Work Bill does not legislate to stop award modernisation increasing costs to employers. A statement of intent is all very well, Minister, and honourably made, I am sure. Where does the Fair Work Bill prevent award modernisation from increasing an employer’s costs? Or has the government decided that a statement of intent suffices? Those are my two questions.

Senator LUDWIG (Queensland—Minister for Human Services) (12.38 am)—I will go back to the primary position, which I am sure you understand, and it has probably been articulated to you before today. The government’s intention is clear. It is set out in the request under the existing section 576C to the Industrial Relations Commission, as it is now, in (1), (2) and (3), right through, dealing with a whole range of issues. Not only is the aim of the award modernisation process to create a comprehensive set of modern awards as set out in section 576A of the act but in addition it must be simple to understand and easy to apply and must reduce the regulatory burden on businesses. There is a range of other provisions, including:

(c) must be economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and

(e) must result in a certain, stable and sustainable modern award system for Australia.

It also deals with the creation of modern awards. It is not intended to—and we have dealt with this one—(c) disadvantage employees or (d) increase costs for employers. It deals with the performance of functions by the commission in section 3 and a range of other provisions, including consultation. It says:

The President will consult with the Australian Fair Pay Commission and State industrial tribunals as appropriate.

That is the clear position, as articulated by Ms Gillard, the Minister for Employment and Workplace Relations, pursuant to section 576C(1) of the Workplace Relations Act. As I have indicated, it will continue under the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009.

Senator FISHER (South Australia) (12.40 am)—Minister, could I have a yes or no answer, please. Does the Fair Work Bill contain any provision that will prevent award modernisation from increasing employers’ costs?

Senator LUDWIG (Queensland—Minister for Human Services) (12.40 am)—What I have said, and I have said it very clearly, is that there is a ministerial request.
that deals with this issue in several ways. It deals with it by saying:

2. The creation of modern awards is not intended to:
   
   ... ...
   
   (c) disadvantage employees;
   
   (d) increase costs for employers ...

That is the provision that it is contained in.

Senator FISHER (South Australia) (12.41 am)—Minister, that is a provision in the Workplace Relations Act. My question is about the bill that this committee is considering. Minister, can you guarantee that if the Fair Work Bill is passed in its terms, without the passage of this opposition amendment, modern awards will not increase employers’ costs?

Senator LUDWIG (Queensland—Minister for Human Services) (12.44 am)—We are now using the committee stage of the Fair Work Bill to start talking about the Fair Work (Transitional Provisions and Consequential Amendments) Bill. Be that as it may, the bill continues the framework which I outlined. I have outlined it a number of times. I am happy to outline it again if you are unsure of the process—that is, that this award modernisation request was made under 576C(1). The award modernisation request, which comes under that section, sets out that the creation of modern awards is not intended to disadvantage employees or increase costs for employers and it will continue under the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009.

Senator FISHER (South Australia) (12.43 am)—So there are aims and statements of intent under the Workplace Relations Act but no provision in the Fair Work Bill that will prevent modern awards from increasing employers’ costs. Minister, you referred to the transitional bill, introduced in the House of Representatives today—
late in the Fair Work (Transitional Provisions and Consequential Amendments) Bill the other part of its 12-month-old promise, which is to ‘not increase costs for employers’ through modern awards?

Senator LUDWIG (Queensland—Minister for Human Services) (12.46 am)—The short answer is: because we legislated 12 months ago. But I am sure you are aware of that.

Senator FISHER (South Australia) (12.46 am)—Minister, if you legislated 12 months ago in respect of not disadvantaging employees as well, then why does the government see fit to legislate the same half of its promise in a bill introduced in the House of Representatives yesterday but not see fit to do the same for the other half of the promise, which is to not increase costs for employers—which, of course, if not achieved, will fail to protect employees in any event? The business community are saying that this process will increase their costs and will cost jobs for employees. So, Minister, why the necessity, in the view of the government, to legislate 50 per cent of the promise made 12 months ago but not the other 50 per cent?

Senator LUDWIG (Queensland—Minister for Human Services) (12.47 am)—It might be difficult to understand, but maybe I am saying it badly—I accept that. The request was made under the existing workplace relations legislation, under section 576C(1), and it continues under the transitional provisions. So the transitional provisions have now been tabled and it will continue under that. It was important to get the commission working on getting modern awards in place. I am sure we all agree with that. It is about ensuring that modern awards can be dealt with, because what we also did very early in the piece was remove AWAs. Unlike the previous government, you may not have agreed with them. In fact, I am told even by the opposition now that Work Choices is dead. But what you did when in government was to strip conditions, strip wages and strip shift loadings, penalty loadings and holiday pay away from people. That is what you did, and you did it not once but many, many times. I do not want to go and rustle up your old bones and have a look at them, but you should own them and recognise they are your bones, not ours.

Senator FISHER (South Australia) (12.49 am)—Minister, why does the explanatory memorandum for the transitional bill say at the top of page 2: FWA will have scope to make orders to ‘phase in’ minimum wages in modern awards on application by an employer where it is satisfied that such measures are necessary to ensure the ongoing viability of a business. What are the practical circumstances that might give rise to this? Why is it necessary to provide for a phase-in provision?

Senator LUDWIG (Queensland—Minister for Human Services) (12.51 am)—I am pleased to note that the senator has a copy of the transitional provisions. I was concerned that you may not have had them. I am sure you have read part 3, ‘Avoiding reductions in take-home pay’, dealing with the Part 10A award modernisation process. It provides:

An employee suffers a modernisation-related reduction in take-home pay if, and only if—

and then it sets out four criteria—(a), (b), (c) and (d)—as to when that circumstance could arise. The next item deals with an outworker who is not an employee and suffers a mod-
ernisation related reduction in take-home pay.

Senator FISHER (South Australia) (12.52 am)—Minister, doesn’t that answer acknowledge that modern awards will effectively be permitted to be the operative or immediate reason for increasing employers’ costs? There is little other conclusion from that answer and from your earlier answers about the lack of any provision to the contrary in the Fair Work Bill.

Senator LUDWIG (Queensland—Minister for Human Services) (12.53 am)—I am amazed at the ability to extrapolate, but I do not think that is an assumption that you can make, quite frankly. It is not something that necessarily flows from one to the next. It is not a reasoned argument, I would put. The position I have outlined is the correct position. There are award modernisation processes in place and the Industrial Relations Commission is dealing with that. The consequential provisions deal with, in part, the effect of award modernisation in terms of employees, particularly part 10A, as I outlined. The issue at the heart of this is that the Minister for Employment and Workplace Relations has put in place an award modernisation request to be read in conjunction with part 10A of the Workplace Relations Act. It deals with the circumstances that I have outlined this morning and says:

2. The creation of modern awards is not intended to—

I will not go through them all again, but clearly I have been using—

c) disadvantage employees;

d) increase costs for employers ...

Senator FISHER (South Australia) (12.55 am)—Thank you, Minister. Whilst the transition bill allows for the phasing in of minimum wages in modern awards on application by an employer who can prove to Fair Work Australia that such measures are necessary to ensure the ongoing viability of their business, the Deputy Prime Minister indicated in her speech to parliament some 12 months ago when introducing the transition to Forward with Fairness legislation that Fair Work Australia, currently the Industrial Relations Commission, can put in place arrangements to phase in differences between old awards and modernised awards over five years. She said:

Such phasing-in arrangements will ensure that employers are provided with a lengthy adjustment period to adapt and plan for any such new standard.

Yet a lengthy adjustment period does not avoid increased cost at the end of that adjustment period. As Brad Norington wrote in the Australian today:

… Gillard—

the Deputy Prime Minister—
cannot deny the revamp of awards is heading in one direction.

Employers face steep increases in minimum rates, sooner or later.

… … …

Award modernisation is a ticking time bomb for Gillard and the Government.

Your phase-in just tries, Minister, to defer the explosion until after the next election. That is what it tries to do; that is all it tries to do. It is hardly sophisticated. A phase-in period will not stop increased costs. It just says, ‘Sit there a bit longer, employer, and stew until the increased costs hit.’ Even then, according to the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009, employers can only achieve a phase-in period if they manage to convince Fair Work Australia that, if they do not get a phase-in period, the viability of their business would be directly impacted in a downward way. There is not even any room for seeking relief from Fair Work Australia if jobs are threatened without there also being a threat to the viability of the
business. No; the only way you get a phase-in period, to sit and stew in, is if you can show that modern awards are the sole reason, the operative reason, for the lack of viability of the business in the longer term.

Minister, this morning you have provided the business community with no reassurance. However you cut it, a modern award can increase an employer’s costs. Minister, you have provided the employer community with no reassurance about the transition bill, which does by your own say-so impact on this bill—because in your answers you have talked about a statement of intent and aim of the minister. Your promises some 12 months ago under the Workplace Relations Act are impacted upon by the transition bill that was introduced yesterday that inextricably relates to and underpins this Fair Work Bill. The answers given by you this morning in this place can only lead us to conclude that a modern award can increase employers’ costs and in so doing can, on the say-so of the business community, cost employees their jobs.

So, despite the transition bill having some provisions that the government says might allow Fair Work Australia to make take-home pay orders to protect employees’ pay, the business community is clearly saying that, because of the probability that award modernisation will increase their business costs, that is going to cost employees their jobs. That is hardly protecting employees. As Brad Norington says, it is ‘a ticking time bomb for Gillard and the government’. Minister, is there any reassurance that you can provide to the business community and their workers that award modernisation will not increase costs and will not cost jobs?

Senator LUDWIG (Queensland—Minister for Human Services) (12.59 am)—The assurance I can provide is that under Work Choices no such transitional provisions, no such system, were put in place to ensure that when AWAs were offered to people that stripped their wages and conditions they could do anything other than take it or leave it. That is the system that you enjoined and I am not so sure you want to leave it, quite frankly. That is the system that you, as an opposition, had, and I am sure—

_Senator Abetz interjecting—_

Senator LUDWIG—I am persuaded by Senator Abetz when he says Work Choices is dead—almost. Maybe a little bit longer and I will be completely persuaded. I am not persuaded that those sitting with him in the Liberal Party are not still wedded to it and would not like it to be brought forward and continued with. But we will check that later on today, I suspect. What I can say is that the idea of including transitional arrangements in modern awards was foreshadowed and is continuing. If you look back at the Liberals’ record in relation to this, they had award rationalisation as part of their process but never took it on. This government has set forward a system to ensure that modern awards will be in place. That is what this government has done, unlike the Liberals, who did not have the ability to pursue the rationalisation of awards as they claimed they were doing. What this government has done through a ministerial request is to ensure that the commission will undertake this work.

Senator ABETZ (Tasmania) (1.01 am)—To sum up on this amendment, it is now quite clear—out of the minister’s own mouth—that the minister has no explanation to offer, as has been his wont throughout this debate. Whenever he does not have arguments he takes a little excursion to the graveyard to kick around a corpse. But that does not obviate the need for him to explain to this parliament why Ms Gillard made the promise that he now clearly does not support
and will not be voting for. It was a silly promise to have made in the first place, I agree. But what we are doing here is testing Labor. I think we will know by their votes—and I can indicate that we are happy to do it on the voices. But we will be listening to hear whether there are any voices from the Labor side saying no, because those voices that say no will be repudiating Ms Gillard’s promise to the Australian people before the last—

Senator Jacinta Collins—Don’t verbal there, Eric, please—

Senator ABETZ—The only way the honourable senator opposite will be verballed is if she actually votes no. If she utters the word ‘no’ in relation to this vote, it will be a repudiation. The minister has not denied that that was the solemn promise made by the minister before the last election.

Question negatived.

Senator SIEWERT (Western Australia) (1.04 am)—by leave—I move Greens amendments (5), (6), (8) and (48) on sheet 5729:

(5) Page 60 (after line 16), at the end of Subdivision B, add:

44A FWA may deal with a dispute about the application of National Employment Standards

(1) FWA may deal with a dispute about the application of National Employment Standards.

(2) FWA may deal with the dispute on application by any of the following to whom the dispute relates:

(a) an employee;
(b) an employer;
(c) an employee organisation;
(d) an employer organisation.

(3) FWA may deal with the dispute by mediation, conciliation or arbitration, including by making any order it considers appropriate.

(4) In dealing with the dispute, FWA must take into account fairness between the parties concerned.

(6) Page 60 (after line 23), after clause 45, insert:

45A FWA may deal with a dispute about the application of modern award terms

(1) FWA may deal with a dispute about the application of a term of a modern award.

(2) FWA may deal with the dispute on application by any of the following to whom the dispute relates:

(a) an employee;
(b) an employer;
(c) an employee organisation;
(d) an employer organisation.

(3) FWA may deal with the dispute by mediation, conciliation or arbitration, including by making any order it considers appropriate.

(4) In dealing with the dispute, FWA must take into account fairness between the parties concerned.

(8) Page 64 (after line 9), after clause 50, insert:

50A FWA may deal with a dispute about the application of enterprise agreement terms

(1) FWA may deal with a dispute about the application of a term of an enterprise agreement.

(2) FWA may deal with the dispute on application by any of the following to whom the dispute relates:

(a) an employee;
(b) an employer;
(c) an employee organisation;
(d) an employer organisation.

(3) FWA may deal with the dispute by mediation, conciliation or arbitration, including by making any order it considers appropriate.

(4) In dealing with the dispute, FWA must take into account fairness between the parties concerned.
(2) FW A may deal with a dispute as it considers appropriate, including in the following ways:

(a) by mediation or conciliation;
(b) by making a recommendation or expressing an opinion;
(c) by arbitration (including by making any orders it considers appropriate).

These amendments relate to the dispute resolution powers of FW A. I will not go into as much extensive detail as I perhaps would be tempted to if the hour were not so late. The Greens went to the election with an election promise which was very strongly in support of the dispute resolution powers of Fair Work Australia. We have held a very strong position on this issue through our industrial relations policy. We certainly went to the election with that policy.

I also articulated during my speech in the second reading debate our concerns about the fact that industrial relations policy in Australia has moved away from conciliation and arbitration and the fact that the bill lacked an independent dispute resolution process. So the Greens are moving these amendments in order to do two things. One is to explicitly provide Fair Work Australia with the power to deal with disputes over the application of the National Employment Standards modern award terms or terms of the agreement. The amendments also explicitly provide Fair Work Australia with broad powers, including arbitration powers, in resolving these and other disputes. Applications to Fair Work Australia would be able to be made by an employee or employer or by an employee or employer organisation.

We do not believe consent arbitration works, in particular for those employees that are unable to exert enough pressure to ensure arbitration in agreed dispute resolution clauses. This is fundamentally about fairness, and the fairness of this bill is severely undermined by the absence of effective dispute resolution processes. It is a little bit of a mockery to call it the Fair Work Bill when there is not an effective dispute resolution process. As I said, the Greens went to the election with a very strong policy on dispute resolution. We have said it from day one. We believe that this policy should have had independent dispute resolution processes in the bill to enact the name of the bill and to ensure that Australian workers have full access to a truly fair industrial relations system.

Senator LUDWIG (Queensland—Minister for Human Services) (1.07 am)—The government will not agree to the amendment proposed by the Australian Greens to give the FW A a separate power to arbitrate disputes about the application of the NES modern award terms or terms of the agreement. The position was raised in the amendment on sheet QU427 and it was really in recognition of the concerns raised by the Senate committee. The government moved amendments to make clear that the terms of the National Employment Standards can be replicated in an enterprise agreement. Where those terms are replicated they will operate as terms of the agreement, and disputes about those terms can be dealt with by the FWA under the dispute settlement terms of the agreement. I can add further to that, but I think that succinctly puts our position.

Senator MINCHIN (South Australia) (1.07 am)—The opposition also opposes these amendments and joins with the government on this matter.

Question negatived.

Senator SIEWERT (Western Australia) (1.08 am)—by leave—I move Greens amendments (10) and (11) on sheet 5729:
(10) Clause 139, page 136 (line 16), at the end of subclause (1), add:

; (k) exceptional matters where the circumstances of the industry or sector warrant such matters being included in the award.

(11) Clause 143, page 140 (after line 4), after subclause (7), insert:

(8) To avoid doubt, nothing in this section is intended to exclude from award coverage employees in new or emerging occupations that have not previously been covered by awards but whose work is of a character that would warrant modern award coverage.

This issue relates to the issue we have just been talking about—modern awards. We are revisiting an issue here that we raised during discussions on the transition to Forward with Fairness legislation last year. We propose that Fair Work Australia should be able to include in awards exceptional matters.

The limiting of award matters is another hangover, we believe, from the Howard years. We believe there should be more flexibility in the content of modern awards and the government should leave it to Fair Work Australia, with input from stakeholders, to ensure an appropriate and relevant safety net. We have a related concern that the bill makes unlawful terms in awards relating to right of entry. I know we have been dealing with right of entry through the evening. Apart from the confusion that may exist from the fact that other terms related to unions may require unions to enter premises—for example, to attend inductions or meet employees under a dispute resolution clause—we see no justification for awards to be banned from including better right-of-entry provisions if that is what the practice is or if it is appropriate in a particular industry or occupation.

In terms of item 12 we have particular concern about the modern award system and its ability to adjust to changing workplaces, both in relation to content and coverage. We seek a clarification of clause 143 that emerging industries or occupations will be able to be covered by modern awards—that is, that Fair Work Australia will be able to make new awards or extend coverage of current awards to such industries. Our amendment merely seeks to clarify and make explicit that is the case. These concerns, as I said earlier, were issues that we raised at the time that we were discussing the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 last year. We expressed concerns at the time about some of the provisions of the award modernisation process and we have just had a long discussion about it. I appreciate that. But we are concerned about some of the rights and conditions that are being lost through the award modernisation process and believe that these amendments enhance the award modernisation process.

Senator LUDWIG (Queensland—Minister for Human Services) (1.12 am)—In relation to amendment (10), the government does not intend to expand the 10 allowable award matters. Expanding the allowable matters in modern awards to include exceptional matters could compromise the simplicity of modern awards. In relation to amendment (11), we accept the principle. The idea that awards can cover emerging areas of activity is reflected in the award modernisation request. However, the amendment is, we would submit, unnecessary. There is nothing in clause 143 that prevents awards covering such employees, and as the amendment itself recognises that, with the phrase ‘to avoid doubt’, I assume you already understand that clause covers the section.

In relation to item 12, again the government does not intend to revisit the issue. The right of entry is properly provided for by a dedicated part of the Fair Work Bill, and...
modern awards and the National Employment Standards are a minimum safety net of terms and conditions of employment.

Question negatived.

Senator SIEWERT (Western Australia) (1.14 am)—The Greens oppose lines 17 to 21 in clause 152 in the following terms:

(12) Clause 152, page 143 (lines 17 to 21), TO BE OPPOSED.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—The question is that lines 17 to 21 in clause 152 stand as printed.

Question agreed to.

Senator SIEWERT (Western Australia) (1.15 am)—by leave—I move amendments (1) to (19) on sheet 5745 together:

(1) Clause 144, page 140 (line 7), omit “must”, substitute “may”.

(2) Clause 144, page 140 (after line 11), after subclause (1), insert:

(1A) FW A is to include a flexibility term if it considers it appropriate for the industries or occupations covered by the award.

(3) Clause 144, page 141 (after line 9), after subclause (4), insert:

Individual flexibility arrangement must not be a condition of employment

(4A) The requirement for genuine agreement in paragraph (4)(b) includes a prohibition on an individual flexibility arrangement being put forward by the employer as a condition of employment.

(7) Heading to subclause 202(1), page 188 (line 4), omit the heading, substitute “Enterprise agreement may include a flexibility term”.

(8) Clause 202, page 188 (line 5), omit “must”, substitute “may”.

(9) Clause 202, page 188 (lines 25 and 26), omit subclause (4), substitute:

(4) An employee and employer may agree to include the model flexibility term in an enterprise agreement.

(10) Clause 203, page 189 (after line 19), after subclause (3), insert:

Individual flexibility arrangement must not be a condition of employment

(3A) The requirement for genuine agreement in subsection (3) includes a prohibition on an individual flexibility arrangement being put forward by the employer as a condition of employment.

(11) Clause 265, page 237 (line 14), after “subsection 264(1)”, insert “and allowed by section 274A”.

(12) Clause 268, page 240 (line 9), after “subsection 267(1)”, insert “and allowed by section 274A”.

(13) Clause 271, page 243 (line 35), after “subsection 270(1)”, insert “and allowed by section 274A”.

(14) Clause 273, page 245 (lines 18 to 23), omit subclause (4).

(15) Page 246 (after line 25), after clause 274, insert:

274A Workplace determination may include flexibility term

(1) A workplace determination may include a flexibility term that would, if the workplace determination were an enterprise agreement, satisfy paragraph 202(1)(a) and section 203 (which deal with flexibility terms in enterprise agreements.

(2) FWA may decide to include the model flexibility term in the determination.

Note: The factors FWA must take into account in deciding terms of a workplace determination are set out in section 275.
(16) Clause 144, page 141 (after line 13), at the end of the clause, add:

(6) The employer must lodge with FWA a copy of any individual flexibility arrangement within 14 days of the arrangement being signed in accordance with paragraph (4)(e).

Note: This subsection is a civil remedy provision (see Part 4-1).

(7) FWA must make publicly available on request copies of individual flexibility arrangements lodged in accordance with subsection (6), with information that would identify the parties to the arrangement removed.

(17) Clause 203, page 190 (after line 19), at the end of the clause, add:

(8) The employer must lodge with FWA a copy of any individual flexibility arrangement within 14 days of the arrangement being signed in accordance with paragraph (7)(a).

Note: This subsection is a civil remedy provision (see Part 4-1).

(9) FWA must make publicly available on request copies of individual flexibility arrangements lodged in accordance with subsection (8), with information that would identify the parties to the arrangement removed.

(18) Clause 539, page 429 (after table item 4), insert:

Part 2-3—Modern awards

4A 144(6) (a) an employee; (b) an employee organisation; (c) an inspector

5A 203(8) (a) an employee; (b) an employee organisation; (c) an inspector

6A 539(5) (a) the Federal Court; (b) the Federal Magistrates Court

I sought leave to move all these amendments together because they relate to the issues around flexibility. The Greens are very concerned about individual flexible arrangements. I articulated this in the second reading debate. It is an issue that we have held discussions with government about. I will seek in a moment some confirmation from the minister about the review of individual flexible arrangements. We are very concerned that they will be used as AWAs were. We all know that AWAs significantly undermined workers’ rights and conditions, particularly pre Work Choices AWAs and particularly those that operated in my home state in of Western Australia. Coming from WA, where pre Work Choices AWAs were used more widely than in the rest of the country, I know that, despite the need for them to meet a no disadvantage test against the award, they were still used to undercut the take-home pay and conditions of vulnerable employees. We are concerned that this may happen with individual flexible arrangements.

We acknowledge that there are more protections for workers under this bill, with IFAs, than there were with AWAs, in particular the provision allowing employees to terminate an IFA with 28 days notice and the fact that it will be more difficult for IFAs to be used as such an explicit anti-union mechanism as AWAs were. We also acknowledge that IFAs could be used effectively in, for example, allowing more family-friendly conditions. However, we are still concerned, as are many others—and I will get to that in a minute—that they have the potential to undermine award conditions and
collective agreements and be used to exploit more vulnerable workers.

Our amendments do not merely oppose the clauses providing for IFAs, although that is our preferred option and we made that plain earlier. We propose there should not be mandatory terms in awards or agreements. Rather, it should be at the discretion of FWA whether such clauses are appropriate for each modern award, and it should be up to the parties to an enterprise agreement whether and to what extent such clauses are appropriate. There may be industries or occupations where such arrangements are not appropriate—for example, occupations that have 24-hour rosters and provide essential services, such as firefighting. In these circumstances, it should be up to the parties or FWA as to whether such clauses should be included in an award or an agreement.

We also propose that it should be explicit in the legislation that IFAs cannot be offered as a condition of employment. Amendments (16) to (19) in relation to IFAs relate to our concerns about transparency. As currently provided for in this bill, IFAs are written and signed and then nothing happens to them unless a breach is taken to court. We appreciate the government not wanting to replicate the bureaucratic nightmare of AWAs being checked by a government authority, but the problem we have is that we will not know how they are being used, who is using them and in what circumstances.

The Greens support the suggestion made to the Senate inquiry by Dr John Buchanan that there be a process of lodgment but not checking, with the agreements being able to be accessed publicly, but without revealing the parties, so there may be some transparency in the system. I have moved amendments to this effect. Dr Buchanan argued for the need for greater transparency, submitting:

Given that standards slid where agreements were collective in nature and subject to public scrutiny, the prospect for their erosion where they are individually made and not publicly registered is a matter of significant concern.

These agreements must be made available for independent scrutiny to help ascertain the impact they are having. What the government has committed to—because I think I can foresee the vote already—is that a review of the use of IFAs will be undertaken. We appreciate the government’s commitment to that. However, we do think it would be better to fix up the potential problem before it starts rather than waiting for problems—when the horse has bolted—before looking at whether conditions and entitlements have been undermined and then having to put in place a remedy to address that issue. We commend these amendments to the chamber.

Senator LUDWIG (Queensland—Minister for Human Services) (1.19 am)—The government is committed to having individual flexibility arrangements, and I think the Greens are well aware of that. In Forward with Fairness, the Fair Work Bill delivers on that commitment. In addition—and I think Senator Siewert recognises this—the government has agreed with the Australian Greens that the transitional and consequential legislation will require Fair Work Australia to conduct a review of modern awards after two years. I also point to the amendments on sheet PD364, which were moved yesterday, particularly amendments (14) to (17), which deal with the issues that I have outlined.

Question negatived.

Senator SIEWERT (Western Australia) (1.21 am)—by leave—I move Australian Greens amendments (4), (13), (15) and (16) on sheet 5729 together:

(4) Clause 12, page 25 (line 13), omit “172(1)”, substitute “172(1A)”. 

CHAMBER
(13) Clause 172, page 161 (lines 5 to 23), omit subclause (1), substitute:

Enterprise agreements may be made about permitted matters

(1) An agreement (an enterprise agreement) that is about one or more permitted matters may be made in accordance with this Part.

Note: An employee organisation that was a bargaining representative for a proposed enterprise agreement will be covered by the agreement if the organisation notifies FWA under section 183 that it wants to be covered.

(1A) All matters, other than matters which comprise unlawful terms, are permitted matters.

(15) Clause 194, page 182 (lines 21 to 27), omit paragraph (c).

(16) Clause 194, page 183 (lines 1 to 13), omit paragraphs (e) to (g).

These amendments relate to collective agreements. The Greens are generally very supportive of the bargaining provisions in the bill. We support collective and good faith bargaining provisions. Our key concerns go to the content of agreements and the restrictions on the level at which good faith bargaining can occur. As has been made clear, the Greens believe parties should be free to agree on any matters, apart from unlawful matters, in their agreements. Our amendments (13) and (14) provide for this. We also note in the ALP’s Forward with Fairness policy that ‘bargaining participants will be free to reach agreement on whatever matters suit them’. Instead of sticking to that policy, the government have taken us back to the ‘matters pertaining’ formula, with some exceptions. While acknowledging that matters pertaining to the employment relationship do not include union activities, the bill has to provide for them and pay deductions separately. What this says to us is that the matters pertaining formula is inadequate.

This part of the bill came in for severe criticism from academics. Professor Stewart commented that the law surrounding the concept of matters pertaining is ‘confusing, uncertain and downright inconsistent’ and he calls for the concept to be ‘given a decent burial’. Professor Stewart is also concerned that restricting the content of agreements will perpetuate the use of side agreements, which are ineffective and unproductive. Of particular concern for the Greens, as we as a community face the prospect of catastrophic climate change, is that the bill does not allow employees to engage in bargaining with their employers over environmental or climate change initiatives. Dr Buchanan agrees with us. He said:

As we move to an increasingly carbon constrained future it is unclear why our labour law is clinging to nineteenth century notions of managerial prerogative and thereby limiting the ability of the parties to enforceable agreements to reach innovative solutions to the problems they encounter.

We in fact agree with the ALP’s policy document, which states:

… as long as bargaining participants bargain in good faith and are able to reach agreement, they should be free to do so without the need for government intervention or to comply with complex procedural rules and requirements.

Restricting the content of agreements is also contrary to ILO determinations. The ILO has noted that:

Measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention on the Right to Organise and the free and voluntary nature of collective bargaining.

Amendments (15) and (16) remove from the definition of ‘unlawful matters’ terms which provide better provisions relating to the employment period for unfair dismissal, indus-
trial action and right of entry. The Greens see no reason why, if parties wish to agree on such terms, they should be prevented from doing so.

These amendments in fact implement the government’s policy and original intent. We believe this is a particularly important set of amendments because we strongly believe in collective bargaining and that parties should be able to reach agreement on whatever matters they wish. This came up repeatedly during the Senate inquiry. We urge the chamber to support these amendments. However, I ask for the question on amendment (13) to be put separately, if possible.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—I will put the question on amendment (13) separately.

Senator LUDWIG (Queensland—Minister for Human Services) (1.25 am)—Employers and employees are always free to negotiate any matter they wish to in the workplace, but in this instance the government believes enterprise agreements made under the workplace relations legislation must remain connected to the employment relationship. The matter of environmental issues is raised, but these issues can also be included in agreements if they pertain to the employment relationship.

In addition, in relation to the removal of the right of entry and unfair dismissal as unlawful content, the unfair dismissal provisions of the bill do ensure that good employees are protected from being dismissed unfairly. It is inappropriate for enterprise agreements to undermine these provisions. The terms of unfair dismissals may be included in enterprise agreements as long as they do not lessen the qualifying period for unfair dismissal or deviate from the unfair dismissal provisions of the bill in a way that is detrimental to an employee. It is appropriate, though, that an agreement cannot remove or undermine an employee’s entitlement to unfair dismissal protections.

Senator SIEWERT (Western Australia) (1.27 am)—Can I apologise. I ask that my previous request be reversed and that all of the amendments be moved together. I note that I would normally have called a division on amendment (13), but I am being reasonable and will not seek to do that. We feel extremely strongly about matters pertaining to that. We would normally have divided. Given the late hour I will not call for a division, but I would like on record the reason for that. I know I am anticipating the vote of the chamber, but that explains why I will not be seeking to call a division.

The TEMPORARY CHAIRMAN—Thank you, Senator. We will revert to the former position of moving the four amendments together.

Question negatived.

The TEMPORARY CHAIRMAN—We now turn to opposition amendments (19) and (20) on sheet 5739.

Senator ABETZ (Tasmania) (1.28 am)—I should indicate that when we had the greenfields debate I conceded that the government’s amendments were better than ours and therefore we would not be proceeding.

Senator SIEWERT (Western Australia) (1.29 am)—I move Australian Greens amendment (14) on sheet 5729:

(14) Clause 180, page 170 (line 28), omit “7-day”, substitute “14-day”.

This relates to the access period for enterprise agreements. Our amendment returns the period of time employees must have to consider a proposed enterprise agreement to 14 days. The seven days in the bill was too short a time for employees to be able to access advice on proposed agreements.
Senator LUDWIG (Queensland—Minister for Human Services) (1.29 am)—We will not be supporting this amendment. The seven-day period for ready access to a proposed agreement will ensure that the approval of an enterprise agreement is not unduly delayed when the parties have already agreed to the terms. When an employer initiates bargaining it must give employees notice of the right to be represented by a bargaining representative and it must not ask employees to approve an agreement until at least 21 days after this notice has been given, and of course good faith bargaining orders will also be available during this period. The government believes that it achieves the right balance between protections for employees and the need for an agreement to be speedily approved once it has been reached.

Question negatived.

Senator SIEWERT (Western Australia) (1.30 am)—I move Greens amendment (17) on sheet 5729:

(17) Clause 229, page 208 (lines 1 to 4), omit subclause (2).

This relates to multienterprise agreements. There was some important evidence given to the Senate inquiry about the provisions in the bill relating to multienterprise agreements and single-interest agreements. Evidence was received from unions representing teachers and nurses, for example, who were concerned that the provisions would limit their ability to reach agreements across their occupations and achieve fairness and stability. We share these concerns. Further, we believe it is the right of parties to bargaining to determine the level at which they will bargain. Our amendment does not go so far as to completely address all our concerns on this issue but it does allow Fair Work Australia to assist in multienterprise agreement making. Fair Work Australia will have discretion in how it applies the GFB provisions. We urge the Senate to support these amendments.

Senator LUDWIG (Queensland—Minister for Human Services) (1.32 am)—Thank you, and thank you for the urging, but probably because it is early morning—

Senator Siewert—Go on, think again!

Senator LUDWIG—I do not know whether I could. To ensure multienterprise bargaining occurs on a voluntary basis, protected industrial action and good faith bargaining orders will not be available when bargaining for a multienterprise agreement. This is also consistent with the government’s clear policy intention to prevent industrial action in pursuit of pattern bargaining. We have made that position very clear. We do not support the amendment. We understand the principle behind it but it undermines what we say is the system that we are seeking to put in place.

Question negatived.

Senator FIELDING (Victoria—Leader of the Family First Party) (1.33 am)—I move Family First amendment (3) on sheet 5733:

(3) Page 219 (after line 25), after clause 241, insert:

241A Application of this Division

This Division does not apply in relation to small business employers or their employees.

This amendment is to do with the general topic of facilitated bargaining for the low paid. At the end of it, the concern that we have got is about imposing the bargaining. I do not want to waste the Senate’s time tonight; the will of the chamber is not there.

Senator ABETZ (Tasmania) (1.33 am)—I indicate on behalf of the coalition that we do support the amendment.

Senator LUDWIG (Queensland—Minister for Human Services) (1.33 am)—The government was not going to support it.
The low-paid bargaining stream is designed to extend the benefits of bargaining to employers and employees who have not been able to bargain in the past. This includes the small business sector, where individual employers often do not have the time or resources to bargain with their employees. I could go into a lot more detail, but I think you get the gist of it.

Senator SIEWERT (Western Australia) (1.34 am)—I indicate the Greens opposition to this provision.

The TEMPORARY CHAIRMAN—We are dealing with Family First amendment (3) on sheet 5733. The question is that the amendment be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—We now turn to Australian Greens amendments (18) and (19) on sheet 5729.

Senator SIEWERT (Western Australia) (1.34 am)—by leave—I move Greens amendments (18) and (19) on sheet 5729:

(18) Clause 260, page 234 (after line 14), at the end of the clause, add:

(6) For the purposes of paragraph (5)(c), an employer may be identified by a trading name, being a name that the employer trades under, or is known as by its employees, suppliers or customers.

(19) Clause 262, page 235 (line 25), at the end of subclause (4), add:

; and (c) an improvement in the employment conditions of the employees.

I also propose to talk to amendment (20) to progress the debate, and so I indicate that the Greens oppose clause 263 in the following terms:

(20) Clause 263, page 236 (line 1 to 21), TO BE OPPOSED.

This is about the low-paid bargaining stream, which the Greens are very supportive of. In fact, I think I have expressed my surprise that these provisions went as far as they did. I have congratulated the government and I congratulate them again for taking this approach. However, we think that they could be improved. There are three amendments that could improve on this stream and these provisions.

In amendment (18) we have taken up a suggestion from the SDA about businesses being able to be identified by their trading name in applications under these provisions. We think this is a practical suggestion, with no detrimental consequences. In amendment (19) we have also taken up another suggestion by the SDA, who pointed out that, in making a low-paid bargaining determination, FWA takes into account future bargaining and the productivity and efficiency in the enterprise but not whether the employment conditions of the employees will be improved by the determination. It may be implied—and in fact that is what the government’s response has previously been, that it is implied—but we believe it should be explicit.

Amendment (20) is a more substantial amendment, to remove the condition for a low-paid determination that the employer must not have been a party to a collective agreement in the past. While we understand the intention of the provisions is to assist collective bargaining where it has been difficult in the past, we believe this restriction is too severe and that there may remain barriers to collective bargaining even where an employer has been involved in one in the past.

These low-paid bargaining provisions are very important, and we believe that these amendments could improve them even further. We urge the government to consider them.
The TEMPORARY CHAIRMAN (Senator Mark Bishop)—The question is that Australian Greens amendments (18) and (19) on sheet 5729 be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—We now turn to Australian Greens amendment (20) on sheet 5729. The question is that clause 263 stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN—We now turn to Australian Greens amendment (21) on sheet 5729.

Senator SIEWERT (Western Australia) (1.40 am)—Chair, can I suggest that I move Greens amendment (21), (22) to (24) and (7) from sheet 5729 together.

The TEMPORARY CHAIRMAN—Amendment (21) would have to be put separately because of the form of the question that will be put by the chair. You may speak to them together and we will put them separately in due course.

Senator SIEWERT—by leave—I move Australian Greens amendment (22) to (24) and (7) on sheet 5729.

(22) Clause 332, page 288 (line 8), omit paragraph (1)(c).

(23) Clause 332, page 288 (lines 20 to 26), omit subclause (3).

(24) Clause 333, page 289 (lines 8 to 10), omit the clause, substitute:

333 High income threshold

(1) The high income threshold is $150,000, indexed in accordance with subsection (2).

(2) The regulations must prescribe a method for the annual indexation of the high income threshold by reference to the increase in the full-time adult aver-
age weekly ordinary time earnings for all persons in Australia, as published by the Australian Statistician.

(7) Clause 47, page 61 (lines 23 to 27), omit subclause (2).

I also indicate that the Greens will oppose clauses 328 to 333 in the following terms:

(21) Division 3, clauses 328 to 333, page 285 (line 2) to page 289 (line 10), **TO BE OPPOSED**.

For us these are very important matters. I appreciate the lateness of the hour so I will seek to expedite the debate as much as possible, which is why I will talk to these amendments together. The amendments all relate to the guarantee of annual earnings and high-income thresholds. I realise that we dealt with this issue earlier in the evening.

For amendments (7) and (21) the Greens oppose the exclusion from award coverage of high-income employees through the guarantee of annual earnings provisions. Awards contain important protections that are not just related to salary, and we do not believe that awards should be undermined in this way. As the Association of Professional Engineers, Scientists and Managers, Australia, said in their submission:

All employees, regardless of the level of their income, require the protection afforded by properly negotiated awards.

In terms of amendments (22) and (23) in the alternative, we do not believe the non-monetary benefits should be part of the calculation in determining whether a person’s salary reaches the high-income threshold. Obviously these are alternative proposals to (7) and (21) because we do not believe that high-income thresholds should be in the legislation. As I was saying, we do not believe the non-monetary benefits should be part of the calculation in determining whether a person’s salary reaches the high-income threshold, given guarantees of annual earnings can be a condition of work. This strengthens the ability of employers to demand particular calculations of non-monetary benefits, which can be extremely difficult to calculate.

In terms of amendment (24), we also believe that the high-income threshold in the legislation at the amount indicated by the government—that is, $100,000—is too low. We suggest that if it is to be in legislation it should be a threshold of $150,000 and that it should be indexed to AWOTE. We do note the government amended the legislation to provide that the threshold cannot be reduced, and that is important. As you know, we supported that amendment. Once again I commend the amendments to the chamber and appreciate that now we will be moving the different amendments separately.

**Senator Ludwig** (Queensland—Minister for Human Services) (1.43 am)—The short answer to amendments (7), (21) and (24) is that the government remains committed to the implementation of Forward with Fairness and the $100,000 high-income threshold as indexed from 2007. In relation to amendments (22) and (23), the Fair Work Bill only includes non-monetary benefits where they are provided as part of an employee’s remuneration, and the government does not intend to depart from that. So, unfortunately, Senator Siewert, that is not comforting for you.

**The Temporary Chairman** (Senator Mark Bishop)—We are dealing with Australian Greens amendment (21) on sheet 5729. The question is that division 3 of parts 2 to 9, clauses 328 to 333, stand as printed.

Question agreed to.

**The Temporary Chairman**—We now turn to Australian Greens amendments (22) to (24) and (7) on sheet 5729.

Question negatived.
The TEMPORARY CHAIRMAN—We now turn to Australian Greens amendments (1), (2) and (4) on sheet 5746. Senator Siewert, you are seeking leave for them to be moved together?

Senator Siewert—In fact, I am withdrawing those amendments.

The TEMPORARY CHAIRMAN—That takes us to Australian Greens amendment (6) on sheet 5746. Is that also withdrawn, Senator Siewert?

Senator Siewert—Yes, amendment (6) is withdrawn.

The TEMPORARY CHAIRMAN—We now turn to Australian Greens amendment (7) on sheet 5746.

Senator SIEWERT (Western Australia) (1.47 am)—I move amendment (7) on sheet 5746:

(7) Clause 388, page 324 (after line 3), after subclause (1), insert:

(1A) The Small Business Fair Dismissal Code must provide that, prior to giving a person a notice of dismissal, an employer must:

(a) give the person warnings, in writing, that the employer is considering dismissing the person, including details of the reasons the employer is considering that action; and

(b) take all reasonable steps to meet with the person to discuss the warnings.

This amendment relates to job security and unfair dismissal and redundancy. Some of these issues we have dealt with previously, but amendment (7) in particular relates to removing the discrimination against employees of small business. We have had a very long debate, I know, about unfair dismissal and the definition of small business, so I will try and keep this short. We believe the small business fair dismissal code must contain a requirement for written warnings. The committee inquiry heard a great deal of evidence about how allowing oral warnings could compound the unfairness to small business employees in particular. Asian Women at Work, for example, told of the prospect of an employer issuing a verbal warning in the midst of erratic and unwarranted abuse and bullying without any possibility of the worker making a serious response in their defence or even acknowledging that it was a warning in the first place. Verbal warnings are highly unreliable. It is likely they will be contested as to what an employer said and whether it constituted a warning or whether an employee understood what was required of them to meet their employer’s concerns, particularly if any warning is given in emotional circumstances. We believe greater formality is needed.

We believe our amendment requiring written warnings is essential if we are actually properly to address the issue of fairness in this bill. During the committee inquiry we were given a number of examples where, for example, a manager or boss was being quite abusive to an employee and it happened on repeated occasions; it was not a one-off. So when is the employee to know when that abuse or that shouting at the worker or telling off of the worker was actually a reprimand or whether it was a formal warning? We believe relying on oral warnings will unnecessarily confuse things, in fact probably make things more complicated for small businesses, but also it leaves workers extremely vulnerable. Again here we are talking about some of the most vulnerable workers in our workforce, and very often we are talking about workers who come from a non-English-speaking background and so have even further problems understanding an oral warning. At least if it is a written warning they will be able to go and seek advice about it to in fact understand what is being said to them in terms of the warning.
We believe this amendment is particularly important in delivering fairness through the small business fair dismissal code. It is called the small business fair dismissal code for a reason. We believe it is much fairer to deliver a warning in writing than to just rely on oral evidence.

**Senator LUDWIG** (Queensland—Minister for Human Services) (1.50 am)—The working group did carefully consider this issue and it decided not to recommend mandatory written warnings due to the red-tape burden that this would place on employers. The small business fair dismissal code was settled last year in close consultation with that working group. The fair dismissal code does require that a warning be given and that an employee be given an opportunity to respond to the warning and a reasonable chance to rectify the problem. That is the position that we have achieved. I think it is the right balance between the small business employer and the employee. Although it encourages written warnings, the emphasis is on genuine and honest exchange.

**Senator SIEWERT** (Western Australia) (1.51 am)—We very strongly disagree with the government. We do not believe that it is fair in any way, shape or form that relying on oral warnings is considered enough. We do not believe it is fair. Having said that, I can tell what the feeling of the chamber is. I would like to put on record that we normally would have called a division on this—this is how strongly we feel about it—but, given the lateness of the hour, we will not. I just wanted to put that on record.

Question negatived.

**Senator SIEWERT** (Western Australia) (1.52 am)—I move Greens amendment (3) on sheet 5746:

(3) Clause 384, page 320 (line 30) to page 321 (line 21), omit subclause (2).

We are also concerned with unfair dismissal protections as they relate to the provision of transferring employees—that is, employees who transfer from an old employer to a new employer under the transfer of business provisions. The bill provides that the new employer can decide whether or not to recognise the employee’s service for the purposes of unfair dismissal protection. We cannot support this position. It could lead to a situation where an employee has worked for an employer for five, 10 or 20 years perfectly satisfactorily then, doing the exact same job, have their employment terminated at will during the next six to 12 months.

During the Senate inquiry we heard evidence about that practice in the aged-care industry. There have been a number of stories of how, when aged-care centres are sold, the accrued entitlements of the employees are calculated into the sale price and then employees are taken on initially and then dismissed. This is an unacceptable practice. We also believe that the period of time an employee may work for an employer as a casual should count towards the employee’s period of employment. The minimum employment period is to enable the employer to assess the employee. A period of casual work definitely serves that purpose.

We believe this amendment deals with a hole in the unfair dismissal provisions, and there are real examples of where this hole has been abused. I have heard of numerous examples such as the aged-care example. There have been several examples in Victoria. We urge the government to act to ensure that this sort of thing cannot happen and that employees’ entitlements are protected.

**Senator LUDWIG** (Queensland—Minister for Human Services) (1.54 am)—The government indicated that it would not accept recommendation 10. The amendment that you have proposed is based on that. The
bill requires that a new employer notify transferring employees if a new minimum employment period will be required. Of course, if the employer fails to notify transferring employees in writing of the requirement to serve a new minimum employment period, previous service with the old employer will be recognised and the employees will not be required to serve a new minimum period for unfair dismissal purposes. The government did decide that it was important to give the new employer flexibility in this regard; otherwise, it could act as a disincentive to new employers offering employment to employees of the old employer.

The TEMPORARY CHAIRMAN (Senator Bernardi)—The question is that Australian Greens amendment (3) on sheet 5746 be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—We now move to Australian Greens amendment (5) on sheet 5746.

Senator SIEWERT (Western Australia) (1.55 am)—Chair, in view of the fact that we have already had a discussion about warnings in writing where I went down in a screaming heap, I withdraw this amendment.

The TEMPORARY CHAIRMAN—We will now move to Australian Greens amendments (1) to (4) on sheet 5732.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.56 am)—by leave—I move Australian Greens amendments (1) to (4) on sheet 5732:

(1) Clause 389, page 324 (after line 24), at the end of the clause, add:

(3) A person’s dismissal was not a case of genuine redundancy if:

(a) the employer; or
(b) the employer’s enterprise; or
(c) the enterprise of an associated entity of the employer;

pay excessive remuneration to any other person.

Note: Excessive remuneration is dealt with in section 536A.

(2) Page 324 (after line 24), at the end of Division 3, add:

389A Dealing with excessive remuneration

(1) An employer must not terminate an employee’s employment because of, or for reasons including, redundancy if:

(a) the employer; or
(b) the employer’s enterprise; or
(c) the enterprise of an associated entity of the employer;

pay excessive remuneration to any other person.

Note: Excessive remuneration is dealt with in section 536A.

(2) Despite any other provision in this Part, if an employee’s employment is terminated contrary to subsection (1), the employee is taken:

(a) to have been unfairly dismissed; and
(b) to meet the requirements of subsection 390(1); and
(c) to be entitled to apply for a remedy under section 394.

(3) Clause 524, page 417 (after line 25), after subclause (2), insert:

(2A) An employer must not stand down an employee under subsection (1) if:

(a) the employer; or
(b) the employer’s enterprise; or
(c) the enterprise of an associated entity of the employer;

pay excessive remuneration to any other person.

Note: Excessive remuneration is dealt with in section 536A.

(2B) Despite any other provision in this Part, if an employer purports to stand down an employee contrary to subsection (2A), the employee:
(a) is entitled to continue to receive payments from the employer for that period; and
(b) is taken to be entitled to apply to FWA to deal with the dispute under subsection 526(3); and
(c) is taken, for the purposes of subsection 526(4), to have been dealt with unfairly.

(4) Page 426 (after line 24), at the end of Part 3-6, add:

Division 4—Reducing excessive executive salaries

536A Meaning of excessive remuneration

(1) An employer pays excessive remuneration to a person if the amount (or value, as appropriate) of the remuneration paid to the person by the employer exceeds $500,000 per annum, unless the employer has an executive high pay authorisation operating in relation to that person.

(2) FWA may make an order (an executive high pay authorisation) applying to an employer in relation to a person if FWA is satisfied that the remuneration paid to the person by the employer is not excessive.

(3) In determining whether the remuneration paid to a person is excessive, FWA must have regard to:

(a) community standards of reasonableness of remuneration;
(b) the extent to which the remuneration paid to the person by the employer could be, or has been, reduced so that the employer could avoid:
   (i) terminating the employment of any person because of, or for reasons including, redundancy; or
   (ii) standing down any person under subsection 524(1);
(c) the need to encourage the ongoing employment of the maximum number of people;
(d) the ratio of the remuneration to the average weekly wage;
(e) any other matter FWA considers relevant.

(4) FWA may make an executive high pay authorisation, or may decide not to make an executive high pay authorisation, pursuant to an application from:

(a) an employer; or
(b) an employee who reasonably suspects that the employer intends to terminate their employment on the grounds of redundancy; or
(c) an organisation of employees entitled to represent a person referred to in paragraph (b).

