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SITTING DAYS—2009

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FORTY-SECOND PARLIAMENT
FIRST SESSION—SIXTH 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
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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
RUDD MINISTRY

Prime Minister               Hon. Kevin Rudd, MP
Deputy Prime Minister, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion  Hon. Julia Gillard, MP
Treasurer                   Hon. Wayne Swan MP
Minister for Immigration and Citizenship and Leader of the Government in the Senate  Senator Hon. Chris Evans
Minister for Defence and Vice President of the Executive Council  Senator Hon. John Faulkner
Minister for Trade  Hon. Simon Crean MP
Minister for Foreign Affairs and Deputy Leader of the House  Hon. Stephen Smith MP
Minister for Health and Ageing  Hon. Nicola Roxon MP
Minister for Families, Housing, Community Services and Indigenous Affairs  Hon. Jenny Macklin MP
Minister for Finance and Deregulation  Hon. Lindsay Tanner MP
Minister for Infrastructure, Transport, Regional Development and Local Government and Leader of the House  Hon. Anthony Albanese MP
Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate  Senator Hon. Stephen Conroy
Minister for Innovation, Industry, Science and Research  Senator Hon. Kim Carr
Minister for Climate Change and Water  Senator Hon. Penny Wong
Minister for the Environment, Heritage and the Arts  Hon. Peter Garrett AM, MP
Attorney-General  Hon. Robert McClelland MP
Cabinet Secretary, Special Minister of State and Manager of Government Business in the Senate  Senator Hon. Joe Ludwig
Minister for Agriculture, Fisheries and Forestry  Hon. Tony Burke MP
Minister for Resources and Energy and Minister for Tourism  Hon. Martin Ferguson AM, MP
Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services  Hon. Chris Bowen, MP

[The above ministers constitute the cabinet]
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<td>Minister for Veterans’ Affairs</td>
<td>Hon. Alan Griffin MP</td>
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<td>Minister for Housing and Minister for the Status of Women</td>
<td>Hon. Tanya Plibersek MP</td>
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<tr>
<td>Minister for Home Affairs</td>
<td>Hon. Brendan O’Connor MP</td>
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<tr>
<td>Minister for Indigenous Health, Rural and Regional Health and Regional Services Delivery</td>
<td>Hon. Warren Snowdon MP</td>
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<tr>
<td>Minister for Small Business, Independent Contractors and the Service Economy, Minister Assisting the Finance Minister on Deregulation and Minister for Competition Policy and Consumer Affairs</td>
<td>Hon. Dr Craig Emerson MP</td>
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<tr>
<td>Assistant Treasurer</td>
<td>Senator Hon. Nick Sherry</td>
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<tr>
<td>Minister for Ageing</td>
<td>Hon. Justine Elliot MP</td>
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<tr>
<td>Minister for Early Childhood Education, Childcare and Youth and Minister for Sport</td>
<td>Hon. Kate Ellis MP</td>
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<tr>
<td>Minister for Defence Personnel, Materiel and Science and Minister Assisting the Minister for Climate Change</td>
<td>Hon. Greg Combet AM, MP</td>
</tr>
<tr>
<td>Minister for Employment Participation and Minister Assisting the Prime Minister on Government Service Delivery</td>
<td>Senator Hon. Mark Arbib</td>
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<tr>
<td>Parliamentary Secretary for Infrastructure, Transport, Regional Development and Local Government</td>
<td>Hon. Maxine McKew MP</td>
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<tr>
<td>Parliamentary Secretary for Defence Support and Parliamentary Secretary for Water</td>
<td>Hon. Dr Mike Kelly AM, MP</td>
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<tr>
<td>Parliamentary Secretary for Western and Northern Australia</td>
<td>Hon. Gary Gray AO, MP</td>
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<tr>
<td>Parliamentary Secretary for Disabilities and Children’s Services and Parliamentary Secretary for Victorian Bushfire Reconstruction</td>
<td>Hon. Bill Shorten MP</td>
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<tr>
<td>Parliamentary Secretary for International Development Assistance</td>
<td>Hon. Bob McMullan MP</td>
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<td>Parliamentary Secretary for Pacific Island Affairs</td>
<td>Hon. Duncan Kerr SC, MP</td>
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<tr>
<td>Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Trade</td>
<td>Hon. Anthony Byrne MP</td>
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<tr>
<td>Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector</td>
<td>Senator Hon. Ursula Stephens</td>
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<td>Hon. Laurie Ferguson MP</td>
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<td>Parliamentary Secretary for Innovation and Industry</td>
<td>Hon. Richard Marles MP</td>
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**SHADOW MINISTRY**

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<td>Leader of the Opposition</td>
<td>The Hon. Malcolm Turnbull MP</td>
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<td>Shadow Minister for Foreign Affairs and Deputy Leader of the Opposition</td>
<td>The Hon. Julie Bishop MP</td>
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<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>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>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 Special Minister of State and Shadow Cabinet Secretary</td>
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<tr>
<td>Shadow Minister for Small Business, Independent Contractors, Tourism and the Arts</td>
<td>Mr Steven Ciobo MP</td>
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[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 MP

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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The PRESIDENT (Senator the Hon. John Hogg) took the chair at 12.30 pm and read prayers.

COMMITTEES
Privileges Committee
Meeting
Senator O’BRIEN (Tasmania) (12.31 pm)—by leave—I move:
That the Standing Committee of Privileges be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sitting of the Senate today and Tuesday, 24 November 2009.

Question agreed to.

CARBON POLLUTION REDUCTION SCHEME BILL 2009 [No. 2]
CARBON POLLUTION REDUCTION SCHEME (CONSEQUENTIAL AMENDMENTS) BILL 2009 [No. 2]
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CARBON POLLUTION REDUCTION SCHEME AMENDMENT (HOUSEHOLD ASSISTANCE) BILL 2009 [No. 2]

Second Reading
Debate resumed from 19 November, on motion by Senator Stephens:
That these bills be now read a second time.

upon which Senator Bob Brown moved by way of amendment:
At the end of the motion, add “provided that the Government first commits to entering the climate treaty negotiations at the end of 2009 with an unconditional commitment to reduce emissions by at least 25 per cent below 1990 levels by 2020 and a willingness to reduce emissions by 40 per cent below 1990 levels by 2020 in the context of a global treaty”.

Senator PARRY (Tasmania) (12.31 pm)—I rise to speak on the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and associated bills. At the outset I want to say that I think the names for these bills are wrong. The word ‘tax’ does not appear in the title of these bills and I believe it should be a fundamental word that is included. It seems to suggest that there is no additional cost or burden to the taxpayers of Australia, yet that is exactly where the cost burden will be felt most.

Some fine speeches have been made in this chamber in relation to these bills, yet the media commentary surrounding these great speeches has been one of trying to create a perception of division. This perception of division could not be further from the truth because we are voting on a suite of legislation that has been rejected already by the
coalition. We reject the current suite of legislation that exists before the chamber represented by these 11 bills. My colleagues in the House of Representatives last week—on Monday, I believe—rejected every single piece of this legislation that has now come to this chamber. Some of our senators have been pilloried in the press for rejecting and wishing to vote against the current set of legislation. It is a suite of legislation that we do not support. Until such time that we have additional legislation in this chamber to vote upon, that is exactly the course of action that the coalition will be taking. It appears to be a united, unanimous point of view that we do not support the current Carbon Pollution Reduction Scheme bills of 2009. They are flawed and full of mistakes.

I particularly found the comments of the Prime Minister, Kevin Rudd, in question time on Thursday last week disturbing. The Prime Minister attempted to link a one-day spike in temperature in the city of Adelaide as something that was a result of global warming and climate change. He used the emotive issue of a one-day spike in temperature. Whilst being a record—and records are being more closely monitored now than they have ever been monitored—it does not give any confirmed or proper evidence of climate change in Australia’s environment. When you start to link emotive things that people can get a tangible hold of to a very complex debate, you are doing two things: firstly, the Prime Minister is trying to belittle the intelligence of the community by linking an emotive event to a very complex suite of legislation; secondly, the Prime Minister is trying to be fraudulent in representing the real issues of the climate debate.

Many speakers have spoken far more eloquently and technically than I will in relation to the Carbon Pollution Reduction Scheme legislation, but one common theme exists. The legislation is being introduced basically to allow the Prime Minister to attend a conference, which is becoming less and less likely to be a successful conference, and to strut his ego on the world stage. It has very little to do with science and very little to do with assisting Australia. It has a lot to do with perception. The perception, unfortunately, has taken over and reality is not manifest throughout the debate.