(5) FWA may make an executive high pay authorisation applying to an employer in relation to more than one person.

(6) To avoid doubt, FWA may make an executive high pay authorisation, or may decide not to make an executive high pay authorisation, at any time, including prior to the termination of any person’s employment.

536B Interpretation

In this Division:

employer includes:

(a) the employer’s enterprise;
(b) the enterprise of an associated entity of the employer.

giving a financial benefit has the same meaning it has in the Corporations Act 2001, and is to be interpreted in the manner specified in section 229 of that Act.

remuneration includes paying a salary or giving a financial benefit to a person, and includes any amount paid, promised or guaranteed in any form, including though consultancy agreements and grants of shares or other interests, and including any payment made upon resignation or retirement, however described.

These excellent amendments are intended to curb excessive executive remuneration.
The government does share the frustration that many in the Australian community feel regarding excessive executive pay, particularly for businesses that are underperforming. That is why, on 18 March 2009, the government asked the Productivity Commission to examine Australia's existing regulatory arrangements for director and executive remuneration in corporate entities under the Corporations Act 2001. Reform will also tackle the regulation of termination pay, or so-called golden handshakes. The inquiry will be chaired by the Productivity Commission Chairman, Gary Banks, and Commissioner Robert Fitzgerald. Professor Allan Fels will also be appointed specifically for this inquiry. I know it does not go as far as the amendments that are proposed here. It is an excellent start, if I can say that, in dealing with this complex issue.

Question negatived.

The TEMPORARY CHAIRMAN—We will now move to Australian Greens amendment (8) on sheet 5746.

Senator ABETZ (Tasmania) (1.58 am)—On a procedural point: it seems to me that, if other participants in this debate agree, we should allow a rearrangement of the order of amendments. There are the Australian Greens amendments, then Senator Xenophon's amendment and then a government amendment. It seems to me, reading the mood of the chamber, that it is most likely that the government amendment will get up. In those circumstances, if we were to allow Senator Ludwig to move his amendment and discuss that, that would obviate the other three.

The TEMPORARY CHAIRMAN (Senator Bernardi)—Is that the wish of the committee? There being no objection to that, we will move to government amendment (1) on sheet PZ330, dealing with clause 394.

Senator LUDWIG (Queensland—Minister for Human Services) (1.59 am)—I move government amendment (1) on sheet PZ330:

(1) Clause 394, page 329 (line 13), omit “7”, substitute “14”.

The government notes that many stakeholders do express concern that the seven-day application period may result in vulnerable workers, or workers who are unaware of the remedy, being deprived of the opportunity to have a legitimate claim considered by Fair Work Australia. In particular, the government acknowledges the concern that, in such a case, the exceptional circumstances requirement may be difficult to demonstrate. The government is therefore prepared to support an extension of the existing seven-day period to 14 days. The government does not support an extension to 21 days as it considers that this would undermine its policy of providing certainty to business and a speedy resolution.

Senator ABETZ (Tasmania) (2.00 am)—I indicate coalition support for this but remind honourable senators that the position the Greens would seek to adopt with 21 days is to reinstate that which appeared in certain legislation which they have had great fun in condemning. That terrible piece of legislation in fact allowed for 21 days to file for unfair dismissal, and the government went to the election on a promise of only seven days. I dare say we will not be hearing from the Australian Greens that this is a huge mandate that the government has got in relation to the number, as we heard in relation to the number that was supposed to apply to a small business. It is very interesting that numbers are vitally important and are subject to a mandate if they happen to agree with them. But if they do not agree with them, the mandate is out the window and, of course, it is the good sense of the Greens and Senator
Xenophon and other people that we can then come to a compromise.

As I said in relation to the debate on the small business number, I think that the government would have had us snookered if they had been insisting on the totality of their mandate. But when they started to shift ground then of course the doors were opened. When we were in government, we as a government at all times thought that 21 days was the appropriate figure. It is great to see Senator Siewert and the Australian Greens embracing that figure and giving the former Howard government a big tick on that and in fact inviting the government to breach its election promise on numbers. However, I have had my two or three minutes of fun pointing these matters out and I indicate that we will be supporting the government’s amendment.

Senator SIEWERT (Western Australia) (2.02 am)—I am not going to rise to provocation—

Senator Xenophon—Why not?

Senator SIEWERT—Because I will lose—it’s two o’clock in the morning! There are very few occasions, as I have remarked before, Senator Abetz, when we have in fact agreed.

Senator Abetz—It is spooky, I know.

Senator SIEWERT—It is very spooky and every time it happens I feel like I am in the twilight zone, particularly at two o’clock in the morning. However, I do agree that it was sensible to move straight to this amendment because, as you rightly said, it deals with the issues that we dealt with in our two amendments which related to this issue. One of our amendments, amendment (8), put the position that we believe the unfair dismissal timing should be moved to 21 days. We also had an alternative that, if that failed, we should go back to 14 days because we believe 14 days is better than seven days—although not, of course, as good as 21 days. So we will be supporting this amendment and I indicate that the Greens will withdraw our amendments (8) and (9). I will withdraw (10) as well, given the lateness of the hour, if this amendment succeeds.

Senator XENOPHON (South Australia) (2.00 am)—I indicate my support for this amendment. I believe that seven days would have had unintended consequences. For instance, it could have been a combination of circumstances of some people not knowing their rights and not being able to lodge a claim in time. The likelier longer term consequence would have been for people to jump the gun and issue proceedings to preserve their position whilst they got legal advice, and I think that would have clogged up the system. I did privately suggest, somewhat cheekily, to Senator Ludwig that maybe 15 would have been the magic number for the government in relation to this, but I support the amendment.

The TEMPORARY CHAIRMAN (Senator Bernardi)—The question is that government amendment (1) on sheet PZ330 be agreed to.

Question agreed to.

Senator SIEWERT (Western Australia) (2.05 am)—I withdraw Greens amendments (8), (9) and (10) on sheet 5746.

Senator XENOPHON (South Australia) (2.05 am)—I am withdrawing my amendment.

Senator XENOPHON (Western Australia) (2.05 am)—Before I move further Greens amendments, there are a whole series of Greens amendments that relate to industrial action. I suggest that we have a cognate debate on all of those. I can highlight that these are amendments (25) to (43) on sheet 5729.
The TEMPORARY CHAIRMAN—Are you seeking leave to move those amendments together?

Senator SIEWERT—I seek advice because I have not gone through and looked at which amendments oppose and which do not. I was suggesting that we have a cognate debate on all of those and some of them will have to be moved separately.

The TEMPORARY CHAIRMAN—I am advised that you can move them all and we can have a cognate debate but we will put the questions separately.

Senator SIEWERT—by leave—I move Greens amendments (25), (28), (29), (33), (34), (37), (38) and (39) to (43) on sheet 5729 together:

(25) Clause 409, page 336 (lines 17 and 18), omit “that are about, or are reasonably believed to be about, permitted matters”.
(28) Clause 413, page 340 (lines 17 and 18), omit “or multi-enterprise agreement”.
(29) Clause 418, page 347 (after line 3), at the end of the clause, add:
(5) As soon as practicable after making an order under subsection (1), FWA must attempt to conciliate the dispute giving rise to the industrial action.

The following two amendments are an alternative to (32).

(33) Clause 425, page 354 (line 2), omit “must”, substitute “may”.
(34) Clause 425, page 354 (line 2), after “suspending”, insert “for a period not exceeding 48 hours”.
(37) Clause 443, page 364 (lines 20 to 22), omit paragraph (1)(b).
(38) Clause 459, page 375 (lines 9 and 10), omit paragraph (1)(b).
(39) Heading to Subdivision A, page 383 (line 4), omit “Protected industrial action”, substitute “Industrial action”.
(40) Clause 470, page 383 (line 7), omit “protected”.

(41) Clause 471, page 384 (line 4), omit “protected”.
(42) Clause 471, page 384 (line 25), omit “protected”.
(43) Clause 471, page 385 (line 26), omit “protected”.

I also indicate that the Greens oppose part 3-3 in the following terms:

(26) Clause 409, page 337 (lines 7 to 10), sub-clause (4) TO BE OPPOSED.
(27) Clause 412, page 339 (line 9) to page 340 (line 6), TO BE OPPOSED.
(30) Clause 419, page 347 (lines 4 to 29), TO BE OPPOSED.
(31) Division 5, clause 422, page 350 (lines 1 to 16), TO BE OPPOSED.
(32) Clause 425, page 354 (lines 1 to 15), TO BE OPPOSED.
(35) Clause 426, page 354 (line 16) to page 355 (line 25), TO BE OPPOSED.
(36) Division 7, clauses 431 to 434, page 359 (line 1) to page 360 (line 12), TO BE OPPOSED.

As much as I would like to think that I would be able to persuade the chamber of the strength of my arguments, I suspect that I will meet some resistance to these amendments. I would like to talk about the issues around industrial action and the issues that are contained in the amendments that we are seeking to move. As I have said, they all relate to industrial action and how we think that this legislation curtails workers’ ability to take industrial action. We also note that there are many provisions in this bill as it relates to industrial action that contravene—I dread to say it again, hoping I am not going to stir up Senator Abetz too much—the conventions in the ILO.

The Greens believe that workers should have the right to take industrial action in pursuit or in protection of their economic and social interests. That has always been a very clear part of the Greens industrial relations
policies which we took to the election. We believe the right of a worker to withdraw their labour is a fundamental human right. We do not believe industrial action should be unlawful or attract civil penalties. Our position is supported by the ILO which argues:

The right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests. These interests not only have to do with obtaining better working conditions and pursuing collective demands of an occupational nature but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers.

If we are turning our backs on our history with a rejection of arbitration, we need to recognise in our law the fundamental right of workers to withdraw their labour. Such a right is intrinsically linked to the freedoms of associations and expression and the right to peaceful assembly.

Any sense of fairness in the Fair Work Bill, we believe, is undermined by the denial of a fair and final dispute resolution process, coupled with the denial of the right to take industrial action. The provisions restricting industrial action in this bill are almost identical to Work Choices. So that corpse is not buried very deep; it is in a very shallow grave. The ILO were highly critical of the Work Choices provisions, criticisms that we believe apply equally to this bill. I have already articulated what the general report from the ILO Committee of Experts had to say about the numerous provisions of the Workplace Relations Act, and I will not go through those again.

It is extremely disappointing that this government has not seen fit to take this opportunity to bring Australia’s laws in line with the ILO conventions that we are signatory to. We have many amendments here that relate, for example, to pattern bargaining and multi-enterprise bargaining. I have touched on that issue previously. We also have amendments that relate to Fair Work stop orders, and we believe that we need to significantly boost the provisions in that area.

The Greens are also concerned about the suspension and termination of protected industrial action. We point out that in fact these provisions have been taken directly from Work Choices—so much for Work Choices being dead—which is why, unfortunately, we cannot just leave it buried. It is still alive; it is like a zombie. We generally oppose the provisions allowing or mandating Fair Work Australia to suspend or terminate protected industrial action, except in circumstances where the industrial action is endangering life or causing significant damage to the nation’s economy. These provisions put a further barrier in place for workers engaging in what is otherwise lawful industrial action. Employees can go through all the hoops in this bill and take lawful action, only to be stopped by one of the provisions that I just mentioned. The ILO has been consistently critical of these provisions as well.

We oppose the cooling-off period, in items 32, 33 and 34, but, in the alternative, seek to give Fair Work Australia greater discretion as to when to order a cooling-off period and to limit such a period to 48 hours. In item 35, we are completely opposed to the ability of third parties to make applications to Fair Work Australia to suspend otherwise lawful industrial action. The point of industrial action is to harm the other party in some way. In doing so, other parties may well be harmed. It is unacceptable for third parties to prevent lawful industrial action.

While we acknowledge the government is moving amendments to strengthen the test, we maintain our opposition to this provision, as we did to the Work Choice laws. Similarly, in item 36, we oppose the right of the
minister to make a declaration terminating industrial action. If lawful industrial action needs to be terminated it should be done by Fair Work Australia in limited circumstances and not by a minister as a political action. Again, we oppose this provision in Work Choices and we do so, again, in this bill. We also have a series of amendments around protected ballot orders and we maintain our general opposition to protected ballot orders. We believe they are unnecessary and can hinder the right of employees to take industrial action. We do not believe the changes made by this bill to Work Choices provisions go far enough in addressing the need for a more streamlined process.

We also have amendments relating to the four-hour pay deduction for unprotected industrial action, regardless of how long the industrial action lasts. This is another provision that the government decided to keep from Work Choices. For example, workers could be 10 minutes late for work after a meeting or have a ‘stop work order’ meeting for half an hour and they would be docked four hours pay. There was also a very unfortunate case under Work Choices where construction workers were docked four hours pay for taking 10 minutes to pass a hat around for the wife of a colleague who had been killed. These examples demonstrate both the harshness and ridiculousness of this provision.

The committee inquiry also heard evidence about how the provision is counter-productive and likely to lead, in fact, to more sustained industrial action—as workers will be docked four hours anyway, they may as well take the time off. It is also counter to the proposition that workers should be paid for the work that they perform. In discussing this provision we should also be mindful that the definition of ‘industrial action’ is very broad, amounting to doing your job in a way that you do not customarily do it. Employers should also be worried about this provision. They face a civil penalty if they pay someone contrary to the provision in circumstances where it may be difficult to determine whether unlawful industrial action is being taken. Our amendments do away with the distinction between unprotected and protected action in relation to payments, as recommended by Professor Stewart. We believe these are logical and practical amendments that deal with the issue of industrial action.

Senator LUDWIG (Queensland—Minister for Human Services) (2.15 am)—These amendments would erode the government’s clear, tough rules on industrial action. On that basis we will not accept them.

The TEMPORARY CHAIRMAN (Senator Bernardi)—The question is that Australian Greens amendments (25), (28), (29), (33), (34) and (37) to (43) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question now is that subclause 409(4) and clauses 412, 419, 422, 425, 426, 431 to 434, 474 and 475 stand as printed.

Question agreed to.

Senator SIEWERT (Western Australia) (2.16 am)—Due to the time I moved them all together. I would have called a division on third-party harm, but given the lateness of the hour I did not. I would like to note that for the record. I move Australian Greens amendment (49) on sheet 5729:

(49) Clause 596, page 470 (line 16), at the end of subclause (4), add:

; or (d) is a lawyer from a community legal centre.

This amendment relates to community legal centre lawyers being exempt from leave requirements. I appreciate that we have already dealt with some of these issues in one of Senator Xenophon’s amendments, but we believe that community legal centre lawyers
should also be given an exemption from leave requirements. The community legal centres recommended that their lawyers be exempt from the need to seek leave to appear before FWA. The Employment Law Centre of WA gave evidence to the Senate inquiry that, given the profile of their clients—particularly vulnerable workers—they should be exempt from this extra requirement. We were persuaded by their arguments and propose an amendment to exempt lawyers from community legal centres in the same way as lawyers from unions and employer organisations are exempt. We are concerned that the people represented by community legal centres—as I said, these are often the most vulnerable workers—do not have union representation. For example, the Employment Law Centre of WA does not represent any workers that have union representation. Community legal centres play a very important role in helping to protect vulnerable workers. We believe it is sensible that they should also be exempt from the leave requirement. They are essentially representing their clients in the same way lawyers from unions are. We would very strongly urge the government to accept this amendment. We believe it is reasonable and practical to exempt the community legal centres from having to seek leave.

Senator LUDWIG (Queensland—Minister for Human Services) (2.19 am)—The bill does set out the factors that the FWA should have regard to in deciding whether to allow legal or other professional representation. On that basis, the government does not support the Senate committee’s recommendation and does not support this amendment. It is appropriate that the FWA have the discretion to determine the circumstances in which legal representation should be allowed.

Senator ABETZ (Tasmania) (2.19 am)—The opposition also opposes this amendment. In opposing it, let me make the observation that it is regrettable—but it is a part of the system—that employer and employee organisations are automatically entitled to be represented whereas individuals are not. In the totality of the scheme, I do not think that is appropriate. The minister is right. Fair Work Australia does have the capacity or discretion to allow representation. I trust that they will allow that representation to be exercised on as many occasions as possible. There is no reason or rationale why only community legal centre lawyers should be exempt from leave. Why should it not be the same for a local suburban lawyer who sees the injustice in a particular case—be it for a small business or, indeed, for an employee—and says, ‘I feel so aggrieved on your behalf that I am willing to do this pro bono or on the cheap’? Why should it not be the case for any agent who could have the capacity to be paid but who decides to do it pro bono or on the cheap? Just because you are in a particular category, it does not justify the exemption being sought. Therefore, the opposition opposes this amendment.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments.

Adoption of Report

Senator LUDWIG (Queensland—Minister for Human Services) (2.22 am)—I move:

That the report from the committee be adopted.

Senator FIELDING (Victoria—Leader of the Family First Party) (2.22 am)—I move:

At the end of the motion, add “and that:

(1) The following matters be referred to the Economics Committee for inquiry and report by 11 June 2009:
The advantages and disadvantages of the Australian Industrial Relations Commission, and its proposed successor Fair Work Australia, holding a periodic, public tender process to select the default superannuation fund for each modern award, and any related matters.

(2) The following matters be referred to the Education, Employment and Workplace Relations Committee for inquiry and report by 11 June 2009:

The amendment relating to modern award terms for long distance transport employees [Amendment no (2) of sheet [RE403]] proposed by the government during the committee stage of the bill, and any related matters.

Question negatived.
Original question agreed to.

Third Reading

Senator LUDWIG (Queensland—Minister for Human Services) (2.24 am)—I move:

That this bill be now read a third time.

Senator ABETZ (Tasmania) (2.24 am)—I wish to make a very brief contribution, at this stage, on behalf of the opposition. We commend the bill to the Senate and, in so doing, we want to say—especially to the government—that the compromises that have been reached over the past few days are sensible and that they reflect well on the operations of the Senate.

Can I remind the government that it cannot claim a mandate on its policy when it itself cherry-picks through the policies that it took to the election and then adopts some and turns its back on or substantially amends others. It therefore loses the moral argument that it otherwise may have had to insist on the totality of its mandate. We, as an opposition and as a coalition, accepted the verdict of the Australian people on 24 November 2007, and I think anybody who has followed this debate would have seen the coalition adopting a very constructive and positive approach to ensuring that we have now come to a conclusion which I think reflects well on the Senate and is a very balanced bill. It is one that I commend to the Senate on its third reading, but in particular to the government. I would encourage the government—and, if I pick up the vibes correctly, we need to especially encourage the Deputy Prime Minister, Minister Gillard—to take a deep breath, look at exactly what has been passed by the Senate and acknowledge it as an appropriate compromise and a good way for us to be able to move forward. I commend the bill.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (2.26 am)—I congratulate the government and the opposition, including Senator Abetz for his contribution. I think it is a very important piece of legislation and also that we have seen political cooperation in the Senate in coming to this conclusion. I think there will be 22 million Australians who will be relieved by this outcome. I congratulate the government and the Deputy Prime Minister for the work that has been put into the legislation and for ensuring that the program they took to the election in 2007 has now come to fruition. I congratulate the opposition for the contribution that has been made and the amendments that they have succeeded in having passed. In particular, I congratulate them for giving the accord to the legislation at half past two in the morning.

I want to congratulate my fellow cross-benchers for their contributions as well—not least, of course, Senator Siewert, who has put an enormous amount of work into this legislation. We Greens would have liked to have seen greater protection in the workplace and a greater ability for unions, not least to be able to assist workers to get better outcomes, but you cannot have all that you...
want. We are pleased as well to have contributed suggestions and amendments to this legislation which have been adopted here in the Senate tonight. I think it is an extremely good outcome from the Senate for the people of Australia. Workers, employers and people in general can be pleased with the work that the Senate has done and the conclusion that has been reached at 2.30 on this Friday morning.

Senator FIELDING (Victoria—Leader of the Family First Party) (2.28 am)—It is 2.30 am, and it is the end of a long process—not just of a long day but of the whole Senate process of the inquiry. At the end of the day, the Senate has done its job and various amendments have been made. It will now go to the lower house and we will see what transpires later on today. Each party represented in the Senate has done their job. We have worked well together tonight to make sure that the Fair Work Bill will pass the Senate. Quite clearly, with the Fair Work Bill about to pass this chamber, that will be the official end of Work Choices.

Senator XENOPHON (South Australia) (2.30 am)—The Fair Work Bill, which is about to pass tonight, kills off Work Choices. Work Choices is dead. I only hope that tomorrow the government will put the final nail in the coffin so that it can be buried.

Question agreed to.

Bill read a third time.

Sitting suspended from 2.31 am to 9.30 am

The PRESIDENT (Senator the Hon. John Hogg) took the chair at 9.30 am and read prayers.

COMMITTEES

Rural and Regional Affairs and Transport Committee

Meeting

Senator O'BRIEN (Tasmania) (9.31 am)—by leave—On behalf of the Chair of the Standing Committee on Rural and Regional Affairs and Transport, Senator Sterle, I move:

That the Rural and Regional Affairs and Transport Committee be authorised to hold a public meeting during the sitting of the Senate on Friday 20 March 2009.

Question agreed to.

Foreign Affairs, Defence and Trade: Joint Meeting

Senator O'BRIEN (Tasmania) (9.31 am)—by leave—On behalf of the Joint Standing Committee on Foreign Affairs, Defence and Trade, I move:

That the Joint Standing Committee on Foreign Affairs Defence and Trade be authorised to hold a public meeting during the sitting of the Senate on Friday 20 March 2009.

Question agreed to.

Membership

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (9.32 am)—by leave—I move:

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

Climate Policy—Select Committee—

Appointed—Participating members:

Senators Bob Brown, Fielding, Hanson-Young, Ludlam and Siewert

Legal and Constitutional Affairs—Standing Committee—

Appointed—

Substitute members:

Senator Ludlam to replace Senator Hanson-Young for the committee’s inquiry into access to justice

Senator Ludlam to replace Senator Hanson-Young for the committee’s inquiry into the provisions of the Evidence Amendment (Journalists’ Privilege) Bill 2009
Senator Ludlam to replace Senator Hanson-Young for the committee’s inquiry into the provisions of the Law and Justice (Cross Border and Other Amendments) Bill 2009

Senator Siewert to replace Senator Hanson-Young for the committee’s inquiry into the provisions of the Native Title Amendment Bill 2009

Participating member: Senator Hanson-Young

Rural and Regional Affairs and Transport—Standing Committee—

Appointed—

Substitute member: Senator Back to replace Senator Nash for the committee’s inquiry into public passenger transport in Australia

Participating member: Senator Nash.

Question agreed to.

BUSINESS

Rearrangement

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (9.33 am)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 3 (Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008).

Question agreed to.

AVIATION LEGISLATION AMENDMENT (2008 MEASURES No. 2) BILL 2008

Consideration resumed from 11 March.

In Committee

Bill—by leave—taken as a whole.

Senator XENOPHON (South Australia) (9.34 am)—I support the measures put forward in the Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008 but wish to move amendments to the provisions for copying, disclosing and testing cockpit voice recording on aircraft, which I will speak to shortly. I note that there have been discussions with the minister’s office about this. I am in your hands, Madam Chair, as to when I should move the amendments to this bill.

The TEMPORARY CHAIRMAN (Senator Crossin)—You can move them now. This is your lucky day.

Senator XENOPHON—I don’t know about ‘lucky day’ on today of all days! I seek leave to move amendments (1) and (2) on sheet 5737 revised together.

Leave granted.

Senator XENOPHON—I move:

(1) Schedule 1, item 11, page 7 (line 29), at the end of paragraph 32AP(3A)(b), add:

; and (iv) the crew members in relation to the CVR information have given their consent in writing, after the CVR recording was made, for the copying or disclosure of the CVR information for the purposes of checking whether the equipment used to make the recording is functioning and reliable.

(2) Schedule 1, page 7 (after line 29), after item 11, add:

11A After subsection 32AP(3A)

Insert:

(3B) If crew members have declined to give their consent in writing under subparagraph (3A)(b)(iv) to two consecutive requests within a 12-month period in relation to checking particular equipment:

(a) the condition of consent under that subparagraph does not apply to the next such request in relation to the same equipment; and

(b) crew members must be notified in writing of those circumstances.
Our airline pilots do a magnificent job and play a key role in, and take responsibility for, having some of the safest skies in the world and the best safety record in the world. The contentious issue for them is the provision relating to cockpit voice recordings. They want an opportunity to give their consent in writing after a recording is made. Checks are made to ensure that the equipment is operating appropriately on each plane owned by an Australian based company.

The issue here is one of privacy. What has been put to me by the airline pilots—and I have had some very useful discussions with Guy Maclean from the Australian and International Pilots Association—is that their workplace is different to any other workplace. The government has said: ‘What is wrong with simply handing in a recording from pilots for the purposes of checking? It is the same as taxidriver recordings.’ With respect to the government, there is a fundamental difference. The nature of the workplace—that is, the cockpit—is quite different. These pilots may be in the cockpit for 14 hours. They have no protection in relation to the content of the conversations that may be listened to by engineers simply for the purpose of checking. There is an understandable nervousness that if in the course of a flight they discuss a personal matter or an operational issue that does not relate to safety—for instance, about the management of the airline they work for—that could cause them some significant and considerable embarrassment. They have very real concerns about that.

The point made by the airline pilots association is that these amendments would provide a provision where consent needs to be sought for the cockpit voice recording to be listened to. If that consent is not given on the first occasion, a second attempt can be made with a subsequent crew in relation to the cockpit voice recording—it is specific to the equipment. If that is not given within a 12-month period, on the third occasion—in the very unlikely event that you have already failed to gain consent twice—that would have to be listened to by the engineers to check the equipment. It gives a safeguard in relation to privacy.

The airline pilots make the point that the amendments will not pose any administrative costs or logistical burden on operations. The authority can easily be obtained post-flight in circumstances where engineers already seek multiple authorisation signatures from the flight crew. Obtaining approval to copy and review CVR data for maintenance purposes will simply be incorporated within existing processes. The Australian and International Pilots Association say:

… this advance notice is indeed appropriate and is supported by pilots. However, while useful as a “heads-up” advance notice is only half of the required protection; it provides absolutely no protection for content of subsequent actual conversations. At the beginning of a long flight one cannot forecast the range or content of future conversation or reasonably be expected to be guarded with respect to such content over an extended period. Indeed, this requirement may alter the communication dynamic within a multi-crew environment and diminish safety by inhibiting free flowing and open communications.

So that sums it up pretty well and I think the airline pilots do have an important point to make there. This is about enhancing, and not in any way compromising, safety, and I believe the privacy concerns of the airline pilots are legitimate. I can indicate that if this amendment is not supported, as appears to be likely, then I will not be seeking to divide in relation to this and I will proceed to my fallback position, which is amendment (3).

Senator MILNE (Tasmania) (9.40 am)—I want to make a couple of comments about the proposed amendments. I want to indicate that I have had quite extensive consultation with the pilots in relation to the matter that
Senator Xenophon was just speaking on—that is, the issue of the taping of the conversations in the cockpit and its length of time. I take the pilots’ point on board that on a long light they might consider this a particularly onerous burden. But having now had a further briefing and upon thinking further about the matter, as I understand it the tape can only be for two hours—and I would like the government to just reassure the committee in relation to this.

My understanding is that the tape can only be for two hours. Because the purpose of the tape is to check the safety systems and so on you could assume that on any kind of flight the tape will include take-off and landing, where all the procedures are gone through. The pilots are given notice beforehand that this is the flight that is going to be recorded and it is only once a year that this occurs. So once a year they are given notice that the tape is going to be made, it is only for a two-hour period and, because it is for the checking of safety procedures and so on, it will be on take-off and landing. I just want the government to clarify that that is the case.

I am also assured that if there is an incident of any kind on the particular flight about which notice has been given for the taping of the procedures then the tape cannot be used in relation to that incident—a separate process or procedure takes effect in looking at and examining that particular incident and other mechanisms are used. So it comes back to this issue of the public interest and the pilots’ interest. In the community’s interest what is being asked here is that, with notice, two hours can be taped for safety procedures when things have gone in a straightforward manner and there has not been an incident.

If you then say, ‘Well, the problem for the pilots is that they will not behave as they normally would in terms of their interaction because they know that they are being taped for two hours,’ the downside of that from the community’s point of view is that pilots can then say, ‘Well, we’re not going to sign off on this.’ I understand that there have been modifications to the position of ‘we’re not going to sign off on this’ which gives the pilots that power, if you like, over what can and what cannot be released.

So on balance I am on the pilots’ side in terms of not wanting to put an onerous burden on them and making them feel as if everything they say is being monitored and watched to be used against them. But there are very strict rules around who can listen to it and what it can actually be used for. So it cannot just be released to the front pages of a daily newspaper speculating on any conversation that might have gone on. There are very strict rules about that with quite severe penalties.

Having listened to both sides of the argument and having engaged with the government about this as well, the Greens do not feel like we can support the amendment. But I do want to be assured by the government that the tape is for two hours maximum and that the likelihood is that, of that two hours, take-off and landing will be part of it. Therefore with notice you know you are going to have to do that, and in those two hours you are not likely to be engaging in much other conversation anyway because of the procedures you have to go through to check off all your systems. I just ask the government to reassure the committee in relation to that before we get to vote on that amendment.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (9.45 am)—First of all, the government is not supporting Senator Xenophon’s first two amendments but will be supporting the third amendment in the event
of this happening. In relation the question from Senator Milne, I reassure all those listening that the government has of course had extensive consultations around this—as has everybody else here, I think. The bill specifically amends the Civil Aviation Act 1988 to allow copying and disclosure of the cockpit voice recordings for the purposes of testing whether the CVR is functioning and reliable. Senator Milne, it retains the last two hours of audio in the cockpit during a flight. Where domestic flights are likely to be less than two hours it will be the full flight, but for flights going across to Perth, for example, it will be the last two. It would not be take-off and landing; it would be those last two hours. The information is recorded for use in accident investigations, so it needs to be fully functional and reliable for that critical safety purpose. I confirm that it is anticipated that this testing would occur once every 12 months.

The bill provides strong privacy safeguards for both the technicians and the pilots during CVR testing. Those standards are international best practice. The protections include notifying the crew in writing before the recording is made that it will be used for maintenance, so there are no surprises sprung on the crews in that regard. The protection is consistent with national privacy principles for the collection and use of personal information, and assurances have been given that that information cannot be read on the front page of the daily newspaper. Additionally, it will be an offence punishable by two years imprisonment to disclose that information for purposes other than maintenance. The offence provision recognises the sensitivity of CVR information, the circumstances that the pilots and crew might be under and the need to deter unacceptable disclosure. Only a person prescribed in the regulations will be able to copy and disclose CVR information for the purposes of testing its function and reliability. There will be a regulatory development process involving industry consultation for the development of those regulations.

Of Senator Xenophon’s three amendments to the regime, the first two relate to the crew giving consent before CVR recording is used for its maintenance. The third one, if for expediency I may go to it, relates to the legislative review role for the Privacy Commissioner. Addressing proposed amendments (1) and (2), which are about the consent issue, the government has confidence that the crew of an aircraft would as a matter of practice be cooperative with respect to the maintenance of the CVRs. However, adding a requirement that the crew needs to give assent would create problems with the serviceability of the CVR and the schedule of maintenance for the plane where consent is not provided. The maintenance schedule for aircraft needs to be reliable, especially when there is a large fleet of aircraft with numerous components to be maintained. Further, an aircraft needs to have a serviceable CVR on board as an operating requirement. The operator needs to be able to guarantee its functionality and reliability, and the confidentiality of the CVRs has been appropriately protected by workable and stringent protections in the bill. The government therefore opposes amendments (1) and (2) to the bill, which involve the crew members giving written consent. However, it does support Senator Xenophon’s third amendment, which provides for a review of the legislation and involves the Privacy Commissioner. The privacy protections in the bill are already stringent, and it is not inconsistent with the nature of these protections to have an independent body review their implementation in the interests of preserving best practice.

Senator JOHNSTON (Western Australia) (9.49 am)—I commence the response of the opposition to these amendments by commending Senator Xenophon on his very
thoughtful and considered amendments. It is a very important issue, and the opposition has, in seeking to balance the very vital and important issues of safety in aviation and employee and pilot privacy, come down on the side of safety. I seek to adopt the quite comprehensive and, may I say, very proper response of the minister in this matter.

We are very respectful of the need for pilots to feel secure in their workplace. It is a unique workplace. As I say, we are very respectful of their wishes. We cannot, unfortunately, in this instance accede to the matters that Senator Xenophon has put forward as we see the overriding, overarching imperative being one of safety. As a background to these remarks, as we all know, the act does a number of things, including the enabling of the department of transport to collect more information on aviation industry participants, to permit the secretary of the department to delegate certain powers and to give the Australian Transport Safety Bureau more time to bring prosecutions. This is the important aspect of the legislation that relates to these amendments: it also facilitates the testing and maintenance of cockpit voice recorders, and that is the context of the amendment. The bill clarifies the confidentiality provisions before the cockpit voice recorder may be copied and disclosed for legitimate maintenance and testing purposes. Currently there is doubt that any copying or disclosure of cockpit voice recorder data for such purposes is legal. Indeed, I might say that I do not think that situation could go on much longer and I congratulate the government for bringing these amendments.

The bill seeks to rectify this anomaly by including necessary changes to the act. These changes stipulate that the person checking the equipment is authorised so to do under relevant regulations and must believe that the material does not relate to a reportable matter, as defined, and that the crew members have been advised in writing beforehand of the intention to copy or disclose the information. According to the government, these changes are necessary, and the opposition accepts that statement. Following the findings of the very serious and unfortunate Lockhart River aviation accident on 7 May 2005, the ATSB discovered that the data on the cockpit voice recorder of the crashed aircraft was not recoverable and that any problems with that recorder were not detected during maintenance. I think that is the background and indeed the safety imperative that the opposition seeks to underline in balancing these two very important issues.

The opposition accepts that any legal ambiguity that arises from copying the data in the voice recorder for legitimate maintenance purposes needs to be dealt with. We also accept that privacy issues need to be managed and, like the government, we will be supporting the third of Senator Xenophon’s amendments. We believe the government amendment goes a long way to addressing these very important matters.

Senator XENOPHON (South Australia) (9.52 am)—I thank Senators Stephens, Johnston and Milne for their contributions. I accept that it is lost and I agree that safety has to be the primary consideration. I want to make it clear that where there is a question mark about a safety incident on an aircraft the CVR is subject to checking—no ifs, no buts. The pilots fully accept that. I think the best thing to do is to put this to a vote now. I will not be dividing. Then we can get on with amendment (3), which I see there is widespread support for.

The TEMPORARY CHAIRMAN (Senator Crossin)—The question is that amendments (1) and (2) on sheet 5737 revised 2 moved by Senator Xenophon be agreed to.

Amendments negatived.
Senator XENOPHON (South Australia) (9.53 am)—I move amendment (3) on sheet 5737 revised 2:

(3) Page 2 (after line 11), after clause 3, insert:

4 Report of the Privacy Commissioner

(1) The Privacy Commissioner must examine the following matter:

The privacy implications for flight crew members of the provisions of the Civil Aviation Act 1988 relating to copying or disclosure of CVR information, as amended by Part 2 of Schedule 1 of this Act.

(2) In examining the matter the Privacy Commissioner must consult representatives of associations affected by the provisions.

(3) The Commissioner must produce a written report to the Minister within 15 months of the commencement of this Act about the operation of the provisions referred to in paragraph (1) over its first 12 months, and may include in the report any recommendations the Commissioner wishes to make for amendment of the provisions to address any privacy concerns.

(4) In examining and reporting on this matter the Privacy Commissioner may exercise any of the powers conferred upon him or her by the Privacy Act 1988, and may delegate any matter to a member of his or her staff as provided for by section 99 of that Act.

(5) The Minister shall cause a copy of a report given to the Minister under subsection (2) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

I think all my colleagues have well articulated it. This is important for the pilots. From my discussions with the Pilots Association I know they want an opportunity to have their views heard before an inquiry by the Privacy Commissioner. That will be reported on or tabled in parliament in some 15 months from the time of the effect of this provision. I think that will go a long way in dealing with their concerns.

Senator MILNE (Tasmania) (9.54 am)—The Greens will support this amendment for the reasons that I indicated before. We want to make sure that the pilots’ interests are protected whilst understanding that the overriding concern in the parliament has to be for public safety and the public interest.

Senator BARNETT (Tasmania) (9.54 am)—I take this opportunity to make a few brief comments about the broader area of air safety—not specifically on this amendment but broadly on the matter of air safety—with respect to this legislation. In particular I indicate that I raised some issues with Airservices Australia some 12 months ago regarding an empty control tower at Launceston airport: it was left vacant for 1½ days due to staff sickness. Likewise, it was left unattended the previous December. I was advised that an investigation would take place and I have asked for that investigation to be made public and for the conclusions and recommendations to also be made public. The Launceston airport has a million passengers a year—that is 3,000 passengers a day. It has four passenger airlines now, as well as small carriers to the Bass Strait islands, freight carriers and so on, and it is now subject to a $20 million redevelopment. I raise these issues seeking answers and for matters to be brought to public attention and put on the public record. I appreciate that air safety should be the top priority and absolutely key in every respect, and I appreciate the efforts of all senators in this chamber to achieve that objective.

Manning levels are very important. There were people at Launceston airport that were sick and also on leave, and I accept that these things happen, but why can’t Airservices
Australia ensure that the air traffic control tower is manned by the appropriate people to ensure that air safety is a top priority? There were several serious incidents in and around Launceston, not just in terms of the matters I have raised. Some years ago, a Virgin flight came very close to a light aircraft. So we need the assurance that safety will not be compromised in any respect. I appreciate the efforts of Airservices Australia, but I do hope and expect that those investigations, the conclusions and recommendations, will be made public so that we have a full analysis of that review.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with an amendment; report adopted.

Third Reading

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (9.58 am)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

SOCIAL SECURITY AND VETERANS’ ENTITLEMENTS AMENDMENT (COMMONWEALTH SENIORS HEALTH CARD) BILL 2009

Second Reading

Debate resumed.

Senator SCULLION (Northern Territory) (9.58 am)—In continuing my contribution from yesterday on the Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009, I would like to preface my remarks by reminding those who were listening of the Prime Minister’s words in the media this morning. He stated that Labor have a mandate—they went to the election with a whole suite of promises, that was their mandate and they will honour all their election commitments. That is what we have heard. I just wonder how this bill actually honours Labor’s election commitment to help senior Australians make ends meet. On 1 November 2007 the Prime Minister released his election plan for older Australians. When you look at the election plan you would not think that we would be in a situation today where we could possibly even consider legislation in this place, let alone legislation that has been brought in by the government apparently to honour their commitment to senior Australians. This is straight from the election plan:

A Rudd Labor government will offer increased financial support—for the benefit of the minister, that is ‘increased financial support’—to older Australians …

I say that just in case I have missed something in the bill, which clearly rolls back support for seniors. The election plan states:

Federal Labor’s plan—Making Ends Meet—will help around three million eligible Australians, including pensioners and self-funded retirees—and, I am assuming, the 22,000 pensioners whose lives you are going to make a whole lot worse through the proposals in this legislation. That is something that those on this side of the chamber are not all that keen on. I believe that Kevin Rudd was elected because one of the fundamentals he persuaded Australians of was, ‘We are going to lower the cost of living.’ He went to great pains to say that he was going to bring down the price of petrol and that he was going to bring down grocery prices.

Government senators interjecting—

Senator SCULLION—We have some interjections from the other side. I can tell you
what: any minute now, those on the other side are going to have to decide, in the full view of the Australian public, whether they are going to vote to put up the cost of prescriptions for older Australians by 600 per cent. My advice to them, if they are going to interject this morning, is that they are going to have to remember that their foot is well and truly on the sticky paper and older Australians in every one of their electorates—and, amazingly, this includes someone from a Queensland electorate—are going to have the capacity to ensure that Madam Bligh hears a bit of a thought process in relation to how you are voting. I say to those opposite—through you, Madam Acting Deputy President—who come from Queensland that I would be a little bit more careful about the sorts of interjections I made in this place just before a test time.

We have had the Prime Minister persuading Australians of two fundamentals—that he would bring down petrol prices and that he would bring down grocery prices. And of course he has become the gold-plated watcher: Fuelwatch, GroceryWatch. We watched carefully as prices went up. Not only did he let them go up; we now have the introduction of the Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009. It does a couple of things, as I have just indicated. It will actually increase the cost of a prescription for older Australians by over 600 per cent.

Senator O’Brien—No.

Senator SCULLION—The senator opposite says no, but a basic calculator will tell you that going from $5.30 to $35 is an increase of 605 per cent. It think it would be entirely accurate to say that is a tad over 600 per cent. And those 22,000 Australians will also miss out on the lump sum payment to help pay their utilities, which was part of this government’s attempt to woo older Australians. They have said: ‘Sorry: gone. Sorry about that. I know we promised it. I know it was a mandate. But we’ll introduce legislation that effectively says that we’ve promised with one hand—and you thought you were getting it—and now we’re going to take it away with the other.’ That is a disgraceful contribution to make to this place and this is a disgraceful piece of legislation.

That $34.60 every three months would help out with the telephone bill—and they need help. Everybody acknowledges that the cost of living is difficult for everyone. But our most vulnerable Australians, who have made such a fantastic contribution, have to suffer the memories of the campaign where those opposite said, ‘We’re going to ease the household squeeze. Somebody put that in—that’ll be really good. Everyone’ll remember that.’ The Australian people said: ‘No worries; we’ll vote for them: they’re going to make our lives better.’ Sorry! That was not a good move. If these people could be trusted on their mandates, they would now come in here and deliver. Their mandate was easing the household squeeze. They said, ‘No pensioner will be worse off’—and all those sorts of things that we can remember.

Of course they did not have a mandate to come to this place and make worse the lives of some 22,000 older Australians who built this country and who raised the generations who now occupy this country and make up this great nation of ours. They have made a fantastic contribution. That is what Australia is: our forebears. Now we are saying to those who are the most vulnerable that we are going to take away the support that they had before the election. We are not going to make their lives better; we are going to make their lives worse.

Anybody who even reads the explanatory memorandum for this legislation would
agree that it is an absolutely disgraceful piece of legislation. As I indicated earlier, those on the other side will be judged. This morning, I was wondering why this legislation was brought to this chamber. I can recall the President coming in and saying, ‘When we’re in this place, it is to add to the true welfare of the people of Australia.’ That is one of those remarks that remind us what we are doing in this place. So to make the lives of our oldest and most vulnerable Australians worse by a piece of legislation is not on. And those on the other side are going to somehow describe how this is going to make it better—good luck in your own electorates, because I have looked at it carefully and it simply cuts away entitlements and benefits that have already been prescribed to older Australians. It is a disgraceful piece of legislation and should not be supported by anyone in this place.

Senator POLLEY (Tasmania) (10.07 am)—I rise to speak on the Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009. I believe that this is an important piece of legislation. The Australian social security system does a tremendous job in assisting people from all walks of life during periods of crisis, change and upheaval and often just in the day-to-day necessities. Assistance can be in the form of information and referrals to other services. It can be direct assistance in the form of income support payments, which can help in the cost of raising children, offsetting the expense of child care or helping to pay the rent. It can be in the form of concessions or the healthcare card, which provides reduced cost pharmaceuticals as well as a range of other possible rebates and concessions.

No government would be unaware of the ever-increasing expenses faced by the average Australian. However, this situation becomes more of an issue for those who have finished permanently in the workplace and have a finite income to see them through the remainder of their retirement. It is the older Australians who have often worked all their lives, seen their children through school and into adulthood, bought the house, paid it off and left their workplace—some with a gold watch—looking forward to a retirement filled with gardening, grandchildren and well-earned R&R.

It is therefore the obligation of any social security system to make provisions for senior Australians to ensure that the mounting costs and finite income can be balanced as best they can. This allows older Australians to enjoy their retirement rather than worry about making ends meet. The task for any government is to ensure that the social security system provides well-targeted assistance at the right time to the right groups and that this assistance is fair and consistent in its treatment of people and their circumstances.

The Commonwealth seniors health card is one such measure designed to reduce the burden of the ever-increasing cost of health care for older Australians. The core benefit offered to holders of the Commonwealth seniors health card is a discount on prescription medicines that fall under the Pharmaceutical Benefits Scheme. However, there are several other services that people may benefit from, such as: bulk-billing for visits to the local GP where the GP is a participating doctor for bulk-billing purposes, bearing in mind that the government offers financial incentives for doctors to bulk-bill concession card holders; and reduced cost for out-of-hospital expenses above a concessional threshold through the Medicare safety net.

Additional benefits and services are also offered by state, territory and local governments, as well as some private enterprises. These can include concessions in the areas of health, household running costs, transport,
recreation and education. Holders of the Commonwealth seniors health card are also often eligible to receive some additional allowances and certain cash payments through the social security system. These include the seniors concessional allowance. This is a non-taxable payment, made quarterly, to help with the costs of power, vehicle registration and rates. This allowance was increased by the Rudd Labor government in March 2008 and is now $518 a year. There is also a telephone allowance. This is provided to concession card holders with a telephone service connected and has recently been expanded to include additional allowances for those with an internet connection as well. This allowance currently stands at $138.50 per year.

The Rudd Labor government, as part of its Nation Building and Jobs Plan, also recently provided lump sum payments to holders of the Commonwealth seniors health card of $1,400 for singles and $2,100 for couples, on top of a seniors’ bonus of $500 delivered in the 2008 budget. The length and breadth of all services, concessions and allowances available to those who qualify for the card indicate the importance and value of this entitlement to many older Australians—retired or otherwise—and the extent to which this government will go to support them in meeting their costs of living.

To qualify for a Commonwealth seniors health card, a person must be an Australian resident living in Australia, have reached age pension age, being 65 for men and 63½ for women, not be in receipt of an income support payment from either Centrelink or the Department of Veterans’ Affairs, not be qualified to receive the age pension, and have an annual adjustable taxable income of $50,000 for singles, $80,000 for couples or $100,000 for couples separated due to ill-health. This limit is also increased by $639.60 for each dependent child in their care. Adjustable taxable income, under the current definitions contained in the Social Security Act 1991 and the Veterans’ Entitlement Act 1986, includes a person’s taxable income plus any rental property loss, foreign income or employer provided fringe benefits. This definition of adjustable taxable income has, over recent times, become increasingly unable to reflect a person’s true financial circumstances, as well as being more and more inequitable in its application. This definition has also been the impetus behind the proposed amendments to the eligibility criteria for the Commonwealth seniors health care card.

The amendment proposes the inclusion of three new forms of income in the definition of adjustable taxable income for the purposes of the Commonwealth seniors health card. Income from a superannuation stream with a taxed source, including lump sum withdrawals, will be included. For the last 18 months, a superannuation benefit paid from a taxed source has been tax free for those aged 60 years and over. This includes superannuation funds where the contributions and their earnings have already been taxed at the 15 per cent rate. Up until now, these forms of income have not been included in the assessment of adjustable taxable income. However, people who receive income from this source have already benefited from the concessional tax rate that is applied to these funds, which is 15 per cent upon contribution and zero upon receipt of the income stream. It is therefore considered appropriate to consider such forms of income as part of a person’s adjustable taxable income as this has a considerable bearing on the person’s overall financial circumstances. Indeed, it would seem unjust if one person with an income of, say, $50,000 per annum were not eligible for a card, while someone with an income of $45,000, with an additional $20,000 from a superannuation income stream with a taxed source, were eligible, despite having a higher
overall income. The inclusion of this income stream will allow income received by seniors to be treated in a similar manner and will ensure that the Commonwealth seniors health card is better targeted at those who need the services the most.

In addition, lump sum withdrawals from superannuation income streams derived from a taxed source will also be included in the definition of adjustable taxable income, once again due to the concessional tax advantages that these amounts have received. Any rollover of moneys between superannuation funds, however, is not considered to be a withdrawal and will therefore not be included in this scenario.

The government is aware that from time to time older Australians may be required to access retirement savings in order to meet large one-off expenses such as replacing a car, making repairs to their homes or paying fees and bonds associated with entering aged-care facilities. There are many legitimate and necessary reasons for making such a lump sum withdrawal and, in keeping with the spirit and the intent of the Commonwealth seniors health card, it would be unjust to automatically include the full amount of such withdrawals as adjusted taxable income. Therefore, the amendment allows for card holders to ask Centrelink to reassess their eligibility by using an estimate of the current financial year’s expected income rather than relying on the previous year’s assessed income, which is skewed by the lump sum withdrawal. Centrelink will then be able to take a holistic look at a person’s financial circumstances, the reason for the lump sum withdrawal and the person’s income in the previous year and make a sensible and fair decision about that person’s ongoing eligibility for the Commonwealth seniors health card.

The second form of income that will be included in the definition of an adjusted taxable income for the purposes of the Commonwealth seniors health card under this amendment is the voluntary sacrificing of salary into superannuation. Presently, income from that voluntary sacrificing of salary into superannuation is excluded from the person’s accessed taxable income, allowing that person to increase their superannuation savings whilst simultaneously lowering the income upon which they pay standard income tax. This is a sensible measure that offers financial incentives to people to save that little bit more for their retirement.

However, even though such salary sacrificing is included in income definitions for the age pension, it is not included at present in the definition of income for the Commonwealth seniors health card. This could be easily rectified by including this form of income in the overall definition, thereby making it consistent across social security and veterans’ affairs legislation in relation to payments and services to seniors. At the same time it would allow people to be treated sensibly and equitably in relation to their eligibility by looking at their financial circumstances and their financial capacity.

In all reality, someone on a good income can salary sacrifice all but $1 of their taxable income to a superannuation fund, thereby paying no income tax and having an adjusted tax income of $1 for the purposes of applying for a seniors health card. Then upon retirement, they have the added advantage of a higher retirement nest egg than otherwise they would have had. It does not seem fair and equitable that this person should be eligible for a Commonwealth seniors health card in addition to the other tax concessions received through their salary sacrificing arrangements, while another person, who does not salary sacrifice into superannuation, may not be eligible. This person’s taxable income
may appear as $1 but their financial circumstances are very different in reality. Their financial capacity is actually their full gross taxable income prior to any salary sacrificing, because the sacrificing is purely voluntary. Therefore it is a sensible amendment that is proposed, one that allows like to be compared with like.

The third change to the definition of adjusted taxable income will be the adding back in of net financial investment losses. A net financial investment loss occurs when the allowable tax deductions relating to an investment exceed the gross income of that investment. This can also include borrowing money to purchase shares and using the interest paid on the loan as an allowable deduction for offsetting the income derived from the share dividends.

People are always encouraged to look at new and innovative ways to create wealth if they so choose. It is expected also that during their attempts to create wealth money needs to be spent along the way and losses will be incurred. As a means of encouraging such initiatives, people are given concessions through the taxation system by being able to offset expenses against income. It would therefore seem inequitable to allow a double concession by precluding these losses from assessment of a person’s overall adjusted taxable income for the purposes of the Commonwealth seniors health card.

Already, in many payments and allowances, the losses incurred from rental property ownership are added back into a person’s overall income to ensure people who are given such tax concessions are not benefiting twice for their losses. Extending this to include the net losses from investments allows those without the capacity to buy rental properties, or invest in shares, to be treated the same as those with the capacity. It does not favour one over the other, whilst still retaining those key tax incentives that encourage people to invest.

The Commonwealth seniors health card is an important service offered to Australian seniors to meet the ever-growing costs of health and wellbeing for older Australians. It provides multiple benefits, from cheaper prescriptions to offsetting the cost of out-of-hospital treatments and allowances for phones and electricity costs. It is also sometimes used as a benchmark for determining who is eligible to receive such additional payments as those recently delivered under the Nation Building and Jobs Plan. It is because of the strong benefits this card can deliver that we must ensure it remains targeted at those who truly require that assistance.

Sensible changes to the type of income included in a person’s adjustable taxable income ensure that a realistic understanding of a person’s overall financial capacity and circumstances is achieved and that benefits are distributed evenly and equitably and not doubled up so as to advantage some more than others. These amendments will ensure that those who are entitled to the benefits offered under the card and most in need of these benefits remain entitled. However, those who have different types of income at their disposal must endeavour to rely on those income streams or rearrange their finances accordingly. That way, the system remains fair and those who it is intended to support are indeed supported. It is a common-sense amendment and, as always, common sense should prevail. I commend the bill to the Senate.
better targeted to older Australians who most need the benefits. The bill overturns changes introduced by the Howard government which allowed certain superannuation payments to be excluded from taxable income assessments. Under this bill, income from a superannuation income stream from a taxed source and income being salary sacrificed into superannuation will now be included as income in the eligibility assessment for the Commonwealth seniors health card.

The passage of this legislation will see the removal of a significant loophole that otherwise creates a situation where some people qualify for the CSHC and others do not despite having the same income. The Greens support the broad principle to increase fairness in the support system for older Australians. However, we are concerned that the amendment fails to address what was a random approach employed in determining thresholds in the first place, thus potentially continuing inequity and hardship for those who are in fact in need of support.

The plight of older Australians on low incomes is an issue that should receive a lot of focus. Fortunately, it has received a lot of focus recently, and the Greens would say that it is about time. It is well recognised that older Australians, particularly those on low fixed incomes but also many self-funded retirees, experience great financial hardship, and will even more so in these difficult economic times. As the Senate Standing Committee on Community Affairs reported last year, those with the capacity for little discretionary spending are most vulnerable to the rises in the cost of living and they are disproportionately affected by increased costs of rent, petrol, household utilities and health care. All the essential costs of living are continuing to rise. Health costs, such as the costs of medical care and particularly pharmaceuticals and dental care, are clearly of great concern to older Australians. Because increasing numbers of older Australians will be experiencing financial hardship and rising cost-of-living pressures in the future, it is particularly important that government benefits such as the seniors health care card are being accessed by those who need them most.

Our population is ageing, and caring for older Australians decently and fairly should be a priority of government. Projections show that by 2042 the proportion of the population aged 65 and over will double to be one in every four people, while growth in the labour market is likely to remain stagnant. Taken together with increased life expectancy, these trends have the potential to slow economic growth and reduce older Australians’ standard of living. That particular projection was written before this year’s global financial crisis took hold and pushed all projections on economic growth out the window.

The Greens have been calling for an increase in the age pension for a number of years and we are pleased to see that both the government and the coalition have picked up on our campaign to provide older Australians with a decent level of income. We await with interest the government’s response to the Harmer review, which we hope will increase the level of the age pension to ensure all older Australians will have a decent quality of life.

However, this bill is not concerned with eligibility for the age pension; it concerns concessional benefits for those older Australians whose income is high enough that they do not need that level of income support yet not so high that they do not warrant some government assistance to help them manage the high cost of health care in particular and other costs of living. The issue at stake is how those income levels are defined and whether the substantial benefits of the sen-
iors health card will go to those who are most in need.

The benefits of the seniors health card are substantial. As I said, health costs are a major expense for older Australians and a cause for major concern and anxiety for many. The CSHC provides access to concessional pharmaceuticals under the Pharmaceutical Benefits Scheme. It also provides, at the discretion of the general practitioner, bulk-billed GP appointments and a reduction in the cost of out-of-hospital medical expenses above the concessional threshold through the Medicare safety net. In addition to health benefits, the card also provides a seniors concession allowance—a non-taxable payment of $128.50 made every three months to help with regular bills such as energy, rates and motor vehicle registration fees that are not available at a concessional rate—and a telephone allowance and also an allowance for internet connection.

To assess this proposal it is worth looking briefly at the history of the seniors health card and in particular the changes introduced by the Howard government which this bill seeks to address. The Commonwealth seniors health card was introduced in 1994 by the Keating Labor government to ensure that retirees who were on a low income but not eligible for a pension would have access to some health benefits. The income test limits then were indexed and were the same as for the age pension. So it was targeted at those older Australians who did not qualify for the age pension because they were asset rich but income poor—primarily farmers—and also those who did not qualify because of insufficient length of residency.

The changes introduced by the Howard government since 1999 have substantially altered the original purpose of the Commonwealth seniors health card, making the benefits available to more people and creating the situation we are now in where there is a potential for people to actively manage their income in such a way that they are able to meet the current income thresholds. The Howard government changes in 1999 significantly increased the threshold from $21,460 to $35,859.20 for singles and to $67,000 for couples. The thresholds were increased again in 2001 to the current level of $50,000 for singles and $80,000 for couples. The Howard government also stopped the eligibility threshold from being indexed, leaving both the timing of changes and the thresholds to be determined by a government decision. The income test was also altered from income assessed under the far more rigorous Social Security Act 1991 to adjusted income assessed under the Income Tax Assessment Act 1997, which serves a very different purpose from the welfare act. This fundamentally changed the purpose of the Commonwealth seniors health card from being a benefit for low-income Australians—and this is very important—to a government benefit available to all older Australians, specifically allowing more self-funded retirees access to the concessions. This is the issue at the heart of this piece of legislation.

The income test change is all the more significant following the changes to the taxability of superannuation made in 2007. Since July 2007, superannuation income from a taxed source—that is, superannuation funds where the tax has already been paid on employer contributions to the fund and on the fund’s earnings—is tax free. Under the adjustable taxable income test which is used to assess eligibility for the seniors health card, this income is not included as part of the applicant’s income. By contrast, people whose superannuation funds did not pay tax on those earnings must pay tax on income from those sources, and this income is included in assessing eligibility for the seniors health card. This creates an inequity between
holders of the two types of super accounts. Both may have the same income, both have had their super taxed, yet by disregarding income from super funds with a taxed source the holders of these accounts can have a high income and remain eligible for the seniors health card.

Similarly, under the current provisions, people who have salary sacrificed into a super account also benefit from earning more than other applicants for the seniors health card but remain eligible. In our view, this further undermines the purpose of the seniors health card by allowing those who through good luck or intention have achieved eligibility for the concessions but may not fit the definition of an older Australian who cannot manage financially without government support. I put it to this chamber that in these times of economic stress this is an extremely important point: who will be affected?

In June 2008, there were a total of 278,378 seniors health care card holders, and the government estimated that approximately 22,000 would lose their benefits if this legislation passed. Clearly these figures are no longer applicable in the current circumstances, as the income of self-funded retirees has dropped dramatically over recent months, with the crashing of the share market and poor performance of private superannuation funds as a result. The government maintains it is unable to provide any current data to give a more accurate picture of who will be affected by these changes. The Greens have sought figures in particular on the number of those who are just above the threshold and those whose income will be substantially above the threshold when their superannuation income is included in their adjusted taxable income, but the government tells us that it does not have any accurate data at this stage.

Unfortunately and somewhat ironically, the purpose of these changes announced by the government in last year’s budget has been overtaken by the global financial downturn. Sadly, it is reasonable to conclude that in the current economic context many self-funded retirees currently eligible for the seniors health care card will be eligible for the age pension. An estimated 30,000 people, for whom six months ago the inclusion of their super income would have put them over the threshold, will now meet the new threshold assessment test, even with their taxed super included.

However, the Greens realise that there are many self-funded retirees who are not on high incomes who would, under these changes, lose their eligibility for the seniors health care card because they will be just over the existing threshold. We believe that this group should be protected by raising the taxable income limit to a level that more accurately reflects the current economic climate. Much has changed since 2001, when income limits of $50,000 for singles and $80,000 for couples were set. In keeping with our position that this assistance should go to those most in need, we believe the income thresholds should be raised. The Greens will be moving amendments requesting that the government sets a new income test limit for eligibility for the seniors card for $60,000 for singles and $85,000 for couples. These figures are based on the average weekly earning of $60,450. We believe that this is a fairer and more realistic income limit in the current economic climate. While we support the move to tighten up eligibility for the card, we want to ensure that we do not unfairly penalise older Australians who will genuinely need this assistance.

Notwithstanding our forthcoming amendment, the Greens are concerned about the arbitrary way in which this income level has been set by government in the past, leav-
ing it open to political will or opportunity. To ensure that threshold levels are reflective of the Australian economy and independent of political intention, the Greens have written to the minister, proposing that the government consider linking the seniors health care card income eligibility test to the consumer price index as part of the restructure being considered on the recommendations of the Harmer and Henry reviews. More broadly, the Greens believe that a better outcome would have been achieved if both this bill and the measures addressed in schedule 3 of the Tax Laws Amendment (2009 Measures No. 1) Bill 2009—which I will come to a minute—had been addressed as part of the comprehensive restructure the government is undertaking based on the recommendations of the Harmer and Henry reviews.

At the current time, much is being made of the impact of the economic crisis on self-funded retirees. If their income falls below $80,000, if their superannuation has crashed, they will be eligible for this card—and, in fact, many are becoming eligible. This card is available to people who are facing financial hardship. If the Greens amendments are accepted by the Senate, it will be available to older Australians who are on $85,000. Given the hardships many are facing in the current climate, many Australians would say that is a significant income—when you consider that many people are currently losing their jobs. While the Greens would like us to be able to support everybody, particularly in retirement, we are also aware that at this time we need to also be focusing our scarce resources on those most in need. Therefore, we believe that addressing this loophole is important in ensuring that we have a safety net for our older Australians who need it most.

The Prime Minister has made it very clear that self-funded retirees who fall into the category of needing assistance through income support and the age pension will be facilitated onto the age pension. I understand that an increasing number of people are accessing that. I have been given a figure of 30,000, although I am not sure of its accuracy because the government is still confirming that. So it is wrong to claim that this is unfairly targeting people who have suddenly suffered a significant loss in income, because they are being assisted. We have heard stories of people deliberately salary sacrificing very large amounts of money in order to be able to gain access to the seniors card. For example, two couples on the same income can be treated differently because of loopholes. Of course it is legitimate to use the existing provisions, but to us it is unfair that, of two couples that are on the same income, one couple does not get the seniors health card and one does because they have managed to access the current provisions.

Given that the threshold has not risen since 2001, we believe it is fair to increase it to $60,000 for singles and $85,000 for couples. We are particularly keen to ensure that the threshold for singles reflects the needs of singles. The Senate Standing Committee on Community Affairs looked into the cost of living for older Australians and identified single Australians, principally women, as one sector that were particularly vulnerable. So we are very keen to ensure that that threshold does provide for those people who are struggling. We believe that a fairer level would be $60,000.

That is why, when we come to discuss this in the Committee of the Whole, we will be moving amendments to address that threshold. We are refraining from moving amendments linking it with the CPI because we think it more appropriate that it be dealt with in the context of the Harmer and Henry reviews. That is why we have written to the minister asking for those thresholds to be included in the revision. We thought that was the more appropriate move. If the thresholds
are accepted by the Senate, the CPI increase will not kick in for a little while anyway. So there is time for those two reviews to take that into account. In the meantime, we will have increased the threshold to meet people’s needs in 2009. I will talk further on the amendments when we come to the Committee of the Whole stage. We commend those amendments to the chamber in the belief that they will provide a little bit more robustness to the seniors health card.

\textbf{Senator BILYK} (Tasmania) (10.38 am)—I rise today to speak on the Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009. Our senior citizens and those people who have served in the Defence Force have contributed enormously to our nation and they deserve to be respected and looked after. The Rudd government is committed to giving these people what they deserve—that is, respect and an easier way of life. The Rudd government knows some people are doing it tough and is committed to helping pensioners and seniors to make sure that they get the maximum help they can.

This amendment will help make the lives of these important citizens better. Anything that improves their way of life is a worthwhile exercise for the Rudd government. The Rudd government genuinely cares for seniors and will continue to make improvements in their lives. One way is by refining the adjustable taxable income test for those people holding a Commonwealth seniors health card. In this situation, the Rudd government is making life fairer and treating similar sources of income in a similar way. The amendments will ensure that the income test is applied consistently for all cardholders.

In the 2008-09 budget, the Rudd government made a promise to create a fairer system for eligibility for the Commonwealth seniors health card. This program is just one of a number designed to create equality among Australians. There are processes in place to review the pension, and there have been one-off bonus payments. As I have stated, this is a government that cares for seniors.

The budget estimated that the cost of creating a fairer system would be more than $19 million for administrative purposes over four years. It is predicted that $12.3 million will be spent in 2008-09 but with significant savings being made over the next three years. A net saving of $84.8 million will be made, with $34.6 million coming from the 2011-12 year.

The Rudd government is spending money now to save money in the years to come, investing in the future—something the Howard government failed to do. We know they failed to invest in schools and in skills training. They should hang their heads in shame for their lack of action over the 12 years they were in government.

This amendment legislation applies to Commonwealth seniors health cards issued under the Social Security Act 1991 as well as those issued within the Veterans’ Entitlements Act 1986. The Commonwealth seniors health card was a Keating Labor government initiative introduced in July 1994. Its original intent was to help those people who failed to qualify for the age pension. It was to help people who lacked resident qualifications or whose assets meant they did not qualify for the age pension.

In 1999 eligibility for the card changed when the previous government abolished indexation on the adjusted taxable income test. Currently the Commonwealth seniors health card is available to men and women who are of the right age to receive the age pension but are not eligible because their income is above the limit. In order to be eligible for the Commonwealth seniors health
card, people must have an adjusted taxable income of less than $50,000 for singles and $80,000 for couples, and they must be an Australian resident or hold a special category visa. As of 1 July 2009, adjusted taxable income will be determined by adding the taxable income, employer provided benefits, target foreign income and net rental property loss, superannuation, money that is salary sacrificed and net financial investment loss.

Currently superannuation income is not considered when determining eligibility for the card, provided the individual is unable to access the money. Money that goes into a superannuation fund as part of a salary sacrifice scheme is also excluded when determining eligibility. This bill will change these provisions and will ensure that income received by seniors is always treated in the same way, therefore creating a more consistent and just approach. For example, if you are a member of a defined benefit superannuation scheme and receive income, it is treated as income; however, if you receive income from a private, industry based or retail based super fund, it is no longer taxable and is not counted as income for the purpose of the card.

If you work in the retail sector or do some relief teaching or gardening, your income is taken into consideration. This is obviously a disadvantage, and we believe that it is inequitable. The income test will be changed to include income from a superannuation income stream with a taxed source and income that is salary sacrificed to superannuation. This will make it fairer for all Australians. This is, after all, what the Rudd government is about: making life better for all Australians and ensuring that people are treated equally.

The card is available to women who are over 63.5 years of age, but the age limit is gradually increasing so that all women must be 65. The progressive change in the eligibility age of women will see 65 as the age for all women to access the CSHC from the beginning of 2014. Men are eligible from the time they turn 65. Increasing the eligibility age for women to 65 to receive the age pension and in turn the Commonwealth seniors health card will create greater equality between men and women.

If you are eligible for a Commonwealth seniors health card under the Rudd government, you will also qualify for some cash payments such as the seniors concession allowance. We increased this allowance in May 2008 to $500 per year and we pay it quarterly, which helps people meet ongoing costs as they arise. Also, under the Rudd government’s Economic Security Strategy, Commonwealth seniors health card holders received $1,400 for singles and $2,100 combined for couples. This is a government that not only cares for seniors but acts for them.

Veterans are eligible for the age pension at the age of 60. It is most important to look after our retired servicepeople, as our nation would not be what it is without their sacrifice and hard work.

In June 2008 there were 278,738 Commonwealth seniors health card holders. This figure will most likely have increased and continue to increase with the change in the global financial situation, meaning that previously ineligible people may now be entitled to the Commonwealth seniors health card. Even more people will become eligible once this bill becomes legislation. Holders of the card are entitled to discounted prescriptions listed on the Pharmaceutical Benefits Scheme. They are also eligible to be bulk-billed by participating health professionals, and the government provides incentives to practitioners who will bulk-bill. In addition to this, cardholders can also be helped out with hospital expenses through the Medicare Safety Net program.
It is also possible to access a range of other services at a discounted price through local, state and territory governments and the private sector. These services include areas such as transport, education and recreation. This makes it cheaper for the elderly to participate in life whether it be by undertaking an adult education course or going to the cinema, and in my state of Tasmania the elderly are a very active group of the population. As I have said already, certain cash payments are available through the federal income support system, including the seniors concession allowance which is paid in quarterly instalments. Telephone services, including the internet, are also subsidised to the value of $138.50 per year. The card will now target a larger group of people who need government assistance.

The changes in these provisions will see eligibility for the seniors card come in line with the requirements for the age pension. This will limit any confusion that currently exists. Seniors will be able to access some of their superannuation fund for medical expenses and to pay the costs involved in going into an aged care facility. In order to do this, people will be able to request that the lump sum they need be exempt when an assessment of their eligibility for the card is made. One-off payments can also be excluded from the assessment in order to prevent people from being disadvantaged by unexpected payments. In order to receive an exemption the individual must put in a written request to Centrelink. The request must provide information on the payment and the reason it is a one-off payment and give an estimate of the income for the current financial year. Centrelink has the discretion to grant an exemption based on the information provided. Centrelink will also take into account the person’s disposable income for the previous few years.

By giving people the opportunity to apply for exemptions the Rudd government is stating that it understands that there are exceptions to the rule and that cases need to be considered on their merit. Since coming to office the Rudd government has given single pensioners an extra $2,337 and couples receiving the pension an extra $3,537. This is a considerable amount in less than 18 months. Approximately 290,000 older Australians will receive additional funds as part of the $42 billion Nation Building and Jobs Plan. Eighty per cent of the 2.8 million people in Australia over 65 years old are benefiting from the Rudd government’s Economic Security Strategy, and I know many senior people in my home state of Tasmania are pleased about this.

Self-funded retirees who lodged a tax return for 2007-08 and people who receive a partial pension will be given a tax bonus of a maximum of $900. Almost 3.5 million Australians will receive an increase in their pension and other financial support from 20 March this year. The government will continue to support our elderly citizens through further pension reform as part of the 2009-10 budget. The findings of the pension review will be released in due course. The Commonwealth seniors health card requirements will be continually reviewed to ensure that the card is only available to those people it is intended for. This ensures that the money is being spent on the people who need it the most and saves government funds for other purposes.

I believe in helping Australia’s older citizens and veterans of Australia’s defence forces and making a difference to their lives. I believe they have earned all the support the nation can give them. The Rudd government believes in equality, and I am pleased to see a system that introduces equality in another area of life for these members of our community. I am proud that the Rudd Labor gov-
ernment continues to help those who need it the most and is working towards a more just Australia.

I reiterate that this bill is just one of many moves being made by the Rudd government that will help our senior citizens and veterans live the more comfortable life which they thoroughly deserve. The Rudd government will continue to support the elderly people of Australia in as many ways as possible. The Rudd government will continue to deliver for seniors. This is important legislation that needs to be passed. It is in stark contrast to the way the opposition treated seniors and pensioners. In fact, it is in stark contrast to the way they still want to treat them. Earlier in the year we saw feigned concern for pensioners and the then opposition leader calling for $30-a-week pension increases. Then there was a change of leadership on that side—and we all know that is not settled yet—and we saw, firstly, support for our stimulus package and then a change of heart.

Almost everything we hear from the opposition involves opposing the stimulus package, so I ask: where do they stand, especially in relation to pensioners? They have moved very quickly from, ‘We care for seniors,’ to: ‘We do not support the one-off payments. We do not support a review of the pension or whatever that review might recommend. We do not think it can be afforded anyway.’ I presume they saw some political gain in their comments earlier in the year. They continually show a callous disregard for pensioners and deserve to be condemned. Older Australians are one of Australia’s greatest assets. They have helped shape modern Australia and continue to make significant contributions to society. I commend the bill to the Senate.

Senator XENOPHON (South Australia) (10.51 am)—I note that the Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009 makes superannuation income and drawdown as a salary-sacrificing part of assessable income when qualifying for the seniors card. Also, as I understand it, super lump sum withdrawals for cars, bonds and health will not be included in assessable income. That is something I would like to clarify during the committee stage if we get to it. I also note that the government is proposing a threshold of $50,000 for individuals and $80,000 for couples to be assessed annually but not to be indexed. Again, that is a question I would like to have addressed. I understand that the Harmer review is looking at these things, but I would have thought that as a safeguard there ought to be consideration of indexation, at the very least based on CPI. Of course, another method of measurement is the average weekly earnings form of adjustment.

My office has had a number of complaints in relation to this bill about people losing their health card benefits, and it is an issue of concern. I think it should be noted that with the global financial crisis many more self-funded retirees will be able to qualify for a seniors card. I would like to get some confirmation from the government as to how much this will save over the next four years and whether there have been any further assessments in relation to that. Regarding some of the media commentary, which I think reflects a number of the complaints that my office has been getting about this, I note that there will be individuals who will be worse off by several hundred dollars a year as a result of the additional pharmaceutical costs alone. That is an issue of concern.

I also understand the equity arguments—that if you have an income of $50,000 as an individual or $80,000 as a couple then you are in a better position to absorb those costs. I note the Greens plan to move amendments to the bill that would lift the threshold, and I
Senator NASH (New South Wales) (10.54 am)—I rise to make a few remarks about the Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009. Quite frankly, removing the Commonwealth seniors health card from around 22,000 senior Australians is simply wrong. This is absolutely appalling, and I think the Labor government should be holding its head in shame at even putting this forward. We have a situation now in this country which, by all accounts, is going to be one of the most difficult we have seen for decades. Yet what is the Labor government doing? It is trying to put a measure in place that will hurt those people who quite simply are least in a position to afford it.

During the 2007 election campaign, the now Prime Minister, Kevin Rudd, said he was going to ease the cost-of-living pressures for senior Australians. This bill is exactly in opposition to what he said at that time. This is going to do completely the reverse. This measure is going to make it more difficult for senior Australians. It is not going to ease those cost-of-living pressures, as the now Prime Minister said at the time. Instead of the strengthened support that the government said that it was going to give to seniors, this is going to roll back the support that the coalition, in government, had in place. To me, it is just the ultimate in hypocrisy from the Prime Minister to have said through the election campaign, ‘We’re going to do everything we can to ease the cost-of-living pressures for senior Australians,’ and yet here we are standing in the chamber today debating a bill that is going to do precisely the opposite.

We have seen debated in this chamber and also in the other place the recent $42 billion stimulus package. I think people will find it quite incongruous when they look at that $42 billion package that the Rudd government has put in place and compare it to the fact that the Prime Minister is going to strip away money and assistance from senior Australians. He can find $42 billion to put in a whole range of measures that the government says are going to assist the economy in Australia to get through these difficult times and yet, at the same time, this relatively tiny amount of funding is going to be stripped away from seniors. Seniors are the last people, the very last sector in this society, who should be having assistance taken away from them at this time—absolutely the last. We can find billions of dollars for pink batts and for boom gates, and yet senior Australians are expected to take a hit by having their seniors health card taken away. That is just wrong. It is not right.

A comment was made earlier by one of the previous speakers about the proposed increase in the pension that the coalition put
forward towards the end of last year. It was said that we ‘feigned’ interest. It is not feigned interest; it is very genuine interest, and those on the other side know it. To play politics with this, an increase of the pension, when these are the very people who need it the most! What have we seen from the other side? Nothing. Not a thing. There is nothing about increasing the pension, but, gosh, what do we see today? ‘Let’s just rip a bit more away from the seniors.’ It simply does not make sense and it is simply not fair. These are our parents and our grandparents who have built this nation, and they are the last people who should be getting targeted with this kind of measure that is going to do nothing but hurt those people who most need the assistance.

Let us look at what is actually going to be taken away from those seniors who lose their card. There are the prescribed pharmaceuticals under the PBS. The CSHC holders pay $5 per script. After losing the card, they are going to pay $31.30. With the card, a senior reaches the PBS safety net threshold when they have paid a total of $290 for their scripts. Scripts after that are free. Without the card, the threshold rises to over $1,000. As regards the seniors concession allowance, with the card, a senior is eligible to receive an annual allowance of $500 to assist with the payment for essential services for which pensioners are granted concessions. At the beginning of July, many of those seniors are going to lose their entitlement. The seniors bonus payment is going to be affected. If they lose their card because of the eligibility changes, they are not going to receive any further bonus payments. There is the telephone allowance and there are other benefits. There is a whole range of things here that our seniors rely on to help them through what are increasingly difficult times, and that is what is so incongruous about this. Things are getting more difficult out in our communities for people, particularly our elderly, and what is the government doing? It is taking assistance away from 22,000 of our seniors.

What I find even more interesting are potential future changes. Goodness knows where Labor are going to go in rolling back support in the future. We have no idea. But interestingly in some recent reports in the media we have seen it flagged that they may do such things as include the family home in the assets test, which is going to force senior Australians to sell their homes. They are going to include an increase in the assets test taper rates, which will reduce the incentive to save for retirement. They are potentially going to increase the income test taper rates, which will be a disincentive for people to earn additional money. These are the types of things that are being spoken about in the media at the moment. People need to be very, very wary of what this government is planning for senior Australians. I come back to the point that these are the people who need the assistance most, not least.

I mentioned the concession card earlier, so let us have a look at the concession allowance. One of the things that that applies to is reduced train fares. There is a particularly good example of this up on the North Coast of New South Wales, where I spend quite a lot of my time. It is interesting to note that the state Labor government closed the Casino to Murwillumbah railway line five years ago. I do not know how many of those in this chamber actually spend much time up there, but let me tell you that the public transport system is appalling, particularly as it is our seniors who are again the most affected. Seniors are least able to get themselves around. They need public transport and it is completely lacking.

I know that some of the federal Labor members of parliament would say that this is a state issue, but are there two separate Labor
parties? Is there the ‘good’ federal Labor Party and then the ‘bad’ state Labor Party, which has not delivered this?

Senator Scullion—they are both bad.

Senator Nash—Thank you, Senator Scullion. I will take that interjection. Absolutely—they are both bad. What is quite extraordinary is the hypocrisy of some of our state and federal Labor politicians. One example of such a federal Labor politician is Justine Elliot, the current member for Richmond. Looking at the rail line that Labor closed five years ago even though it is so desperately needed up there in the north, I was flabbergasted to come across a letter from Mrs Elliot in a previous campaign. In this letter to the residents she spoke about how she had got a commitment for some funding. She said: ‘This is a great victory for our community, which has run a tireless campaign to save the train. Thank you.’ This is about providing transport for seniors, and where is Justine Elliot, the local member, now? It is such hypocrisy when on the one hand you say you are going to look after seniors but on the other hand you do exactly the opposite.

Seniors should realise that this government is doing nothing for them. But not only is it doing nothing; it is ripping away the things they need the most. I recently attended a rally in Murwillumbah about the closure of this railway line. It was attended by a number of seniors who said to me, ‘We absolutely need this railway line for a whole range of reasons.’ They want to be able to see their children and grandchildren and to attend their schools at Casino down at the other end of the railway line. They talked about what it could do to open up the whole area for them.

Yet what have we seen from the Labor government? Absolutely nothing. In spite of a promise from the local member years and years ago that they would find the money, now there is absolutely nothing. I was very proud to stand up there with those seniors and my Nationals colleagues Geoff Provest and Jenny Gardiner to say that we will do what we can, everything we can, to try and help, because there was no sign of either Justine Elliott or Janelle Saffin at that rally. What the government is putting forward today is about taking away those concession cards from some of those seniors on the North Coast. They need those concession cards to be able to use public transport to get from A to B. I get sick and tired of our seniors being the last cab off the rank, being the ones who are least thought about and least considered when we are formulating what should be good policy for the future of those people. It is, simply, wrong.

It is also interesting to note what is going to be taken away from health—the prescribed pharmaceuticals and the PBS safety net. These are things that our seniors really rely on, and I can only think that this is indicative of Labor’s approach to health in general. If they think that taking those things away is an appropriate measure, they are just wrong. The attitude to health from this government is, quite frankly, appalling—even more so when we look at the comments the Prime Minister made during the election campaign. He said, ‘Kevin Rudd will fix our hospitals.’ He said, ‘The buck stops with me.’ And what have we seen? Absolutely nothing from this government—and this was from a Prime Minister who said he would honour all his election commitments.

He made an election commitment to fix our hospitals, and he has not done it—and there is no sign that it is going to be done in the future. It is an election commitment on which nothing is being done from the other side. It is particularly notable on the North Coast. We are seeing our hospitals up there in crisis. We are seeing maternity units being
shut down—and everybody knows how important it is that women in regional communities have access to a decent level of health care when they are having their children. Even more importantly, our seniors on the North Coast cannot access a decent level of health care. Many will say that it is a state issue, and in many respects it is, but this became a federal issue when the Prime Minister said that he would fix the hospitals and that the buck stops with him. That is when this absolutely became a federal issue. He took responsibility and he has delivered absolutely nothing.

It is very interesting to look at precisely that issue of the Prime Minister’s election commitments. I was listening to him this morning on the radio when he was talking about the mandate that he had from the last election and the fact that he would honour his election commitments. I just wonder whether those election commitments and that mandate apply only to IR, because they certainly do not seem to apply to seniors. We are seeing that through the measures that the government is trying to introduce today. The Prime Minister said that he would make ends meet, that he was going to offer increased financial support and ease the burden for our seniors. Those were his election commitments; they were absolute commitments from the Prime Minister. But apparently they do not matter. The mandate and the election commitments apparently only matter if they relate to IR, because they apparently do not matter. The mandate and the election commitments apparently only matter if they relate to IR, because he made the same types of commitments during the election about seniors and he is not honouring them. That is absolutely clear through this bill today, and seniors should be very, very concerned about what the Labor government have in mind for the future of our senior Australians.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (11.09 am)—I thank those who made a thoughtful contribution to this debate and who actually made an extraordinary effort to understand what this legislation is about. I am flabbergasted by the contribution from Senator Nash. She obviously has not read the bill or listened to the debate. I think she should be ashamed of herself—that confected rage about this legislation and the scaremongering tactic, frightening pensioners unnecessarily—when this bill is all about fairness and equity in the pension system. It really is unforgivable.

Senator Scullion—They will lose their healthcare card: that’s frightening.

Senator STEPHENS—Senator Scullion, you are the same, with your confected rage yesterday when you were trying to argue and justify a change to the system for the Commonwealth seniors health card, which was introduced by the Howard government and which has continued to produce and compound inequities since that time.

Let’s just get to the reality of what this bill is all about. First of all, it amends the test to create a test that is simpler and fairer by treating income from different sources in a similar way. To me, that seems to be a very fair and equitable thing to do. Under the current rules, income from a defined benefit scheme, such as the Commonwealth Superannuation Scheme for public servants and some state government funds, is treated as income when determining eligibility for the Commonwealth seniors health card. This has meant inequities over time, as people with substantial incomes from superannuation income streams from a taxed source have had this income disregarded for the purpose of assessment for the Commonwealth seniors health card. This has meant inequities over time, as people with substantial incomes from superannuation income streams from a taxed source have had this income disregarded for the purpose of assessment for the Commonwealth seniors health card. Individuals who have income that is non-
assessable and non-exempt under the Income Tax Assessment Act 1997 have already had the advantage of accumulating their superannuation savings in a concessional tax environment. They have also benefited from the ongoing tax treatment of their superannuation pension payments after age 60.

By treating all income received by seniors, whether received from superannuation or another source such as employment income, in the same way this proposal will ensure the income test is applied to all cardholders consistently. Currently, the test does not include income of those who are salary sacrificing into either a superannuation fund or a retirement savings account, as Senator Siewert so ably pointed out. The definition of ‘income’ for qualification for the age pension already includes income salary sacrificed into superannuation. Accordingly, the changes introduced in this bill align the salary sacrifice definition of income for the Commonwealth seniors health card with the existing definition for age pensioners. The changes will ensure fairness and equality in determining eligibility for the Commonwealth seniors health card.

It is anticipated, as Senator Nick Xenophon suggested, that the number of cardholders expected to lose access to their card will actually be reduced, due to the global financial crisis. However, for Senator Xenophon’s benefit, if a retiree’s income has dropped due to the global financial crisis to below existing income levels that already exist then they will not be affected by these changes.

However, as indicated privately to both Senator Xenophon and to the Greens, to date the government does not have a final revision of these figures because full-year impacts of the global financial crisis on relevant superannuation incomes are yet to be made public. Therefore, there has been no formal change made to the published estimates. However, work on providing up-to-date figures is progressing.

Some seniors groups have been worried that these changes will mean lump sum withdrawals from superannuation will be counted as income. They are concerned that this could lead to unfair and unintended consequences. The government acknowledges that and understands that, in certain circumstances, cardholders may need to make lump sum withdrawals from their superannuation to pay for unexpected costs, such as medical expenses or modifications to their home to ensure that they can stay in the home.

These lump sum withdrawals may have the effect of increasing an individual’s adjusted taxable income for the test year. To safeguard against people losing eligibility for their card they can request that their qualifications for the seniors health card be determined with reference to an estimate of their income for the current financial year. This may result in discounting the lump sum where it is shown to be one-off, not ongoing, income. These safeguards exist in current legislation. The changes contained in this bill apply to both veterans’ entitlements and social security based senior health cards.

Question put:

That the bill be now read a second time.

The Senate divided. [11.19 am]

(The President—Senator the Hon. JJ Hogg)

Ayes

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<thead>
<tr>
<th>Senator</th>
<th>31</th>
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<tr>
<td>Arbib, M.V.</td>
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<td>Bishop, T.M.</td>
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<td>Brown, C.L.</td>
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<td>Collins, J.</td>
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<td>Evans, C.V.</td>
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Noes

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<tr>
<td>Bilyk, C.L.</td>
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<td>Brown, B.J.</td>
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<td>Cameron, D.N.</td>
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<td>Crossin, P.M.</td>
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<td>Farrell, D.E.</td>
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Majority

| Majority        | 2  |

AYES
Thursday, 19 March 2009 SENATE 2255

Feeney, D.  Fielding, S.
Furner, M.L.  Hansson-Young, S.C.
Hogg, J.J.  Hutchins, S.P.
Ludlam, S.  Ludwig, J.W.
Lundy, K.A.  Milne, C.
McLucas, J.E.  O’Brien, K.W.K. *
Moore, C.  Pratt, L.C.
Polley, H.  Stephens, U.
Siewert, R.  Wortley, D.
Sterle, G.  Xenophon, N.

NOES
Abbott, E.
Barnett, G.
Birmingham, S.
Brandis, G.H.
Cash, M.C.
Coonan, H.L.
Fierravanti-Wells, C.
Fisher, M.J.
Humphries, G.
Kroger, H.
McGauran, J.J.
Nash, F.
Ronaldson, M.
Scullion, N.G.
Williams, J.R. *

PAIRS
Carr, K.J.
Conroy, S.M.
Faulkner, J.P.
Forshaw, M.G.
Hurley, A.
McEwen, A.
Sherry, N.J.
Wong, P.

Cormann, M.H.P.
Boswell, R.L.D.
Payne, M.A.
Trood, R.B.
Ferguson, A.B.
Joyce, B.
Macdonald, I.

* denotes teller

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator SIEWERT (Western Australia) (11.23 am)—by leave—I move Greens amendments (1) and (2) on sheet 5758:

That the House of Representatives be requested to make the following amendments:

(1) Schedule 1, page 4 (after line 16), after item 2, insert:

**2A Point 1071-12 (table)**

Repeal the table, substitute:

**Seniors Health Card Taxable Income Limit Table**

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
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<tbody>
<tr>
<td>Item</td>
<td>Person’s family situation</td>
<td>Amount per year</td>
<td>Additional dependent child Amount per year</td>
</tr>
<tr>
<td>1</td>
<td>Not member of couple</td>
<td>$60,000</td>
<td>$639.60</td>
</tr>
<tr>
<td>2</td>
<td>Partnered</td>
<td>$42,500</td>
<td>$639.60</td>
</tr>
<tr>
<td>3</td>
<td>Member of illness separated couple</td>
<td>$60,000</td>
<td>$639.60</td>
</tr>
<tr>
<td>4</td>
<td>Member of respite care couple</td>
<td>$60,000</td>
<td>$639.60</td>
</tr>
<tr>
<td>5</td>
<td>Partnered (partner in gaol)</td>
<td>$60,000</td>
<td>$639.60</td>
</tr>
</tbody>
</table>

(2) Schedule 1, page 5 (after line 7) after item 5, insert:

**5A Point 118ZZA-11 (table)**

Repeal the table, substitute:

**Seniors Health Card Taxable Income Limit Table**

<table>
<thead>
<tr>
<th>Column 1</th>
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<td>4</td>
<td>Member of respite care couple</td>
<td>$60,000</td>
<td>$639.60</td>
</tr>
</tbody>
</table>

Statement pursuant to the order of the Senate of 26 June 2000—

These amendments increase the taxable income limits under the Social Security Act 1991 and the Veterans’ Entitlements Act 1986 used to determine qualification for the seniors health card and will
have the effect of increasing the number of people who will be eligible for the card.

As the card entitles the holder to discounts on prescription medicines through the Pharmaceutical Benefits Scheme; bulk-billing with participating doctors; reduced out-of-hospital expenses above the threshold through the Medicare Safety Net; and certain cash payments through the income support system, this will result in increased expenditure under standing appropriations in the National Health Act 1953, the Social Security (Administration) Act 1999 and the Veterans’ Entitlements Act 1986.

The amendments are therefore presented as requests.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000—

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.

On the basis that these amendments would result in increased expenditure under the standing appropriations in the National Health Act 1953, the Social Security (Administration) Act 1999 and the Veterans’ Entitlements Act 1986, it is in accordance with the precedents of the Senate that these amendments be moved as requests.

These are the amendments I flagged in my speech in the second reading debate to move the threshold for eligibility from $50,000 to $60,000 for singles and from $80,000 to $85,000 for couples. We believe that these are fairer thresholds that accompany the closing of the loopholes, which the government is seeking to do in this legislation. These thresholds have not been raised for a significant time period of time, so we believe that it is appropriate that the thresholds increase. As I said in my speech, we are particularly concerned about the threshold for single people because older single Australians have been identified as a particularly vulnerable group. In particular, we believe women in that group are particularly vulnerable, so we think a $60,000 threshold is more appropriate and, in fact, aligns with average weekly earnings. We also believe that to be the appropriate level to put the threshold at.

I would also like to take this opportunity to remind the chamber that in a bill that we debated last night, the Fair Work Bill, everybody except the Greens agreed to a high-income threshold of $100,000, for which workers on $100,000, because they are on a high income, are exempt from award conditions. So in that bill we class $100,000 as a high income, beyond which workers are not then subject to the same protections of our industrial relations system, yet in this bill, when we are talking about these issues, $100,000 or $80,000 is not regarded as a high income. Contrary to what Senator Nash said—with all due respect to Senator Nash because I know she cares very deeply about older Australians, as do the Greens—we have been advocating an increase in the age pension for many years. The coalition, when they were in government, did not raise the age pension income. It makes me question their new-found sincerity and interest in looking after senior Australians when, for 11 years, they did not address this very serious issue around the cost of living for older Australians and those living on pensions.

However, it is not older Australians who are living on pensions that we are talking about right now; it is those who are not on pensions that do need the extra assistance. The reason the Keating government—and I am not defending the Keating government—introduced this threshold in the first place was to help those people who did not make the eligibility criteria for the age pension but needed extra assistance. The threshold has been set at $80,000 for couples, and we think
it should be $85,000. But you are talking about people who are on a relatively high income. As I said, in the bill that we discussed last night, this place said $100,000 was a high income. So you are talking about people on a high income. We are talking about people on or around that income who may be eligible for the seniors card. All this bill is saying is, ‘We count all your income in the threshold of $80,000,’ or, if you go with our amendment, $85,000. So we are ending this disparity between the income that is counted and the income that is not counted.

The evidence shows that there are people who are likely to be on $100,000 but who, because of the process they have used in the past to salary sacrifice, if they have taken advantage of the Howard government’s superannuation changes in 2007, are still able to access the benefits of this card. The Greens have concerns. We think we need to be investing our scarce resources into helping those most in need. That includes helping people on the age pension by increasing the age pension. We have been begging governments, both the previous government and this new government—it is not so new any more—to raise the age pension. That is where we want to be investing because it is those people who are most in need.

I will very briefly touch on the people who are on Newstart at the moment. Unfortunately, increasing numbers of Australians are being forced into unemployment. A partnered family is trying to survive on $21,268 a year. The Greens have put the threshold at $85,000—four times what people on Newstart get. Would we not be better investing our efforts in helping those people? The next bill we will be talking about is a tax amendment bill, and that has a schedule in it that changes fringe benefits tax, which will impact on some of our lowest income and hardworking Australians. I will be absolutely fascinated to hear what the coalition have to say about that bill. Here they are, standing up for older Australians, which is fair enough, but I want to know if they are going to stand up for low-income Australians, because that is exactly what I expect them to be doing in the next bill.

We are talking about people who are on the threshold. The threshold is four times what somebody on Newstart gets a year. If we look at it in that context, where is the fairness? We think the threshold should be increased to $85,000. What we, the Greens, are talking about is, firstly, making sure that everyone is on the same level playing field. Then we are talking about increasing the thresholds for that level playing field to $85,000 and to $60,000. We think that is pretty fair, when you consider the overall circumstances that all Australians are facing. Bear in mind that, if self-funded retirees’ incomes go down—not through any fault of their own, because they have made very careful investments, but because the effects of the global financial crisis on the stock market have meant that their superannuation and the other investments they are relying on have tanked—they will fall below the threshold and be eligible for that support. Bear in mind also that they are still above the aged-care pension threshold. If they fall below the threshold level for the aged-care pension, they will get the aged-care pension and the seniors card. But if they are still lucky enough to be on $85,000 or over—and you are talking of up to and over $100,000—that, in anybody’s book, is a significant amount of money today, particularly when the predictions are that we may see unemployment at over seven per cent. And what will that mean for our economy? What will that mean for those people’s families? Those people are going to be forced into unemployment, again through no fault of their own.
We Greens believe that we need to be looking at where we invest the money. Ideally—if we could get away with hypothecating this—we would say to government: ‘Hypothecate this to help unemployed people.’ We want the government to increase Newstart allowance. Newstart payments are even lower than the age pension because they have not gone up at the same rate as the age pension has.

We need to make some fundamental changes in the way that we look after our most vulnerable in Australia. We do need to be looking after older Australians, we absolutely agree. But we think we need to be investing this money, our scarce resources, into helping those Australians who are genuinely in need, including older Australians who are genuinely in need, and that includes increasing the age pension. We have been on the record constantly as saying to government: ‘Raise the age pension; raise the age pension.’

With all due respect to the coalition, when they talk about supporting older Australians I think there is a group of older Australians on whom we should focus strongly. Everybody needs our strong support—and they need our particular focus at the moment because they are going to be suffering even more in these economic circumstances.

So we think there should be a balance. Through this amendment we can make sure that everyone is on a level playing field, but we should also make sure that we raise that threshold. That would be a fair outcome for this debate. In particular, raising the single threshold to $60,000 would deal with the issues that single older Australians face. They have been identified as suffering the most in terms of their ability to enjoy a decent quality of life. That is what the committee inquiry into the cost of living for older Australians reported: all older Australians should have access to the resources to facilitate a decent quality of life. And that is what we are talking about.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (11.34 am)—I thank Senator Siewert for her comments. Of course she is absolutely right: the current system just perpetuates the inequities that were put in place by the actions of the Howard government in 1999. But her comments also really highlight the anomalies and the challenges in the intersection between the taxation and the social security systems. The government is very mindful of all of this in its treatment of the Commonwealth seniors health card issues and also much more broadly in terms of the support that it is continuing to provide for senior Australians.

If this were the only thing that the government was doing for pensioners and senior Australians then the argument perhaps would be quite clear. But I do think it is important to put on the record, in response to Senator Xenophon’s questions and to some of the issues raised by Senator Siewert, that the situation of the global financial crisis has really changed quite significantly the dynamics and the environment in which we are even thinking about this bill. The evidence is very clear, the information is very much on the public record, that self-funded retirees are in general seeing significant falls in their investment income and now many of them, as Senator Siewert said, will be eligible for a part pension. Current statistics about what has happened even since October show that the impact of the global financial crisis on senior Australians means there has already been a substantial increase in age pension claim rates from around 3,500 a week prior to mid-October to around 5,500 a week into December 2008. And 4,600 age pension claims were lodged in the week ending 16 January 2009. You can see that there is al-
ready an increase in the number of people who are becoming eligible for age pension payments.

The other point I want to make is that the government is absolutely committed to comprehensive reform of the pension system. We all know that the Harmer review has been incredibly detailed in its considerations, and some of the comments that were thrown around by the opposition in the second reading debate were really about the kinds of issues that were tested during the Harmer review, including proposals put up by various organisations and interest groups, and that is a fair and legitimate process. But to imply that that is the intention of the government I think is unnecessary and provocative scaremongering for senior Australians. The Harmer review actually handed down its report on 27 February, less than a month ago. It is a comprehensive review and goes to a massive reform agenda of Australia’s pension system. The government has committed to consider the report—and has restated that commitment—and will respond in the 2009-10 budget. So it is very important that we think about the amendments that are being proposed today by the Greens in the context that the budget comes down in May, and this Greens amendment is a short-term measure that could completely undermine some of the comprehensive reform that will be put in place in the budget in May, in a couple of months.

One of the issues that Senator Xenophon raised was the issue of indexation. The Commonwealth seniors health card was introduced by Labor in 1994 to support seniors of reasonable means who could not access the age pension. That was its original intent and purpose. But the indexation of the income limits was ceased by the Howard government in 1999 and last increased in a pretty ad hoc way in 2001, and they have stayed at the 2001 level ever since. It is a pretty clumsy process that the Howard government put in place. It has really deepened inequities in the system since that time. So we realise that we need to give fair consideration and, as Senator Siewert said, to focus our energy and our resources on those older Australians who are most in need of our support. We all know that there are going to be extraordinary pressures on public funds and public support for those who are caught up in the consequences of the global financial crisis. The issue is really one that cannot be dealt with in such a piecemeal way.