I think my colleague Senator Brett Mason summed it up exceptionally well with his speech. The pertinent lines in Senator Mason’s speech indicated the fact that the debate we are having in this chamber is not about several things. He said that it is not about who is to blame for climate change, if climate change exists—are they natural cycles? He indicated that the debate is not about those issues. He also indicated that the debate is not about whether we need a trading scheme, a tax or whatever. This debate is about, purely, a suite of legislation currently before the chamber that we in opposition do not support.

The other speech I particularly want to highlight as well is the speech Senator Nick Minchin made in this chamber, an outstanding speech in my view. Again, the media have misreported the context of the speech. Senator Minchin’s speech expressed some very good and strong personal views, but he expressed the position of the coalition that we will not support this legislation. It is terrible legislation. If it were good legislation we would not be seeking to amend it. That is the first issue. If it were good legislation we would have passed it and we would not have sought to amend it. We have sought to amend it and, as of that cause, we will not be supporting the existing legislation as it stands, so if no amendments become apparent there
will be no support for the legislation. That is quite clear and is exactly what Senator Minchin portrayed to this chamber and to the nation, yet somehow the confusion comes out in the media that there is great division. I did not see great division. I saw absolute unity on opposing the legislation that we are debating. That the media cannot even report it accurately shows how complex it is.

Senator Minchin also indicated—and this comes to the crux of the matter—the whole process of managing the introduction of this legislation and the implementation date of this legislation is all designed around one thing. The government could have introduced it a lot earlier and negotiations probably could have been completed a lot earlier. There are a number of things that point to this legislation as being purely a way of creating an opportunity for the Prime Minister of Australia to do two things. Senator Minchin summed it up quite well when he said:

Frankly, the timing of this debate is also testament to the vanity of Prime Minister Rudd. Right on the eve of the Copenhagen conference, Mr Rudd is determined to have this Carbon Pollution Reduction Scheme Bill … passed so that he can strut the stage in Denmark …

That is the first issue. The second part, though, is that the Prime Minister wants to have up his sleeve a double dissolution trigger that will be of reasonable significance, and that is what he is trying to do. The timing of this points to that and to no other reason. It does not point to any crucial live start-up date. I do not think a start-up date of 1 July 2011—not 1 July 2010—is a credible reason for rushing this legislation through in the remaining four days of this sitting year. A calendar for this year was introduced late in 2008 to set the weeks and the sitting pattern for this year, and again we have come down to the final four days. As the government did in 2008, so they are doing again in 2009. They are not managing the effective timing of legislation through this chamber.

One wonders why the sitting schedule has been reduced in the number of weeks. Is it so the government can get controversial, serious, heavy legislation rammed through the parliament in the last four days of its life for this year? Is that the true motive? Do the government not want to be called to account for more than the 14 sitting weeks, in effect, that the Senate will sit for this year? Next year they are going to do the same, despite warnings from the Greens, the Independents and certainly us that they are not sitting enough hours or weeks. You cannot expect at the end of a calendar year to be able to say to parliament: ‘Hang on, we’ve got this piece of legislation that we think we want to rush through the parliament. It’s very complex. There’ll be very complex amendments if amendments are agreed to. We want you to consider them in the last three days.’ That is just outrageous, given the government have a sitting schedule that could have been a lot longer and a lot healthier.

The government know that life outside of this parliament does exist. Senators and members make commitments outside of this firm sitting schedule and the government know that to extend hours is a very difficult thing to do at short notice. This is why the government have left it to the death knock to let this legislation come in. It is the absolute death knock for this to arrive in this chamber and for us to fully debate it. Also, we are debating the legislation currently, so if amendments are forthcoming from the current negotiations it is going to be hard for us to digest the information and then debate it in such a short period of time. But the government have been placed on notice—they were placed on notice earlier this year, they were placed on notice last year and they have been placed on notice again for next year’s
sitting schedule—so we do not get a repeat of these matters.