The income limits in the legislation are the current limits that have been set to determine the appropriate limit for access to government support. While the previous government changed the indexation arrangements, we are very aware that seniors have argued against that decision to stop indexation. But, as I say, the Harmer review is a comprehensive investigation into the Australian pension system. One of the review’s terms of reference is to consider the:

… structure and payment of concessions or other entitlements that would improve the financial circumstances and security of seniors, carers and people with disability.

So any reform to the pension system will obviously impact on the Commonwealth seniors health card, and a key consideration in addressing the term of reference will be the appropriateness of the income thresholds. As the pension review is being considered in the budget context, at this stage I must indicate that the government is unable to support the amendments moved by the Greens in this form and at this time, because the government will deliver that pension reform in the budget.

Senator SIEWERT (Western Australia) (11.41 am)—I have a question regarding people going onto the pension. Do you have any figures on how many people are going
onto the pension as they become eligible through age or become eligible as they fall under the threshold because their income has dropped in response to the decreasing value of their superannuation funds et cetera? Is there a way of identifying figures that reflect the numbers of people moving onto the pension via the age eligibility requirement and the assets eligibility requirement?

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (11.42 am)—At this stage there is no way of disaggregating those two groups. But there are some indications of a trend of increasing numbers registering for the age pension. We also need to think about this increase in applications in the context of other activity that is going on—for example, the government has lowered the deeming rate three times since November. That may have also influenced some of the income streams.

Centrelink is encouraging revaluation of all shares and managed investments held by pensioners. Centrelink is actually doing that today—today is the date that that revaluation of all shares and managed investments will take place. That is a regular revaluation to ensure that the most recent available value of a pensioner’s shares and managed investments is used to determine the rate of pension. The government undertook a special revaluation in November last year following the dramatic falls on share markets. So those currently in the system may be eligible for additional support. That is also part of the mix of what we are considering at the moment.

Senator SIEWERT (Western Australia) (11.44 am)—I am trying to understand why we cannot get the most up-to-date figures—and maybe it is because I do not understand the details of data collection enough. You have the figures from June 2008. That is nine months ago and it is also prior to the global financial crisis really biting. So it is very hard to judge this legislation, because we know that the figures we are using—of around 22,000 affected—are wrong. We know that that is way too high, but we actually do not know how many people are now going to be affected. That relates to our next amendment, which provides that, for some people, eligibility for the seniors card could potentially be grandfathered.

My concern is why we cannot get the most up-to-date figures. As you have just pointed out, Centrelink are actively working with older Australians—which I think is great—to make sure that they are getting access to benefits if they meet the thresholds. I wonder: don’t you keep records of that? Don’t you keep records of when people are coming onto the pension and how they are meeting the criteria? Is it just because the data is not processed till the end of the year—which I also find a bit difficult to understand?

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (11.45 am)—It seems like a simple question but in fact it is quite complicated, because there are so many factors taken into account for those people who may be deemed eligible. One of the important issues that we have, a real challenge, is about the full-year impacts on superannuation incomes, which are still yet to be known. It is difficult to disaggregate just on the simple dimension of those who are self-funded retirees who are now becoming eligible, because there are so many other considerations that come into play in those numbers. It is difficult to disaggregate on such a simple scale.
Senator SCULLION (Northern Territory) (11.46 am)—We will not be supporting what I will refer to as the first amendment, but I acknowledge what you are trying to achieve. The principle under which we do not support the first amendment is that, if we are tinkering with this at all, the coalition believe that we should be doing this in the context of having all the information. I acknowledge that the minister says, ‘You have only had it a month and it is difficult,’ but that is why we find it a bit difficult to understand why we are bringing this legislation on at this time rather than at a time—perhaps when we come back—when we have all had time to consider it and after the government has considered the Harmer report. I think we would all be in a much better position.

We know that the Harmer report is going to cover that entire ambit, whether you are a pensioner or self-funded retiree. There will be a number of adjustments made. Clearly the Harmer report was a legitimate attempt to ensure that, if any adjustments are made, we know exactly what is going to happen at the end of the day rather than try to make the adjustments piecemeal. As I have indicated before, we disagree with the government rolling back the support for seniors, and I will not go into that again.

To Senator Siewert I would like to amplify one of the reasons that in 2001 we changed the eligibility and the numbers increased. I appreciate that you are not being mischievous about the comparisons with the youth allowance and other demographics. This is a health card. By the time you get to a certain age—and no-one is questioning the age—the costs of life become much greater, and often at a geometric rate. As you become sicker today, it is going to cost you an awful lot more. It is very, very expensive to be older. That is what this is about. I acknowledge that we can say, ‘Perhaps it does seem like a lot of money.’ To one of those couples on $42½ thousand a year, it might seem like a lot of money, but I am not sure we can reasonably index this against paying for good health.

The consequences of being in or out of the Commonwealth seniors health card—because we are saying, quite legitimately, that we are going to move this a little bit to get a saving—are dramatic. I think you will acknowledge it is a bit of a cliff fall without talking about 600 per cent. Access to prescriptions at a reasonable rate so that people can afford to pay for their own health care is one of the fundamentals of this, and for those people who need a wide range of prescriptions it is a dramatic change. I do not think anyone is in doubt of that. We are only not happy to discuss and support the first amendment on the basis that I have just outlined. I think the Greens would also acknowledge that the government has said, quite rightly, that the Harmer review has only been out a short while. That makes me wonder why, when we have had a review, you would be bringing legislation on now rather than waiting for an appropriate time when we would all be able to have a very ordered look at a comprehensive investment by government.

Instead what we know today is that we are spending $19.3 million in a process that is going to give us a net saving of $84.4 million. I have to say that that smacks very much of Treasury rather than of someone who is looking comprehensively at this. This is all about savings. If we are going to make those savings—if the government have decided to make savings across the board and if they have decided that they are going to make savings across the board in regard to senior Australians—then surely it would be far better to do that in an environment where we have all of the information at hand so we can make an informed decision about our most senior Australians. There is just no motive in my mind for bringing this on now.
I will just touch on the second amendment—the so-called grandfathering. I think we should be in this place to make any legislation better. If we are all about saving the 22,000 people who may be affected by this by accepting the Greens grandfathering clause then of course it will be better. At this stage I do not want to throw that out completely. But I would say to the Greens, if you are interested in this grandfathering clause, the best way to deal with this legislation is to simply join the coalition in voting it down. We would much prefer to have a look at this legislation in the light of the Harmer review. I think the thrust of what you are doing with the grandfathering clause is very useful because it recognises the angst and the pain of the 22,000 people who will be falling off the cliff shortly if this legislation is passed. I acknowledge that.

But I would appeal to the Greens to join with the coalition to provide an opportunity to scrutinise this legislation when we have the very best possible information available—information that has already been paid for by taxpayers and information that is supposed to be out there to inform this place and the other place and to inform Australians. I think that if the Greens join us in that context then we can have a bipartisan, rational and transparent approach to how we deal with the future arrangements in terms of the health care of our senior Australians. I would think that is a far better idea than voting in a grandfathering clause that will save some. We still do not have an extract understanding of how that will have an impact on them because there are other things coming down the line.

Obviously in the Harmer review there are going to be some changes to how we allocate pensions and how we deal with our seniors, and I think that people need to know what the final position on this is. We are unable to do that today and I appeal to the Greens to support the coalition in simply voting down the legislation. As I said, whilst I acknowledge the thrust of the grandfathering amendment I think it would be far better and far more responsible, both fiscally and in a humanity sense, to wait until we have all of the information from the Harmer review.

**Senator SIEWERT** (Western Australia) (11.52 am)—We know very well that we are not talking about 22,000 people at this stage. I am frustrated that we cannot get access to better data, but we are not talking about 22,000 people at this stage. I would like to ask both Senator Scullion and Senator Stephens a question. One question is to the coalition, and this is on an issue—and it sort of relates to our grandfathering clause too—that the Greens have some trouble with. Let us take the example of two couples on the same income. One couple, because they do not have access to the superannuation process the Howard government introduced in 2007, do not have access to the loophole—let us describe it like that. The other couple, who are on the same income, do have access to the superannuation process and the taxation process—and I will not bore the chamber by going into the technical details—and basically, because they can access the loophole, they can access a seniors card. The problem for us is: how is that fair? We acknowledge that it is difficult to take something away from somebody and that is why, upon reflection, we have proposed the grandfathering clause—because we do not think it is fair to take something away from somebody.

We know there are fewer than 22,000 people because we know that there has been a massive impact on superannuation funds. So we think that is fair. We have fixed the loophole but we will also look after that group of people—though they still get an advantage over fellow retirees on the same income. We have looked after them and we
have not taken anything away from them, but we have fixed it for the future. We think that is fair.

Senator Stephens, I would like to know why you think it is fair that, because of a loophole, a group of people can be earning the same amount of money as another but one group cannot access the seniors card. Could you confirm that my understanding is correct that the people that would no longer be able to access the card would still get the PBS and Medicare safety net?

I get the issue around the increased cost of health care—I really do. Bear in mind also that those couples generally no longer have to pay a mortgage or pay the exorbitant cost of raising children—unless those children are the generation X, Z or whatever that are still staying at home. They have increased health costs but their other costs are reduced. But there will still be a safety net, as I understand it, under those medical expenses. We are talking about, for PBS, a baseline and also, for Medicare, a safety net, aren’t we? It is not as if the healthcare costs for these people are going to absolutely skyrocket, because they will still have access to that safety net. Could you please confirm that I am correct?

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (11.56 am)—Senator Siewert, you are absolutely right. What this legislation is about is closing a loophole. It is not about budget savings—in fact, we know we are going to be investing much more in a fairer and more equitable system supporting our older Australians.

Changes proposed by the bill to access to pharmaceutical support are an important issue. We certainly understand that many people are worried that, if they lose access to those concessional pharmaceuticals, they will not be able to afford their medicines. I want to make it absolutely clear and plain in answering your question that there are safeguards in place to support them if they get sick.

To remind everybody thinking about this legislation—as you say so rightly, Senator Siewert—this is only for people whose income is more than $50,000 a year or, for couples, $80,000 a year, which is a substantial amount of money, as you say, for older Australians. Below these amounts they will still have access to the pharmaceutical concessions and above those amounts a safety net remains in place to ensure that those who need lots of medicines are protected from the high costs. The Pharmaceutical Benefits Scheme safety net allows a senior without a concession card to have their contribution decreased from the standard rate of $32.90 a script to the concession rate of $5.30 once their expenditure gets to $1,264.90 in a calendar year. You can see, of course, that people who would be using many scripts would get to that threshold very quickly. Once a senior reaches the safety net threshold, an application can be made for the PBS safety net card. They will be eligible for that if they reach the threshold in a calendar year. That card gives automatic access to the concession rate of pharmaceuticals.

Senator SCULLION (Northern Territory) (11.58 am)—I was listening very carefully to Senator Siewert when she said that perhaps the number I had was not correct. I know that the government will have the number at hand. Senator Stephens, can you tell us again exactly how many people will be affected by this access arrangement?

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (11.59 am)—Senator Scullion, we had a long conversation about this. You might not have been in the chamber. At
the time of the original explanatory memo-
randum it was estimated that about 22,000
seniors would be affected. We now know,
given the impact of the global financial cri-
sis, that it is probably going to be signifi-
cantly fewer than that. We know that because
of the trend of increases in age pension claim
rates. What I outlined was the rough figures
that we have available already.

So there has been a substantial increase
since October, from 3,500 pension claims in
mid-October to around 5,500 occurring per
week into December 2008, and 4,600 age
pension claims were lodged in the week end-
ing 16 January 2009. The challenge for the
government is that we cannot clarify the spe-
cific numbers because the finalised impacts
of superannuation payments will not happen
until the end of the financial year. So we are
very clearly focused on closing this loophole
as soon as we can, because it is about fair-
ness and consistency, and they are important
principles for us in ensuring that the social
security system supports all Australians.

Senator SCULLION (Northern Territory)
(12.00 pm)—Minister, just to clarify, that
approximate figure of 22,000 people with
Commonwealth seniors health cards will
significantly reduce as a consequence of the
Rudd recession. Just to be clear: as we, some
stage in the future, climb out of the Rudd
recession—because of incomes coming in—
what those people who currently have a
Commonwealth seniors health card can look
forward to is in fact eventually losing their
Commonwealth seniors health card. Is that
right?

Senator STEPHENS (New South
Wales—Parliamentary Secretary for Social
Inclusion and Parliamentary Secretary for the
Voluntary Sector) (12.01 pm)—Senator Scullion,
that is a very cheeky assumption on
your part. You know the Harmer review is a
comprehensive review of the pension sys-
tem, and to make an assumption like that is
both unfair and a bit disingenuous. The issue
for us is having a fair social security system
and one that supports older Australians who
need financial assistance. So we will wait
with bated breath—as you will—for the
Harmer review and its recommendations.

Senator SCULLION (Northern Territory)
(12.02 pm)—I thank the minister for that,
and I acknowledge that perhaps I was a bit
cheeky in thinking that those pensioners
would expect Australia to recover from the
Rudd recession any time soon.

I know we are waiting for this Harmer re-
view to come out, but I just want to put on
the record that the coalition would be de-
lighted to have a look at some legislation that
affects this particular demographic, in the
light of other changes that are afoot at the
moment. To us there does not appear to be
any reason to look at this piece of legislation
right now, with only a portion of the informa-
tion that we should have available. We
know that the Australian people have made a
considerable investment in the Harmer re-
view. We do not see any reasonable motive at
all for us to look at this legislation in the ab-
sence of the most recent information. That is
the fundamental reason, part of a multitude
of reasons, why we are not supporting the
first Greens amendment. At this stage the
number of seniors concession card holders is
apparently decreasing from 22,000 because
of the Rudd recession—

Senator Jacinta Collins—Global.

Senator SCULLION—Well, Senator
Collins, everything seems to be global with
Labor. It is the blame game—‘It’s all global,
nothing to do with this Prime Minister—he is
not responsible for the most horrid recession
that this country has seen in many, many
years.’ So I welcome your interjection, Sena-
tor. But, again, we would all hope that some-
one starts taking responsibility. Many Aus-

CHAMBER
ustralians see this place as leaderless; I acknowledge that.

I can assure you the focus at the moment is on those more vulnerable Australians, whom those on this side—and, I suspect, on the crossbench, including the Greens—believe are sufficiently important to be provided with all the information so we ensure that their future is secure and safe, primarily because we have all the information at hand. I think that is quite a reasonable position to take. So, unfortunately, it appears that we will not be able to support the first Greens amendment. We certainly will not be supporting the legislation without having a look at the report of the Harmer review.

Question put:
That the request (Senator Siewert’s) be agreed to.

The committee divided.  [12.09 pm]
(The Temporary Chairman—Senator PM Crossin)

Ayes………… 7
Noes………… 35
Majority…… 28

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

NOES
Abetz, E.  Back, C.J.
Barnett, G.  Bilyk, C.L.
Birmingham, S.  Bishop, T.M.
Boyce, S.  Brown, C.L.
Cameron, D.N.  Collins, J.
Crossin, P.M.  Evans, C.V.
Farrell, D.E.  Feeney, D.
Fierravanti-Wells, C.  Fifield, M.P.
Fisher, M.J.  Furner, M.L.
Hutchins, S.P.  Kroger, H.
Ludwig, J.W.  Lundy, K.A.
Marshall, G.  McLucas, J.E.
Moore, C.  Nash, F.

O’Brien, K.W.K.  Polley, H.
Parry, S. *  Pratt, L.C.
Ryan, S.M.  Scullion, N.G.
Stephens, U.  Sterle, G.
Wortley, D.

* denotes teller

Question negatived.

Senator SIEWERT (Western Australia)  (12.12 pm)—I move Greens amendment (1) on sheet 5772, which has been circulated in the chamber:

(1) Page 10 (after line 14), at the end of the bill, add:

PART 4—APPLICATION
21 Application

The amendments made by this Schedule do not apply in relation to an individual who had or was qualified to have a seniors health card under the Social Security Act 1991 or the Veterans’ Entitlements Act 1986 as in force immediately before the commencement of this Schedule.

This relates to grandfathering. As I said in my earlier remarks on the previous amendments that the Greens moved, there are a group of people that already received the seniors card despite the fact that they are over the threshold. In effect, their salary is not being counted within their income in respect of the threshold. We do think it is unfair to take a benefit away from people when they already have it. Losing that benefit is what I think people are very worried about. We suggest that would make the system unfair. A group of such people have received the card and gained a benefit from it—because the card is a benefit—and they are now used to that benefit. This legislation, without this grandfathering clause, would take that away. We think that would be unfair to those people, and it has created a lot of fear for those people. It is unfair due to both the fear it has caused and the loss of the benefit itself. The system as it currently
stands is unfair because, as I have said, couple A and couple B may both be on the same income but one couple gets the card and the other couple does not. That is unfair as well.

There is no way that the changes being introduced in the legislation will lead to a system whereby everybody wins. The Greens actually do agree with closing this loophole, so if you meet the threshold you get the card. However, as I have said, there is this group of people. Senator Stephens, Senator Scullion and I—the three Ss—have been talking about this issue. We have acknowledged that we do not know the exact number, though we know it will be significantly less than 22,000. We think a fair outcome of this is to close the loophole but look after those people that are getting the card. We realise that we will be entrenching that unfairness through the changes that are to come—though that is happening while the system is being made fairer overall—because it is also unfair that those people who are currently getting that benefit would be ticked off from getting that benefit and would no longer have access to it. So we believe that the fairest approach is to close the loophole and get that sorted out but also look after the people currently getting the card. We do that knowing full well that the number of 22,000 that is being used is now grossly exaggerated. Sorry, but 'exaggerated' is not the right word because 'exaggerated' implies an intent, and I do not believe that is the government's intent. So let us say it is now artificially high because the global financial crisis has kicked in very significantly and has very strongly impacted these people's earning capacity.

Can I state once again: it will not cut people off. If they are under, they will not suddenly drop off. If their income has been affected and they are down below $80,000, they will still get the seniors card. So to imply that, because people have been affected by the global financial crisis, they are getting a double whammy is in fact not true, because as soon as they go below that threshold they will in fact be able to claim the seniors card. We are trying to come up with a way of ensuring the government's policy intentions are met to develop a fairer system so that everyone is on a level playing field. We would get rid of loopholes but look after those people who will be adversely affected now. We realise we are entrenching some unfairness. Grandfathering, by its very nature, does that. When the coalition government brought in the Welfare to Work provisions, they grandfathered a whole group of people who were already on the system. Then there were two different systems running at the same time, because they realised it was unfair for people who were already on the system to make them subject to those new provisions. Do not let anybody think that, therefore, I support Welfare to Work—I do not and never have—but I just want to acknowledge that the coalition did see that it was unfair and, when they brought in the changes to Welfare to Work, they did grandfather a whole group of people.

Grandfathering has been used on numerous occasions. So there is nothing unusual in making sure we protect a group of people who are used to accessing or are already accessing some benefits. We believe this is a fair approach that deals with the concerns of the people who fear they are going to lose benefits, but it does mean that people in the future will not have access to that loophole. We urge the chamber to support this amendment, because we believe it is a fair way forward.

**Senator SCULLION** (Northern Territory) (12.17 pm)—I have already made some comments on the grandfathering amendment. Senator Siewert said, 'It is so important that we get it right.' I acknowledge that the Greens are making an attempt to ensure that there is not this notion of unfairness, of those
who have and those who have not. I am not so sure a grandfathering clause should not be included in the final arrangements; I just do not think the final arrangements should be made today. We have had amendments circulated by Senator Xenophon. Have a look at the amendments, have a look at the interest in this and have a look at how many people are concerned about this. As Senator Siewert said, we want to make sure people are not afraid of us, and that is why I would again appeal to the Greens to simply vote this legislation down. Bring it back in seven weeks, when we have considered the Harmer report, and we can consider it then with all of the information behind us.

I have said before that we disagree with some of the fundamentals of the impact. I acknowledge that the grandfathering clause will allow the people who are currently in the scheme, who stand to lose that entitlement, to keep the entitlement, which will make them happy, but there are people who are about to join the scheme and have some expectation of that entitlement, and I guess that will make them unhappy. I acknowledge it is very hard to keep everybody happy. We owe people to consider this matter in light of the very best information available. There is no reason whatsoever that the government cannot simply withdraw this legislation and reintroduce it when we have had a full examination of the Harmer report, which is going to have another impact on self-funded retirees. It is for those reasons that we will not be supporting the grandfathering clause. I am quite sincere. We will sit down, in a bipartisan fashion, and examine this very carefully, but we can only do so with the backdrop of the information that this country has already invested in, which is the Harmer report.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.20 pm)—I have got a lot of sympathy with what Senator Scullion has said, but we are here to make decisions and there is always another report and always another process. The government has made a priority of this legislation. I do not know what the government’s position is on the amendment that Senator Siewert has just moved, which would mean that people who would be disadvantaged—because they would lose their card under this legislation—would no longer lose their card. It would mean that newcomers who are reasonably well off would not have access to the card. That is the ultimate point for the government. We have all heard how, with the worsening financial situation, the number of people who have a card and who are better off has fallen from 22,000 to some unknown figure, but very much smaller than that, in just the last few months.

The Greens will support the legislation if the amendment fails. We are moving the amendment so as to put to the opposition a position which would protect the folk that we and they are concerned about—the people who would otherwise lose their cards. For us, this is effectively a win-win proposal that is being put to the chamber and I ask the opposition to think about that again. This is part of the Senate process and we are moving closer to a decision. Some very positive amendments are being brought forward to try to meet the major concerns of people who might otherwise oppose the bill, and they of course are those in the opposition and the crossbench Independents. The government may not like it but it is a serious amendment. If it is put into the bill, it will at least relieve those folk who feel, with the passage of the bill, they are going to lose their card and cannot afford to do that in the current economic circumstances.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (12.22 pm)—I thank Sena-
Senator Brown for those comments. Senator Siewert actually nails the issue. We are stuck between a rock and a hard place here. This bill is about amending an anomaly that was put in place in the changes in September 2007. The people, who we now know will be far fewer than 22,000, are those who have come into the system since September 2007. So it is not a hugely entrenched group of people, if I can say that in the most sympathetic of terms. One of the things the grandfathering clause would do is to create a fair, fairer and fairest system, which is hugely problematic for us simply because we are here to close a loophole which creates inconsistent treatment across the social security legislation. This could have the unintended consequence of trapping people into this grandfathering situation and create another group of people who would be treated differently as further changes were made. On that basis, we are not able to support the grandfathering amendment of the Greens, but we thank them for trying to work out a resolution to what is a sticky situation.

Senator XENOPHON (South Australia) (12.24 pm)—Can I just make my position clear with respect to the grandfathering clause. I commend Senator Brown for moving that clause—

Senator Bob Brown—Senator Siewert.

Senator XENOPHON—Senator Siewert, sorry. I can tell the difference between the two. It has been a very long week.

Senator Siewert—He is taller than me.

Senator XENOPHON—That is right. I indicate that I support the grandfathering clause. There is a concern that people will be disadvantaged as a result of this and I think that the Greens amendment is a sensible one. I note the comments of both the government and the opposition, but my fundamental problem relates to the whole issue of the threshold. I supported the Greens amendment to raise the threshold from $50,000 to $60,000 for singles and from $80,000 to $85,000 for couples. That really was my minimum position to support this bill. Looking at CPI, an amendment has been circulated in my name with respect to CPI. But that really is redundant and I will not be moving it, because that was on the basis that Senator Siewert’s amendment would be successful.

My plea to the government is: go back to the drawing board. I am concerned about the prejudice this will cause to existing cardholders. But again I note Senator Siewert’s quite genuine and I think reasonable concerns based on public policy about where you have the cut-off and who should be eligible for this in terms of equity. Senator Siewert has made the point that there are many others in the community who do not get a benefit at all who are on other benefits. I thought that the Greens position was the sensible one in terms of the thresholds. In the absence of that being passed, it is impossible for me to support this legislation in its current form.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (12.26 pm)—I will briefly respond to Senator Xenophon. Thank you for advising that you will be withdrawing your amendments in relation to indexation. I think you had left the chamber when we had discussed in the committee stage about the indexation issues. I reiterate our concern about increasing the thresholds, although we have gone beyond that now. It is critical that we do not do this kind of work in isolation. The notion of increasing the thresholds has implications for the intersection between the
taxation and social security systems, and other decisions that are made in that space. So we are trying to get a consistent approach to thresholds, income levels and taxation treatments.

When the measure was originally introduced in 1994, it was indexed. It was the Howard government’s changes in 1999 that ceased the indexation and created an ad hoc system from that time, which is what is in place. The Harmer review is a systemic review and a comprehensive reform of the pension system and we will be looking to many of those issues. This measure before us today was about closing the loophole and acting to create a level playing field in the system. I am disappointed that you cannot support the bill as it stands, but I want you to know that we do not want to continue in the same vein as the previous government with ad hocery around what is such important legislation.

Senator XENOPHON (South Australia) (12.29 pm)—I appreciate the minister’s remarks. I am happy to sit down with the government on this, but there is that small issue of resources and physically, in terms of IR and the so-called alcopops bills, we have been working around the clock. We are doing the very best we can on all pieces of legislation but it has been physically impossible for us to have the sorts of discussions that would have been preferable in order to do that. In terms of the arguments and the proposition put by the Greens in relation to the thresholds, I would have been comfortable to as a minimum support the legislation on that basis with CPI indexing. Again, my door is open. We have got a few weeks so, whenever we get up, whenever we get through this legislative session—whether it is today, tomorrow or Sunday—I am happy to sit down and further discuss this with the government.

Question negatived. Progress reported.

Sitting suspended from 12.31 pm to 1.30 pm

CONDOLENCES

Death of an Australian Soldier

Senator CHRIS EVANS (Western Australia—Leader of the Government in the Senate) (1.30 pm)—by leave—It is with great sadness that I make a statement to the Senate concerning the death of an Australian soldier, unfortunately for the second time this week. I know all Australia was deeply saddened to learn that another Australian soldier was killed in Afghanistan yesterday afternoon Australian time. He was a specialist explosive ordnance disposal technician and was tragically killed while making safe an improvised explosive device. The soldier’s name has not been released at this time and his family have asked that we respect their privacy, given they have only recently heard of his death. It has been a terrible week for our nation and for the ADF, particularly the troops serving in Afghanistan. Obviously, it is a time of great worry for the families of the soldiers.

As I said, this is the second Australian soldier to be killed this week. Corporal Mathew Hopkins died earlier in the week. I think everyone would have been moved by the photos in the paper of such a young man with a young baby and wife. They really brought it home to all of us. I know that anyone’s death is tragic but the death of such a young serviceman was very upsetting for all and brought home the seriousness and tragedy of his death.

As a result of the incident yesterday, 10 Australian soldiers have now been killed in Afghanistan fighting Taliban insurgents. We are deeply indebted to those brave soldiers who have given their lives on behalf of all of
us. We believe they made that sacrifice not in vain; they have played an important role in maintaining the security of our nation and the world. I would like to reiterate to anyone listening today how seriously the government and, I am sure, all senators take their responsibilities in supporting the deployment of Australian troops overseas. We know what a risk those who serve on our behalf take and we have seen in recent times the terrible price they pay. I assure all Australians that all of us in the government and in the parliament more generally take decisions to support such deployments very seriously and only after great consideration, knowing that someone’s son, someone’s husband, will potentially pay a very high price. Unfortunately, 10 Australian soldiers have done so in Afghanistan.

It is essential for Australia’s security that we continue our fight to bring greater stability and security to Afghanistan. We should remember that many of the terrorists who have inflicted enormous suffering around the world over the past decade found sanctuary with and were trained under the Taliban. We must recall that, since 2000, over 100 Australians have been killed at their hands. Afghanistan remains a highly dangerous place. The government remains committed to fighting terrorism at its source. We cannot allow Afghanistan to yet again become a safe haven for international terrorists. So, however difficult the task, it is an important task, an imperative task, to ensure that Afghanistan is not allowed to become a safe haven for the export of international terrorism. The implications of this would extend not only to that region but also throughout our region, potentially even to our shores.

On behalf of the Australian government, I extend our deepest condolences to the family, friends and colleagues—the fellow serving soldiers—of the brave soldier who died yesterday. I know words cannot heal the terrible loss they must feel but it is important that the parliament and the government let them know how we grieve their loss and that the thoughts of a grateful nation are with them at what must be a terrible and difficult time.

Senator MINCHIN (South Australia) (1.35 pm)—I rise on behalf of the opposition to support the motion moved by Senator Evans on behalf of the government. We also extend our sincere condolences to the family of the Australian soldier killed in Afghanistan yesterday. I have no doubt that all Australians, whether they support our presence in Afghanistan or not, were completely shattered to hear overnight of the death of a second Australian soldier just this week. We were saddened to learn of the death of Corporal Mathew Hopkins in Afghanistan on Tuesday and another brave young Australian losing his life yesterday in the service of his country. As Senator Evans said, he was a highly skilled and courageous soldier trying to defuse an improvised explosive device to prevent it causing harm to his fellow Australians and to Afghans.

Again we are reminded of the incredible danger that our soldiers face in Afghanistan and at the same time of the bravery and courage of the young Australians who so proudly wear the uniform of the Australian Army. This brave soldier’s colleagues would obviously be devastated but I do trust that it is some comfort to them to know that the government and the opposition stand shoulder to shoulder in support of their mission. These two deaths this week weigh heavily on those of us who were part of the cabinet that first committed Australian troops to Afghanistan in the wake of the 9-11 atrocity. But we in the opposition do share with the new government a very firm commitment to this cause. As Senator Evans so rightly said, it does remain absolutely vital to prevent Afghanistan from once again becoming a haven.
for these mass murderers who seek to export their reign of terror around the world. So we on this side join with the government in honouring the bravery of this great young Australian soldier and we offer our sincere condolences to his family and friends.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.37 pm)—I rise on behalf of the Australian Greens to add our condolences to what will be another shattered family, mourning and trying to come to grips with the loss of this fine young soldier who has died trying to make a bomb which was so clearly unsafe for himself and his fellow soldiers and Defence Force personnel. It is added to the death of Corporal Mathew Hopkins, which we mourned earlier in the week and which we now mourn in the knowledge of who he is and his circumstances and of the terrible tragedy that has befallen his family, his associates and loved ones. War is always horrific and it affects much more than the people who are sent by a nation in its interests. I reiterate that, while the Greens believe our Defence Force personnel should be brought home to Australia, we are 100 per cent behind the Defence Force personnel who are in Afghanistan. They are in the service of the country at the request of our government and for our nation, and our hearts go out to the families who were so grievously affected this week.

Senator FIELDING (Victoria—Leader of the Family First Party) (1.38 pm)—On behalf of Family First I join in the condolence motion. The highest price to pay for the courageous Australians in our Defence Force is their lives. Our thoughts and prayers go to family and friends at this sad loss of life. We are just shattered by it—you think about it and you are really just shattered at losing a fellow Australian, someone who has put his life on the line to bring peace and stability for us who are in relative comfort here in Australia. We do owe a great debt to our Defence Force on the front line and their families. Our thoughts and prayers go to the family and friends.

Senator XENOPHON (South Australia) (1.40 pm)—It is with great sadness that I support this motion. I wish to associate myself with the remarks of both the government and the opposition. Coming after the death of Corporal Mathew Hopkins earlier this week it gives an added spectre to it that two Australian lives have been lost. And the fact that this young man was defusing a bomb to make it safer for others adds to the tragedy and the poignancy of the situation.

The PRESIDENT—I ask honourable senators to stand in silence in support of the comments made in the chamber on the passing of our ADF personnel, Corporal Mathew Hopkins and the yet to be named ADF personnel member. We extend our deepest sympathy to their families and also to their loved ones and their fellow serving ADF personnel.

Honourable senators having stood in their places—

The PRESIDENT—I thank honourable senators.

TAX LAWS AMENDMENT (2009 MEASURES No. 1) BILL 2009

Second Reading

Debate resumed.

Senator COONAN (New South Wales) (1.42 pm)—The bill before us is the Tax Laws Amendment (2009 Measures No. 1) Bill 2009. It contains three schedules. Schedule 1 to the bill amends the Taxation Administration Act 1953. This schedule will reduce the PAYG—pay as you go—instalment amounts for certain taxpayers by 20 per cent, starting from the December 2008 quarter. Schedule 2 to this bill contains consequential amendments to the recent changes made to temporary residents’ super-
annuation and schedule 3 to this bill includes amendments relating to income test changes that were announced almost a year ago in the 2008-09 budget. I am obviously speaking on behalf of the coalition. There are some complex matters in this bill, so I will address each of them in turn and then address some concerns.

I will deal with schedule 1 first. On 20 November 2008 the member for Moncrieff announced the coalition’s policy to provide PAYG relief for small businesses. PAYG relief directly assists small businesses experiencing cash flow problems. Small business is the backbone of our economy and provides jobs to 3.8 million Australians. Of course, we all want to focus very much on the capacity of the economy to produce jobs. Our proposal would protect jobs by directly helping small businesses to keep employing their employees. This proposal illustrated the coalition’s demonstrated understanding and commitment to helping all small businesses in Australia. We recognise that many small businesses are experiencing cash flow problems. Unlike the Labor government, who are asking small businesses to spend large amounts of money that they do not have or that they are having difficulty borrowing before they can be eligible for any assistance, we understand the issues affecting small business. We have learnt that lesson well.

Almost a month after our announcement the government announced on 12 September 2008 that it would reduce the quarterly PAYG instalments by 20 per cent for quarterly taxpayers. The reduction will apply to small business entities, individuals and multi-rate trustees, full-assessment taxpayers with $2 million or less in instalment income for the previous income year, and full self-assessment taxpayers with more than $2 million in instalment income for the previous income year who are eligible to pay an annual PAYG instalment but have chosen not to. I am glad that the government was able to take our advice and assist small business by reducing the PAYG instalment amounts, so obviously we support schedule 1 of this bill. It is a very sensible measure.

Schedule 2 of this bill contains consequential amendments to the recent changes made to the temporary residents unclaimed money regime. This schedule will make the rules governing unclaimed superannuation for Australian residents consistent with the rules governing unclaimed superannuation for temporary residents. This will reduce the compliance burden on superannuation funds from maintaining two separate regimes. We clearly support schedule 2 of this bill, which is reasonably straightforward and uncontroversial.

Schedule 3, however, is a bit more complicated. This schedule contains the changes to income tests for financial assistance programs that were announced in last year’s budget. There are two elements to income testing: the items included in assessing income and the income threshold for that test. This schedule makes amendments to the first of these by expanding the definition of terms used to determine income. This element of income testing goes to ensuring the integrity of government assistance programs and should accurately reflect a person’s income.

The previous coalition government demonstrated our commitment to maintaining the integrity of income tests by undertaking decade-long reforms to income tests, starting in the 1996-97 budget—way back then. The coalition’s reforms to income testing did receive broad support from a wide range of stakeholders. This schedule then has three key parts: firstly, changes to some key definitions used in income tests; secondly, changes to the reporting requirements for taxation purposes; and, thirdly, changes to
some of the actual income tests to give effect to the changes in part 1.

Part 1 introduces definitions for adjusted fringe benefits for reportable superannuation contributions, the total net investment loss, rebate income, income for Medicare levy surcharge purposes and reportable employer superannuation contributions. Part 1 of this schedule inserts a new definition of ‘adjusted fringe benefit’ to replace the existing definition of ‘reportable fringe benefit’. The definition of a reportable fringe benefit used for tax purposes is not suitable for income testing for government programs, for the reason that it does not reflect the cash benefit received by the employee. The Family Assistance Office currently uses an identical definition to the one being introduced by this schedule. This definition better reflects the fringe benefit received by the employee and it is consistent with the income definition currently used by the Family Assistance Office for income tested payments. As adjusted fringe benefits will be included in the new definition of rebate income, this new definition will apply to income tests for the senior Australian tax offset and the pensioner tax offset.

Part 1 of the schedule inserts a new definition of ‘reportable superannuation contributions’. This definition includes salary sacrifice to superannuation contributions and reportable employer superannuation contributions, which I will deal with a little bit later on. This definition ensures that salary sacrificed amounts are included under the income test when determining eligibility for government benefits.

I will now deal with total net investment loss. Part 1 of this schedule inserts a new definition of ‘total net investment loss’ and a related definition for ‘financial investment’. Currently, only net rental property losses are considered. The new definition will expand this to include losses arising from financial investments. Total net investment losses will include the existing definition of net rental property loss and losses arising from financial investments. Financial investments will include shares in a company, interests in a managed investment scheme, interests in a forestry managed investment scheme, an optional right related to any of the above, and any other investment that is of a similar nature to any of the above. A total net investment loss will include a taxpayer’s losses from financial investments and rental property that exceeds the income they received from the sources I have just mentioned.

This will not affect the ability of taxpayers to claim the tax deductions for those losses. However, the amount they would deduct will be included for determining eligibility for income tested government assistance. These amendments will add total net investment losses to the income test for the Commonwealth seniors health card. The income test for the Commonwealth seniors health card will also be amended by the Social Security and Veterans’ Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009, which we have not yet voted on but which is certainly before the parliament. Amendments in that bill add amounts that are salary sacrificed into superannuation funds and superannuation stream income from a taxed source to the income test for the Commonwealth seniors health card.

Part 1 also introduces two definitions that are the sum of other definitions used for income testing. One of these new definitions is ‘rebate income’. Rebate income is a definition that consists of the sum of other definitions and includes taxable income, adjusted fringe benefits, total net investment loss and reportable superannuation contributions. The single definition will make it easier to amend related income tests in other legislation. Rebate income will be used for determining
eligibility for the senior Australian tax offset, the pensioner tax offset and the eligibility of a trustee for an offset. Part 1 of this schedule includes a new definition of ‘income for surcharge purposes’. This definition will be used to determine a taxpayer’s liability for the Medicare levy surcharge. This definition is similar to ‘rebate income’ as it is a definition that consists of the sum of other definitions. Like rebate income, this definition will make it easier to amend the income test for the Medicare levy surcharge. This definition will include taxable income, reportable fringe benefits, reportable superannuation contributions and the total net investment loss.

I place very clearly on the record that the coalition broadly supports measures to improve the integrity of income testing for government assistance programs. Part 1 of this schedule proposes a new definition of ‘reportable employer superannuation contributions’—or RESC, as I will be referring to it. I mentioned it earlier. RESC does not include payments made by an employer to meet the compulsory nine per cent superannuation contribution. It only includes amounts made by employees in addition to the nine per cent compulsory contribution. The proposed definition of RESC includes payments made by the employer to the employee’s superannuation fund where the employee ‘has or has had, or might reasonably be expected to have or have had, the capacity to influence the way the amount is contributed so that his or her assessable income is reduced’.

Any contributions made by an employer to an employee’s superannuation fund that the employee did not control will not be included in or as RESC. This includes the contributions made by an employer as part of an agreement that has been negotiated by a third party, who, of course, is often a union representative. This is another clear example of the Labor government’s policy agenda being driven by ideology rather than by common sense, as I think we will see in a moment. This proposed definition highlights Labor’s approach in managing Australia’s tax and transfer system. The Labor government have continuously claimed to be concerned about ensuring equity within the tax system. They have talked about that, but it can be a very different thing to actually implement changes to the tax system in a fair and equitable manner.

Labor’s legislation that we are considering will create two classes of employees: one class of employees who choose to negotiate their own employment arrangements and the second class of employees who choose a union negotiated agreement. Those employees who choose to negotiate their own arrangements will be treated very much as second-class citizens compared to those who are under a union negotiated agreement. This will create a bias towards workplace agreements negotiated by unions over those negotiated by employees. This is an example of an ideologically driven policy agenda for Australia’s tax and transfer system. I place on record that I am very pleased that in discussions with the minister’s office this has been recognised and there has been an approach that I think satisfies the coalition and indicates good faith in this respect.

I would like to provide an example of the effect of this proposal. For a certain government benefit the income test is $51,000. For example, let us take two people—Angus and Thomas—who both have a taxable income of $50,000 per year. Both of their employers make a 15 per cent superannuation contribution to their super funds, amounting to $7,500. Thomas reached an agreement with his employer to have 15 per cent paid into his super fund and Angus’s employment conditions are determined by a union negotiated agreement. Angus and Thomas both take home $50,000 and have $7,500 contrib-
uted to their respective superannuation funds. Angus will be eligible for the government benefit because the contributions made by his employer above the compulsory nine per cent are determined by a union negotiated agreement; however, Thomas will not be eligible for the government benefit because the additional six per cent superannuation contribution his employer contributes into his super fund will be included in determining his eligibility under the income test only because he negotiated it himself—and therein lies the rub, the problem.

So Angus and Thomas both take home the same amount of pay and have exactly the same amount of superannuation contributed by their employers but only one is eligible for government assistance. The government simply cannot justify this proposed definition as an integrity measure. As this example illustrates, the proposed measures will intentionally introduce a bias to income tests. The effect of the proposal in this measure is de facto discrimination against those Australians who choose to negotiate their own employment arrangements. This proposed change shows that either Labor do not understand the consequences of changes to Australia’s tax and transfer system or they simply have not addressed it, which is probably more the case.

I note that the report into this bill of the Senate Standing Committee on Economics shows that the additional comments made by coalition senators raised the concern that the proposed definition of RESC may create an unintentional bias. They also recommended that the bill be amended to ensure that such inequality is avoided. We have raised this issue in good faith with the government and have asked the government to address it. The fact that we are deliberating on these important and complex matters on this day in this additional sitting, and the fact that the bill was only brought on for debate in the House on Wednesday and we are told that the government needs it to be approved by parliament today in order to meet administrative deadlines, speak volumes, I think, as does the fact that we are not sitting beyond today before the budget.

The government first announced the intention to legislate these areas on budget night last year but is seeking to debate the matters in both houses in just the last few days before this year’s budget. We place on record our strong concerns about how this bill has been drafted. The parliament should have been given more time to consider the outcomes of this bill. We have stated in the other place, and I restate it here in the Senate, that we support integrity measures and we support the aspects in this bill dealing with other matters, but we do not support a system that treats employees on the same remuneration package differently based on the terms of their employment.

On Wednesday in the House the shadow Assistant Treasurer raised these concerns regarding the inequality arising from the RESC definition in good faith with the government and the minister has acknowledged the validity of our concerns. The government, as I said, has demonstrated good will by engaging in extensive discussions with the opposition to work through the inequality issues that we are concerned about that will arise from this bill.

Because of the good faith shown by the minister and his staff and Treasury, and recognising the fact that there are administrative deadlines that will be onerous for business in terms of compliance, we will not be obstructing this bill or moving an amendment to try to address it. This approach from the opposition is on the basis of, and following, the minister’s undertaking to ask his department to seek to examine any possible solution to resolve the issues we raised in the bill. On
that basis we will not move amendments or vote against the bill, but we strongly urge the government, the minister and Treasury officials to work for a more equitable solution than we currently have in the bill.

The **ACTING DEPUTY PRESIDENT** (Senator Marshall)—I note your confidence that this will be the last day of sitting. I hope you are right!

**Senator SIEWERT** (Western Australia) (2.02 pm)—The Greens are very disappointed with key elements of the Tax Laws Amendment (2009 Measures No. 1) Bill 2009 and, unlike Senator Coonan, will be seeking to amend it. We share the opposition’s concerns around the timing of this bill and believe that it has unintended consequences. I also add that I think the opposition’s approach to the impacts that this bill may have on the community is very different to the approach it is taking with the seniors card. I find the approaches quite contradictory, and I will get to that in a minute.

In terms of the positive aspects of this bill, we can indicate our support for schedules 1 and 2. The Greens support the amendment in this bill to reduce tax payments for small business as a way of assisting them with the current financial crisis. We also welcome the administrative reforms to unclaimed superannuation schemes. The Greens will continue to support government regulation of business as a necessary part of our community, but we realise that, where businesses are regulated, it is a responsibility of the government to ensure that the compliance costs associated with it are minimised wherever possible.

The Greens welcome the objective of schedule 3 of this bill. We welcome efforts to better target government income support and tax offsets to people who genuinely need them. Consistent with the long-term Greens policy, this bill prevents the removal of some of the middle-class welfare payments made under the Howard government era and will prevent those on high incomes with the capacity to actively manage their non-cash income—for example, by salary sacrificing into superannuation or through receiving fringe benefits—to get their taxable income below relevant thresholds.

Under this bill people will no longer be able to sacrifice a significant amount of money into superannuation in order to receive government support. This is a bill that is long overdue. Likewise, it is appropriate that tax deductions associated with investment losses and fringe benefits do not provide a loophole for otherwise middle- or high-income earners to access the social safety net. The Greens also welcome the objective of the amendments to provide consistent treatment of a person’s income across income support programs and tax concessions. We agree that it is unfair that some people are able to access those benefits not because they need them but because they happen to be in a job that allows them to access fringe benefits and salary sacrificing arrangements which artificially decrease their income for assessment purposes.

That is the positive side of these amendments. However, from the Greens perspective, there are some overwhelmingly negative aspects in this schedule, and that is the impact on low-income earners in the community sector and more generally. There is a sting in the tail in this bill. There is the potential for some of these amendments to adversely affect some low-income workers—that is, those who earn less than $60,000 per annum who rely on salary sacrificing and fringe benefits to boost their income. This is an issue for all low-income earners but is of particular concern to people employed in the community and public hospital sectors, where fringe benefits and salary sacrifice super as part of a broader salary package is routinely used to boost incomes in order to
attract staff. It is obvious that the impact of this will depend on individual circumstances and the actual eligibility thresholds for each of the affected payments or offsets amended. However, by examining most thresholds for payments in the bill, it is obvious that in many cases an expansion in the definition of ‘income’ will result in the loss of eligibility or a loss of some payment for low-income people.

For the community sector and the public hospital sector this is an unacceptable impact. These are people who do difficult jobs with relatively low pay and rely on these kinds of top-ups on already meagre salaries. Until the government agrees to increase their salaries to fair and real levels, fringe benefits and salary sacrificing will remain an important tool in attracting skilled people to these sectors. The effect of these amendments will be to remove access to income support or tax offsets that these low-income people can access to make their cost of living just a little bit easier to meet. These tests will also likely increase the rate of payment made under the Medicare levy SFSS and HELP schemes and effectively increase the tax paid by low-income earners and those with student debts less.

This issue came up last year. Those who were in the chamber when we were discussing this last year will remember the fierce debate we had around fringe benefits tax. The Greens are still seeking to increase the cap on fringe benefits from $30,000 to $40,000. This is an absolutely critical issue for the not-for-profit sector. The only way they can attract staff is by offering attractive packages through salary packages and fringe benefits tax arrangements. Not-for-profit organisations already have difficulties in attracting staff. This is going to make it that much harder. The government last year, following through from an amendment that the Howard government had put in place, was about to change the reportable fringe benefits for the purposes of family tax benefits. Fortunately, it realised that that was going to have quite a deep impact and did not proceed with that amendment. That then raised the issue around the cap on tax-free fringe benefits, and we had the debate about it in the chamber at the time. Everyone recognised and acknowledged that wages and conditions within the community sector were substantially below those offered in both the public and the private sectors.

This is an essential element that not-for-profits can use in order to pay and attract staff. It is well recognised that staff in not-for-profit organisations work substantially less money than their counterparts in the private sector. The changes contained in schedule 3 will have an adverse impact on this sector. This will add to the pressure these groups are already under now because of the increased demand for their services in these economic times. The sector is also about to lose a significant amount of money through the government’s decision on employment reforms and employment services. Just last night the Minister for Housing, Tanya Plibersek, said that the government would be delivering more of the housing program through not-for-profit organisations and community housing organisations—a move I strongly support, I might add. They are not going to be able to do it if they do not have a sector, and they are not going to have a sector if they keep treating that sector in the manner in which they are treating it at the moment.

Senator Stephens is a very strong advocate for the not-for-profit sector. On the one hand, you have got the government saying positive things and trying to do positive things in terms of social inclusion and, on the other hand, you have got them passing policies that are having a negative impact on the sector. Come on, guys—get your approach right.
or at least be consistent. Do you or do you not support them? The government and Senator Stephens will tell you that these organisations were sent a copy of a discussion paper and that the bill went out for comment. It was a short period for comment, and I do not know how they undertook that consultation, but I can tell you that, with my phoning around, there are now very significant concerns in the sector about these issues. They have not been properly consulted. This is not a part of broader reform. The broader reform is going on separately to this.

The Greens ask the coalition to reconsider their approach to this, given that not two hours ago we had Senator Scullion in this place arguing that we could not make changes to the seniors health care card because it had not been considered in the context of the Harmer and Henry reviews, we did not know the numbers, we did not know the impact it was going to have and we did not know how many people it was going to impact. Those very same arguments can and should be used for these amendments. We do not know the number of people this will impact on, we do not know what effect it will have, we are doing it outside of the Henry and Harmer reviews and, most importantly, this is affecting low-income workers. Admittedly, the impact will probably not be as bad as it would have been with the changes that the government did not proceed with last year—they have raked that down a little bit—but this is still going to have a significant impact. I cannot understand a government that is proceeding with these amendments when they do not know what impact it is going to have and when it is vital that we put resources and support into our community sector, not take it away. The Greens begged the government to take out schedule 3 so that we could look at it properly and have a proper discussion with community organisations, but they would not. The Greens begged the coalition to do the same thing, and I beg them again.

I will be submitting an amendment shortly to take this schedule out so that we can consider it at a later date and so that we can make a decision in full knowledge, because we are not now. Their arguments regarding these two bills are completely inconsistent and contradictory. On one bill they will vote down a measure because they do not know the impact, yet on this bill they will support it even though they do not know the impact. It is hitting at the most vulnerable low-income sector again. It is not the proper way to govern. It is not the proper way to make decisions on important issues like this, for a sector that is under the pump all the time and even more so now. Their services are being called on as never before and they are turning away thousands and thousands of people.

On top of that, the government has just made a decision that it will take away employment services from the majority of not-for-profit organisations operating in this country that use funds to subsidise and cross-subsidise other social and community services. This week, this sector is copping a double whammy, on top of the call on their services that is increasing exponentially. They are constantly reporting they are unable to meet need. There is a huge unmet need out there. Where is the compassion that we are supposed to be showing as a nation in helping the not-for-profit sector and helping our most vulnerable? I really urge the government to take schedule 3 off the table and to bring it back when it has got it right, when it
has properly consulted and when it can put measures in to protect those workers that are on a low income across the board but particularly those who are working for the community sector. This will put further pressure on not only the community sector but the public hospital sector in attracting the staff that they need.

The Greens, at this stage, are urging the government to take schedule 3 out of this bill. If the government does not agree to that, we will be seeking to move amendments in order to protect low-income workers. We do not particularly want to do that, because we would prefer to deal with this in a more comprehensive manner. But we feel that this issue is so urgent that we really need to amend the legislation if the government is not prepared to reconsider schedule 3.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Senator Siewert, is it not your intention to move an amendment now?

Senator SIEWERT—No. As I understand it, I move my amendment at the end of the speakers.

The ACTING DEPUTY PRESIDENT—Thank you.

Senator PRATT (Western Australia) (2.15 pm)—This afternoon I rise to speak on the Tax Laws Amendment (2009 Measures No. 1) Bill 2009. The Senate referred this bill to the Senate Standing Committee on Economics, and I was pleased to have the opportunity to examine some of the issues through that committee’s work. As has already been highlighted, the bill amends various tax laws to implement a range of improvements. It makes a number of amendments to our tax laws in three quite separate groups. These three groups of amendments are laid out in the schedules of the bill.

I would like to begin by making some comments in relation to schedule 1. Here we have, very importantly I think, a 20 per cent reduction of the pay-as-you-go instalments for the December quarter of 2008 for certain small businesses. It sets out the method by which the Commissioner of Taxation is able to determine the amount of pay-as-you-go quarterly instalments. The instalment system aims to smooth taxpayers’ cash flow by ensuring that taxpayers do not accrue large tax liabilities that may be difficult to pay as a lump sum. This would be an undesirable outcome. In order to prevent this, taxpayers earning business or investment income pay instalments towards their final tax liability during their income year. Some of these taxpayers may pay their PAYG instalment on the basis of what is known as their GDP adjusted notional tax. The instalments paid by taxpayers that will be affected by this amending legislation are set out in schedule 1 of this bill.

In this economic climate we know that business incomes have changed quite dramatically. Without this legislation, we may well be asking small business to pay too much tax upfront—more than they would otherwise be liable to pay. That is a significant disadvantage for small businesses that might otherwise be struggling anyway. So, broadly speaking, the GDP adjusted notional tax is worked out by increasing the taxpayer’s income in the previous year by that year’s rate of nominal GDP growth. This is known as the GDP uplift factor. In income years when economic and business conditions change quickly and unpredictably, causing the expected income of taxpayers to change accordingly, this uplift factor may not be representative of the expected profit growth of these taxpayers. That is certainly something we are experiencing at the moment.

What happens is that you have taxpayers who are required to pay instalments that are way too high in relation to their actual in-
come. This income year is one in which economic and business conditions have already changed very dramatically. So, without this legislation, it is very likely that these taxpayers will have to pay instalments that are too high in relation to their actual income, unless the amendments proposed by this bill become law. Naturally, any overpaid tax would of course be refunded to these taxpayers at the conclusion of the income year, once their final tax liability has been assessed. But, in the meantime, paying overly high instalments can have very negative impacts for the cash flow of the small business affected because not only are they paying that higher rate of tax compared to their tax flow but they have a declining cash flow and, as we know, small business is also experiencing something of a credit crunch. Basically, those small businesses need that cash now.

It is true that taxpayers can vary their instalments on their own initiative. Many are reluctant, though, to work out reductions themselves because underpayments can trigger an interest charge: if you thought you were making the right decision and you underpay, you will be charged interest at the end of the financial year. On that basis, many businesses are quite reluctant to do that. What these amendments do is provide for a 20 per cent reduction in the instalment for the December 2008 quarter, and that is broadly in line with the average reduction in the instalments necessary in a single quarter to bring the instalment regime back into line with the expected slowing in small-business profit growth for the 2008-09 income year. So this reduction is going to avoid the need for small businesses affected to risk reducing instalments on their own initiative, while at the same time providing immediate relief to the cash flow of the small-business sector—a sector which provides, I think, about four million jobs.

It is really important that we do everything we can to support small business in the current economic climate. Senators will be aware that such cash-flow relief is much needed by small businesses and we really need to support their business confidence, because it is desperately needed in these difficult times. So the instalment reductions are going to offer relief to around 1.3 million small businesses that have an aggregated turnover of $2 million or less.

As such, this measure stands to benefit not only the businesses concerned but also their employees, suppliers and customers and, through them, the broader economy as a whole. This measure is part of the Rudd government’s broader commitment to take timely and decisive action to support small business and to ride out the current global financial crisis. The government are doing this because we value small business in its own right but also because we recognise the importance of small business to the broader economy.

As I said earlier, in addition to the instalment reductions in the December quarter, schedule 1 of the bill provides for a new regulation-making power, which is going to allow instalments to be reduced in the future in specified circumstances—when the economic conditions change. That is going to avoid the need for further legislation to effect reductions when those circumstances arise. It is going to give the government the flexibility to respond to the changing economic circumstances, which is very important.

Here we have greater flexibility in the tax system and a greater capacity to respond swiftly and appropriately to the changing economic circumstances that we currently face. This stands to benefit those small businesses that currently pay tax under this system. It is part of the government’s broad commitment to do what we can to make life
easier for small business. I understand that the measures in schedule 1 have very broad support across the chamber, in recognition of their benefit to small business in these difficult times.

I will just comment very briefly on schedule 2, which makes largely technical amendments to superannuation. However, we know that government over many years has had difficulty matching up lost superannuation moneys with the people who actually own them. There are some significant improvements for temporary residents, as these amendments will reduce the number of lost accounts and amounts of lost money and enable temporary residents to reconnect with that income that they earned.

Finally, I turn to schedule 3. I know that Senator Stephens as parliamentary secretary will be responding to the issues raised in the debate, but I would like to note that for some time now there has been a level of inequity and unfairness in the way that taxation arrangements have applied to non-wage remuneration and discretionary losses. The amendments in schedule 3 will align the income test used to determine eligibility for the dependency tax offset with the definition of ‘income’ used for things like family assistance. The income cap will be linked to the income cap on family tax benefit part B. These changes are designed to introduce greater consistency across our tax and transfer systems.

I note that there is some controversy about these measures. I note that the government’s view was that there was a broad policy objective to remove inequities in the taxation levels that people were paying. Indeed, this was something that was supported by the Australian Council of Trade Unions in its submission to the inquiry, which said:

These are important equity measures which:

- Remove inconsistencies in the treatment of non-wage remuneration;
- Better target the dependency tax offsets to lower income families; and
- Treat the income of individuals and families without access to salary sacrifice arrangements in an equivalent way to those who are able to access—such arrangements. So they see clearly that these provisions in the bill make our tax system fairer. Here we have in the provision in schedule 3 fairness within the tax system, in schedule 2 we have improvements to the superannuation system and in schedule 1 we have a commitment to assist small business to face the challenges presented by the global financial crisis. I commend the bill to the Senate.

Senator MILNE (Tasmania) (2.26 pm)—I rise today to speak on the Tax Laws Amendment (2009 Measures No. 1) Bill 2009 to make a contribution in relation to the spouse superannuation tax offset. The Greens are particularly concerned about the proposed changes to the spouse superannuation tax offset. The new definition of income will include employer superannuation payments made to low-income earners in determining the eligibility of their spouse to receive a tax offset if and when their spouse contributes to their superannuation. This means that a low-income person’s total assessable income, reportable fringe benefits and employer superannuation contributions must be less than $13,800 for their spouse to receive the tax offset. This is likely to reduce eligibility for some couples to receive this tax offset and therefore discourage them from adding to the superannuation of the low-income partner.

We know that many Australians have an inadequate amount of superannuation for their retirement. For example, ABS data from 2006 indicates that, on average, Australians across all age groups only have $52,000 in their super accounts, and this reduces to
$35,000 for women. So, at a time when we should be encouraging more people to save more for their retirement, we are reducing incentives for them to do so. This is short-sighted and illogical. While this amendment may save the government money in the next budget and the out years, if we do not get people contributing more to their super, particularly low-income people, this will have a long-term impact on government finances as those people seek income support in retirement. This is of particular concern for women, who generally have lower superannuation savings and, due to work breaks undertaken to raise children and other purposes, are less able to boost their super during their working lives.

These changes should be considered as part of the comprehensive changes recommended by Harmer and Henry. These amendments are being considered prior to the finalisation of publication of the broader Harmer review into pensions and the Henry review of taxation. Why is this the case? This raises questions of whether these changes pre-empt broader reforms and what may occur if they are not consistent with the government’s future response to these reviews.

The Greens want to keep in this bill the ability for the government to close down loopholes that allow middle-class welfare to flourish, but we want to ensure that low-income people are not caught up in these changes. The Greens, therefore, propose to amend this bill to exempt from these amendments people whose gross income is less than $60,424 per annum and exempt from changes to the superannuation spouse tax offset couples whose combined superannuation is less than $300,000. We believe that these amendments preserve the basic aim of the bill while ensuring that low-income people are not unfairly treated. We also believe that these recommendations will ensure that low-income couples continue to be encouraged to boost the superannuation of the low-income partner. This is particularly important when many of these people are women, who we know hold significantly lower superannuation savings than men.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (2.31 pm)—I thank all senators who have contributed to this debate on the Tax Laws Amendment (2009 Measures No. 1) Bill 2009 and those who participated in the hearings of the Senate Standing Committee on Economics into this bill. This is an important bill and one that the government is keen to see progress because it is part of our agenda to ensure there is consistency and fairness in our tax and transfer system.

The pay-as-you-go amendments contained in schedule 1 to the bill reduce by 20 per cent the PAYG instalment amount payable by certain small businesses for the quarter that includes 31 December 2008. The 20 per cent reduction in the PAYG instalment is intended to ensure that the PAYG instalments payable by eligible small business taxpayers more accurately reflect their expected tax liability based on actual profits for the 2008-09 income year. Let me assure all small businesses that the government is committed to helping them through the global financial crisis. This PAYG instalment reduction is one way of providing immediate and much-needed cash flow relief to eligible small business taxpayers.

Schedule 2, which has generally been considered non-controversial and been supported across the chamber, relates to the broader unclaimed money regimes, making the existing provision in the unclaimed money act more compatible with the new temporary resident superannuation provisions. The amendments also improve the...
general administration of the unclaimed money regime. This will assist superannuation providers to meet their unclaimed money obligations and make it easier for someone to be reunited with their unclaimed money.

Schedule 3 shows how the government is committed to enhancing the fairness and the integrity of the tax and transfer system. From 1 July 2009 individuals who have access to salary sacrifice arrangements to reduce their taxable income will be treated the same as those who do not have access to salary sacrifice arrangements for the purposes of determining eligibility for certain means tested programs. Salary-sacrificing individuals who benefit from tax concessions will continue to do so; however, those benefits will no longer flow through to the assessment of means tested programs and tax offsets. This ensures that government programs and tax offsets are delivered to those most in need.

I note the opposition have indicated their serious concerns that two employees on similar conditions might be treated differently as a result of this measure. This matter was also raised by the opposition in their additional comments to the Senate economics committee report on this bill. The opposition’s concern is that the definition of ‘reportable employer superannuation contributions’ may contribute an unintended bias as individuals on the same total income may have different RESC amounts, depending on whether their employment conditions are set by a common-law employment contract or an industrial agreement.

I understand, and Senator Coonan has confirmed, that there have been in-depth discussions today between Treasury officials, the Assistant Treasurer’s office and members of the opposition to attempt to resolve this matter. This is a complex and difficult area of tax law, and the government acknowledges that the opposition have raised a very legitimate question. The Assistant Treasurer has asked his departmental officials to seek to examine any possible solution to address these concerns.

Of particular concern to the opposition is the potential for an employee to move from one job to another on the same income but, if the second employer offers only a nine per cent super guarantee whereas the first employer offered a 15 per cent contribution, they may be treated differently. The government has undertaken to examine this issue and determine whether a solution is possible. Can I thank the opposition on behalf of the government for their engagement on this issue and the discussions that have been had in good faith. This is a sensible outcome, given how important it is for both the tax office and Centrelink that this bill, and in particular this schedule, be passed today. The test for determining whether superannuation contributions made by an employer are to be assessed as income is whether the employer had ‘capacity to influence the contribution’. It is not intended that employees be assessed on superannuation contributions over which they have no capacity to influence.

Together, these reforms ensure that the various tax and transfer programs are fairer and better targeted to those in need of government assistance. Can I draw the Senate’s attention to the report of the Standing Committee on Economics, which stated that ‘the relative complexity of the tax and transfer system will be reduced by the proposed measures’.

In relation to the timing of the bill, and the call by the Greens to withdraw schedule 3, I make the point that in April 2009 family assistance customers of Centrelink will be asked to estimate their income for the 2009-10 income year, and they cannot be asked to declare information for something that has
not been made into law. So there is a real risk that the bill, as it applies to family assistance payments, might need to be deferred to later income years, and that would actually reduce the expected savings from the reforms. That would put a hole in the budget of $164 million. So it is an important measure and it needs to be resolved today.

In relation to the concerns that Senator Siewert has raised about the perceived adverse impact on the not-for-profit sector, I acknowledge Senator Siewert’s absolute championing of the sector. She is a strong advocate for all things that are in the third-sector space, and I thank and admire her for it. But Senator Siewert suggested that the sector had not been consulted on this. If I can put on the record what actually happened. First of all the government released the discussion paper and the draft legislation for public comment, in November 2008, and it was open for comment for a month. Comments from the not-for-profit sector were specifically sought about the impact of the bill, including from the Australian Council of Social Service, several church organisations including the Salvation Army and St Vincent de Paul, and the body that the ATO uses as one of its most powerful and connected consultative mechanisms, the Charities Consultative Committee—and the sector did not raise any particular issue of concern about the bill.

It is not an issue that has been raised with me, either, so I think the concerns that have been raised overstate the impact that it may have on the sector. I just wanted to ensure that that was on the public record. It seems to me that everyone is very mindful of what happened last year with the changes to the fringe benefits tax and family tax benefit arrangements. Having to fix that in such a hasty manner last year has made everyone more mindful about how there could be unintended consequences of legislation. But this is not, as we perceive it, an unintended consequence that would be of the order that Senator Siewert was referring to. Having said that, I thank everyone for their contributions.

Debate (on motion by Senator Stephens) adjourned.

Ordered that the resumption of the debate be made an order of the day for a later hour.

THERAPEUTIC GOODS AMENDMENT (MEDICAL DEVICES AND OTHER MEASURES) BILL 2008 [2009]

Second Reading

Debate resumed from 3 December 2008, on motion by Senator Ludwig:

That this bill be now read a second time.

Senator PARRY (Tasmania) (2.40 pm)—The Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009] amends the Therapeutic Goods Act 1989 in a number of functional ways, introducing a number of clarifications and refinements that have long been foreshadowed. The coalition supports these amendments although we do have some questions of the government to provide some points of clarification. In considering this relatively straightforward legislation we have to remain focused on the need for ongoing reform of the Therapeutic Goods Administration’s processes. The TGA works on a cost recovery basis in order for therapeutic products to be sold in Australia and the goods must be on the Australian Register of Therapeutic Goods. This process is 100 per cent funded through the collection of evaluation fees. The risk of that approach is that the government can be too tempted to impose additional regulatory burdens as it is the applicants intending to bring new products into the Australian market and not the government who have to fund the additional costs incurred.
We are making decisions in this parliament about additional layers but we are not committing additional government resources. We are spending other people’s money; that is why we must be ever vigilant to ensure that the balance is right. That is, the balance between the costs we impose on business and our core objective to maintain high standards in the registration of therapeutic goods. Not to get that balance right could mean that Australia could miss out on potentially beneficial products if relevant businesses decide not to pursue a listing due to excessive costs or long delays. So as we focus on ongoing and future reforms of the Therapeutic Goods Administration processes we must seek to maintain high standards while lowering the cost of compliance.

Feedback from industry stakeholders is that they support the current bill. However, the industry also pointed out that the current reforms are relatively minor and that further reform, including a recommitment to negotiations towards an Australian-New Zealand regulatory regime, is required. For example, the Australian Self Medication Industry described the current legislation as ‘a bit of tidying up at the margins’ and called for a renewed push to world’s best practice reform of the TGA. We certainly urge the Australian government to pick up where the Howard government left off in working with the new government in New Zealand to take up this reform.

Following a memorandum of understanding between the two governments in December 2003, negotiations to create the Australia New Zealand Therapeutic Products Authority commenced. I know Senator McLucas, the then responsible shadow, is on the record supporting the revival of negotiations on ANZTPA and I would hope that, regardless of the current legislation, the joint regulatory process will be revived as soon as possible. Industry is particularly keen to have the reform agenda restarted. In the process of reviewing this legislation with a range of industry bodies it was clear that whilst the current reforms are welcomed—in fact seen as overdue—more reform is required. So in speaking on this legislation I ask that the government gets on with the job to ensure that the stalled reform process is restarted as soon as possible.

As I have already advised the Senate, the coalition supports these amendments. These amendments, in brief, seek to achieve the following: exempt medical devices from the operation of the act to allow for stockpiling and rapid availability in emergency situations and to declare these exemptions as not legislative instruments and therefore not disallowable, tighten the fit and proper person test for manufacturing licences and medical device conformity assessment certificates, adopt the European and United States pharmacopoeias in addition to the British Pharmacopoeia as default standards under the act, improve access to information from the TGA, clarify the regulation of advertising of therapeutic goods, and align criminal penalty provisions with current policy. These are largely technical amendments designed to enhance the operation of the TGA.

The one area where the coalition would like some further information from the government is that of exemptions for medical devices that are required in an emergency, or that need to be stockpiled for a potential emergency, which can be granted by the minister. Clearly, this is an important provision and is required only because previous amendments to the Therapeutic Goods Act distinguish between medical devices and other therapeutic goods without giving medical devices access to the exemption provisions already in the act.

However, in seeking to clean up this anomaly, the government is proposing to go
further. We would simply like to more clearly understand why. Unlike the current exemption, the government appears to be intent on making those exemptions not disallowable—that is, removing all oversight from the process of this parliament. When the government seeks to create an instrument that cannot be disallowed, it has an obligation to clearly set out the reasons why this is necessary. To date, the best we have got from the government is a reference to national security. We would like that explanation to be expanded upon. We will be looking for more adequate explanation from the government at the conclusion of the second reading debate. We understand from our discussions with the government that such an explanation will be forthcoming, and we appreciate that. The opposition shares the view of the Senate Standing Committee for the Scrutiny of Bills that there is a need for a more full explanation of what the intent is and why it is required. As I have said, the TGA is a fundamental part of Australia’s health regulation. It will need continual refinement to operate most effectively. I again urge the government to act and have a joint regulatory initiative with New Zealand, which was commenced under the Howard government. I again place on record that we do support the bill.

Senator CAROL BROWN (Tasmania) (2.46 pm)—I rise to speak briefly on the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. By way of context, the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009].

The bill before us proposes a range of amendments to the Therapeutic Goods Act. The majority of these proposals were to be implemented with the proposed joint regulatory scheme in New Zealand, which was postponed in July 2007 due to the New Zealand government’s decision to not proceed with enabling legislation due to insufficient parliamentary support. The Rudd government has decided to pursue these long-overdue regulatory reforms in an Australia-only context while negotiations on the Australia New Zealand Therapeutic Products Authority remain postponed. These reforms will strengthen the existing regulatory framework for therapeutic goods and improve protections for consumers. Public consultation outlining the government’s plans for reforms to the therapeutic goods regulatory framework was undertaken in late July and early August last year.

The industry strongly supported progress in these areas, especially as changes were delayed for several years in anticipation of the Australia-New Zealand therapeutic goods authority legislation. Therefore, this bill amends the Therapeutic Goods Act 1989 in a number of ways. First, as has already been pointed out, it incorporates into the act provisions allowing the stockpiling and supply of medical devices to deal with emergency situations without the requirement for such devices to comply with the act. These provisions are based on similar provisions added to the act in 2002 allowing medicines to be stockpiled and supplied in emergency situations. These emergencies could include an act of bioterrorism or the emergence of a new highly contagious disease in Australia.
In 2002 the then parliamentary secretary, in introducing the bill, explained that the amendments were necessary to strengthen the ability of the Commonwealth to plan for and respond to national emergencies in which there was the potential for large numbers of people to require emergency treatment. She gave us examples of such acts of bioterrorism or the emergence of a new highly contagious disease in Australia. Exactly the same rationale applies to the amendments contained in this bill.

The act presently operates very effectively to ensure that medical devices supplied in Australia to meet our daily healthcare needs meet very high standards of manufacture and quality control in general. It is an offence to supply devices that have not been approved by the Therapeutic Goods Administration. However, in the event of a national emergency there may be a need for the government to supply large volumes of goods and, as such, it may need to source these volumes from manufacturers who do not regularly supply goods to the Australian market and who have not sought to have their products approved by the TGA. The amendments in schedule 1 to the bill allow the minister to exempt devices from the requirements of the act so they can lawfully be stockpiled and made available in an emergency. The minister can only make such an exemption if she or he is satisfied that it is in the national interest to do so. The minister’s power may only be delegated to the Secretary of the Department of Health and Ageing. The minister may impose conditions on the exemption, including limiting the people allowed to import, manufacture or supply devices, and must notify those people of any other conditions on the exemption. Breaching a condition of exemption is a criminal offence.

Second, the bill gives effect to a range of amendments which have been in contemplation for a number of years and which were to have been adopted as part of the proposed Australia New Zealand Therapeutic Products Authority. It replaces an unduly subjective and harsh test of who is a fit and proper person to hold a manufacturing licence with a much narrower and more objective test requiring the secretary to have regard to breaches of the act or offences against it together with offences involving fraud or dishonesty over the previous 10 years. Again, just by way of background, the act was amended in 2003 to introduce a ‘fit and proper persons’ test. The aim of the test was to mitigate the risk posed by those who have already breached or may be coerced or tempted to breach manufacturing standards. However, the test has proven difficult to administer and has been criticised by some in industry as elaborate, complex and intrusive.

The main problems identified with the existing legislation are that it requires the fitness and propriety of a very broad range of people—the applicant, a senior manager or any other person who controls the applicant—to be assessed. It requires a very broad range of conduct to be considered, including the conduct of additional third parties and irrelevant conduct, such as convictions for minor traffic offences. It requires a decision maker to exercise a significant amount of discretion and to determine what matters are relevant.

The legislation does not set out an exclusive list of factors that can be considered, nor balance all relevant factors to determine whether a particular person is a fit and proper person. It does not contain sufficient powers to enable the TGA to monitor the ongoing suitability of a person to hold a manufacturing licence or a conformity assessment certificate. The new test, requisite amendments of which are contained in this bill, will require the secretary to have regard to past breaches of manufacturing licences or conformity assessment certificates, offences
against the act or corresponding state law, and offences involving fraud or dishonesty over the previous 10 years. The persons covered by the test are the applicant, senior managers of the applicant’s affairs, and shareholders with more than one-fifth of the shares or votes.

The bill also establishes the United States Pharmacopoeia and the European Pharmacopoeia as alternative default standards to the British Pharmacopoeia—I really want Senator Back here to help me with the pronunciation—which standard goods must comply with if the minister has not determined other standards. As I have noted, this will give manufacturers greater flexibility in choosing what standard to comply with when providing goods to the Australian market.

The provisions will allow the TGA to release a wider range of information to inform members of the public about the therapeutic goods and devices that are available in Australia and to further assist them to make better informed choices and decisions about their use of therapeutic products. They will also allow the TGA to publish the minutes and deliberation of expert advisory committees as well as the summaries of the evaluation of applicants for the registration of prescription medicines.

The existing provisions governing release of information to other regulators has also proven to be unduly restrictive and operationally difficult, and the amendments also address these issues. In this regard the bill also seeks to widen the provisions of the Therapeutic Goods Act, allowing the secretary to release information obtained under the act to other regulatory agencies or to the public.

Finally, the bill makes technical amendments to clarify the operation of the provisions limiting the claims that can be made in advertisements for therapeutic goods and to bring the criminal offences provisions in line with the latest criminal law policy. Therefore, the amendments to the Therapeutic Goods Act contained in this bill represent logical, good public policy. As I noted earlier, the majority of these proposals were to be implemented in a joint regulatory scheme with New Zealand, which was postponed in July 2007. However, the government has decided to pursue these long-overdue regulatory reforms in Australia.

These reforms will strengthen the existing regulatory framework for therapeutic goods and improve protection of consumers. Public consultation outlining the government’s plan for reforms to the therapeutic goods regulatory framework was undertaken in late July and early August last year, and the industry strongly supported progress in these areas. I commend the bill to the chamber.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (2.54 pm)—I thank those who have contributed to the debate on the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. As we have heard, the bill amends the Therapeutic Goods Act 1989 in a number of ways. Firstly, it incorporates into the act provisions allowing the stockpiling and supply of medical devices to deal with emergency situations. These provisions are based on similar provisions allowing medicines to be stockpiled and supplied in emergency situations which were added to the act in 2002. The amendments in schedule 1 to this bill allow the minister to exempt devices from the requirement of the act so they can lawfully be stockpiled and made available in an emergency. These exemptions are not subject to parliamentary scrutiny. This follows from advice received by the then government in 2007 which recommended that the contents of the stockpile should be classified as ‘confidential’ to ensure that would-be bioter-
rorists were not able to find out what preparations Australia had made for dealing with possible bioterrorist acts. For this reason the bill also amends the act so that similar exemptions applying to medicines are not to be subject to disallowance.

This bill also gives effect to a range of amendments which have been in contemplation for a number of years and which were to have been adopted as part of the Australia New Zealand Therapeutic Products Authority, or ANZTPA. Following the decision by the New Zealand government, in July of last year, not to proceed with legislation enabling ANZTPA, the Rudd government decided to pursue these amendments in an Australia-only context. These post-ANZTPA reforms include a range of amendments that I think have been fully canvassed in the second reading debate.

In response to Senator Parry’s questions around exemptions, I would like to emphasise that a decision made by the minister to exempt a good for emergency stockpiling is not a legislative instrument as it would not alter or determine the legislation but, rather, would simply apply the legislation to particular goods needing to be stockpiled, much like the issuing of a permit. Instruments of this kind are, by definition, not legislative under the Legislative Instruments Act 2003. I should also point out that the minister will only be able to make such an exemption if she or he is satisfied that it is in the national interest to do so, and the minister’s powers may only be delegated to the Secretary of the Department of Health and Ageing. Further to this, the minister would only make such a decision based on advice from an expert group, including the Chief Medical Officer and members of the Office of Health Protection, the Office of Chemical Safety and the Australian Radiation Protection and Nuclear Safety Agency, with access to advice from security and intelligence services. It is not the sort of decision that could be made without such expert advice. Subjecting such a decision to disallowance would allow the Senate to substitute its judgment, that the potential risk of the remedy outweighed the risk of a threat, for the judgment of a minister acting on the best advice in the country.

I will go to the question that was raised by the Senate Standing Committee for the Scrutiny of Bills about strict liability. The committee made comments regarding strict liability offence provisions for those who breach the conditions of a medical device emergency stockpile exemption. I should point out that this is based on the current strict liability offence provision, under section 22 of the act, for those who breach a condition of emergency exemption for the stockpiling and supply of medicines. It is important that conditions imposed on an exemption for medical devices be adhered to as they are the mechanism by which we can ensure that these devices are stored appropriately, that there is good record-keeping for them and that access to and supply of them to the Australian community will happen in the event they are called upon. The requirements imposed by the new section on the minister are that all reasonable steps must be taken to inform the person or people who import, manufacture or supply these devices of the exemption and advise them of any change to or revocation of the exemption.

It is highly unlikely that any other person will have access to devices covered by the exemption and therefore they could not be in a position to breach any of the conditions. Imposing strict liability on the subsection 4MNB(5) offence of breaching a condition of an emergency exemption for medical devices obviates the need for the prosecution to prove intent in the breach. The reason for this is to provide an effective deterrent to breaches of the conditions and ensure compliance with the conditions, which, as I have
explained, are crucial to the effectiveness and readiness of the emergency stockpile.

If an importer, manufacturer or supplier mistakenly breaches the conditions, the
Criminal Code provides a defence of an honest and reasonable mistake of fact. Therefore,
the strict liability offence is squarely targeted to those who have been entrusted under an
exemption to make available medical devices for the emergency stockpile and who would
have been informed of the conditions and their obligations in this important role.

The bill also deals with the fit and proper
test, default standards for medicines,
information disclosure and the use of re-
stricted representations in advertising. It also
makes technical amendments to all offence
provisions to bring them into line with the
latest policy on how these should be ex-
pressed. The current test in deciding who is a
fit and proper person is subjective in that
there is no limit on the matters the secretary
may consider and there is no guidance as to
who is a person ‘likely to have effective con-
trol’, and it is unduly harsh in that the secre-
tary must have regard to any conviction
against any law of the Commonwealth or a
state or territory, no matter what the crime or
when it took place. Not only has the test
been criticised by industry for this reason,
but it is also administratively problematic.
The amendments in schedule 3 of the bill
replace this test with a much narrower test
requiring the secretary to have regard to
breaches of the act or offences against it,
together with offences involving fraud or
dishonesty over the previous 10 years.

Another amendment that will assist indus-
try and thus consumers involves increasing
the default standard and medicines. This will
make it easier for some overseas manufac-
turers to access the Australian market. The
act currently provides that, unless the minis-
ter determined standards for therapeutic

goods, they had to comply with the require-
ments of the British Pharmacopoeia. Many
manufacturers based in the United States or
Europe supply the Australian market and, as
part of the ANZTPA consultation process,
industry pressed for the inclusion of the
United States Pharmacopoeia and the Euro-
pean pharmacopoeia as alternative default
standards.

Schedule 4 of the bill contains a series of
amendments to include these pharmacopoe-
ias as default standards with the same stand-
ing as the British Pharmacopoeia. That has
been strongly welcomed by industry. I am
interested in Senator Parry’s comments about
how these amendments are a little bit around
the edge; they were very strongly welcomed
by participants in a workshop conducted by
the TGA as part of its formal consultations in
the middle of last year and were warmly
welcomed by industry. This government is
committed to improving access to regulatory
information gathered or generated by the
TGA. At present, the act provisions setting
out when the secretary can release informa-
tion obtained in the act to other regulatory
agencies or to the public are unduly restric-
tive and have proved operationally difficult.
The government has therefore decided to
broaden the public access to information un-
der the act. In particular, the TGA will pub-
lish a greater range of information about
goods included on the Australian Register of
Therapeutic Goods on its website to inform
members of the public about the therapeutic
goods and devices available in Australia and
assist them to make better informed choices
and decisions about their use of therapeutic
products.

Senator Parry spoke of the need for fur-
ther work on the therapeutic goods regula-
tory regime. The government will be pursu-
ing further reforms. We have made that very

clear to industry. We have made it clear that
this piece of work is the first tranche of re-
form that is clearly needed to the Therapeutic Goods Act and its regulations and operations. They were delayed—and I do not blame the former government for that. There was a desire by the former government to pursue a trans-Tasman arrangement. That was not able to be delivered. My view is that we need to progress the work that was undertaken by the TGA, by the department and, most importantly, by industry over many years at great expense. We need to progress those reforms in an Australia-only context.

The reforms will include adding to the act a power for the secretary to suspend the registration or listing on the Australian Register of Therapeutic Goods of a medicine if the secretary is concerned about its safety. Under the act, as it currently stands, medical devices can be suspended from the ARTG for up to six months if there are concerns about the safety of the device that could be addressed by corrective action during the period of suspension. However, such action is not possible with medicines. If serious concerns emerge about the safety of a medicine, the secretary’s only option is to cancel the registration or listing even if the problems are such that they could quickly be addressed by the manufacturer. This is a real problem that I think we need to address. The situation at the moment is that if even a very minor mistake or error has been made—a mistake on a label, for example—the only option the TGA has is to remove the medicine or therapeutic good from the register in total. That means that that therapeutic good, medicine or device cannot be accessed by the Australian community. This is a sensible amendment—an amendment that provides continuity of access providing that the safety of the Australian public is protected. I look forward to this amendment occurring.

If the registration or listing is cancelled, once the problem has been addressed the sponsor of the medicine must apply to have the medicine reregistered or relisted and pay the relevant application fees. Senator Parry, I understand the point you made about cost to industry and I say our government is very committed to reducing cost to industry. Therefore, this amendment is not only more efficient but also a saving to industry, and therefore consumers, and will retain access to safe and efficacious medicines for the Australian community.

We will also be amending the law relating to manufacturing licences. At present, a number of licences cover more than one site and licences do not clearly indicate the steps in manufacture or the range of goods that may be produced under the licence. There is no ability for manufacturers to apply to vary their licences and no ability to transfer licences from one manufacturer to another. We intend to address these issues by amending the act to provide that a licence may only cover one site and must specify the manufacturing process and the range of goods it covers. Once again, this is a sensible and practical amendment that will deliver effective regulation—in fact, even safer regulation.

At the moment, a licence is provided to a sponsor or a manufacturer for a range of licensed sites. This can mean that if there is a problem at one site the response is to respond to all manufacturing sites. In this way, we license every site. The only condition on that is if there are two physical sites that are co-located we may be able to put that manufacturing under one licence, but it means we will be able to regulate more effectively each manufacturing site and be able to monitor the production line, especially when they move from one site to another.

We will also be moving to put in place a regulatory framework for homoeopathic and anthroposophic medicines. Under current arrangements, the regulations exempt many of these medicines from the need to be listed.
on the Australian Register of Therapeutic Goods and from the manufacturing quality requirements of the act. The Expert Committee on Complementary Medicine in the Health System recommended in 2003:

Homoeopathic medicines and related remedies that make therapeutic claims should be regulated to ensure they meet appropriate standards of safety, quality and efficacy.

The government consulted extensively with homoeopathic and anthroposophic practitioners and suppliers on an appropriate level of regulation for these substances, and we will take industry responses into account in framing amendments.

A further range of amendments that we intend to pursue relates to the TGA’s electronic listing facility. It has a list of permitted ingredients based on schedules included in the regulations to the act, but it includes many substances that were grandparented into the scheme when the act came into effect in 1991 and are not identified in the regulations. The list is published on the TGA website. Persons wishing to add substances to the list of permitted ingredients currently apply to the TGA and if the application is accepted the new ingredient is notified in the gazette. As a result, there is no single legal source for the ingredients which may be included in medicines. We propose to address this by empowering the minister to make a legislative instrument setting out lists of permitted ingredients and prohibited ingredients for different classes of medicines. Persons wishing to list a medicine for domestic use must certify that it contains only permitted ingredients and no prohibited ones. The secretary, in considering an application to list a medicine for export purposes, must have regard to whether it complies with the list. A person may apply to list a new ingredient on the permitted ingredients list, and the minister must consider this application.

We also propose other amendments. Since 2003 the TGA has operated an electronic system to permit sponsors to list low-risk medicines containing pre-approved ingredients on the Australian Register of Therapeutic Goods without prior scrutiny by the TGA. As part of the listing process, sponsors must certify a range of matters relating to the safety and the quality of medicines and are subject to prosecution under section 21A of the act for providing incorrect certifications. A similar system has recently been introduced for including low-risk medical devices on the TGA. We propose to regularise this process to provide for computer programs to be used to facilitate that decision making.

The amendments to this bill are the first instalment of an ongoing program of reform to the act. Australia has been served well by the TGA in the past. It is important that the regulatory regime that the TGA implements is kept up to date so that the TGA and the industry it regulates can operate as efficiently as possible and, as a result, Australian consumers can continue to have timely access to safe and effective therapeutic goods. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Ordered that consideration of this bill in Committee of the Whole be made an order of the day for a later hour.

MS BARBARA BELCHER

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (3.15 pm)—by leave—I rise to acknowledge the quite outstanding contribution made by a quiet and unassuming public servant, Ms Barbara Belcher, who will be retiring before Easter from her position as First Assistant Secretary, Government Division, in the Department of the Prime Minister and Cabinet. Barbara joined the department on 7 February 1966, missing the prime
ministership of Sir Robert Menzies by less than a fortnight. Apart from a few years in the early nineties, she has spent her whole career in that department. She has served 10 prime ministers—Holt, McEwen, Gorton, McMahon, Whitlam, Fraser, Hawke, Keating, Howard and now Kevin Rudd—and 10 PM&C departmental secretaries: John Bunting, Lennox Hewitt, John Bunting again, John Menadue, Alan Carmody, Geoff Yeend, Mike Codd, Mike Keating, Max Moore-Wilton, Peter Shergold and now Terry Moran.

I will not go through all her responsibilities over so many years of service, but they have included early years working in the Executive Council Secretariat and processing a whole range of papers, such as letters patent for royal commissions and the formal documents for the appointment of ministers—and, in quite a number of cases, the termination of those appointments. From 1978 till 1981, during the Fraser government, Barbara worked in the cabinet office. She was executive assistant to Sir Geoffrey Yeend during the 1983 change of government. Later she worked on the massive machinery of government changes introduced by Prime Minister Hawke after the July 1987 election. In 1988 she became the department’s House of Representatives parliamentary liaison officer, working all too briefly with Mick Young as Leader of the House and then subsequently with Kim Beazley. One of her tasks was to ensure that there was always a jacket available in her office in case ‘the Bomber’ had to make an unexpected appearance in the chamber. Her time in that job saw the parliament move into this building.

In 1994 she became secretary to the royal commission into the Australian Secret Intelligence Service. Of course, we cannot know too much about her contribution to that task, but by all accounts it was excellent. In mid-1995 she returned to the Department of the Prime Minister and Cabinet as Assistant Secretary, Parliamentary and Government Branch. Again, she dealt with all the business of the change of government in 1996. Three years later she was promoted by Mr Moore-Wilton to her present position as First Assistant Secretary, Government Division, a position which she has occupied for more than 10 years.

My dealings with Barbara fall into four stages. First, I came to know her in 1995 through the weekly meetings of the Parliamentary Business Committee of cabinet while I was Manager of Government Business in the Senate. Second, I gained a much fuller insight into her qualities during 11½ long years of opposition through the estimates committees—as I did, I might say, with many public servants. I am sure all senators who have seen Barbara in that role will agree that she has been a model witness. So she should be; she drafted the guidelines for official witnesses appearing before parliamentary committees. Barbara followed her own guidance, always willing to provide such information as she properly could but careful never to answer questions not asked. She was always meticulous in the accuracy and truth of her evidence. While fully comprehending the politics underlying the questions, she would never depart from the professional impartiality expected of public servants. I appreciate how little she enjoyed these regular interactions.

Our third area of interaction was far more enjoyable for both of us. We shared membership for many years of the National Archives of Australia Advisory Council. Barbara showed a real enthusiasm for the work of the council and the Archives and gave very sound, practical advice on how the council could achieve its ends. A significant initiative of the council to which she gave very helpful support and advice was the Australian Prime
Ministers Centre, now well established in Old Parliament House.

Our fourth area of interaction has been the period since the last election. That Sunday morning, 25 November 2007, now seems a long time ago. It was a moment of exhaustion suspended between the euphoria of an election win and the grind of government. As we wondered what would happen next, Peter Shergold and Barbara Belcher arrived with their folders, and with their extensive knowledge and experience and their sound common sense, to help us with the myriad of decisions that have to be taken to enable a quick and smooth transition to government.

Since then Barbara has made an enormous personal contribution to the areas for which I have ministerial responsibility. As well as the ongoing parliamentary and governance work of her division, there have been the many initiatives on issues such as standards of ministerial conduct, the codes for lobbyists and ministerial staff and the setting up of new arrangements to ensure that government advertising is apolitical. I make special mention of the work done on two key areas of reform: the proposals for overhauling the FOI Act and those for electoral reform. Barbara’s contribution over this period has been absolutely outstanding, and I take this opportunity to publicly thank her for it.

These days there is an emphasis on career mobility, but we should also value the accumulation of knowledge, expertise and experience. I mentioned Barbara’s work on ministerial appointments. Over a period she developed an encyclopaedic knowledge of the various circumstances leading to the sad end of many such appointments. From a lost Prime Minister to Sheraton sheets, from overseas loans to Stumpy Gully, from colour TV sets to Paddington Bears, from whiteboards to travel rorts, from Senator Shiel to Senator Santoro, and from many far less dramatic events, Barbara acquired knowledge and expertise which, coupled with what was an excellent sense of judgment, led to her becoming recognised in the Australian Public Service and by successive governments as the person to go to with the really difficult questions. She is also the oracle on the application of the caretaker conventions to all those challenging situations that arise during election periods.

There is little I can say about Barbara outside her working life. She has not had a lot of time, I suspect, outside of her work. What I can say, however, is that I personally know her to be generous hearted, solicitous for the welfare of others and a very caring and compassionate person. And I finish by saying, through you, Mr Acting Deputy President, sincere congratulations to Barbara for a job very well done. Thank you for the outstanding contribution you have made, and every best wish for a long and happy retirement. I will miss you, and I know very many others in this building will also.

**Senator MINCHIN** (South Australia) (3.26 pm)—by leave—I rise briefly on behalf of the opposition to support and endorse Senator Faulkner’s appropriately generous remarks on the occasion of the retirement of Barbara Belcher after nearly 44 years in the Australian Public Service—a remarkable record of achievement. I do so on behalf of all former members of the Howard government, which Barbara served so loyally, as she has served every government that she has been active within. I congratulate her on a great career, which Senator Faulkner has so appropriately described. She has made a remarkable contribution to this country, to government, to public servants and to good governance. She is renowned on both sides of politics and in this city for her professionalism, her remarkable knowledge of the business of government and her innate wisdom.
I think, in particular, she has been a tremendous role model for women in our Public Service. One of the great features of the Public Service is that it contains so many very impressive women. One of the privileges of having been, in my case, a minister for 10 years is to have worked with so many outstanding public servants, particularly in the central agencies—in PM&C and Finance and Treasury, where I spent much of my time. Barbara was in PM&C and she was one of many with whom it was a privilege to work. As some know, I represented the Prime Minister in Senate estimates for a number of years and was the happy beneficiary of Barbara’s briefings and advice. I was a witness to her professionalism and courteous handling of senators’ questions, which Senator Faulkner has also referred to. Indeed, Barbara was especially helpful to me when senators Faulkner and Ray were launching completely outrageous attacks upon me over our modest investment in government advertising. Barbara was there, always very courteously and politely equipping me to respond to these outrageous attacks.

It is my pleasure to briefly endorse everything that Senator Faulkner has said, and the fact that government and opposition can combine in both the House and the Senate to thank Barbara for her tremendous contribution is testament to what she has given over nearly half a century to this country. We join with Senator Faulkner and the government in wishing her all the best in what I hope is a very long and enjoyable retirement.

**APPROPRIATION BILL (No. 3) 2008-2009**
**APPROPRIATION BILL (No. 4) 2008-2009**
**APPROPRIATION BILL (No. 5) 2008-2009**
**APPROPRIATION BILL (No. 6) 2008-2009**

**Second Reading**

Debate resumed from 10 and 17 March, on motions by Senator Ludwig and Senator Arbib:

That these bills be now read a second time.

**Senator COONAN** (New South Wales) (3.29 pm)—I make it clear at the outset that the coalition obviously will be supporting Appropriation Bill (No. 3) 2008-2009, Appropriation Bill (No. 4) 2008-2009 and also Appropriation Bill (No. 5) 2008-2009 and its cognate bill Appropriation Bill (No. 6) 2008-2009 and sticking to the by now well-honoured convention of the Senate passing supply bills. This is so even though we do take issue with some of the stated purposes for which these appropriations are sought, and I propose to make some comments concerning them.

The total appropriation being sought in Appropriation Bill (No. 3) is $2.053 billion. The total appropriation being sought in Appropriation Bill (No. 4) is $1.41 billion. Appropriation Bill (No. 3) contains appropriations for any changes to estimates of program expenditure and policy decisions taken since the 2008-09 budget. Appropriation Bill (No. 4) contains appropriations for grants to the state and local governments. The total appropriation of Appropriation Bill (No. 3) and Appropriation Bill (No. 4) is $3.94 billion, which is money that this Rudd Labor government has been very busy spending since the last budget and which contains further examples, we would say, of more reck-
less spending by the government with the result of yet again increasing the budget deficit. For example, Appropriation Bill (No. 3) will appropriate $13.95 million for a national advertising campaign to raise public awareness of climate change and the government’s proposed Carbon Pollution Reduction Scheme. Does anyone in Australia seriously believe that Australians today are unaware of climate change? Surely the answer to that question is a resounding ‘Of course they are’, yet the government is going to waste almost $14 million ensuring that Australians are aware of the Labor government’s Carbon Pollution Reduction Scheme, which of course has not been passed by the parliament and looks shakier by the day. What sort of scheme is this that appropriates $14 million of taxpayers’ hard-earned money? My colleague in the House said recently that this Labor government’s scheme is deeply flawed, will cost tens of thousands of jobs, will kill investment, will not deliver any CO2 reductions of any consequence and so fails on all counts.

The coalition believes that it is important to reduce carbon emissions and the best way of tackling climate change is of course from a position of economic strength. Our leader, Malcolm Turnbull, has advocated alternative and very comprehensive ways to address and redress the issue of CO2 emissions. There can be, of course, no solution to climate change that relies on Australia’s commitment alone. It can only be and must be a worldwide solution, yet we do not yet know what and when President Barack Obama will be putting forward as a program of action for the United States—apart from a budget allocation in 2012—or what any other country will decide after the December 2009 environment summit in Copenhagen. We cannot act alone or in a vacuum on this issue, yet we say that this reckless Rudd government will not be swayed in its one-dimensional and unilateral course of action on a Carbon Pollution Reduction Scheme. If it goes ahead it will cost tens of thousands of jobs, will kill investment and will put a big hole in the balance sheets of trade exposed companies. Its flawed scheme will export jobs and export emissions with absolutely no benefit to Australia or, indeed, the rest of the world.

Also in Appropriation Bill (No. 3) is an amount of $101 million extra for the solar panel rebate scheme. It is a good scheme, now badly mismanaged by the current government. First it put a means test on families when applying for their rebate, then it removed it, then it had a mish-mash on the various dollar amounts people could actually receive as a subsidy and, finally—when it appears that it could not get more disorganised—Australians are being forced to wait until almost winter this year to get their rebate as the federal government is taking up to six months to pay the solar panel rebate. As if that was not enough, this government is changing the scheme yet again in mid-2009. It will then pay thousands of dollars less to individuals claiming the rebate payment.

Mr Acting Deputy President, you might be confused about this, but for the Australian taxpayer, unfortunately, it does not stop there. As the famous TV ad man Tim Shaw used to say, ‘But wait—there’s more.’ We have another $10 million being spent to meet the higher costs of the broadband assessment process. These higher costs are for consultancy fees and legal advice for the Broadband Network. Looking at the mess that the Minister for Broadband, Communications and the Digital Economy has made of the broadband assessment process, I am not surprised that they need more legal advice.

The government has failed to meet its 2007 election promise to reduce the costs of consultancy fees by $395 million. Despite that promise, the Rudd government’s spend-
ing on consultancy services is now at $553 million, which is the highest amount spent on consultancies by a federal government. Quite clearly, spending has got away from the Minister for Finance and Deregulation, Mr Tanner. He cannot restrain the extreme spending that is very much a hallmark of the Labor government.

This additional appropriation for consultancy is for broadband, which I do normally restrain myself from speaking about these days. The National Broadband Network would have to win on a count-back the title of the most bungled attempt at policy this inexperienced Labor government has made. The incompetence of Senator Conroy, the responsible minister, has the telecommunications industry agog. Not content with first moving the goalposts and cancelling OPEL—the coalition’s national rural and regional broadband project that by now would have reached 900,000 premises at metro equivalent services and prices—Senator Conroy then adopted the coalition’s idea of a tender for a new fibre network, which was a complementary process. Here we are now in March 2009 and Senator Conroy still has not announced how he actually proposes to deliver a new fibre network to 98 per cent of the population and, perhaps more significantly, when. Instead, we see another appropriation for more consultants and more advice on broadband to help out this utterly hopeless minister, who is out of his depth. If the Prime Minister were paying attention, he would give this important portfolio to someone else to fix.

Appropriation Bill (No. 3) 2008-2009 will also appropriate $93.3 million for the LPG vehicle scheme. This popular scheme was introduced by the former coalition government. Unfortunately, in the typical style of this government, it grossly underfunded the scheme in the May budget, despite acknowledging even in the Department of Innovation, Industry, Science and Research portfolio budget statements that there were likely to be twice as many conversions as budgeted for. This extra appropriation would not be necessary if the government had not deliberately underfunded the scheme in the budget in an attempt to conceal the apparent size of the Rudd government’s outlays. It is really yet one more example of mismanagement needing to be shored up when the sunlight is not shining quite so brightly into the recesses of how this government is appropriating money.

As I said a moment ago, this march by the Labor government goes agonisingly onwards to economic obstruction of the sound economic fundamentals bequeathed to them by the former coalition government. Labor’s spending priorities are all wrong. Of course, this trend simply continues in appropriation bills Nos 5 and 6. I will outline to the Senate the details of these two bills.

Appropriation Bill (No. 5) 2008-2009 contains appropriations for payments that are designed to meet components of the implementation costs of the government’s so-called second fiscal stimulus package. The bill appropriates $384 million for a number of different departments. The Department of Education, Employment and Workplace Relations receives $285.6 million. This includes $43.7 million for the commencement and completion of claims under the Australian apprenticeship system, $38.8 million to assist apprentices and trainees to return to work, $34 million to keep 241 ABC Learning Centres open until 31 March—there is not long to go for that—$36.8 million for personalised assistance to any worker made redundant and $70 million for the General Employee Entitlements and Redundancy Scheme, GEERS.

Funding for other departments includes $16.4 million for the Department of Infra-
structure, Transport, Regional Development and Local Government for the East Kimberley development package, $11.1 million for the Department of Families, Housing, Community Services and Indigenous Affairs to double the emergency relief program until 30 June 2011 and $14.9 million for the Department of Foreign Affairs and Trade to account for the impact of foreign exchange rate changes on international payments, as well as $68.7 million to agencies in general for implementation costs of the government’s second stimulus package. The Department of the Environment, Water, Heritage and the Arts has been allocated $24 million over two financial years for government advertising for the Energy Efficient Homes Package or what we colloquially now know as the Pink Batts appropriation.

Appropriation Bill (No. 6) 2008-2009 contains appropriations for purchases of capital items and for payments to the states, territories and local government authorities. Specifically, the bill provides the Department of Infrastructure, Transport, Regional Development and Local Government with $1.189 billion for additional equity in the Australian Rail Track Corporation, as well as $392 million to be given to the states and territories to bring forward road infrastructure projects. It also contains an appropriation of $250 million for the Department of the Environment, Water, Heritage and the Arts for the Murray-Darling Basin. This is part of the Murray River funding that the government promised to bring forward at Senator Xenophon’s request during the negotiations on the government’s second stimulus package, which was eventually passed in this chamber.

The funding appropriations in these bills have a significant impact on a number of portfolios, from Agriculture, Fisheries and Forestry to Defence, from Education, Employment and Workplace Relations to Foreign Affairs and Trade and from Infrastructure, Transport, Regional Development and Local Government to Treasury.

The total funding appropriated by bills Nos 5 and 6, as I said earlier, is $2.215 billion. Although most of this money relates to the government’s second stimulus package, it should be noted that this funding comes at a time when evidence has emerged that the initial stimulus package did not deliver the desired result. The national accounts for the December quarter 2008 showed that the first stimulus package, the December 2008 cash splash, did not stop the slide into negative territory. GDP contracted by half a per cent in the December quarter, and the 75,000 jobs that the government promised to create have not materialised. Rather, unemployment had the biggest jump last month since 1991. Critically, Australians showed no confidence in the Prime Minister, not listening to his exhortations to ‘spend, spend, spend’. Instead, they acted far more sensibly—or perhaps they were far too frightened—saving their payments during these uncertain economic times. In fact, data shows that 80 per cent of all recipients of this cash splash saved their cash payment. This was of course a critical blow to the government’s ‘don’t think, just spend’ reaction.

What made things worse was Australians reading this week that these taxpayer funded stimulus payments, doled out in the hope that they would be injected into the Australian economy, had gone worldwide to recipients in countries such as Italy, New Zealand, the United States and Japan. Just yesterday—actually, I suppose it was over a day ago now; time flies in the Senate—we woke to news that cemented the mockery of this bungled spendathon, the extreme spending that this government is engaged in, with cash payments being made to criminals and dead people, and family pets perhaps. Hollywood scriptwriters simply could not make this up.
This Rudd-led Labor government, packed to the rafters with trade unionists, does not know the first thing about managing Australia’s economy. They do not value the unique entrepreneurship of Australians and their businesses. They do not understand how to keep Australians in their jobs because they have never walked in the shoes of a business owner or employer. I tell you: it matters when you have to pay wages at the end of the week and it is just you and a few employees. Labor is the party of spending extremists, extreme spenders who simply throw money and a review or two at every problem. That is not the role of government, in our view.

Labor promised before the election to spend less and govern as economic conservatives. The additional funding appropriated in these bills is yet another example of broken government promises. It is just another $2.2 billion on the government credit card that will need to be paid back in the future. Frankly, only the Lord above—or that supposedly brilliant economic duo of Prime Minister Rudd and Treasurer Swan—knows when we will return to trend growth and begin to look again at a surplus.

But, as these are supply bills, we have said that the coalition will support this legislation, as we did appropriation bills Nos 1 and 2, even though they contained some pretty crazy funding—for example, for the discredited Fuelwatch scheme. We support the passage of these appropriation bills through the Senate, even though we certainly do not agree with some of the specific funding appropriations sought in the bills.

Now that Labor has raided the surplus and plunged the budget into deficit, all new government expenditure must be funded by borrowing—that is, this bill and any additional funding appropriated must be placed on the national bank card for our children to pay off later down the track. If indeed we will be borrowing to fund government expenditures then surely the government should be ensuring that all new spending is well targeted and likely to have the desired outcomes.

Put simply, these bills allow very poor quality spending. One of the worst examples is the $17.9 million allocated in bill No. 5 for the Department of the Environment, Water, Heritage and the Arts for government advertising for the Energy Efficient Homes Package, the so-called Pink Batts installation. Despite Labor’s rhetoric while in opposition, when they demanded that government advertising should be cut, now that we are in deficit Labor actually propose to borrow to spend a large but unspecified component of $17.9 million to advertise the much lauded installation of Pink Batts. Adding insult to injury there is a further allocation in 2009 of $6.4 million for further advertising. Bear in mind of course that these funds will need to be spent within the very short period of time remaining in this financial year.

It is already bad enough that nearly $4 billion of taxpayers’ funds are earmarked for the installation of Pink Batts—hardly spending on the economic infrastructure that will stimulate the economy and encourage productivity, let alone create jobs—but to top it off the government is putting another $17.9 million on the national bank card to advertise the Pink Batts installation scheme. Even Treasurer Wayne Swan, who advocated this measure as it would increase jobs in the sector—he said—has admitted that an unspecified amount of these Pink Batts will be imported from overseas, stimulating someone else’s economy yet again.

The coalition believes that in the current economic circumstances the main focus should be about jobs, jobs, jobs: new government expenditure should be focused on job creation and supporting those at risk of
losing their jobs. The coalition, especially the Leader of the Opposition, has on numerous occasions addressed parliament and highlighted alternative policies that will help stimulate the economy and support jobs. The first stimulus package has certainly not created the jobs that were touted. We have made suggestions about using government expenditure to support jobs and reduce barriers to employment—for example, by temporarily paying the superannuation guarantee liabilities for targeted small businesses. This proposal, like many other suggestions, has simply been ignored by the government. Instead we have seen the government engage in some of the most overblown and deceptive rhetoric that I think I have seen in all my years in this place. Whenever we disagree with the Prime Minister he scoffs, ‘The opposition just want to sit there and do nothing,’ or he says that the alternative is to do nothing. This is complete tosh. The alternative to government cash splashes is not to do nothing; we in fact support a fiscal stimulus. Our alternative is instead to better target more modest spending into more productive activities.

It is a worry that during a global financial crisis we have a spending extremist for Prime Minister, one who wants to spend $24 million on advertising in the next 16 months and then engage in a misleading political diatribe about the opposition instead of investing in economic infrastructure that will boost the productive capacity of the nation. This kind of excess in a time of financial uncertainty and deficit is symptomatic of a government that has simply lost the plot. Labor’s addiction to spin, even during this crisis, is not new leadership; it is right out of The Hollow Men playbook of a stunt a day, playing politics at the expense of standing up for good policy. As I outlined earlier, we believe Labor’s spending priorities are all wrong, and while we support the legislation in the Senate, as these are supply bills, we highlight the fact that this is a government acting to type, condemning Australia to debt, deficit and a legacy that will haunt future generations of Australians.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.49 pm)—We will of course be supporting Appropriation Bill (No. 3) 2008-2009 and cognate bills before the Senate. I will come back in a moment to a second reading amendment which I have, but I note at the outset that we will no longer be moving the amendments to the bills circulated by Senator Hanson-Young.

The honourable senator speaking for the government needs some reply. The problem of climate change is very real indeed. Just yesterday the scientists who are experts in the field warned us that the probability of the west-end Arctic icecap melting due to climate change has now increased materially. With the melting of the Greenland icecap, which is already underway, it is expected that sea level rises at the end of that process, if both occur, will be five to six metres. That follows on from predictions from a meeting in Copenhagen just a week ago that by the end of this century there may well be not a half-metre sea level rise around the world but a one-metre rise. The news is that that prediction could turn out to be very conservative. So there will be hundreds of millions of displaced people, some megacities swamped, massive coastline damage because there will be greater cyclones and storms, and no real readiness for that.

Instead, we have governments and the big parties—the Liberal Party, the National Party and the Labor Party—which are intent on putting billions of dollars into and have earmarked billions of dollars for infrastructure to export more coal. I was looking at a Friends of the Earth publication just yester-
day which said that, if the proposal for growing coal exports out of Newcastle, Gladstone and Mackay is taken into account, the equivalent of that coal being burnt overseas will dramatically increase greenhouse gas pollution of the atmosphere not just once, twice or three times but many times the current output for the whole nation of Australia. Of the rich countries on the face of the planet at the moment, we are the worst per capita polluters.

What I want to come back to here is that we had 12 years of neglect by the Howard government, by the National Party and the Liberal Party. In fact, the National Party want to put the foot on the accelerator of the very industries that would, for example, make sure that Queensland is in the future faced with the big loss of jobs which we are seeing at the moment due to the financial downturn. That is what they want to do instead of converting Queensland into the sunshine state and producing, as the Greens are proposing, a renewable energy revolution based on solar power which would produce tens of thousands of jobs in Queensland as well as retrofitting all the houses in Queensland with such things as solar hot water, insulation and potentially, with gross feed-in laws—which the big parties do not want in that state—cheaper power bills for everybody in the state.

Not least at stake there—and the honourable senator did not mention this once in her speech—is the fate of the Great Barrier Reef. Scientists tell us it has a high likelihood of massive death from coral bleaching from climate change due to the failure of the policies of the Labor, Liberal and National parties, both at state level and at federal level in this country. And it is going on; it is not changing. One only has to look at the policies of the two big parties as we now head towards a global conference at the end of this year in Copenhagen to see that Australia is way behind. Let me remind the Senate that it was Maggie Thatcher who said, 20 years ago, that every year we delay in tackling climate change is going to make it more expensive to fix. She set up the Hadley Institute, which is now a world leader in climate change science in Britain, but there is no sign of that coming from Kevin Rudd, there was no sign of it coming from John Howard and there is certainly no sign of it coming from any Labor, National or Liberal party state leader at the moment.

What I particularly want to talk about with this opportunity on the appropriation bills before us is the failure of successive governments to provide the proper transparency which is required if the Senate is to do its work in scrutinising expenditure of massive amounts—multibillion dollar amounts—of taxpayers’ money.

First of all, I move:

At the end of the motion, add:

“, and the Senate endorses recommendation 1 of the Finance and Public Administration Committee in its report on the additional estimates 2008-09, that the government respond to the Standing Committee on Appropriations and Staffing reports on the ordinary annual services of the government as a matter of priority”.

I refer to the Standing Committee on Finance and Public Administration report of March. At section 1.12 it has this to say under the heading ‘The ordinary annual services of government’:

In the course of the examination of the Department of the Senate, issues in relation to the ordinary annual services of government were canvassed. The Clerk of the Senate, Mr Harry Evans, noted that, although the Senate had established a definition for ordinary annual services more than 40 years ago, this was no longer adhered to strictly. As a result, expenditure is incorrectly included in the appropriation bills for the ordinary annual services of government.
That is, the bills that we have in front of us right now.

The Clerk commented that ‘the government collectively, which in reality means the Department of Finance and Deregulation, adopted the view that anything under an existing outcome is part of the ordinary annual services’.

Even if they are not part of the ordinary annual services, they are put in there. The Clerk went on to state:

As you know, the outcomes are extremely broad, vague and all-encompassing so completely new programs are turning up in the ordinary annual services bill. This was pointed out by the Audit Office, and it has certainly been taken up by the Appropriations and Staffing Committee. This situation is not in accordance with the past determinations of the Senate on the subject …

The Senate, not for years but for decades, has been ignored by consecutive governments on this issue. I go back to the report. Section 1.13 says:

The Clerk noted that the Senate Appropriations and Staffing Committee had reported on the matter a number of times but the Government had yet to respond to the committee.

I interpolate: the government did not even bother replying. I go back to the report.

However, the need to resolve the issue was highlighted by the Clerk:

Here we have a quote again from the Clerk, Harry Evans:

Something will have to be done soon because there is always something that puts this problem on the backburner, and currently it is the global financial crisis.

That is excuse No. X-plus. I go back to the Clerk:

We cannot deal with this problem with the ordinary annual services while the global financial crisis is threatening.

He is quoting the general government wisdom.

There is always something that shoves this problem to the back of the queue, but something will have to be done soon, otherwise the distinction between ordinary annual services and everything else will be lost. We will soon get to a situation where there is only one bill presented and the other bill disappears altogether, and that would be a great loss for accountability because you then simply cannot distinguish between the ordinary ongoing normal expenditure of government and new expenditure.

Section 1.14 says:

As articulated by the Clerk, the distinction between expenditure on the ordinary annual services of government and other expenditure provides a useful tool for parliamentary scrutiny and accountability in addition to ensuring compliance with the relevant Constitutional provisions (sections 53 and 54) …

We are talking here about complying with the Constitution. That is a requirement for this parliament and for any government. But the evidence is that these appropriation bills are not complying with the Constitution.

Going back to the report, it says:

This committee’s 2007 report Transparency and accountability of Commonwealth public funding and expenditure and the Murray review— that was the review done by former Democrat Senator Andrew Murray— both supported the need to isolate the ordinary annual services as is provided for in the Constitution. It was recommended that the Senate continue to seek clarification from the Government about what should be included in the different appropriation bills and that the Senate should then form a view as to the appropriateness of the split, When any differences are resolved to the satisfaction of the Senate, the now Department of Finance and Deregulation should be required to monitor and enforce the split.

Finally, section 1.15 says:

The committee notes that the reform agenda, Operation Sunlight—Enhancing Budget Transparency, states that the ‘Government is considering proposals to put to the Senate to clarify the allocation of items between the Appropriation bills.’ However, given the importance of this matter to
effective Senate scrutiny and the continuing mis-allocation of expenditure between appropriation bills, the committee considers that the matter should be addressed as quickly as possible.

So say I. That is why this amendment, which calls on the government to act on this and respond, is before the Senate. I commend it to the Senate.

Here is the recommendation that I referred to from the Senate Standing Committee on Finance and Public Administration report this year:

The committee recommends that the Government respond to the Standing Committee on Appropriations and Staffing reports on the ordinary annual services of government as a matter of priority.

I am going to get serious about this. I believe that the Constitution is not being upheld. I believe that time and again governments are hiding specific expenditure items in annual general services. I will get pulled up on this, but let me shorthand it. This is all pretty arcane. Annual general services is the money brought forward for the running of government. Specific appropriations are for things like the allocation of money for the relief of countries affected by the tsunami—multibillion dollar expenditure of government moneys. It may be a multimillion dollar expenditure on government advertising. It is an issue that has arisen during the course of the history of our country. The government says, ‘Here is an issue; we will expend money on it.’ More and more of these things are being put into ordinary annual services and therefore do not come before the Senate for specific scrutiny and our adjudication of whether they are wise uses of money. That is contrary to the Constitution.

It is increasingly bad practice. This government is guilty of it, as was the last. It is time that the Senate called a halt to it. Other examples include the Northern Territory emergency response package. We know that that is billions of dollars. That began under the Howard government and has continued under the current Rudd government. The expenditure on the equine influenza outbreak was seen as part of ordinary annual services. That is not an ongoing service of government to the people of Australia; that is money that was expended for a particular one-off matter which arose. That ought to have been brought before the Senate for scrutiny—in fact, it should obviously have been brought before both houses of parliament.

I commend this amendment—and it is a very serious one—to the Senate. We are the house of review. We are to scrutinise government expenditure to ensure that the executive is held to account. And I do not want to reflect on the House of Representatives, but what the executive says gets voted through the House of Representatives. I am not going to use the phrase ‘rubber stamp’, because that might reflect on the House of Representatives. This Senate is in a different position. It has the ability to scrutinise government. I say to my coalition colleagues and my government colleagues that this is an important amendment. It is simply a call on government to respond to the Senate. I would ask everybody in this place to very positively consider this amendment and give it support so that we can get a response from the government on this matter as a matter of priority.

Senator STERLE (Western Australia) (4.05 pm)—I rise to speak in regard to Appropriation Bill (No. 3) 2008-2009, Appropriation Bill (No. 4) 2008-2009, Appropriation Bill (No. 5) 2008-2009 and Appropriation Bill (No. 6) 2008-2009. The purpose of these bills is to seek appropriation authority from parliament for the additional expenditure of money from the consolidated revenue fund to meet requirements that have arisen since the last budget and from policy decisions since the last budget. The additional funds will enable the government to respond
appropriately and quickly to current circumstances and to implement programs and initiatives that will not only immediately assist the Australian community and the economy but provide long-term benefit.

At a time when families throughout the country are looking to the government to take a firm leadership role in seeing the nation through the current difficult times, it has been instructive for Australians to see how negative the opposition has been in respect of the government’s nation-building and jobs initiative. This is in marked contrast to the reaction of community and private sector leaders and state, territory and local governments who have welcomed the Rudd Labor government’s proactive and constructive responses to the global financial crisis and the urgent need for the government to have a long-term vision for the Australian economy.

I have no doubt that at the next federal election Australian voters will remember the negative contributions made by federal Liberal Party members and their coalition mates from the Nationals to the policy debate at a time when the world is experiencing the worst economic outlook since the Second World War. I must say, however, that it has not really surprised me. In reality, it is simply a continuation of past form.

The constant hogwash that comes out of the mouths of the members of the opposition about how well the Howard government managed the Australian economy is now being seen for what it always was—self-serving rhetoric. And what did Australians get as a result? They got an economy riddled with holes big enough to drive a truck through. Australian voters were very aware of this when they voted in the Rudd Labor government in 2007. For example, it became glaringly obvious that the state of Australia’s essential public infrastructure—and I hope you are listening over there—was already affecting the prospects of the long-term economic growth and was becoming a serious drag on productivity. As well, Australia was beset by a critical major shortage of skilled labour, such as has never been seen since Federation. The effect of the skills shortage flowed into every area of the economy. For an example we only have to look at Australia’s manufacturing sector. In May 2007, a background paper entitled ‘Australia’s manufacturing sector’, prepared by the then Australian Department of Industry, Tourism and Resources, made the following points:

Since the early 1990s there has been a transformation in the composition of the manufacturing workforce. There has been a considerable change in the skill mix required. Over the last 10 years, the percentage of total hours worked in the economy by high-school labour has increased by seven percentage points to around 30 per cent, while the percentage of hours worked by low-skilled labour has fallen by seven percentage points to around 32 per cent.

In other words, in almost all sectors of the economy, long-term economic growth has become closely linked to the skill level of the workforce. The fact is the higher the level of workforce skills, the higher the capacity for the economy to grow and to compete in an increasingly competitive global marketplace. This applies to manufacturing as much as it applies to other sectors of the economy. It is no wonder that Australia’s manufacturing sector languished under the Howard government. It is totally misplaced thinking to believe that it is in Australia’s interests to have a declining manufacturing sector where we eventually become totally dependent on imports to meet our need for manufactured goods.

In 1996, manufacturing provided approximately 16½ per cent of full-time jobs in Australia. This amounted to more than one million full-time jobs. By 2007, the proportion of full-time jobs in manufacturing had fallen to 12½ per cent. This is equivalent to a
loss of approximately 300,000 manufacturing jobs. If this trend were to continue over the next 20 years—in other words, twice the period of the Howard government—there would be virtually no jobs left in manufacturing in this country. This would mean the loss of well over a million jobs. And don’t let anyone be fooled that the coalition party stands for job creation. Nothing—and I say nothing—could be further from the truth.

Let me turn briefly to the need to upgrade and expand Australia’s public infrastructure. For years the Howard government simply ignored the decline in the quality of Australia’s essential public infrastructure. It consistently failed to appreciate that ensuring the quality and capacity of the nation’s public infrastructure is essential to sustaining Australia’s long-term economic growth. It was blindly obvious to almost everyone else that the provision of essential public infrastructure was falling behind the needs of Australia’s growing population and growing economy. Industry leaders and the country’s trade unions desperately tried to get the Howard government to take notice.

Opposition senators interjecting—

Senator STERLE—It would not hurt if those opposite took notice because they are still absolutely in denial that they presided over the greatest skills shortage in Australia’s history—and if you want me to say that again I am quite happy to do that. As I was saying, industry leaders and the country’s trade unions desperately tried to get the Howard government to take notice of the negative effects that Australia’s creaking infrastructure was having on private sector investment and on the prospects for future economic growth.

Senator Bushby interjecting—

Senator STERLE—I hope you are listening over there, and I will say it one more time: for 11 long years you presided over the greatest skills shortage in the history of this country—something to be very proud of, I am sure, Senator Bushby, who is from Tasmania. I am sorry, I forgot Senator Kroger, from Victoria, who also sat there and witnessed the greatest skills shortage in Australia’s history. I am sorry for forgetting Senator Kroger—and she should be even more ashamed, coming from a manufacturing state such as that great state of Victoria. All the Howard government did was to embark on a blame game, blaming the states and territories for the problem.

The Howard government also presided over the emergence of a critical shortage of affordable housing. In an address at the 2002 annual convention of the Housing Institute of Australia, the former Prime Minister, John Howard, had this to say:

I am committed to preserving and expanding the levels of home ownership, which are essential to social cohesion and stability.

And then what happened? Mr Acting Deputy President, I will tell you what happened. From almost the moment Mr Howard uttered those words, housing affordability went into freefall. By early 2007 the Housing Institute of Australia was estimating that more than half a million households were experiencing housing stress. Back in March 2002 the median first-home price was approximately $220,000 and average monthly repayments were approximately 21 per cent of average disposable household income. By September 2007 the median first-home price had increased to approximately $430,000. That is an increase of approximately 95 per cent. Over the same period the average annual household disposable income had increased by only approximately 25 per cent. You do not have to be Einstein to work out that over the period of the Howard government the cost of buying a first home had become a financial nightmare for hundreds of thousands of Australians. The result of 11 years
of neglect by the Howard government is that Australia is now in the grip of a housing shortage that will, unfortunately, take years to resolve. All these problems could largely have been avoided if the federal government at that time had put its mind to the job required of it.

Senator Back—That was state governments, Labor state governments.

Senator STERLE—I am just reminded that there is a Western Australian over there—was it you, Senator Back?—running the blame game. What comes out of Senator Back’s mouth? The states, the states, the states. It is good to see that the chip is still implanted in half of them over there of the stupidity and the inaction of the Howard era. It is still largely there, even coming from a senator who has been in this place no more than one week. It is still alive and well in Western Australia, as is Work Choices. They cannot help themselves and, as my esteemed colleague Senator Arbib said in this chamber a couple of days ago, it is in their DNA.

The task of dealing with the legacies of inaction by the Howard government was already urgent when the Rudd Labor government came to office in November 2007. Because of the global financial crisis, the task is even more urgent today. The funding that will be provided by these appropriation bills will enable the government to get on with the task of assisting Australian families and Australian businesses to weather the economic storm that is currently—

Senator Heffernan interjecting—

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! No, Senator Heffernan. You will not interject from the doors of the chamber, thank you.

Senator Heffernan—I wasn’t.

Senator STERLE—Mr Acting Deputy President, thank you very much for warning me. I do appreciate that. I think I have got a lot more to be worried about than Senator Heffernan standing at the door, but anyway I will not go any further.

As I was saying, the additional funding requests in these bills include the funding required to meet changes in the estimates of program expenditure due to variations in the timing of payments and to meet forecast increases in program take-up. They include an additional $157 million for Australia’s overseas aid program; and an additional $600 million in relation to Australia’s military presence in Iraq and exchange rate movements and as a result of the Graded Other Ranks Pay Structure review. There are additional funds to meet the expected extra take-up of the rebates for household solar panels and the expected increased access to the LPG Vehicle Scheme. The bills also meet requests for the provision of additional funding to agencies for expenses in relation to grants to the states under section 96 of the Constitution and for payments to the territories. In addition, the proposed appropriations will complement the Nation Building and Jobs Plan as well as give effect to important elements of the December 2008 nation-building package and will fund enhancements to employment and apprenticeship programs and other urgent measures and variations.

Included in the bills is the proposal of funding for additional equity for the Australian Rail Track Corporation. The Australian Rail Track Corporation is a wholly owned Commonwealth company and is undertaking a significant infrastructure investment program. This includes 17 projects to improve the reliability and competitiveness of the nation’s rail freight network, including the expansion of capacity along the rail corridors connecting the Hunter Valley coalmines to the port of Newcastle. This expansion of capacity will more than double the amount of coal capable of being transported to port
from 97 million tonnes a year to 200 million tonnes a year. As well, the appropriation bills include a proposal to bring forward no less than $711 million to invest in building better roads. Also, consistent with the agreement reached with the minor parties during the passage of the Nation Building and Jobs Plan, the government proposes to bring forward expenditure totalling $500 million over four years, beginning in 2008-09, to assist in expediting the return of water to the environment and delivering long-term benefits to the Murray-Darling Basin. The Department of the Environment, Water, Heritage and the Arts will be provided with $250 million in 2008-09 for this purpose. The government considers that this is the maximum pace of water recovery that can be pursued without causing unnecessary disruption to the water market and without compromising the amount of water that can be returned to the rivers over time. Almost as importantly, included in the bills is a proposed—

Honourable senators interjecting—

Senator STERLE—Through you, Mr Acting Deputy President, maybe it’s only the Western Australians and my good friend Senator Heffernan who might be interested. But, almost as importantly, as I said before, included in the bills is a proposed $195 million in total over two years to implement the East Kimberley development package. The package is designed to support economic development in the region through investment in social and common-use infrastructure. The contribution is conditional on a joint assessment with the Western Australian government of the most effective infrastructure investments to meet the social and economic development needs of the region.

Honourable senators interjecting—

Senator STERLE—Did you hear that? That Western Australian government will match this contribution with the aim of doubling the available irrigated development area from 14,000 to 28,000 hectares to provide for a possible large-scale expansion of agriculture. Isn’t that wonderful news! There will be an increase from 14,000 to 28,000 hectares in that fantastic part of Australia, up there in the Kimberley. The social infrastructure component of the package may provide for investment in schools, health, early childhood, aged care and recreational facilities. Common-use infrastructure may provide for the development of roads, and aeronautical and power infrastructure—and don’t they need it!

Lake Argyle, where the Ord River enters the Carr Boyd Ranges—if I shut my eyes I can really see myself floating in that part of the world—

Senator Back—It’s crocodile infested!

Senator STERLE—You say it is crocodile infested. I think it is a wonderful part of the world. Through you, Mr Acting Deputy President, I do not know whether Senator Back has had the privilege of being up there. It is a fantastic part of the world. Get up there, mate. Have a look around and meet some of the constituents. As I said, the Ord River enters to Carr Boyd Ranges just south of Kununurra. Lake Argyle is the largest freshwater storage in mainland Australia. It has a storage capacity of almost 11,000 million cubic metres of water—enough to fill Sydney Harbour nine times. I am told that in the wet season that expands to a capacity that would fill Sydney Harbour 22 times. This is a vast resource. The existing Ord River Irrigation Scheme takes a very small percentage of the available water. We would be foolish to ignore the huge potential agricultural resource we have in the Kimberley area of Western Australia.

Senator Back—Hear, hear!
Senator STERLE—Thank you, Senator Back. It is great that we do agree on that. We would seriously be foolish to ignore it.

Recent research has shown that developments in plant breeding and new crop varieties have substantially increased opportunities for large-scale agriculture in northern Australia, particularly in the WA Ord River Irrigation Area. For example, field research carried out over the past 10 years has confirmed that using new and tested approaches to growing cotton in Northern Australia can be a successful undertaking.

In May 2007 the then chief executive officer of the Cotton Cooperative Research Centre had this to say:

Cotton is a feasible and sustainable crop for farmers to grow, and would provide significant employment and infrastructure investment opportunities in the Kimberley region of Western Australia and the Northern Territory.

This investment by the Commonwealth government will send signals to the private sector and to state, territory and local governments that the federal Labor government is serious about the potential to greatly expand agriculture production in Northern Australia. It will show that the government realises that this will only occur if there is infrastructure to support large-scale farming and to get agricultural produce to international and domestic markets at an economic price.

From the time it came to office the Rudd Labor government demonstrated its commitment to Northern Australia and to the people who live and work in this region of Australia. The Office of Northern Australia, under the responsibility of Gary Gray, the Labor member for the WA electorate of Brand and Parliamentary Secretary for Regional Development and Northern Australia, is now getting on with the very important task of turning vision into reality in Northern Australia. Enough talk; it is now time to get cracking. Under Mr Gray’s guidance—the guidance of the parliamentary secretary—I have no doubt that this reality will take shape.

Senator Bernardi interjecting—

Senator STERLE—I am sorry, Senator Bernardi; you are awake now! Last time I saw you, you were dozing off in the chair. Welcome back.

Senator Bernardi—You’re a toxic bore.

Senator STERLE—I am sorry. This must be South Australia having a go at Western Australia, is it, Senator Bernardi—through you, Mr Acting Deputy President. If you have got nothing better to do, go outside. Suck a bit of fresh air in if you need to stay awake that long, Senator Bernardi, because you are boring me. The additional funding proposed in these appropriation bills—

Senator Bernardi interjecting—

Senator STERLE—If Senator Bernardi can abuse another colleague, maybe he will get another promotion. I do not have any idea what he is up to, but good luck anyway. It will not only deal with immediate funding needs but will support programs and initiatives that will have long-lasting benefit to the economy and the Australian community. On that, I commend the bills to the Senate.

Debate (on motion by Senator Ludwig) adjourned.

Ordered that the resumption of the debate be made an order of the day for a later hour.

THERAPEUTIC GOODS AMENDMENT (MEDICAL DEVICES AND OTHER MEASURES) BILL 2008 [2009]

In Committee

Considers resumed.

Bill—by leave—taken as a whole.

Senator PARRY (Tasmania) (4.26 pm)—The opposition understands that the Greens have an amendment, which I have indicated
to Senator Siewert we will be opposing. The Parliamentary Secretary to the Minister for Health and Ageing, in her speech in the second reading debate, answered the opposition’s questions. As indicated in the second reading debate, we will support the bill but oppose the Greens’ amendment.

Senator SIEWERT (Western Australia) (4.26 pm)—Thank you, Senator Parry, for clarifying that before I had even moved my amendment! I move Greens amendment (1) on sheet 5767:

(1) Schedule 1, item 2, page 4 (after line 29),
after section 41GS, insert:

41GSA Parliamentary committee scrutiny of exemption notices

(1) As soon as practicable after the commencement of the first session of each Parliament a standing committee of each House of the Parliament is to be nominated, according to the practice of the relevant House, as its nominated committee for the purposes of this section.

(2) As soon as practicable after 30 June and 31 December each year the Minister must cause a document setting out the particulars of:

(a) all exemptions under section 41GS; and

(b) all variations and revocations under section 41GU;

in the previous six-month period to be provided to the nominated committee of each House of the Parliament.

(3) Each nominated committee is to receive each document provided in accordance with subsection (2) on a confidential basis.

(4) Each committee, and each member of each committee, must treat the information contained in any such document as confidential, and must not publish any part of that information to any other person except as authorised by this section.

(5) The committee may refer to the information contained in any such document and any conclusions drawn from it in a report to either House of the Parliament, but must not disclose the information in such a report.

I apologise for not being in the chamber to speak on this earlier; I was otherwise detained. The Greens overall are supportive of the purposes of the Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008 [2009]. The broad intent of the bill is to minimise regulatory obligations while maintaining appropriate levels of scrutiny and accountability, which are so vitally important when dealing with the products which come under the jurisdiction of this act. We believe there are obvious merits in the provisions that increase transparency of the processes of the Therapeutic Goods Administration and provide public access to a range of information held by the TGA. Similarly, the Greens support the changes to the fit and proper person test for manufacturing licensees and distributors, which will improve objectivity for administrative purposes. We appreciate the provision to include additional default standards for submissions to the TGA; adding the American and European pharmacopoeias to the British pharmacopoeia as default standards will provide greater flexibility to the pharmaceutical industry, with significant benefits that will flow on to Australian consumers.

The provisions to strengthen penalties for breaches of the act are appropriate and should be supported. Furthermore, it is important to state that the Greens appreciate and support the primary purpose of the bill: to allow for the stockpiling of medical devices and pharmaceutical medicines in case of a threat to public health and possible future emergency. To do this, this bill intro-
roduces provisions which will exempt medical devices from certain requirements for inclusion in the Australian Register of Therapeutic Goods in line with the amendment made to the act in 2002 for other therapeutic goods, including pharmaceutical medicines.

We do not dispute that there may be a case for fast-tracking in certain cases and for the process to ensure public health; however, what concerns us about this bill is that it takes this process one step further away from the processes of transparency and accountability which currently exist. It removes the requirement for exemption instruments to be disallowable—that is, the exemptions will no longer be subject to any parliamentary or public scrutiny and this entire process will be determined by the minister. This is the issue which creates concerns for the Greens, which is why I am moving this amendment.

This bill would give the minister discretionary power to exempt medical devices from key requirements, including those relating to the obligations of manufacturers of medical devices in relation to conformity assessment procedures, medical devices, clarifications and conformity assessment certificates, and the listing in the Australian Register of Therapeutic Goods. There are very sound reasons for the requirements for registration in the Australian Register of Therapeutic Goods. Before a product can be marketed in Australia it must have achieved regulatory approval and be registered. This involves the TGA assessing the quality, safety and efficacy of the product. The transparency of this process is an essential part of ensuring high standards of safety and public confidence. Knowledge that a product is registered on the ARTG provides certainty to all Australians that the processes have been thorough and rigorous. Exempting certain therapeutic goods from this register—that is, those that the minister determines to be required for stockpiling in certain circumstances—creates a degree of risk in this process. The risk may not be great, but the question remains whether there is sufficient justification for introducing any degree of risk at all.

We are very concerned. The most worrying part of this bill for us is the provision under clause 41GS(6), which states that these emergency exemptions would not be a legislative instrument, thereby exempting them from the usual tabling and disallowance regime under the Legislative Instruments Act. The bill also changes this requirement for pharmaceuticals under these circumstances. Since the amendment made to the act in 2002, pharmaceuticals deemed necessary for stockpiling in these circumstances have been subject to parliamentary scrutiny by legislative instrument. The changes proposed in this bill will enable emergency exemptions for therapeutic goods to be completely removed from parliamentary scrutiny and disallowance. Additionally, notices prohibiting advertisements containing misleading and false representations, and ministerial orders relating to the non-applicability of standards in particular circumstances, will not be legislative instruments under this bill.

We are also deeply concerned about the issues around ministerial discretion. Under clause 41GS(2) the minister can exercise that discretion if he or she is satisfied that it would be ‘in the national interest’ for the exemption to be made to deal with (a) a possible threat to public health or (b) an actual threat to public health. However, the definitional parameters of these terms are not specified, and it is not clear how or on what basis determinations about a potential threat to public health or possible future emergencies would be made. We believe there are significant issues around emergency stockpiling. We are deeply concerned there will no longer be any public scrutiny of purchases because of that particular clause in the act.
We have looked at this bill very thoroughly. We do appreciate why there needs to be these powers, but we are deeply concerned that they will not be subject any longer to the process of a regulatory instrument. We believe there does need to be some scrutiny, so we have proposed a process whereby a parliamentary committee could in fact scrutinise the exemption notices. There are similar circumstances where this occurs. It would not be done publicly, it would conform with the taking away of the legislative instrument process, but it would enable a form of scrutiny. As the bill stands now, there will be no oversight of that. We will no longer be able to check what is on those lists. We will not know what the minister and the government have purchased for those lists. What will the level of scrutiny be to ensure that we are in fact preparing adequately, or that the pharmaceuticals or the medical devices purchased are the appropriate and proper pharmaceuticals or medical devices?

This amendment is designed to allow a level of scrutiny while still allowing for the information not to be made public. We are concerned about always using the issue of bio-threats to justify decision making and secrecy. We do understand, though, that there may be instances where we do not want some of the pharmaceuticals and medical devices purchased in the public arena, so we believe this is an appropriate compromise to ensure a level of scrutiny by a parliamentary committee—in a confidential process, I might add. We therefore commend the Greens amendment to the chamber.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (4.34 pm)—Can I indicate to Senator Siewert in fairness that the government does not support the amendment. Firstly, we need to remember that these exemptions are not legislative instruments and never ought to have been disallowable. They do not state the law generally or modify the law generally; they are really in the nature of permits, and permits are not as a rule visible to parliament, far less subject to parliamentary scrutiny or disallowance. Currently under section 19 of the act the secretary may approve the importation of unregistered medicines for use in clinical trials or for the treatment of particular individuals. Under section 19 the secretary may approve the importation of unregistered medicines to replace medicines that are on the register but in short supply, as long as a person has applied to have the replacement medicine registered in Australia or they have been registered in another country. These approvals, which result in the immediate supply of unregistered medicines to people in Australia, are not appropriately subject to any parliamentary reporting or oversight.

Secondly, the government has been advised that these exemptions should be kept confidential for reasons of national security. Making them available automatically to a committee of each house will unnecessarily broaden the number of people who will have access to the information without any countervailing benefit.

Thirdly, Senator Siewert’s amendment does not seem to be very workable, especially as far as proposed subsection (5) is concerned. I do not see how a committee could refer to information about exemptions in a report to parliament without actually revealing the substance of those exemptions, and I do not see how useful that could be.

Finally, establishing a committee of each house for this purpose with biannual reporting could be a very heavy-handed approach given that most of the time there would be nothing to report. So, while I understand the principle you are pursuing, its application in the circumstances is inappropriate.
Senator SIEWERT (Western Australia) (4.36 pm)—I am aware of the time constraints so I will be brief. The concern around national security is in fact the point. Pulling out the national security card to justify excluding scrutiny of this process is of concern to the Greens. However, I understand that I am not going to get very far in this argument, so I will simply put my amendment.

The TEMPORARY CHAIRMAN (Senator Bernardi)—The question is that Greens amendment (1) on sheet 5767 be agreed to.

Question negatived.

Bill agreed to.

Bill reported; report adopted.

Third Reading

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (4.38 pm)—I move:

That the bill be now read a third time.

Question agreed to.

Bill read a third time.

FAIR WORK BILL 2008

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Fair Work Bill 2008 informing the Senate that the House has agreed to amendments (1) to (30), (35) to (93), (95) to (135), (137) to (231) made by the Senate and disagreed to amendments (31) to (34), (94) and (136) made by the Senate, and requesting the reconsideration of the bill in respect of the amendments disagreed to by the House.

Ordered that the message be considered in Committee of the Whole immediately.

House of Representatives message—

SCHEDULE OF AMENDMENTS MADE BY THE SENATE TO WHICH THE HOUSE OF REPRESENTATIVES HAS DISAGREED

(31) Clause 23, page 41 (line 31), omit “15 employees”, substitute “20 employees”.

(32) Clause 23, page 42 (line 5), at the end of subclause (2), add:

; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and

(d) the regulations must prescribe a method for the calculation of full-time equivalent positions for the purposes of this section.

(33) Clause 121, page 122 (line 5), before “Section”, insert “(1)”. 

(34) Clause 121, page 122 (after line 11), at the end of the clause, add:

(2) Subsection 23(1) has effect in relation to this section as if it were modified by omitting “20 employees” and substituting “15 employees”.

(3) Subsection 23(2) has effect in relation to this section as if it were modified by omitting paragraphs (c) and (d).

(94) Clause 194, page 183 (line 13), at the end of the clause, add:

; or (h) any matter that restricts, controls or dictates the use or non-use of independent contractors.

(136) Clause 3, page 3 (line 34), omit “enterprise-level”, substitute “enterprise-level or workplace-level”.

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HOUSE OF REPRESENTATIVES REASONS FOR DISAGREEING TO THE SENATE AMENDMENTS

Senate Amendment Numbers 31 - 34

Definition of small business employer

This amendment would change the definition of small business employer so that instead of meaning an employer that employs fewer than 15 employees, it means an employer that employs fewer than 20 full-time equivalent positions, not as an individual head count of employees.
In April 2007 the Government released its election policy *Forward with Fairness - Labor’s plan for fairer and more productive Australian workplaces*. This document clearly set out the unfair dismissal policy contained in the Fair Work Bill as introduced into the House of Representatives. The policy is that an employee who is employed by an employer who employs 15 or more employees for 6 months will be eligible to bring an unfair dismissal claim, and an employee who is employed by an employer who employs fewer than 15 employees must have been employed for 12 months.

The Bill aligns unfair dismissal with long standing redundancy provisions.

The House of Representatives does not accept this amendment.

**Senate Amendment Number 94**

**Independent contractors**

This amendment would make certain terms in enterprise agreements relating to independent contractors ‘unlawful terms’.

The Government considers that terms relating to conditions or requirements about engaging independent contractors may appropriately be included in enterprise agreements as they sufficiently and legitimately relate to employees’ job security, provided such terms do not amount to a general prohibition against the engagement of such contractors. Further, this approach is consistent with jurisprudence about which matters pertain to the employment relationship in the context of the Commonwealth’s workplace relations laws.

The Explanatory Memorandum to the Fair Work Bill outlines this at page 108.

The House of Representatives does not accept this amendment.

**Senate Amendment Number 136**

**Object of the Act**

This amendment would amend the object of the Bill. It would replace a reference to achieving productivity and fairness through an emphasis on ‘enterprise-level’ bargaining to ‘enterprise or workplace level’ bargaining.

The reference to enterprise-level bargaining reflects a long standing approach to describing the scope of collective bargaining and is consistent with the language used to describe the bargaining framework established by the Fair Work Bill.

The House of Representatives does not accept this amendment.

**Senator Ludwig** (Queensland—Minister for Human Services) (4.40 pm)—I move:

That the Senate does not insist on the amendments that have been disagreed to.

The key issue under discussion today has been unfair dismissal arrangements. The government made a clear election commitment. The government made a clear election commitment. The government acknowledges people of goodwill who are opposed to Work Choices. We note that Senator Fielding and Senator Xenophon have had concerns about the unfair dismissal arrangements—concerns that they have been very clear and consistent about. Senator Xenophon today raised with the government the prospect of an arrangement being for a three-year transitional period. Senator Xenophon also raised the need for specialist advice for small and medium-sized businesses to be available through the Office of the Fair Work Ombudsman, and the government agreed with him in relation to this. The government agreed today to Senator Xenophon’s request that the experience of employers, particularly small and medium-sized enterprises, and employees with the unfair dismissal system be the subject of a thorough and transparent review by Fair Work Australia in 2012.

Senator Fielding today raised with the government the prospect of the definition of ‘small business’ being resolved by calculation of less than 15 full-time equivalent employees rather than a headcount of full-time, part-time and regular and systematical casuals. Arising from these discussions, it was agreed with Senator Fielding as follows, confirming the government’s undertaking in respect of how a small business will be defined for the
purposes of the unfair dismissal provision in the Fair Work Bill 2008:
The Government agrees to an amendment providing for a two-phase approach.
Until 1 January 2011, the threshold used to define a small business for the purpose of applying the unfair dismissal arrangement will be less than 15 full-time equivalent employees.
The number of full time equivalent employees is to be calculated on a straightforward basis by averaging the ordinary hours worked by all employees in the business over the 4 week period immediately prior to the employee’s termination, and dividing that by 38, being ordinary weekly hours.
From 1 January 2011, the threshold will be based on a simple headcount of employees as provided currently in the Fair Work Bill and detailed in Forward with Fairness, Labor’s election policy.
... the amendment to the small business definition will be progressed through the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 when it is debated before the Parliament.
The Government further agrees to amend the objects of the Fair Work Bill to acknowledge the special circumstances of small and medium sized enterprises. This amendment will also be progressed through the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 when it is debated before the Parliament.
Furthermore, the Government agrees to establish a specialist information and assistance unit for small and medium sized enterprises within the Office of the Fair Work Ombudsman.
To that end I table the letter outlining the government’s agreement with Senator Fielding and I acknowledge that when the Senate debates the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 Senator Fielding will move the relevant amendments detailed in the letter.
I want on behalf of the government to publicly acknowledge the positive contribution of Senators Xenophon and Fielding in this process. I also want on behalf of the government to publicly acknowledge the constructive approach of the Australian Greens throughout this debate and their clear concern about the injustices which can occur for working Australians in the absence of fair unfair dismissal laws. What this shows is what can be achieved when people who are opposed to the disgraceful Work Choices laws and committed to fairness and balance in Australian workplaces work together. What has also been starkly revealed is the complete political humiliation of those who stood in the way of the Australian people—namely, the Liberal Party, the Work Choices party.

As we move to dispose of the bill, we find that the Liberals have not moved one constructive amendment and are now consigned to the political fringe, where their extreme workplace laws have always been. The Leader of the Opposition has been revealed to the Australian people as an opportunist.

Just two weeks ago, on 5 March, he said:

… Work Choices is dead. We accept the verdict of the people at the last election.

Yet today he voted in the House to do the complete reverse, by supporting the continuation of Work Choices. This is a historic day as we rid the nation of Work Choices against the fierce opposition of the Liberals.

**Senator ABETZ** (Tasmania) (4.46 pm)—I indicate that the coalition will be voting that the Senate insist on its amendments.

This morning the Senate, after showcasing itself as the very best in developing a compromise on complicated and potentially divisive issues, sensibly supported the third reading of the Fair Work Bill 2008 unopposed by any senator in this chamber. It is regrettable that some senators have now allowed the Deputy Prime Minister off the hook, the hook of her arrogance, that she herself had hooked herself up on.
Let us examine what Ms Gillard and Labor were refusing to accept. There were six amendments in all that can be distilled into three issues. The first issue—and this was in Senator Xenophon’s amendments—was whether a small business should be seen as being an enterprise of 20 or 15 employees. For the sake of a handful of employees in the definition of ‘small business’, Ms Gillard was foolishly going to hold back the repeal of WorkChoices—a position she could not have maintained in the Australian community. Yet Family First and others have allowed her the big backdown, by them providing the backdown.

We have said to the Australian people that WorkChoices is dead. They know it. That is why we voted the way we did in the early hours of this morning. Why was Ms Gillard so concerned to keep the definition of ‘small business’ at 15 rather than 20 employees? Because Ms Gillard had said so, despite the fact that the Australian Bureau of Statistics says that a ‘small business’ should be seen as 20 employees.

Senator Chris Evans—It’s called keeping your election promises—you wouldn’t understand.

Senator ABETZ—The Leader of the Government in the Senate foolishly interjects, forgetting completely that Ms Gillard’s proposals to this place had numerous breaches of Forward with Fairness in them. Indeed, she through her colleague introduced 50 pages of amendments to her own legislation. It seems that size really does matter for Ms Gillard—not in relation to the size of a small business but in relation to the size of her ego and her pride.

Senator Fielding is the architect of allowing that to go on unabated. I say to Senator Fielding that the very plight of job creation in this country and the very plight of small business that he was championing at 2.30 this morning is still the same plight that small business and Australian workers face at 4.50 pm this same day. Nothing has changed other than Senator Fielding’s resolve to defend job creation in Australia and small business.

We as a coalition said at all times that we would measure these provisions on a three-way test: what they did for small business; what they did for jobs; and whether they would mean excessive trade union power. Clearly, the diminution of the number impacts on jobs and small business. But let us do away with this nonsense of the mandate—the mandate is looking very shabby when the government itself moves amendments to its own legislation so that it can countermand its own policies, which it has done on numerous occasions. It made good sense when they did so, but they cannot cherry-pick the mandate argument when and as it suits them.

Let us move to the other issue, which is the fifth amendment or the second issue. That relates to independent contractors. Ms Gillard and the Labor Party were willing to hold up the complete repeal of WorkChoices on the basis that the Senate wisely made an amendment making it unlawful to include in an enterprise agreement, amongst other things, items that had placed restrictions on the use of independent contractors. A great protection for independent contractors was introduced through this Senate into the legislation. I am yet to see the letter and I am yet to see whether independent contractors have been sold out as well. No mandate argument on that; they did not even take the issue of independent contractors in that regard to the election.

Nor did they in relation to the sixth amendment and the third issue, which related simply to the definition of enterprise level. We said to make it perfectly clear the legislation should say enterprise level or workplace...
level. And the minister at the table said that there was no need for that because enterprise level included workplace level. So we said, ‘So if the worst is that we are putting belts and braces on this, we will keep on with it.’ And now all of a sudden this amendment, because of Ms Gillard’s pride, should stand in the way of the repeal of Work Choices. Those that campaigned against Work Choices would be shaking their heads this evening at the evening news if they were to hear that Ms Gillard’s silly pride has stood in the way of the complete rollback of Work Choices. Instead, we had a situation of Senator Fielding and Senator Xenophon agreeing and repudiating the arguments they put in this place less than 24 hours ago in relation to some of the issues. I said Senator Xenophon—I withdraw that; I should say Senator Fielding only. I apologise for that. I was looking in that direction and I apologise to Senator Xenophon.

One of the other great ironies of this debate was when we dealt with the issue of superannuation. Senator Sherry banged on in this place about the evil of secret deals; that there was a need for transparency. When we amended this legislation in this place, in full vision of the Australian people, bouncing ideas off each other, in the full and in the open, the government rejected it. They then go behind closed doors, do a deal, the full details of which we will never know, and come back and say that this is allegedly the will of the Australian people.

If it was such a good deal, why could it not have been struck in the Australian Senate by Australian senators during the debate on this legislation? Why did the government and Senator Fielding have to go behind closed doors to make such a deal? I say to the Australian people that the compromise that the Senate achieved last night was one of the best moments in the Senate’s history, dealing with a complicated and divisive issue. Instead, Senator Fielding has done a deal behind the scenes to undo that compromise, the full details of which we will never know.

I will not delay the Senate for long, other than to say that we measured these amendments and this legislation on three criteria: impact on jobs, impact on small business and impact on increased trade union power. We believed that the compromise, which meant a lot of compromise right around the chamber, had struck the right deal. That is why, as the champions of job creation and as the champions of small business in this country, we will be insisting on the very wise amendments that the Senate made last night.

But for Senator Fielding, the Deputy Prime Minister, Ms Gillard, would have so overcooked the egg by her arrogance, so overacted in relation to this matter, that she would have been in very real danger of losing her audience, the Australian people. She knew it, and that is why the government were so desperate to strike a deal. That is what they did. That is why they caved in. Senator Fielding will now get a headline other than alcopops. Good luck to him.

But when we leave this place tonight, every single coalition senator will know that he and she voted for jobs and small business, knowing that small business is the engine room of jobs in this country. We will be able to leave this place and say at the next election that we defended jobs and small business with pride and with commitment. When it comes to these issues in the future, there is only one group of senators that will defend them—that is, the coalition, the Liberal and National parties. We unashamedly support the amendments carried by the Senate less than 24 hours ago.

Honourable senators interjecting—

The TEMPORARY CHAIRMAN (Senator Bernardi)—Could I remind senators on my right that interjecting across the
chamber is disorderly. I would ask you to extend the same courtesy to other senators as you would like for yourself.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.58 pm)—In the wee hours of this morning I warned in this place that for the opposition to have its way with crossbench numbers to obstruct this legislation could lead to a potential double dissolution election. That will not now happen, even though the opposition has been left irrelevant to the further proceedings in the Senate. I made clear last night that the question was whether, for the purpose of this legislation, small business should be an enterprise of 20 or 15 employees. In fact, 500,000 employees in Australia fit between those definitions. The Greens were rock solid with the government that the definition—

Honourable senators interjecting—

Senator BOB BROWN—Yes, absolutely. We were absolutely in defence of those 500,000—

The TEMPORARY CHAIRMAN (Senator Bernardi)—Order! Senator Brown, please ignore the interjections. I understand there is a great deal of spirit in this debate, but interjecting across the chamber is disorderly. I cannot hear Senator Bob Brown.

Senator BOB BROWN—The Greens were rock-solid, as was the government—and I commend the Deputy Prime Minister and my colleague Senator Rachel Siewert—that small business should be defined as 15 employees. My colleagues on the crossbench Senator Xenophon and Senator Fielding insisted along with the coalition it should be 20. What has changed here today is that my colleagues Senator Xenophon and Senator Fielding have given way on their stand on 20 and agreed with the Greens and with the government that it should be 15. That is the salient difference between last night and tonight. And I congratulate my fellow crossbenchers on having made that determination because with it comes a raft of very important gains for workers in Australia.

The government went to the election on its Fair Work legislation. Today, if the vote we are going to see in the next hour or so comes as expected, we will see fulfilled the vote of the people in 2007 which put the Howard government out of office over Work Choices and brought the Rudd government into office over Fair Work. That was a mandate and that is what the people will get. The definition for small business relating to unfair dismissal laws will stand at 15. It will stand at 15 because the Greens were not prepared to relent on that and nor were the government.

The Greens were also insistent—and I have a letter from the Deputy Prime Minister, which I will table shortly—that the Senate amendment seeking to restrict the content of enterprise agreements in relation to independent contractors not stand. We did not want to see workers undercut by arrangements with contractors. The government also agrees to discuss with the Greens refinements that can be made to the small business dismissal code which will make it clearer that the employer is required to provide evidence that a warning has been given. Very importantly the government has also supported the proposal put by the Greens to extend the time limit for lodging unfair dismissal applications from seven days to 14.

I have a list of amendments which the Greens have been able to negotiate—again and again I have to congratulate Senator Siewert and the Deputy Prime Minister, and now the Senate, for this outcome. They are: new provisions for flexible work for carers of children with disabilities—so there should be; a review by Fair Work Australia of the right to request flexible work—that is an
important provision; an interim review by Fair Work Australia of modern awards; and a provision to support employment law services in Australia so that people who believe they have been treated wrongly will have access to legal backup. On the matter of pay equity, the House of Representatives Standing Committee on Employment and Workplace Relations is currently conducting an inquiry and the government agrees to consult with the Greens in respect of the committee’s considerations. The government also agreed that the Fair Work Ombudsman will prepare a guide on pay equity issues as part of the new functions to be detailed in the government’s amendments to the bill. And the conscientious objection certificates, which gave the Exclusive Brethren sect specific provision to be able to exclude unions from their workplaces—and it was their workplaces only—have now been removed from the legislation.

I want to commend Senator Xenophon, Senator Fielding and Senator Siewert for the flexibility they have shown that has allowed this outcome through working together. The coalition is left out of this at this stage. Also I want to commend the Hon. Julia Gillard, the Deputy Prime Minister. We have found working with her in this last period to be constructive, to be direct, to be honest, to be forthright and ultimately to have made this agreement possible.

But, finally, I want to say this to the workers and the voters of Australia: you made your feelings known in 2007; this government has stuck to its guns, and so have the Greens. This outcome will benefit working Australians and Australian working families. That is the ultimate test. It would have been an appalling thing for the opposition to have had its way and for people to be forced back to the polls again on the very matter they determined in November 2007. The common sense of the Senate has prevailed, and this is a much better outcome for the people of Australia.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.05 pm)—Family First has brokered a deal with the Rudd government that finally buries Work Choices. Family First and the Rudd government have agreed to the definition of a small business as one with up to 15 full-time workers, with a review in 2011. Family First supports the Fair Work Bill as it strengthens protection and fairness for workers and small business.

It is a matter of fact that Family First voted against Work Choices, because it was a dog. It was a dog that bit Australians harshly. We voted against Work Choices, and it is about time that we buried Work Choices forever. Family First has brokered a deal to ensure that Work Choices is dead forever. This is extremely important. You have got to remember that the last election was fought on Work Choices and the environment. Australians voted and they wanted Work Choices dead and buried. The Senate will today deliver that final burial to Work Choices.

The Fair Work Bill does strike a balance between workers and small business, and it does strengthen both of them. The unfair dismissal laws were previously too harsh under Work Choices. We made that quite clear. When Work Choices was being rammed through the Senate, I went to the previous Prime Minister with 10 changes. I walked out the door after seeing the Prime Minister with zero. Do you know what? If he had adopted five of those 10, the coalition could still be in power today. But, no, they abused the Senate process.

The Senate is the house of review and it has done its job. It has struck a balance and a compromise that will actually benefit Australia in these tough financial times. This is not the time to muck around and play politics with the Australian people on workplace
laws; I can tell you, it is not. These changes are important, and Family First support the Fair Work Bill with the changes that have been made over the last couple of days.

**Senator XENOPHON** (South Australia) (5.08 pm)—If I can just clarify my position so that there is no ambiguity with respect to it, last night, from my perspective, Work Choices was killed off by the Senate; today it is a case of burying it. But last night amendments were moved—and that is the subject of this debate now, that these amendments be agreed to—and the fundamental point of difference was in relation to the definition of a small business. The amendment that was agreed to was 24 full-time equivalent employees. In the spirit of compromise, there were further discussions with the government, and I think the opposition knows, the Greens know and Senator Fielding knows that I was absolutely transparent in relation to that.

I do want to pay tribute to the Deputy Prime Minister, the Hon. Julia Gillard, because, whatever her opponents may say about her, she has been a consummate professional in all her dealings with me and my office in this, absolutely straightforward and upfront with me, and I appreciate that. My dealings with the opposition and Michael Keenan have similarly been very constructive.

My position has been that I was concerned about small business being able to get some more time in these difficult times in order to adjust to the government’s proposed position. I understand that the government went to the people on 15 employees and so they have argued the issue of mandate. But, for me, the difficulty has been that times have changed since the election. We now have a much more difficult economic situation and the psychology of small business has been battered by the global financial crisis. We have a situation where small businesses are deeply concerned about hiring people. Even today on talkback radio there were people ringing in saying, ‘We’re going to sack a couple of people to get below the threshold.’ That is foolish, and it is the wrong thing to do, but that is the sort of perception we are dealing with.

Essentially, my position to the government was to have a transitional period of three years of 15 full-time equivalent employees so that we could have that time during this financial crisis for small businesses to adjust. That is my key point of difference, and it is not a criticism of Senator Brown, because he was not aware of the full story. It has never been my position that this much shortened transitional period is acceptable, so I cannot accept that. But can I say that I do wish to look at the positives as well. The government’s decision to establish a specialist information assistance unit for small- and medium-sized enterprises within the Office of the Fair Work Ombudsman is a significant change. It is a good thing in that it will ensure that small businesses can have access to specialist advice where there is a dispute. That is a good thing for small businesses. It is also good that there will be a thorough and transparent review of the system in 2012. I would have preferred that there be an independent person conducting that review.

Nevertheless, the key point of difference is that there ought to have been a longer transition period. We could have done better for small businesses in this country in these difficult times. I am unfortunately in the position that I believe we ought to insist on these amendments because we could have done better for small businesses. But, having said that, it seems the deal has been done. I look forward to us doing the best that we can to give confidence to small businesses to continue to employ as many Australians as possible.
The TEMPORARY CHAIRMAN (Senator Bernardi)—The question is that the motion moved by the minister be agreed to.

Question put.
The committee divided. [5.16 pm]
(The Temporary Chairman—Senator C Bernardi)

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Resolution reported; report adopted.

Senator Fielding—I am wondering where my hug from the Deputy Prime Minister is.

TAX LAWS AMENDMENT (2009 MEASURES No. 1) BILL 2009

Second Reading

Debate resumed.

Senator SIEWERT (Western Australia) (5.21 pm)—by leave—The Greens have circulated in the chamber a proposal to divide this bill. As I indicated in my speech on the second reading, the Greens have some significant problems with schedule 3 of this bill. We propose that schedule 3 be divided from the bill and that it be moved into a separate bill. I indicate to the government that if this is not successful and we go into committee this will take some time, because I have further amendments and I have a significant number of questions for them.

The PRESIDENT—Are you seeking leave to move your instruction?

Senator SIEWERT—Yes.
Senator LUDWIG (Queensland—Minister for Human Services) (5.23 pm)—by leave—The Tax Laws Amendment (2009 Measures No. 1) Bill 2009 is an extremely important bill and one that the government requires. I understand that the opposition understands the requirement for this. It contains, as I am informed, about $0.5 billion worth of necessary expenditure. It is on the list as a matter that we want to progress. We are not going to deal with it by splitting it. We are happy to try to achieve a result in committee if that can be done in short time. I recognise that there are many people here who have been here for some time and are keen to depart this place. Having said that, there are still the appropriation bills to be worked through as well—although I understand that they will not take a particularly long time. I would like to at least have an opportunity in committee to try and reach agreement with Senator Siewert in respect of this particular bill, but not if that cannot be achieved within a short time. I understand that Senator Siewert has indicated that she intends to pursue the matter with vigour, which is her right.

Senator Chris Evans—That is code for a long time.

Senator LUDWIG—Yes. I understand that that is her right. But I would like to attempt, at least at the outset, to try and get the bill through and give the Senate an opportunity to hear the arguments that Senator Siewert is pursuing.

The PRESIDENT—I indicate that the Clerk has advised me that the second reading of this bill has not been put yet. I need to put the second reading before we take any action foreshadowed by Senator Siewert.

Senator COONAN (New South Wales) (5.25 pm)—by leave—Given the hour and what has transpired over the past few days and the, no doubt, fatigue of many people in the Senate, it might be helpful if I indicate the opposition’s position in relation to Senator Siewert’s proposal. I have had a careful look at the amendment as it is framed. I accept what the government says—that the Tax Laws Amendment (2009 Measures No. 1) Bill 2009 is time critical. This is the reason that we in fact engaged a day or so ago with the minister’s office to get an assurance that the reportable employers super scheme would be looked at, and that assurance has been given.

As to the Greens amendments, the broader policy intent of income test reforms is to remove inconsistencies in treatment of certain types of income when determining eligibility for government support payments. We do note that the amendments—both the splitting amendment proposed by Senator Siewert, which really goes to excising the schedule and dealing with it in a different way, and the substantive amendments—do in effect underpin concerns of the Greens for low-income earners. I thought it would be helpful to indicate to the chamber that we believe that the amendments would be inconsistent with the measures contained in this bill that are intended to accurately reflect a person’s income for determining their eligibility for income testing. We do not believe that there would be consistency in applying two separate income-testing regimes based on a person’s total gross income. The proposed amendments in relation to the spouse superannuation tax offset would not maintain the integrity of the tax and transfer system.

Having said that, that is not to say that we do not have some sympathy for the force of Senator Siewert’s amendments. We would be very supportive if Senator Siewert were able to achieve in negotiations with the government, either now or at some later time, a better arrangement around the way in which the tax and transfer system works in relation to low-income people and also for the spouse.
superannuation tax offset. For the purposes of what I understand will be the debate in committee, we will not be supporting the Greens amendments.

Question agreed to.

Bill read a second time.

Senator SIEWERT (Western Australia) (5.28 pm)—by leave—I move:

That it be an instruction to the Committee of the Whole that the committee:

(a) divide the Tax Laws Amendment (2009 Measures No. 1) Bill 2009 to incorporate in a separate bill the provisions of Schedule 3—Reforms to income tests; and

(b) add to that bill enacting words, provisions for titles and commencement, and a provision giving effect to amending schedules.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (5.29 pm)—by leave—I wish to make some remarks about Senator Siewert’s proposition and indicate why the government has some difficulties with it. Unfortunately, Senator Siewert had to leave the chamber when I was responding to some of the issues that were raised during the second reading debate which went to her concerns about schedule 3. The opposition has managed to engage with the government on some of its concerns around schedule 3 and has come to an agreement that is in good faith about how we are going to work through those concerns. Senator Siewert raised the issue of the adverse impact on the not-for-profit sector, is really quite problematic for a number of reasons. The most important one is that the fundamental challenge that we have is about fairness and consistency of treatment across the system, which is really what this bill is about. It is actually about getting rid of anomalies, about getting rid of cobbled-together, last-minute arrangements that make the tax and transfer system both clunky—and I suppose ‘clunky’ is a good word for a Friday afternoon—and unnecessary.

We really need to think about some of these issues. Not counting the super contributions of the spouse results in people being able to artificially lower their income through salary sacrificing to ensure eligibility for an offset. The proposed amendment does not address the existing inequity arising from the current treatment of salary sacrificing. So other taxpayers who do not have the
ability to salary sacrifice, because their employers do not offer salary sacrificing arrangements, will continue to be at a disadvantage under this proposal. The government’s change only affects the eligibility for the offset of a very small number of people. My advice is that about 350 people would be affected in this way. There are a range of other measures and programs that encourage superannuation and this bill does not propose to abolish this offset which encourages super; it only aims it at those most in need. The other point that I need to make about the Australian Greens proposal is that this proposed amendment would actually impose significant administrative and compliance costs on organisations.

In relation to the second amendment—this issue of introducing two different income tests—again we are stuck with a real problem. We have two different income tests for below and above $60,000 and that adds considerably to the complexity of the tax and transfer system. It actually goes against one of the main aims of the bill, which is about simplifying and standardising the income tests across tax law. It would actually impose a ‘drop dead’ test. So $1 of income above $60,464 would result in a totally different income test. That amendment, too, would undermine the aim to simplify the law. So it is not appropriate for this bill.

I want to go back to Senator Siewert’s concerns, because she has raised this with me privately outside the chamber. And she has raised it again—that is, the issue of the consultation process. I want to assure Senator Siewert and the Australian Greens about the extent to which organisations were consulted. There was public consultation on the draft income test, which took place between 7 November and 5 December. It involved the draft version of the income test reform amendments and a consultation paper from the Treasury being issued. Submissions closed on 5 December and then 120 individuals from key stakeholder organisations were invited to make submissions. As well as those 120 stakeholder organisations, the Australian Taxation Office notified members of its charities consultative committee, and the National Taxation Liaison Group, the FBT subcommittee, the superannuation consultative committee, the clubs consultative committee and the software developers consultative group were part of the public consultation process. The committees also comprised representatives of major accounting, professional, superannuation, employer, business, charitable, not-for-profit and government bodies as appropriate.

After the call for submissions and that invitation, 16 formal submissions were received as part of that process. Of those, five were received from the software companies and industry associations, two each from professional bodies and consulting companies and one each from a superannuation fund and a private individual. The main issues raised in the submissions were the commencement date of the reforms and a perceived added complexity in complying with the reforms. Almost all of the submissions raised particular concerns about the reportable employer superannuation contribution definition, which was generally considered to be too complex to calculate and would place a significant burden on employers in order to comply. The specific concern raised included difficulty in calculating the superannuation contributions exactly in excess of amounts required under the superannuation guarantee legislation, and difficulty determining the RESC amount for contributions mandated by industrial agreements. That goes to the issue that was raised by Senator Coonan and which is subject to further negotiation and discussion between the opposition and the government.
On the other hand, the submissions from the software companies actually expressed difficulties in modifying programs in time for commencements from 1 July 2009. The submissions indicated that the software companies would not be prepared to start working on updated systems until at least April of 2009, when parliament is expected to have completed its consideration of the bill. That is the timing imperative that we are confronted with today. We need to get these bills through the Senate so that the work can be done in modifying the programs for the commencement on 1 July. There were claims that even the time between April 2009 and July 2009 might not be enough to develop, test and implement the software changes. As well, there were concerns that there may not be time to educate employers on the changes to ensure the new software would be used correctly, which could result in mistakes or noncompliance.

Some submissions also queried the interaction of these reforms with the review of Australia’s future tax system, and there was concern that any changes made as part of the reforms may be unwound by further reforms occurring as a result of the review.

You can see that in all of the consultative processes the issues stated by Senator Siewert as being fundamental to her argument really were not raised. I think that what we have to do is to ensure that we stick to the purpose of the bill, which is about increasing consistency in the treatment of non-wage remuneration to take better account of certain losses for means test purposes. By focusing financial assistance on low and middle incomes, these measures, we believe, will save around $504 million over the next four years. I again thank all the senators who participated in this debate and indicate that the government cannot support the amendment moved by Senator Siewert.

Senator Ludlam (Western Australia) (5.40 pm)—On the basis of discussions that have just been held, Senator Siewert has asked to withdraw the amendment. On behalf of Senator Siewert, I seek leave to withdraw the motion to divide the bill in Committee of the Whole.

Leave granted.

In Committee

Bill—by leave—taken as a whole.

Senator Ludwig (Queensland—Minister for Human Services) (5.41 pm)—I will make a short statement to wrap this up. The government can agree to sensibly consider the Greens concern regarding NGOs. The concern is that employees of NGOs will be particularly affected by the amendments in this bill. I can give the government’s assurance that we will seriously consider this and engage with the Greens on this issue promptly—and of course the NGOs in the sector as well.

Senator Ludlam (Western Australia) (5.42 pm)—Senator Siewert has instructed me to withdraw the Greens amendments that were to be moved now, but that is on the basis of receiving a statement in writing from the minister at the earliest convenience. So I will not be moving the Greens amendments.

Senator Chris Evans (Western Australia—Minister for Immigration and Citizenship) (5.42 pm)—Can I place on record our appreciation to the Greens, to Senator Siewert and Senator Ludlam, for the efforts they have made. Unfortunately, we have not had as good communication on the details of this bill between the government and the Greens as we would have liked. I apologise for that. There is a will on the part of the government to find a solution to the Greens concerns. If they think that the amendments in this bill are genuinely going to disadvantage people, we will take that in good faith.
I appreciate Senator Siewert’s cooperation. There was an absolute need to get the bill passed today for the purpose of people declaring their income in the next financial year. So it is very important that the bill pass. Therefore, I really do appreciate the cooperation. If the Greens do not move their amendments then the bill will pass una-mended, which is good because the House of Representatives has gone home, as I understand it! That would have created a huge difficulty for the government and for income assessment for the next financial year. So I do appreciate the cooperation and good faith shown. Senator Ludwig and I both understand that Senator Siewert will be after us if we do not deliver. That is a frightening prospect, so I can assure the Senate that it will be taken very seriously.

The TEMPORARY CHAIRMAN (Senator Carol Brown)—The question is that the bill stand as printed.

Question agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator LUDWIG (Queensland—Minister for Human Services) (5.44 pm)—I move:

That this bill be now read a third time.

Bill read a third time.

APPROPRIATION BILL (No. 3) 2008-2009

APPROPRIATION BILL (No. 4) 2008-2009

APPROPRIATION BILL (No. 5) 2008-2009

APPROPRIATION BILL (No. 6) 2008-2009

Second Reading

Debate resumed.

Senator LUDLAM (Western Australia) (5.45 pm)—by leave—I table the letter that was given by the Deputy Prime Minister to Senator Bob Brown, which Senator Brown intended to table earlier.

The PRESIDENT—The question is that the amendment moved by Senator Bob Brown be agreed to.

Question agreed to.

The PRESIDENT—The question is that the motion, as amended, be agreed to.

Question agreed to.

Bills read a second time.

Third Reading

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (5.46 pm)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

ADVANCE TO THE FINANCE MINISTER

In Committee

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (5.47 pm)—I move:

That the committee approves the statement of Issue from the Advance to the Finance Minister as a final charge for the year ended 30 June 2008.

Question agreed to.

Resolution reported, report adopted.
Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (5.48 pm)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading
Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (5.49 pm)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009

The Bill amends the Higher Education Support Act 2003 (the Act) to implement the Government’s commitments to ensure that Australian higher education students have access to appropriate levels of student services and amenities, improve the flexibility of the legislation across the Tertiary sector and enable implementation of announced changes to VET FEE-HELP.

The Bill provides that from 1 July 2009 higher education providers may choose to charge a compulsory student services and amenities fee (the fee). The fee will be capped at $250 per year, with $125 the maximum for the second half of 2009, and will be indexed annually.

Eligible students will be able to access a loan from the Government to pay the new fee under a new component of the Higher Education Loan Program: Services and Amenities-HELP (SA-HELP).

SA-HELP will operate on a similar basis as existing elements of HELP such as HECS-HELP and FEE-HELP. It will ensure that the fee will not be a barrier to eligible students wishing to access higher education. Higher education providers will have to provide access to SA-HELP for eligible students if they are charged a services and amenities fee.

This provision addresses the negative impact of the previous Government’s approach to voluntary student unionism, and reflects an approach that is practical, balanced and consistent with our policy not to return to compulsory student unionism.

The Bill ensures that the current legislative prohibition on compulsory membership of a student organisation remains in place. Students will still be able to choose to join a student organisation if they wish.

The Bill also ensures that the proceeds from the new fee are not to be used to support any political party, or the election of a person to the Commonwealth, State or Territory legislatures or to a local government body. This would include direct financial support or advocacy on behalf of a political party or candidate for election.

This Bill makes amendments to require higher education providers that receive Commonwealth Grant Scheme funding to comply from 2010 with new Student Services, Amenities Representation and Advocacy Guidelines. These will establish the National Access to Services and Amenities Benchmarks that set sector-wide standards for the
provision of information on and access to essential services of a non-academic nature.

In addition, these guidelines will establish National Student Representation and Advocacy Protocols to ensure students have access to independent and democratic representation and their views are considered as part of an institution’s decision making.

The guidelines will be made by the Minister as legislative instruments and stakeholders will be consulted on the development of the guidelines.

The Bill also amends the Act to provide enhanced protection of the privacy interests of Australian students and improves the efficiency and effectiveness of the allocation of student places and Commonwealth Scholarships through the higher education system.

Tertiary Admissions Centres (TACs) play an increasingly important role in the Australian higher education system. They are the first contact for most people who apply to become university students. TACs add to the efficiency and productivity of the administration of the Australian higher education system by centralising and coordinating admissions procedures on a state-wide basis.

HESA does not currently refer to or acknowledge the role of TACs. This creates the potential for aspects of the necessary functions performed by the organisations to appear to be unauthorised under the Act. This Bill amends HESA to ensure that the roles and responsibilities of TACs are recognised in the legislation.

In particular, the Bill amends HESA to give TACs the same status, and duty of care, as Officers of a Higher Education Provider (HEP) in relation to the processing of student’s personal information. This will ensure that student information may be shared between the Department, HEPs and TACs as appropriate.

In addition, student’s privacy rights are protected by HESA’s privacy protection provisions. The reform will assist TACs in continuing to play a positive role in the continuing development of efficient and smooth administration in the Australian higher education system.

The Bill will also ensure that students wanting to study diploma and above qualifications in the vocational education and training sector are able to access the training they choose without worrying about up front fees.

According to the National Centre for Vocational Education Research (NCVER) the number of students training in diploma and advanced diploma qualifications in the public vocational education and training sector has declined in recent years: from 197,300 students in 2002 to 165,900 students in 2007. The only fields of study that have held up to some extent have been health, and more recently in engineering. All governments are committed to lifting Australia’s skill levels and increasing the number of completions at diploma and advanced diploma level is a key element of this commitment. A target of doubling the number of completions of diploma and advanced diploma qualifications by 2020 was identified as a critical target in the Council of Australian Governments discussions.

VET FEE-HELP assists students studying diploma, advanced diploma, graduate certificate and graduate diploma courses by providing a loan for all or part of the tuition costs. Loans are not subject to income and assets tests and repayments do not commence until an individual’s income is above a minimum repayment threshold. The first students to access VET FEE-HELP assistance will commence early this year.

These initiatives are part of the Government’s commitment to ensuring that higher education plays a leading role in equipping Australians with the knowledge and skills to make Australia a more productive and prosperous nation.

Customs Legislation Amendment (Name Change) Bill 2009

I am pleased to introduce the Customs Legislation Amendment (Name Change) Bill 2009.

On 4 December 2008, the Prime Minister released the Government’s National Security Statement. The Statement outlined the Government’s national security policy and vision for a reformed national security structure.

In the Statement the Prime Minister announced that the Australian Customs Service is to be renamed the Australian Customs and Border Protection Service to better reflect its new role of being
the lead Commonwealth Government agency on maritime people smuggling issues. In conjunction with partner agencies it will do this by:

- coordination of intelligence collection across Government;
- analysis of intelligence gathered on people smuggling ventures and networks;
- coordination of surveillance and on-water response; and
- engaging internationally with source and transit countries to comprehensively address and deter people smuggling.

This Bill will amend the Customs Administration Act 1985 to change the name of the Australian Customs Service to the Australian Customs and Border Protection Service. The Bill will make consequential amendments to a number of other Acts to also reflect the name change.

Ordered that further consideration of the second reading of these bills be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

Ordered that the bills be listed on the Notice Paper as separate orders of the day.

**AVIATION LEGISLATION AMENDMENT (2008 MEASURES No. 2) BILL 2008**

Returned from the House of Representatives

Message received from the House of Representatives agreeing to the amendment made by the Senate to the bill.

**COMMITTEES**

Foreign Affairs, Defence and Trade Committee: Joint Membership

Message received from the House of Representatives notifying the Senate of the appointment of Mr Murphy and Mr Oakeshott to the Joint Standing Committee on Foreign Affairs, Defence and Trade.

**ADJOURNMENT**

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (5.50 pm)—I move:

That the Senate at its rising adjourn until Tuesday, 12 May 2009 at 12.30 pm, or such other time as may be fixed by the President or, in the event of the President being unavailable, by the Deputy President, and that the time of meeting so determined shall be notified to each senator.

Question agreed to.

**ADJOURNMENT**

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector) (5.51 pm)—I move:

That the Senate do now adjourn.

Australian Labor Party

Senator MASON (Queensland) (5.52 pm)—Mr President, I seek leave to speak for up to 20 minutes on the adjournment.

Leave granted.

Senator MASON—I thank the Senate for its indulgence. There is a new dichotomy in Australian politics. We have today in the opposition economic conservatives. We have in the government former economic conservatives. But they are much happier today because no longer do people in the government have to live a lie. Friends like Senator Carr can tax, they can spend and they can send the nation into debt as much as they like, and they are much happier about that. Senator Carr’s old boss, former Premier Joan Kirner, said the other day that she was so happy that debt was no longer out of fashion. Debt in effect for Ms Kirner is the new black; debt is again fashionable.

The former economic conservatives, the government, have a very interesting solution to the current economic crisis. All of us in this chamber know this: the current eco-
nomic crisis was caused by individuals and indeed by companies borrowing and spending far too much. In the United States, and indeed elsewhere, far too much money was borrowed and far too much money was spent by individuals and companies. What is the solution offered by the government? It is for governments to borrow and spend even more. That is the solution of the government. After companies and individuals have spent too much and borrowed too much, the nation, the government, should borrow and spend even more. That is the solution. It is a bit like drinking to cure a hangover. That is the analogy. That is the idea the government has: to keep on spending and borrowing even more and more and more.

There has been a lot of talk over the last two weeks about political DNA, about what makes political parties and political leaders tick. A quick look at history will tell us about every single Labor government since Federation. What does it tell us? It tells us this: every single federal Labor government puts our nation further into debt—every time. There have been 10 Labor prime ministers and they have put this nation into further debt every time. There is always more debt. Every time you have a Labor government they put the country further into debt. Debt is always higher when Labor governments leave than when they arrive—every single time. The farewell gift of Australia’s previous nine Labor prime ministers is more debt. That is the iron rule of Australian federal politics: every Labor government, more debt.

Go right back to the first one: Chris Watson. He was only there for a short time, but there was more debt. Andrew Fisher—he spent a lot; he created a lot more debt. Billy Hughes—again, he created a lot more debt. James Scullin—there was much, much more debt. John Curtin and Ben Chifley—again, they left far, far more debt than there was when they turned up as prime ministers. Then, of course, there was Mr Whitlam. We know what he did. What did he do? He borrowed and borrowed, and there was more debt. At least it is consistent. There is always more debt.

The one thing that is in Labor DNA is debt—every single time. Then, of course, there were Mr Hawke and Mr Keating. It is funny, you know. They did not start off so badly, but in the end the DNA came out. Mr Hawke and Mr Keating left this country in debt—$96 billion. Then, finally, there was Mr Rudd. Mr Rudd also, after six months, spent $50 billion and put the country into debt again. That is 10 Labor prime ministers: Watson, Fisher, Hughes, Scullin, Curtin, Chifley, Whitlam, Hawke, Keating and Rudd—10 out of 10, more debt. There is not one exception. Every Labor Prime Minister creates further debt for this country. It is a disgraceful record. In war and peace, in good times and bad, there is always debt. Debt is in the Labor Party’s DNA—not jobs; but debt. The excuses change, but it is always the same rationale—debt, debt, debt, from every one of the last 10 Labor prime ministers.

There are some who doubted Mr Rudd’s commitment when he first came into parliament. They doubted whether he would be a good Labor prime minister, because he did not come from a union background—he was a former diplomat. They were concerned that he might not know the Labor Party’s ways. But the Labor Party need not have worried, because he has the DNA. He has the debt gene. He has it; the Australian Labor Party need not have worried. Mr Rudd knows how to spend and he knows how to put the nation into debt. He has never forgotten that. Mr Rudd fits in perfectly with the other nine former Labor prime ministers in creating further and further debt. This country must never forget that when Labor left office they left this country and its people with $96 bil-
lilon of debt—paying about $8 billion of interest each year to service that debt. That is what Mr Hawke and Mr Keating left this country, just like all the other Labor prime ministers did: debt. And they left it.

It has taken just six months for the Labor Party to spend over $50 billion and, of course, to extend a credit line of $200 billion. If it ever happens—and it will—that Labor spends the $200 billion, we will start to have the problem of structural debt. That is where, every year, the budget gets consumed by interest on debt—just like in western Europe. It becomes part of the political culture, the fabric and the way of life of, let us say, France. And 10 per cent of the budget is taken up on interest payments on debt. That is the problem. This credit line of $200 billion signifies the fact that the Labor Party will do it if they feel it is necessary.

Senator O'Brien interjecting—

Senator MASON—Well, it’s funny. What worries me is that Mr Rudd talks about turbocharging social democracy; what he has done is turbocharge debt. Perhaps that is the same thing. That is the problem. The debt has gone up $50 billion in six months. Only twice in this nation’s history—during the McMahon government and under the Howard-Costello government—has there been no net government debt. What did Mr Whitlam do as soon as he got in? He fixed that problem. He put the country back into debt. What happened when Mr Rudd got in? He put us back into debt, just like the other nine Labor prime ministers did. The one consistent fact of Australian political history, the one consistent political fact about Australian Labor governments, is debt—and there are no exceptions. What a coincidence! We know what is in Labor DNA. It is debt. There have been no exceptions. It is always the same. The Labor Party will bugger up the economy and they will expect the coalition to fix it up.

It happens every time. With 10 Labor prime ministers, the coalition government to take over has been expected to fix and pay off the debt.

This is a moral question. What about the intergenerational equity? Mr Costello has spoken often about this. This is a moral issue. The Labor Party love to talk about equity, but they do not mind bankrupting our children or grandchildren to pay off the debt. It is all very well to spend on behalf of today’s voters, but who is going to pay off the debt? Our children and our grandchildren will be saddled with the debt that these people create, just like all the other Labor governments do. There are no exceptions. It is the one ironclad rule of Australian politics. They always say that the great dictators love children and hate their parents. You could never accuse Mr Rudd of that. He loves the parents; we are just not too sure if he loves the children who will be saddled with the debt that he is creating today, just as the other nine Labor prime ministers have created debt in the past. Every Labor Prime Minister puts this nation further into debt. It is the ironclad rule of Australian politics. It is absolutely disgraceful, if not scary.

Let us not forget how Labor spent their first year in office. How I remember Mr Swan, Mr Rudd and even Senator Conroy saying: ‘The economy’s overheated. The inflation genie is out of the bottle.’ They talked it down: the economy was overheated, interest rates were going up and the economy was out of control. We said, ‘Go for growth.’ They talked the economy down just at the time when it needed to be talked up, making the recession even worse. I will never forget how ‘the inflation genie was out of the bottle’—at four per cent—and things were so terrible, weren’t they? Now, a few months later, we know what economic terror is, their having talked down the economy. If they had gone for growth, they would not have had
the problem. Instead, they kept talking down the economy and they failed to build up business and consumer confidence. So well done! Mr Rudd even got that wrong—first year in office: wrong.

What is the intellectual edifice behind this change from being an economic conservative? What is it based on? It is political opportunism, but this voodoo economics is based on the famous essay of Mr Rudd’s in the *Monthly*, which of course I have read. The philosophy, if you call it that, is unusual because it reflects an unusual state of mind. Mr Rudd’s political and economic philosophy changes at every opportunity. He was a Christian socialist. Dietrich Bonhoeffer, the great German pastor, was his spiritual, economic and social mentor, but he abandoned that and decided he was a neoliberal when he was after the shadow Treasurership before the 2004 election, under Mr Latham. He was trailing Mr Latham’s coat-tails through Labor caucus, saying he was a neoliberal. So he went from the German Dietrich Bonhoeffer to the Austrian Friedrich Hayek in a very short amount of time.

Then, upon becoming opposition leader, Mr Rudd called himself a self-styled economic conservative, and he was proud of it—very, very proud of it. Mr Rudd was so proud of styling himself as an economic conservative. He was out and proud about being an economic conservative. There was no difference between him and Mr Howard at all, really; he was ‘Howard lite’. He was an economic conservative and he loved every minute of it.

The first whiff of economic grapeshot, the first bit of real tension, the first downturn, and what happens? He drops all that. He drops Bonhoeffer, drops Hayek, drops economic conservatism and becomes a reborn social democrat all of a sudden. So he has changed four times in just a couple of years.

Mr Rudd is, in a sense, Australia’s first post-modern Prime Minister, because he does not actually believe in anything. No-one I know has changes of hearts like that, except Mr Rudd—no-one at all. My old friend Senator Carr—I always have a go at him, I know—is wrong about everything, but at least he believes in something. Mr Rudd does not believe in anything. He changes his mind every second week. He is like a schizophrenic Harry Potter figure, baring his latest philosophy to some sort of focus group in Labor headquarters in Sussex Street over a Chinese meal, with dim sims. That is where he has got this philosophy from; it is pathetic. It is this sort of groupthink.

The essay in the *Monthly* is wrong. Not only is it based on hypocrisy; it is intellectually lazy, ignorant and wrong. Mr Rudd of course does not like talking about the fact that Mr Blair was one of the great neoliberals of the latter half of the 20th century; a Labour Prime Minister was one of the most significant neoliberals of the 20th century—as well as Mr Hawke and Mr Keating, of course, to their partial credit; I will give them that.

But perhaps even more disturbing than the shocking hypocrisy of the Labor Party adopting neoliberalism as well—even forgetting the hypocrisy—is the moral argument here. More people have been moved out of poverty in the last 20 years than were moved out of poverty in previous recorded history. More people have moved out of poverty in the last 20 years than ever before in human history. It is not because of communism or socialism or social democracy but because of free trade—yes, free trade. Free trade and neoliberalism created more wealth for the Chinese than for anyone else. The Chinese do not go on like Mr Rudd does. Mr Rudd takes advantage not only of the hypocrisy but of ignoring great moral arguments.
What the Labor Party does not seem to understand is that this is about good regulation. The fact is that the reason why Australian banks are among the best in the world is that the regulation is very good. This same system that Mr Rudd decries in Australia—the neoliberalism he criticises—is the same system that gave us the best banks in the world. So not only is this article in the Monthly pathetic, lazy and ignorant; it is just plain wrong.

And now it is worse. I understand that our high commissioners and our ambassadors are having to run around and hawk this line to world leaders. When Australia’s High Commissioner to the United Kingdom meets Her Majesty the Queen, I suppose he says, ‘Here, have a look at this article from the Australian Prime Minister.’ In Ulan Bator they probably take a translation of this article and give it to the local president, prime minister, doge or whoever it happens to be.

Our diplomats are expected to run around the world with this embarrassing little essay, which is ignorant and hypocritical. Our embassies have been changed into publishing houses these days. It is a pathetic, intellectually lazy and ignorant piece of work. To have the hide to have our diplomats running around with this! I wish they would peddle something I wrote, rather than this rubbish. Can you imagine asking our diplomats—our high commissioners and our ambassadors—to run around with this stuff? It is absolutely embarrassing. I feel sorry for them.

Who are the political legatees of this appalling ideology? Who are the people who love debt—debt being the new black to the Labor Party? Of course, in Queensland it is Ms Bligh, with $74 billion in debt. And she racked up that $74 billion of debt—guess what—in boom times. She has just had record mining receipts of billions of dollars. She has received billions of dollars in property taxes and hundreds of millions in GST. And do you know what she has done, Mr President? She has still racked up $74 billion of debt. I thought the $96 billion of debt federally in 1996 was bad. That was spread among about 20 million people. This is $74 billion spread among 4½ million people. Talk about structural debt. When will this debt ever be paid off, Mr President?

Of course, the Labor Party do not worry about that. They are not concerned about paying off the debt at all, because there is one golden rule of Australian politics: every Labor Prime Minister—from Chris Watson through to Kevin Rudd—spends more money than they raise. They leave this country with more debt. That is an iron rule of Australian politics. And this diseased DNA is now spreading to the Labor states. We have got Ms Bligh with $74 billion in debt and she does not seem to give a damn. It costs $10 million a day in interest alone to service that debt, and Ms Bligh does not care at all. (Time expired)

Senate adjourned at 6.12 pm (Friday) until Tuesday, 12 May 2009 at 12.30 pm

DOCUMENTS
Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Airports Act—Select Legislative Instrument 2009 No. 43—Airports Legislation Amendment Regulations 2009 (No. 1) [F2009L01022]*.


Broadcasting Services Act—Commercial Television Conversion Scheme Variation 2009 (No. 1) [F2009L01058]*.
Charter of the United Nations Act—
Charter of the United Nations (Sanctions — Iran) Regulations 2008—Charter of the
United Nations (Sanctions — Iran) (Export Sanctioned Goods) List Amendment De-
termination 2009 (No. 1) [F2009L00923]*.
Civil Aviation Act—
Civil Aviation Regulations—Instrument No. CASA EX10/09—Revocation of
exemption [F2009L01057]*.
Civil Aviation Safety Regulations—Airworthiness Directives—Part—
105—
AD/BELL 212/22—Tail Rotor Drive Shaft – Replacement [F2009L00977]*.
AD/BELL 212/31—Float Bags – Inspection [F2009L00975]*.
AD/BELL 212/32—Elevator to Horn Assembly Attachment – Modification [F2009L00974]*.
AD/BELL 212/36 Amdt 1—Emergency Floatation System and Squib Value [F2009L00973]*.
AD/BELL 412/14 Amdt 1—Emergency Floatation System and Squib Value [F2009L01037]*.
AD/DHC-8/146—Main Landing Gear Stabiliser Braces [F2009L01091]*.
AD/ECUREUIL/71 Amdt 4—Tail Rotor Blade Trailing Edge [F2009L01000]*.
AD/PA-44/16—Ailerons [F2009L00999]*.
AD/PA-46/6 Amdt 1—Flap Drive Mechanism [F2009L00997]*.
AD/PA-46/6 Amdt 1—Flap Actuator Tube [F2009L00994]*.
AD/PA-46/14 Amdt 2—Aileron Cable Routing [F2009L00993]*.
AD/PA-46/17—Aileron Balance Weight Attachment Screws [F2009L00991]*.
AD/PA-46/25—Fuselage Rivet Installation [F2009L00989]*.
106—
AD/CF6/46—Inspection of Life Limited Parts [F2009L00960]*.
AD/CF6/71—Life Limited Parts [F2009L00932]*.
107—
AD/GOV/9—Governor Control Arm Attachment Cap Screw A-1635-105 – Replacement [F2009L01027]*.
AD/GOV/10 Amdt 1—Governor Flyweight Assembly [F2009L01025]*.
AD/INST/56 Amdt 2—Avidyne Corporation Primary Flight Displays [F2009L01074]*.
AD/PHS/3—Model 23260 and 43E-60 Low Pitch Stop Assembly – Inspection [F2009L00941]*.
AD/PHS/6—Model 23e-50, Barrel Bolt Boss – Modification [F2009L00940]*.
AD/PHS/12—Pacific 6533A Propeller Blade [F2009L00939]*.
AD/PHS/13—Hub Rework [F2009L00938]*.
AD/RAD/17—AWA VC-10 VHF Transceiver – Modification [F2009L00915]*.
AD/RAD/19—“Aircom” VHF Transceiver – Modification [F2009L00914]*.

CHAMBER
AD/RAD/20—King VHF – KTR-900 Transceiver – Modification [F2009L00913]*.
AD/RAD/22—Press-to-Talk Assembly – Modification [F2009L00911]*.
AD/RAD/25—Bayside VHF Transceiver Modification or Retirement [F2009L00910]*.
AD/RES/3—Safety Belts – Davis FDC-2700 – Inspection [F2009L00864]*.
AD/RES/6—Safety Belts – Mills ME 2402 and ME 2402T – Inspection and Rectification [F2009L00863]*.
AD/RES/11 Amdt 1—Eon Corporation E8000 Buckle Assemblies [F2009L00862]*.
AD/RES/15—Pacific Scientific Dual Tension Reel Assembly P/Nos 0109101-01,-03,-05,-07 – Modification [F2009L00861]*.
Corporations Act—
Variation of Financial Stability Standard for Central Counterparties [F2009L00714]*.
Customs Act—
Select Legislative Instrument 2009 No. 40—Customs (Prohibited Imports) Amendment Regulations 2009 (No. 1) [F2009L01001]*.
Tariff Concession Orders—
0830239 [F2009L00641]*.
0839785 [F2009L00642]*.
0840334 [F2009L00644]*.
0840468 [F2009L00643]*.
Environment Protection and Biodiversity Conservation Act—
Amendment of the list of Migratory Species [F2009L01063]*.
Update to the list of Migratory Species [F2009L01064]*.
Higher Education Support Act—Higher Education Provider Approvals Nos—
1 of 2009—Australian Institute of Professional Counsellors Pty Ltd [F2009L01061]*.
2 of 2009—Canberra Institute of Technology [F2009L01062]*.
Migration Act—Select Legislative Instrument 2009 No. 41—Migration Amendment Regulations 2009 (No. 2) [F2009L01048]*.
National Health Act—
Instruments Nos PB—
20 of 2009—Amendment declaration and determination – drugs and medicinal preparations [F2009L01071]*.
24 of 2009—Amendment Special Arrangements – Highly Specialised Drugs Program [F2009L01115]*.
25 of 2009—Amendment Special Arrangements – Chemotherapy Pharmaceuticals Access Program [F2009L01116]*.
26 of 2009—Amendment determination – conditions [F2009L01117]*.
National Health (Australian Community Pharmacy Authority Rules) Amendment Determination 2009 (No. 1) [F2009L00832]*.
Payment Systems (Regulation) Act—
Select Legislative Instrument 2009 No. 44—Payment Systems (Regulation) Amendment Regulations 2009 (No. 1) [F2009L00895]*.
Radiocommunications Act—
Radiocommunications (Allocation of Spectrum Licences by Auction or Pre-determined Price) Amendment Determination 2009 (No. 1) [F2009L01067]*.
Social Security Act—Social Security (Deeming Threshold Rates) (FaHCSIA)
Determination 2009 (No. 2)
[F2009L01068]*.

* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Carbon Pollution Reduction Scheme
(Question No. 795)

Senator Abetz asked the Minister for Climate Change and Water, upon notice on, 13 November 2008:

(1) With reference to the proposed Carbon Pollution Reduction Scheme: has a Regulatory Impact Statement been undertaken or provided.

(2) With reference to Professor Ian Plimer’s letter to the editor published on page 17 of The Australian of 21 October 2008:

(a) does the Government agree with Professor Plimer’s analysis; if so, why; if not, why not;
(b) does the Government agree that Australia acting in isolation would be deeply problematic for the economy;
(c) does the Government consider that it is acting on greenhouse gases in isolation; if not: (i) what other countries are deemed to be acting in consort with Australia, (ii) what schemes are they operating under, and (iii) how do they compare with the proposed Australian scheme;
(d) if the Government is acting on greenhouse gases in isolation or relative isolation: which countries might be influenced by Australia’s actions;
(e) does the Government have a list of countries that will be motivated to follow suit because of Australia’s leadership with its proposed Carbon Pollution Reduction Scheme;
(f) has the Government given consideration to the number or major emitters; if so, which ones would need to participate in a global scheme before Australia moves ahead with its own Carbon Pollution Reduction Scheme;
(g) will Australia’s Carbon Pollution Reduction Scheme have any specific remedial or beneficial impact to save Australian icons such as the Great Barrier Reef; if so, how, and is there any evidence to support this view;
(h) in regard to the list of 2,500 scientists who are asserted to endorse the reports of the International Panel on Climate Change (IPCC): (i) has the Government been made aware of this list by the IPCC Secretariat; if so, can a copy of the list be provided, and (ii) is this list publicly available; if not: what has the Government done to satisfy itself as to the veracity of the claim;
(i) on what basis was a 20 per cent total proportion of permits available for trade exposed companies set, if it was based on environmental, economic or other considerations please specify which; and
(j) if Australia reduces its carbon emissions to zero, will it have zero impact on the climate.

(3) With reference to answers to questions on notice nos 561-563 (Senate Hansard, 4 September 2008, p. 4633), and in particular, the paper used in the various reports:

(a) does the department agree that elemental chlorine-free paper has less impact on the environment that totally chlorine-free paper;
(b) in regard to the answer in (11)(c)(i): on what basis did the printer assess that the two Australian-made options are of lower quality;
(c) was this based on environmental considerations or production/presentation considerations; and
(d) was the final report printed on Australian-made paper; if not, from where was the paper
sourced.

Senator Wong—The answer to the honourable senator’s question is as follows:

(1) The Australian Government’s best practice regulation processes have been followed in relation to
the Carbon Pollution Reduction Scheme: Australia’s Low Pollution Future. As such, a Regulatory
Impact Statement has been undertaken and will be released publicly.

(2) (a) Professor Plimer is correct in identifying that carbon dioxide (CO\textsubscript{2}) levels of more than 4,000
and 2,000 parts per million (ppm) have occurred during the Ordovician-Silurian and Jurassic-
Cretaceous periods. However his analysis presented in the article does not disprove the link
between atmospheric CO\textsubscript{2} and temperature:

- Recent studies have found that the Ordovician glacial event occurred at the end of the period,
while the nearest CO\textsubscript{2} data proxy data point may have occurred more than 5 million years ear-
lier and may therefore not be representative of CO\textsubscript{2} levels during the glacial event.
- During the Ordovician the earth was such a different place that the carbon dioxide thresholds
for allowing ice formation were much higher, approximately 3,000 ppm.
- There is no definitive evidence for permanent ice during the Jurassic and Cretaceous periods
which were dominated by warm climates punctuated by brief cool periods which corresponded
with relatively low CO\textsubscript{2} levels.

(b) No, Australia is not acting in isolation (see answer to 2(c)). Recent modelling by the Treasury
of a number of international scenarios indicates that Australia will continue to prosper while
making the emissions cuts necessary to reduce the risks of dangerous climate change.

(c) Australia is not acting on greenhouse gases in isolation. Australia is one of 192 countries
that have ratified the United Nations Framework Convention on Climate Change (UNFCCC) and
one of 183 Parties that have ratified the Kyoto Protocol. Many countries have made serious ef-
forts to address climate change through a suite of policies including, but not limited to, renew-
able energy targets, energy efficiency measures, research, development, demonstration and
deployment projects (for instance, to deploy carbon capture and storage technologies).

Emissions trading schemes currently operate in 27 European Union member states. The Cana-
dian Government has committed to introducing a scheme in 2010. President of the United
States of America (USA) Barack Obama has also committed to introducing a national cap and
trade scheme. In addition, Japan is currently trialling a scheme and 27 states and provinces in
the USA and Canada are introducing regional emissions trading schemes (including the Re-
gional Greenhouse Gas Initiative and the Western Climate Initiative).

(d) Australia is not acting on greenhouse gases in isolation.

(e) Australia’s leadership in relation to the proposed Carbon Pollution Reduction Scheme (CPRS)
positions Australia to play its full part towards a global solution, including by urging other ad-
vanced countries to take comparable action.

(f) Australia is committed to commence the CPRS in 2010. Australia will carefully calibrate its
carbon pollution reduction efforts in light of progress in international negotiations. It has
committed to a target range of 5-15 percent reduction in greenhouse gas emissions below 2000
levels by 2020.

The top of this range (5 per cent below 2000 levels) represents a minimum (unconditional)
commitment to reduce emissions by 2020, irrespective of the actions by other nations. The
bottom of this range (15 per cent below 2000 levels) represents a commitment to reduce emis-
sions in the context of global agreement where all major economies commit to substantially restrain emissions and all developed countries take comparable reductions to that of Australia. Australia’s firm view is that developed countries must continue to take the lead in reducing greenhouse gas emissions, however all countries – in particular all major economies – must contribute to the global effort to combat climate change. Australia will continue to work constructively to forge a comprehensive post-2012 outcome that is effective and fair.

(g) Australia’s environment is likely to be disproportionately affected by climate change. As Australia generates only 1.5 per cent of global greenhouse gas emissions, its actions alone cannot avert the worst consequences of climate change including losing icons such as the Great Barrier Reef. The only solution to the climate change is a global one. For Australia to play a positive role in developing a comprehensive global solution, both our domestic and international actions are important. Internationally, strong domestic action will support our efforts to help shape an effective post-2012 international climate change framework for reducing emissions under the UNFCCC. It will also assist Australia’s efforts to secure the participation of all countries, both developed and developing, in global efforts to reduce emissions, including through key bilateral and regional relationships.

(h) The Intergovernmental Panel on Climate Change Fourth Assessment Report (AR4) is publicly available on the IPCC website at www.ipcc.ch. The AR4 is composed of four sections including a Synthesis Report, Working Group I Report ‘The Physical Science Basis’, Working Group II Report ‘Impacts, Adaptation and Vulnerability’ and Working Group III Report ‘Mitigation of Climate Change.’ The appendices of each section provide a full list of the individual contributors, reviewers and their associations. Furthermore, the individual contributors and reviewers to every chapter of every section are listed at the beginning of each chapter.

(i) The Government’s preferred position in the Green Paper was to provide assistance to entities conducting Emissions-Intensive Trade-Exposed (EITE) activities amounting to up to around 20 per cent of total available permits (equivalent to around 30 per cent if agricultural emissions were included in the Scheme). This reflected an initial assessment of the economic and environmental benefit of shielding entities conducting EITE activities, the overall economic cost, and particularly the cost to households, of shielding these entities conducting EITE activities and consideration of the alternative uses of Scheme revenue.

As outlined in the White Paper, the quantum of assistance to be provided in the EITE assistance program has increased. At the start of the CPRS it is estimated that EITE industries will be allocated around 25 per cent of total carbon pollution permits (equivalent to 35 per cent if agricultural emissions are included in the Scheme).

(j) Australia generated over 576 million tonnes of CO2e emissions in 2006 which is 1.5 per cent of total global emissions. As outlined in 2(g) above, the Government accepts that Australia acting alone cannot avert the worst consequences of climate change and the only solution to climate change is a global one. However, as also outlined in 2(g) Australian reductions in greenhouse gas emissions can assist in contributing to this global solution.

(3) (a) (b) and (c) The paper used in the Draft Report of the Garnaut Climate Change Review was chosen on advice from the printer. 9Lives80 paper was selected over the two Australian-made options based on both environmental and presentation considerations.

(d) The Final Report was printed on Australian-made paper.
**Human Services: Program Funding**

**(Question No. 880)**

Senator Ronaldson asked the Minister for Human Services, upon notice, on 24 November 2008:

In regard to the Minister’s administered portfolio area, for the 2008 calendar year, can lists be provided for: (a) the top 5 program overspends and their costs; and (b) the top 5 program underspends and their costs.

Senator Ludwig—The answer to the honourable senator’s question is as follows:

1. **Department of Human Services**
   (a) The Department has not overspent administered funds appropriated to it in the 2008 calendar year.
   (b) The Department has returned $77.933 million in administered funds in the 2008 calendar year, as a result of the lapsing of unspent appropriations related to the 2007-08 financial year. This included $72.322 million from special appropriations (Child Support Program) and $5.611 million from annual appropriations ($0.304 million for Child Support Program, $4.541 million for the Northern Territory Emergency Response (NTER) and $0.766 million Job Capacity Assessment (JCA) program).

Medicare Australia
(a) Nil.
(b) Nil.

Centrelink
(a) Nil.
(b) Nil.

**Health and Ageing: Program Funding**

**(Question Nos 887 and 897)**

Senator Ronaldson asked the Minister representing the Minister for Health and Ageing, upon notice, on 25 November 2008:

For the 2008 calendar year, can lists be provided for: (a) the department’s top 5 program overspends and their costs; and (b) the department’s top 5 program underspends and their costs.

Senator Ludwig—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

The Commonwealth Budget and associated financial reporting is prepared on a financial year basis. For this reason, calendar year information is not available for 2008.

Overspend and underspend information for the top five underspending and top five overspending programs for the 2007-08 financial year is as follows:

**Top Five Underspending Programs for the Department of Health and Ageing in 2007-08**

<table>
<thead>
<tr>
<th>Program</th>
<th>Budget $,000</th>
<th>Actual $,000</th>
<th>Underspend $,000</th>
<th>Percentage underspent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Care</td>
<td>5,250,538</td>
<td>5,149,570</td>
<td>100,968</td>
<td>1.9%</td>
</tr>
<tr>
<td>Medical Indemnity</td>
<td>118,106</td>
<td>34,337</td>
<td>83,769</td>
<td>70.9%</td>
</tr>
<tr>
<td>Pharmaceuticals and Pharmaceutical Services</td>
<td>7,195,244</td>
<td>7,161,868</td>
<td>33,376</td>
<td>0.5%</td>
</tr>
</tbody>
</table>
Program | Budget 1 $,000 | Actual 2 $,000 | Underspend $,000 | Percentage underspent  
--- | --- | --- | --- | ---  
Sport and Recreation | 139,605 | 109,098 | 30,507 | 21.9%  
Aboriginal and Torres Strait Islander Health | 491,824 | 471,963 | 19,861 | 4.0%  

1 Budget refers to the amount in the Portfolio Budget Statements 2008-09 Estimated Actual 2007-08. This figure represents an estimate of 2007-08 expenses as at 13 May 2008.  
2 Actual refers to the amount published in Department of Health and Ageing Annual Report 2007-08. This is the total amount of actual expenses incurred for the 2007-08 financial year.

Top Five Overspending Programs for the Department of Health and Ageing in 2007-08  
Program | Budget 1 $,000 | Actual 2 $,000 | Overspend $,000 | Percentage overspent  
--- | --- | --- | --- | ---  
Medicare Services | 12,818,269 | 12,956,991 | 138,722 | 1.1%  
Private Health Insurance | 3,551,912 | 3,643,184 | 91,272 | 2.6%  
Blood and Organ Donation Services | 468,442 | 521,865 | 53,423 | 11.4%  
Aged Care Workforce | 34,403 | 46,946 | 12,543 | 36.5%  
Primary Care Education and Training | 245,437 | 257,908 | 12,471 | 4.8%  

1 Budget refers to the amount in the Portfolio Budget Statements 2008-09 Estimated Actual 2007-08. This figure represents an estimate of 2007-08 expenses as at 13 May 2008.  
2 Actual refers to the amount published in Department of Health and Ageing Annual Report 2007-08. This is the total amount of actual expenses incurred for the 2007-08 financial year.

**Attorney-General’s: Commonwealth Credit Cards**  
*(Question Nos 986 and 991)*

**Senator Ronaldson** asked the Minister representing the Attorney-General and the Minister representing the Minister for Home Affairs, upon notice, on 25 November 2008:

(1) How many Commonwealth credit cards have been issued to departmental and agency staff within the Minister’s portfolio.

(2) How many Commonwealth credit cards have been issued to departmental and agency staff that fall within the responsibility of the Minister’s associated Parliamentary Secretary or Secretaries.

(3) Within the Minister’s portfolio, how many Commonwealth credit cards have been issued to: (a) staff employed under the *Members of Parliament (Staff) Act 1984*; (b) the Minister; and (c) the Minister’s associated Parliamentary Secretary or Secretaries.

(4) For each Commonwealth credit card issued in (3) above, what was the date of its issue.

**Senator Wong**—The Attorney-General and the Minister for Home Affairs have provided the following answer to the honourable senator’s question:

(1) The number of credit cards issued to departmental and agency staff between 4 December 2007 and 25 November 2008 is set out as follows:

<table>
<thead>
<tr>
<th>Attorney-General’s Portfolio – department and agency</th>
<th>Number of cards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney General’s Department</td>
<td>281</td>
</tr>
<tr>
<td>Administrative Appeals Tribunal</td>
<td>3</td>
</tr>
<tr>
<td>Australian Commission for Law Enforcement Integrity</td>
<td>6</td>
</tr>
<tr>
<td>Australian Crime Commission</td>
<td>24</td>
</tr>
<tr>
<td>Australian Customs Service</td>
<td>501</td>
</tr>
</tbody>
</table>
QUESTIONS ON NOTICE

**Attorney-General’s Portfolio – department and agency** | **Number of cards**
---|---
Australian Federal Police | 876
Australian Institute of Criminology / Criminology Research Council | 4
Australian Law Reform Commission | 2
Australian Security Intelligence Organisation | 155
AUSTRAC | 11
CrimTrac | 15
Family Court of Australia | 12
Federal Court of Australia | 41
Federal Magistrates Court of Australia | 4
High Court of Australia | 4
Human Rights and Equal Opportunity Commission | 4
Inolvency and Trustee Service Australia | 13
National Capital Authority | 5
National Native Title Tribunal | 8
Office of the Director of Public Prosecutions | 13
Office of Parliamentary Counsel | 3
**TOTAL** | **1,985**

(2) Not applicable.

(3) Nil. The Attorney-General’s Department has not issued any credit cards to (a) staff employed under the Members of Parliament (Staff) Act 1984; (b) the Minister and (c) not applicable.

(4) Not applicable.

**Health and Ageing: Program Funding**

(Question Nos 1062, 1085 and 1087)

Senator Abetz asked the Minister representing the Minister for Health and Ageing, upon notice, on 3 December 2008:

(1) Given that spending on individual programs is not reported in either the budget papers or annual reports, did any programs in the Minister’s portfolio: (a) have underspends for the 2007-08 financial year; if so, for each underspend: (i) in what program did it fall, (ii) how much was the underspend, and (iii) what was the reason for the underspend; and (b) have overspends for the 2007-08 financial year; if so, for each overspend: (i) in what program did it fall, (ii) how much was the overspend, and (iii) what was the reason for the overspend.

(2) Will any agencies and/or departments in the Minister’s portfolio return money in the 2008-09 Budget as a result of underspends for the 2007-08 financial year; if so, how much.

Senator Ludwig—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) The spending of all programs is recorded in the table of Attachment A. All programs had a variance between estimated and actual spending.

(2) The Department of Health and Ageing returned $693,869,561 to consolidated revenue due to underspends in 2007-08. Cancer Australia returned $151.
### Attachment A

<table>
<thead>
<tr>
<th>Program</th>
<th>Budget 2007-08 (‘$000)</th>
<th>Actuals 2007-08 (‘$000)</th>
<th>Variance (‘$000)</th>
<th>Variance Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Chronic Disease - Early Detection and Prevention</td>
<td>31,078</td>
<td>26,294</td>
<td>(4,784)</td>
<td>Underspent funds relate to services to be provided in respect of participants in the Bowel Cancer Screening Program who received kits late in the financial year. Since costs are not incurred until kits are used, funds were not spent until after 30 June. Other underspends came from: (a) The Obesity Campaign, which was completed at lower cost than anticipated; (b) Delays in finalizing contracts for the Chlamydia pilot program. The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>1.2 Communicable Disease Control</td>
<td>21,044</td>
<td>20,213</td>
<td>(831)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>1.3 Drug Strategy</td>
<td>177,309</td>
<td>159,173</td>
<td>(18,136)</td>
<td>The underspend results in delays in funding agreements, activities related to services for drug users with comorbid mental illness, and the National Illicit Drug Strategy.</td>
</tr>
<tr>
<td>1.4 Food and Regulatory Policy</td>
<td>663</td>
<td>184</td>
<td>(479)</td>
<td>Funds were re-directed to support other components of the National Public Health Program (Program 1.6).</td>
</tr>
<tr>
<td>1.5 Immunisation</td>
<td>571,819</td>
<td>581,928</td>
<td>10,109</td>
<td>The overspend is predominantly due to a revision to the estimated number of people receiving vaccinations, partially offset by delays in development of the HPV register and completion of the Q fever vaccine facility. The underspend was due to delays in finalising large numbers of grants under the Community and Schools Grants program; internal funds transfers and slippage of the commencement date with the ABHI campaign.</td>
</tr>
<tr>
<td>1.6 Public Health</td>
<td>222,267</td>
<td>207,455</td>
<td>(14,812)</td>
<td></td>
</tr>
<tr>
<td>2.1 Community Pharmacy and Pharmaceutical Awareness</td>
<td>199,313</td>
<td>192,540</td>
<td>(6,773)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>Program</td>
<td>Budget 2007-08 (‘$000)</td>
<td>Actuals 2007-08 (‘$000)</td>
<td>Variance (‘$000)</td>
<td>Variance Explanation</td>
</tr>
<tr>
<td>------------------------------------------------------</td>
<td>------------------------</td>
<td>------------------------</td>
<td>------------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>2.2 Pharmaceuticals and Pharmaceutical Services</td>
<td>7,195,244</td>
<td>7,161,868</td>
<td>(33,376)</td>
<td>The Pharmaceutical Benefits Scheme (PBS) is a demand driven program. In 2007-08 there were 3% fewer general PBS prescriptions and 0.1% more concessional PBS prescriptions than forecast resulting in a small underspend in PBS general expenditure and a smaller overspend in PBS concessional expenditure.</td>
</tr>
<tr>
<td>2.3 Targeted Assistance - Pharmaceuticals, Aids and Appliances</td>
<td>280,074</td>
<td>260,945</td>
<td>(19,129)</td>
<td>The underspends were attributable to the demand driven nature of the Life Saving Drugs and Herceptin programs.</td>
</tr>
<tr>
<td>3.1 Medicare Services</td>
<td>12,818,269</td>
<td>12,956,991</td>
<td>138,722</td>
<td>Medicare Services is a demand driven program. The overspend of $138,722m or 1.1% was primarily due to slightly higher than estimated demand.</td>
</tr>
<tr>
<td>3.2 Alternative Funding for Health Service Provision</td>
<td>3,785</td>
<td>3,098</td>
<td>(687)</td>
<td>The underspend of $687,000 or 18.1% was due to the demand driven nature of the Medical Treatment Overseas program. It is difficult to accurately predict the pattern of payments due to the varying nature of the life threatening medical conditions and treatments available overseas. The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>3.3 Diagnostic Imaging Services</td>
<td>8,171</td>
<td>8,073</td>
<td>(98)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>3.4 Pathology Services</td>
<td>3,651</td>
<td>3,349</td>
<td>(302)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>3.5 Chronic Disease - Radiation Oncology</td>
<td>70,035</td>
<td>65,450</td>
<td>(4,585)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>3.6 Targeted Assistance Medical</td>
<td>14,400</td>
<td>15,065</td>
<td>665</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>4.1 Aged Care Assessment</td>
<td>74,049</td>
<td>73,844</td>
<td>(205)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>4.2 Aged Care Workforce</td>
<td>34,403</td>
<td>46,946</td>
<td>12,543</td>
<td>The expenditure estimate for this Program anticipated delays in advertising and finalising funding rounds due to the 2007 election. The delays did not eventuate and the funding rounds progressed smoothly.</td>
</tr>
<tr>
<td>Program</td>
<td>Budget 2007-08 ('$000)</td>
<td>Actuals 2007-08 ('$000)</td>
<td>Variance ('$000)</td>
<td>Variance Explanation</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>------------------------</td>
<td>-------------------------</td>
<td>------------------</td>
<td>--------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>4.3 Ageing Information and Support</td>
<td>39,689</td>
<td>33,676</td>
<td>(6,013)</td>
<td>A number of Ageing and Information and Support projects were delayed by funding constraints. Several IT projects were also delayed because changes to implementation dates which impacted on the maintenance and enhancement components of the projects.</td>
</tr>
<tr>
<td>4.4 Community Care</td>
<td>1,721,963</td>
<td>1,720,919</td>
<td>(1,044)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>4.5 Culturally Appropriate Aged Care</td>
<td>27,136</td>
<td>26,952</td>
<td>(184)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>4.6 Dementia</td>
<td>32,394</td>
<td>31,219</td>
<td>(1,175)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>4.7 Flexible Aged Care</td>
<td>332,289</td>
<td>335,095</td>
<td>2,806</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>4.8 Residential Care</td>
<td>5,250,538</td>
<td>5,149,570</td>
<td>(100,968)</td>
<td>Expenditure on residential aged care subsidies is estimated each year using a model that estimates demand for residential care based on forecasts of, for example, the number of places available, occupancy, and the expected frailty of residents. There was a difference between estimated and actual expenditure because the value of claims against the demand driven residential aged care program was less than estimated.</td>
</tr>
<tr>
<td>5.1 Primary Care Education and Training</td>
<td>245,437</td>
<td>257,908</td>
<td>12,471</td>
<td>The overspend is a result of a change in accounting policy by the ANAO. The overspend is solely in expense terms, the cash budget for the program was not exceeded.</td>
</tr>
<tr>
<td>5.2 Primary Care Financing, Quality and Access</td>
<td>258,735</td>
<td>253,647</td>
<td>(5,088)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>5.3 Primary Care Policy, Innovation and Research</td>
<td>27,326</td>
<td>27,391</td>
<td>65</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>5.4 Primary Care Practice Incentives</td>
<td>323,700</td>
<td>324,009</td>
<td>309</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>6.1 Rural Health Services</td>
<td>136,883</td>
<td>142,761</td>
<td>5,878</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>Program</td>
<td>Budget 2007-08 (‘$000)</td>
<td>Actuals 2007-08 (‘$000)</td>
<td>Variance (‘$000)</td>
<td>Variance Explanation</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-------------------------</td>
<td>--------------------------</td>
<td>------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| 7.1 Hearing Services                         | 285,911                 | 286,227                  | 316              | The variance is not considered significant for this program. The majority of the underspend were related to the implementation of new measures and slippage in capital works and includes the following:  
   *Petrol Sniffing Prevention Program:* Opal sales are demand driven and usage is extremely difficult to estimate. Expenditure in the program is directly related to Opal fuel usage.  
   *Capital:* Expenditure estimates for capital projects are influenced by various external factors such as availability of workforce and weather.  
   *Northern Territory National Emergency Response:* Due to the complex logistics of delivering follow up care to children, following child health checks, in remote communities in the NT, many of the more specialised services (including ear, nose and throat, dental and hearing services) did not commence until the third quarter of the financial year. |
<p>| 8.1 Aboriginal and Torres Strait Islander Health | 491,824                 | 471,963                  | 19,861           |                                                                                                                                                       |
| 8.2 Private Health Insurance                 | 3,551,912               | 3,643,183                | 91,271           | Expenditure on private health insurance rebates is demand driven. The overspend in 2007-08 is due to increase in participation being higher than estimates which were based on historical trends.                                                                                      |
| 10.1 Chronic Disease - Treatment             | 17,017                  | 16,383                   | 634              | The variance is not considered significant for this program.                                                                                                                                                      |
| 10.2 E-Health Implementation                | 53,779                  | 42,559                   | 11,220           | The program underspend of $11.220 million is due to lower than expected costs for the Broadband for Health incentive and changes to the National eHealth Transition Authority (NEHTA) Work Program.                                                          |
| 10.3 Health Information                      | 7,664                   | 7,696                    | 2                | The variance is not considered significant for this program.                                                                                                                                                      |
| 10.4 International Policy Engagement         | 10,576                  | 10,424                   | 152              | The variance is not considered significant for this program.                                                                                                                                                      |</p>
<table>
<thead>
<tr>
<th>Program</th>
<th>Budget 2007-08 ($'000)</th>
<th>Actuals 2007-08 ($'000)</th>
<th>Variance ($'000)</th>
<th>Variance Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.5 Palliative Care and Community Assistance</td>
<td>28,510</td>
<td>26,936</td>
<td>(1,574)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>10.6 Research Capacity</td>
<td>27,555</td>
<td>26,745</td>
<td>(810)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>11.1 Mental Health</td>
<td>161,490</td>
<td>158,485</td>
<td>(3,005)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>12.1 Rural Workforce</td>
<td>169,360</td>
<td>168,680</td>
<td>(680)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>12.2 Workforce</td>
<td>163,912</td>
<td>163,025</td>
<td>(887)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>13.1 Blood and Organ Donation Services</td>
<td>468,442</td>
<td>521,865</td>
<td>53,423</td>
<td>Accounting treatment for recording blood prepayments has changed, existing prepayments must be expensed. The result is an increase in expenditure and the removal of the prepayment as an asset.</td>
</tr>
<tr>
<td>13.2 Medical Indemnity</td>
<td>118,106</td>
<td>34,337</td>
<td>(83,769)</td>
<td>This underspend relates to the High Cost Claims Scheme and the Run-off Cover Scheme. Expenditure is less than expected because the schemes only respond to claims made by medical indemnity insurers. It is difficult to predict when insurers may lodge a claim.</td>
</tr>
<tr>
<td>13.3 Public Hospitals and Information</td>
<td>9,955,474</td>
<td>9,943,708</td>
<td>(11,766)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>14.1 Health Emergency Planning and Response*</td>
<td>63,767</td>
<td>62,586</td>
<td>(1,181)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>14.2 Surveillance</td>
<td>5,703</td>
<td>5,076</td>
<td>(627)</td>
<td>The majority of the underspend was due to lower than expected demand for the Tuberculin Screening test.</td>
</tr>
<tr>
<td>15.1 Sport and Recreation</td>
<td>139,605</td>
<td>109,098</td>
<td>(30,507)</td>
<td>The underspend predominantly reflects protracted execution of funding agreements with three sporting facilities projects.</td>
</tr>
<tr>
<td>Cancer Australia (Administered)</td>
<td>19,749</td>
<td>19,756</td>
<td>7</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>Program</td>
<td>Budget 2007-08 ('$000)</td>
<td>Actuals 2007-08 ('$000)</td>
<td>Variance ('$000)</td>
<td>Variance Explanation</td>
</tr>
<tr>
<td>----------------------------------------------</td>
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<td>-----------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>National Health and Medical Research Council (Administered)</td>
<td>541,591</td>
<td>566,063</td>
<td>24,472</td>
<td>The Medical Research Endowment Account is a special account which allows underspends from previous years to be retained within the account for expenditure in forward years. Due to a variety of factors it is difficult to estimate the spend against the MREA. The expense was underestimated in 2008-09 due to a higher than expected rate which successful grant applicants obtained the prerequisite ethics clearance and a higher than anticipated level of research investment recommended by the NHMRC Research Committee and Council.</td>
</tr>
<tr>
<td>National Blood Authority (Administered)</td>
<td>725,692</td>
<td>725,351</td>
<td>(351)</td>
<td>The variance is not considered significant for this program.</td>
</tr>
<tr>
<td>Private Health Insurance Administration Council (Administered)</td>
<td>230,232</td>
<td>235,167</td>
<td>4,935</td>
<td>The variance is not considered significant for this program.</td>
</tr>
</tbody>
</table>

All information in the budget, actual and variance columns was sourced from the Department of Health and Ageing Annual Report 2007-08. Information concerning NHMRC, NBA, Cancer Australia and PHIAC in the budget column is sourced from the Portfolio Budget Statements 2008-09 and the actual column from those agencies Annual Report 2007-08. The variance column equals Actual less Budget.

**Agriculture, Fisheries and Forestry: Program Funding (Question No. 1072)**

**Senator Abetz** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 3 December 2008:

1. Given that spending on individual programs is not reported in either the budget papers or annual reports, did any programs in the Minister’s portfolio:
   a. have underspends for the 2007-08 financial year; if so, for each underspend: (i) in what program did it fall, (ii) how much was the underspend, and (iii) what was the reason for the underspend.
   b. have overspends for the 2007-08 financial year if so for each overspend: (i) in what program did it fall, (ii) how much was the overspend, and (iii) what was the reason for the overspend.
2. Will any agencies and/or departments in the Minister’s portfolio return money in the 2008-09 Budget as a result of underspends for the 2007-08 financial year; if so, how much.
Senator Sherry—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) The Department of Agriculture Fisheries and Forestry (DAFF) has a number of programs that are demand driven in nature. Most of these provide support to rural communities that have been affected by the drought. Budget estimates for these programs are based on statistical information on the number of eligible recipients in affected regions and historical uptake of similar programs. In 2007-08 the estimated uptake of the programs was overstated resulting in the overall estimate of $1,276.4m being underspent by $174.8m.

A number of programs relate to the payment of levies collected on behalf of industry. Overall in 2007-08 the levies collected from industry was greater than estimated resulting in payments to recipients being $23.3m greater than the estimate of $763.7m. The authority to make over payments for these programs is vested in their individual Acts.

The DAFF estimates included funding for a number of programs that were terminated by the incoming Government. Budget funding of $24.8m was appropriated for terminating programs with $5.5m underspent by the end of the financial year.

A list of all programs under each of the categories above is listed in Attachment A.

A number of DAFF programs from 2007-08 were marginally over or under spent. Overall the Budget funding for these programs totalled $522.8m with a total underspend of $5.4m.

The remainder of DAFF’s programs had appropriated funding of $317.2m and a combined underspend of $89.7m. The largest contributors to this underspend were:

<table>
<thead>
<tr>
<th>Underspent Program</th>
<th>Under spend $’000</th>
<th>Reason for underspend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fisheries Structural Adjustment Package</td>
<td>20,098</td>
<td>A large portion of this amount, $12,973m, has been approved through the 2008-09 Budget process to move in to future years to fund commitments entered into in 2007-08.</td>
</tr>
<tr>
<td>For expenditure under the Fisheries Administration Act 1991</td>
<td>7,320</td>
<td>Payments to AFMA have reduced based on operational costs in 2007-08 being less than estimated due to reduced activity of illegal fishing.</td>
</tr>
<tr>
<td>EADRA – Equine Influenza</td>
<td>27,561</td>
<td>A large portion of this amount has been moved to 2008-09 to meet outstanding claims under the Emergency Animal Disease Response Agreement pending approval by the National Management Group for reimbursement. This underspend is due to grant recipients not meeting milestones as per their original budget forecasts. A movement of $3,705m was approved through the 2008-09 Budget process and a further movement of the remaining balance sought.</td>
</tr>
<tr>
<td>Tasmanian Community Forest Agreement</td>
<td>19,669</td>
<td></td>
</tr>
</tbody>
</table>

(2) The underspend for annual appropriations for the 2007-08 financial year is $381.846 million.

Attachment A

Demand Driven Programs
Agriculture Advancing Australia – Farm Help
Interim Income Support Payments
Farm Household Support Act 1992 – Exceptional Circumstances Relief Payment

QUESTIONS ON NOTICE
Drought Assistance – Reestablishment Assistance
Horticulture Code of Conduct
Exceptional Circumstances
Regional Assistance
Drought Assistance – Professional Advice
Support for Irrigators in the Murray Darling Basin

**Levies Programs**
- Agricultural and Veterinary Chemicals (Administration) Act 1992
- AMLI Consequential Act 1997
- Australian Animal Health Council (Live-stock Industries) Funding Act 1996
- Australian Wine and Brandy Corporation Act 1980
- Dairy Produce Act 1986 - Dairy Industry Restructure Package
- Dairy Produce Act 1986
- Egg Industry Service Provision Act 2002
- Fisheries Administration Act 1991
- Primary Industries and Energy R and D Act 1989 - Forest and Wood Products R and D Corp
- Horticulture Marketing and Research and Development Services Act 2000
- Levies Bad Debt write offs
- National Residue Survey Administration Act 1992
- Pig Industry Act 2001
- Plant Health Australia (Plant Industries) Funding Act 2002
- Primary Industries and Energy R and D Act 1989 - Cotton R and D Corp
- Primary Industries and Energy R and D Act 1989 - Fisheries R and D Corp
- Primary Industries and Energy R and D Act 1989 - Forest and Wood Products R and D Corp
- Primary Industries and Energy R and D Act 1989 - Grains R and D Corp - Grains - Wheat
- Primary Industries and Energy R and D Act 1989 - Grains R and D Corp - Other Grains
- Primary Industries and Energy R and D Act 1989 - Grape and Wine R and D Corp
- Primary Industries and Energy R and D Act 1989 - Rural Industries R and D Corp
- Primary Industries and Energy R and D Act 1989 - Sugar R and D Corp
- Wheat Marketing Act 1989
- Wool Services Privatisation Act 2000

**Terminating Programs**
- Agriculture Advancing Australia - Industry Partnerships
- Agriculture Advancing Australia - FarmBis
- Food Processing in Regional Australia
- National Food Industry Strategy - Food Innovation Grants
- New Industries Development Programme
- Agriculture Advancing Australia - FarmBis

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**QUESTIONS ON NOTICE**
Prime Minister and Cabinet: Program Funding
(Question No. 1104)

Senator Abetz asked the Minister for Climate Change and Water, upon notice, on 3 December 2008:

(1) (a) For the period 1 December 2007 to 30 June 2008, what funds has the Government committed to spend under regulation 10 of the Financial Management and Accountability Act 1997 (the Act) for each department No. 51-4 December 2008 83 and/or agency that operates under the Act in the Minister’s portfolio; and

(b) how much of this commitment was approved: (i) at the department or agency level, and (ii) by the Minister for Finance and Deregulation.

(2) How much depreciation funding for each department or agency in the Minister’s portfolio: (a) was available as at 30 June 2008; (b) was spent in the 2007-08 financial year; and (c) was spent in the 2007-08 financial year to directly replace assets for which it was appropriated.

Senator Wong—The answer to the honourable senator’s question is as follows:

(1) (a) For the period of 1 December 2007 to 30 June 2008:

the Department of Climate Change has reported to me that the Department has committed to spend under regulation 10 of the Financial Management and Accountability Act 1997 (the Act), the following funds (inclusive of GST):

For 2008/2009 financial year: $7,384,834.00
For the 2009/2010 financial year: $7,311,660.00
For the 2010/2011 financial year: $6,100,000.00
For the 2011/2012 financial year: $4,400,000.00

In total, $25,196,494.00 was committed during this period for 1 July 2008 to 30 June 2012.

the Office of the Renewable Energy Regulator (ORER) has reported to me that ORER has not committed any funding under regulation 10.

(b) All of the funding commitments made by the Department of Climate Change during the period of 1 December 2007 to 30 June 2008 under regulation 10 were made at the Department level.

(2) Portfolio agencies budgets are allocated to priorities on the basis of need and the Government does not try to allocate funding from particular sources to particular programs.

Agriculture, Fisheries and Forestry: Program Funding
(Question No. 1108)

Senator Abetz asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 3 December 2008:

(1) (a) For the period 1 December 2007 to 30 June 2008, what funds has the Government committed to spend under regulation 10 of the Financial Management and Accountability Act 1997 (the Act) for each department and/or agency that operates under the Act in the Minister’s portfolio; and

(b) how much of this commitment was approved:

(i) at the department or agency level, and

(ii) by the Minister for Finance and Deregulation.

(2) How much depreciation funding for each department or agency in the Minister’s portfolio:

(a) was available as at 30 June 2008;
(b) was spent in the 2007-08 financial year; and
(c) was spent in the 2007-08 financial year to directly replace assets for which it was appropriated.

Senator Sherry—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

1. (a) $80,582,810
   (b) (i) $80,582,810
      (ii) Nil

2. Agencies are appropriated at an overall level and not on the basis of individual expenses. The depreciation expenses identified in each agency’s financial statements in the Portfolio Budget Statements represent estimated expenses and not the amount of funding provided. Depreciation expenses may also be met from a mix of direct appropriation revenue and independently sourced revenue. In the case of the portfolio’s Commonwealth and Companies Act agencies these expenses are met exclusively from industry levies with the exception of Land and Water Australia (LWA) which is partly funded from direct appropriations.

The table below addresses the sub-paragraphs (a), (b) and (c) to Question 2 above.

<table>
<thead>
<tr>
<th>Agency</th>
<th>FMA/CAC</th>
<th>(a) Budgeted expenses taken from 2007-08 PBS $’000</th>
<th>(b) Actual depn expenses for 2007-08 $’000</th>
<th>(c) Spent to replace assets $’000</th>
</tr>
</thead>
<tbody>
<tr>
<td>DAFF</td>
<td>FMA</td>
<td>10,854</td>
<td>13,600</td>
<td>58,799</td>
</tr>
<tr>
<td>AFMA</td>
<td>FMA</td>
<td>451</td>
<td>797</td>
<td>3,794</td>
</tr>
<tr>
<td>APVMA</td>
<td>FMA</td>
<td>646</td>
<td>527</td>
<td>436</td>
</tr>
<tr>
<td>AWBC</td>
<td>CAC</td>
<td>476</td>
<td>406</td>
<td>325</td>
</tr>
<tr>
<td>BA</td>
<td>FMA</td>
<td>72</td>
<td>93</td>
<td>93</td>
</tr>
<tr>
<td>CRDC</td>
<td>CAC</td>
<td>62</td>
<td>53</td>
<td>53</td>
</tr>
<tr>
<td>FRDC</td>
<td>CAC</td>
<td>451</td>
<td>467</td>
<td>117</td>
</tr>
<tr>
<td>GRDC</td>
<td>CAC</td>
<td>691</td>
<td>610</td>
<td>115</td>
</tr>
<tr>
<td>GWRDC</td>
<td>CAC</td>
<td>48</td>
<td>56</td>
<td>30</td>
</tr>
<tr>
<td>LWA</td>
<td>CAC</td>
<td>302</td>
<td>389</td>
<td>140</td>
</tr>
<tr>
<td>RIRDC</td>
<td>CAC</td>
<td>145</td>
<td>203</td>
<td>307</td>
</tr>
<tr>
<td>SRDC</td>
<td>CAC</td>
<td>32</td>
<td>18</td>
<td>102</td>
</tr>
<tr>
<td>WEA</td>
<td>FMA</td>
<td>155</td>
<td>119</td>
<td>10</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>14,385</td>
<td>17,338</td>
<td>64,321</td>
</tr>
</tbody>
</table>

Garnaut Review: Costs
(Question No. 1227)

Senator Abetz asked the Minister for Climate Change and Water, upon notice, on 20 January 2009:

With reference to part 5 of the amended answer to question on notice no. 562, which states that, ‘The Department has not made enquiries as to what type of motor vehicle Professor Garnaut drives’:

1. Has Professor Garnaut been provided with a motor vehicle by the Commonwealth; if so, what is the make and model of this vehicle.
(2) Does Professor Garnaut claim a motor vehicle allowance; if so: (a) how much and on what basis is it paid; (b) what make and model of motor vehicle does this specific allowance support; and (c) if the department does not know what make and model of motor vehicle the specific allowance supports, will the department undertake to find out; if not, why not.

Senator Wong—The answer to the honourable senator’s question is as follows:

(1) The Commonwealth did not provide Professor Garnaut with a motor vehicle. Professor Garnaut’s contract as a temporary Commonwealth employee included a specified amount of vehicle allowance for the maintenance of a privately plated vehicle, to be paid in fortnightly instalments. The make and model of vehicle were not specified in the contract.

(2) (a) Professor Garnaut’s employment contract provided a vehicle allowance of $14,750, in lieu of a vehicle, pro rata for the duration of his contract. This figure is significantly lower – about 49 per cent lower – than the usual rate of vehicle allowance paid at the SES Band 3 level. Professor Garnaut’s employment was at the SES Band 3 level.

(b) Professor Garnaut’s contract did not specify the make and model of motor vehicle and does not require this information to be supplied to the Commonwealth.

(c) This is a common feature of SES contracts across the Commonwealth and SES employees are not obliged to specify the makes and models of motor vehicles associated with those allowances.

Veterans’ Affairs: Moncrieff Electorate
(Question No. 1282)

Senator Mason asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 5 February 2009:

With reference to the Government’s funding of organisations and projects between 3 December 2007 and 20 January 2009:

(a) which organisations and projects within the Moncrieff electorate received funding from the department;

(b) how much funding did each organisation or project receive; and

(c) for what purpose was each funding commitment made.

Senator Faulkner—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

Details requested at (a), (b) and (c) are provided in the following table:

<table>
<thead>
<tr>
<th>Organisation (a)</th>
<th>Amount Received (b)</th>
<th>Purpose (c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnam Veterans’ Federation of Australia - Queensland.</td>
<td>$21,357</td>
<td>To purchase computer equipment and furniture to assist with pensions and welfare activities.</td>
</tr>
<tr>
<td>Surfers Paradise RSL Sub-branch.</td>
<td>$9,040</td>
<td>To purchase computer equipment.</td>
</tr>
<tr>
<td>Legacy Club Gold Coast Sub-branch.</td>
<td>$13,200</td>
<td>To assist with salaries.</td>
</tr>
<tr>
<td>Surfers Paradise RSL Sub-branch.</td>
<td>$27,900</td>
<td>To assist with a salary, consumables and travel expenses.</td>
</tr>
<tr>
<td>Vietnam Veterans Association of Australia - Southport and Districts Sub-branch.</td>
<td>$3,455</td>
<td>To assist with travel and consumables.</td>
</tr>
</tbody>
</table>

QUESTIONS ON NOTICE
# Complementary Medicines

**Question No. 1292**

Senator Cormann asked the Minister representing the Minister for Health and Ageing, upon notice, on 10 February 2009:

With reference to the *Australian Regulatory Guidelines for Complementary Medicines*, which provide for ‘targeted and random desk-based audits of listed medicines’ by the Therapeutic Goods Administration:

1. (a) How are targets selected; and (b) how many medicines have been selected by targeting in each of the past 5 years.

2. (a) By what means have random selections been made; (b) who conducts the randomisation process; and (c) how many medicines have been selected under this procedure in each of the past 5 years.

3. (a) How many listed products have been the subject of requests for information under section 31 of the *Therapeutic Goods Act 1989* (the Act); and (b) of these, how many were delisted under each of the past 5 years.

---

<table>
<thead>
<tr>
<th>Organisation (a)</th>
<th>Amount Received (b)</th>
<th>Purpose (c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnam Veterans Federation of Australia Queensland Branch Inc.</td>
<td>$58,800</td>
<td>To assist with ongoing salaries and consumables.</td>
</tr>
<tr>
<td>Australian Intelligence Corps Association - Bundall.</td>
<td>$4,000</td>
<td>Construct a memorial garden at the Defence Intelligence Training Centre to commemorate members of the Corps who lost their lives during operations.</td>
</tr>
<tr>
<td>Gold Coast/Tweed Heads TPI Centre.</td>
<td>$3,000</td>
<td>To hold a commemorative luncheon to celebrate the 90th anniversary of Armistice Day at the Holiday Inn Hotel in Surfers Paradise.</td>
</tr>
<tr>
<td>Vietnam Veterans Association of Australia - Southport and Districts Sub-branch.</td>
<td>$4,671</td>
<td>Install a plaque at the Southport RSL Cenotaph to celebrate the 40th anniversary of the Battle of Coral/Balmoral dedicated to the 1st &amp; 3rd Battalions RAR, followed by a commemorative dinner.</td>
</tr>
<tr>
<td>Gold Coast Naval Foundation - Ashmore.</td>
<td>$2,250</td>
<td>Hold a church service and luncheon at the Southport Sharks Football Club to commemorate the finding of the HMAS Sydney II.</td>
</tr>
<tr>
<td>South East Asia &amp; Korea Peacekeeping Veterans Assoc Inc - Queensland.</td>
<td>$2,597</td>
<td>To produce a newsletter for members nationally.</td>
</tr>
<tr>
<td>South East Asia &amp; Korea Peacekeeping Veterans Assoc Inc - Queensland.</td>
<td>$7,216</td>
<td>To provide social outings for members unable to do so on their own.</td>
</tr>
<tr>
<td>South East Asia &amp; Korea Peacekeeping Veterans Assoc Inc - Queensland.</td>
<td>$1,399</td>
<td>To assist with the purchase of a portable PA system to enable better communication for members at social functions, meetings and outings.</td>
</tr>
<tr>
<td>Totally and Permanently Disabled Soldiers Association - Gold Coast and Districts.</td>
<td>$2,480</td>
<td>To purchase the necessary computer hardware and software to enable production of the newsletter.</td>
</tr>
</tbody>
</table>
the following processes set out in section 30 of the Act: (i) the summary process, and (ii) the show-
cause process.

Senator Ludwig—The Minister for Health and Ageing has provided the following answer
to the honourable senator’s question:

(1) (a) Listed medicines may be targeted for review based on concerns regarding their quality, safety,
presentation, composition or efficacy. Such concerns may arise from a variety of sources, in-
cluding: safety reviews, audits of manufacturers’ compliance with good manufacturing proc-
esses, adverse reaction reports, international problems alerts, advertising complaints, medicine
problem reports or as a follow-up from the results of random desk-based audits.

(b) Separate data for targeted and random reviews are not maintained. The total annual number of
reviews for the years between 2004 and 2008 are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Reviews</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>288</td>
</tr>
<tr>
<td>2007</td>
<td>377</td>
</tr>
<tr>
<td>2006</td>
<td>381</td>
</tr>
<tr>
<td>2005</td>
<td>407</td>
</tr>
<tr>
<td>2004</td>
<td>246</td>
</tr>
</tbody>
</table>

(2) (a) Random selections are made using a statistical sampling model designed by the Australian
Bureau of Statistics. The model is designed to make random selections from among all new
listed medicine applications submitted to the Therapeutic Goods Administration (TGA).

(b) The selection process is fully automated.

(c) Separate data for targeted and random reviews are not maintained. The total number of re-
views conducted between 2004 and 2008 are shown in the table at (b).

(3) (a) Separate data for individual products are not collected. The number of review letters written
by the TGA to product sponsors for the years between 2004 and 2008 are shown in the table at
1 (b).

(b) (i) The number of products delisted under the summary process of Section 30 of the Act are as
follows:

<table>
<thead>
<tr>
<th>Year</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>11</td>
</tr>
<tr>
<td>2006</td>
<td>15</td>
</tr>
<tr>
<td>2005</td>
<td>4</td>
</tr>
<tr>
<td>2004</td>
<td>7</td>
</tr>
</tbody>
</table>

(ii) The number of products delisted under the show-cause process of Section 30 of the Act
are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>5</td>
</tr>
<tr>
<td>2007</td>
<td>8</td>
</tr>
<tr>
<td>2006</td>
<td>3</td>
</tr>
<tr>
<td>2005</td>
<td>4</td>
</tr>
<tr>
<td>2004</td>
<td>0</td>
</tr>
</tbody>
</table>
Government Boards: Identity and Gender Balance
(Question No. 1294)

Senator Barnett asked the Minister representing the Prime Minister, upon notice, on 10 February 2009:

(1) Can a list be provided of the names of all Government boards, specifying for each board: (a) the identity of each board member; and (b) the gender balance for each board.

(2) Can the overall gender balance for all of the boards be provided, and this same figure provided as at November 2007.

(3) The Victorian Government has recently adopted a policy of moving toward half of all positions of their boards and committees being occupied by women, does the Federal Government have plans to adopt a similar practice.

Senator Chris Evans—The Prime Minister has provided the following answer to the honourable senator’s question:

I am advised that:

(1) At the end of each financial year, the Office for Women conducts a statistical analysis of the gender composition of Australian Government boards and bodies using the data held in the Government Boards database.

As this is only a statistical analysis for the purpose of a whole-of-government-boards overview that is provided to the Government, the name of each board, identities of board members and gender balance for each board are not analysed or validated.

(2) The Government Boards database is a management tool: responsibility for the accuracy and maintenance of the information rests with individual government departments. The data from every agency is only required for analysis once a year, and it is only for that census date that all the data can be guaranteed, thus information can only be provided as at 30 June each year. The overall gender balance of boards as at 30 June 2007 was 34 per cent female, 66 per cent male.

The data for 30 June 2008 is currently being finalised. This has taken longer than usual due to Machinery of Government changes.

(3) The Australian Government is committed to improving the voice of women through increasing women’s representation on boards. A range of possible policy options for achieving this are under consideration.