I also want to raise some questions about new information that seems to have come to light in recent times which probably bears testimony as to why we should not be rushing this. I am looking at reports in the media, and I stress they are allegations and the veracity of the alleged emails has not been confirmed. But this has made national and international media in recent days. The reports are in relation to the hackers that have broken into the leading climate change science research centre in Britain. Documents have been leaked going back some years. Some of these documents, if they are found to be true, just raise further questions which, if I were the Prime Minister of this country and found that there was some veracity to those documents—and I will go through them in a moment—or even if they were just reported, would mean that I would want to hold off a bit. I would want to cool off a bit before I charged off to Copenhagen or put monumental legislation to this parliament.

Again I stress this is reported in the media and there is no firm evidence that this is correct; however, enough media outlets seem to have taken up the charge and the baton. Some of the issues that have come out of the hacking are that there appears to be a widely divergent range of views about climate change. Scientists appear to be, through the emails, frustrated at trying to find evidence to prove man-made climate change. I am not suggesting that any of these reports are accurate. I am just saying this has been raised and is worthy of further exploration. One leading climatologist who supports the theory of man-made climate change, Dr Kevin Trenberth from the US Centre for Atmospheric Research, says in one of the emails:

The fact is that we can’t account for the lack of warming at the moment, and it is a travesty that we can’t.

Reports say:

Sceptics say the emails are evidence of a conspiracy …
I do not know whether that is the case or not; I am not suggesting that. Reports say:
… some of the climatologists colluded in manipulating data to support the widely held view that climate change is real, and is being largely caused by the actions of mankind.

So the theme from these emails is that scientists are having difficulty proving that climate change ‘is largely being caused by the actions of mankind’. The reports go on:

In one email, dated November 1999, one scientist wrote: ‘I’ve just completed Mike’s Nature [the science journal] trick of adding in the real temps to each series for the last 20 years (ie, from 1981 onwards) and from 1961 for Keith’s to hide the decline.’

So there is an indication there has been some temperature decline. Again, it just needs further exploration and examination before we rush into what is monumental legislation that is very difficult for us to comprehend. But the ultimate effects of this legislation are such that it would be too late if all of a sudden we found out next year the whole thing has been a hoax. So I think further examination is required.

Others have been claiming that scientists are trying to bully into submission colleagues who challenge the theory of man-made climate change, and some of these emails refer directly to the debate in Australia. I think that caution is required on this very significant debate. We are asked to just rush through a debate that a government is leading, with or without amendments. The government is leading this debate. It is not going to hurt the government to slow down one iota and say, ‘We’ve got some serious consideration for a variety of reasons’—not to mention the time frame we have been asked to consider it in. There is the time
frame in relation to other material that keeps coming forward.

On top of that, we find that other countries around the world, particularly the United States—the Senate—and Canada, have now decided that they are going to wait. They are doing the prudent thing. Their governments will look at delaying and waiting till after the gathering at Copenhagen, which is not an unrealistic expectation. It is a sensible outcome when you have every country going to Copenhagen to make a decision to collaborate and agree—or even disagree—and to go with a position placed on the table and seek some form of international outcome. Why would Australia go, cap in hand, with a fixed set of legislation that may even be required to be amended when the government returns from those discussions? It does not make sense. It has never made sense that you would not wait until after you have a discussion.

Most legislation that comes before the Australian parliament does so because there is consideration of the facts and the material is analysed. Legislation is developed to either fix a problem—remedy a situation—or create new issues. All of that is done in the consideration of all the facts that are on the table. If you were moving legislation in relation to other sectors or industries and you knew there was a major conference or gathering of all the experts on the particular legislation that you were putting forward, surely you would wait and get all the facts on the table. Then you would say, ‘Let’s design our legislation around what we know to be the views of other countries, especially when we are not a major player.’

Colleague after colleague after colleague has got up in this chamber and stated the obvious: with 1.4 per cent of global emissions produced by this country, our behaviour would have no prospect of changing the world’s behaviour and does not affect the planet to a significant degree. Yes, let us be worldly wise, let us be a community partner and let us do our bit. But it has been suggested—and I find it hard not to believe—that, by doing our bit in Australia, where we only produce 1.4 per cent of global emissions, we are promoting more serious global emissions in other countries. If they took up where our industries could not compete, we would end up with industries polluting to a far greater degree and emitting far more seriously than Australia does. So on the global front we are not going to be assisting the global emission rate at all. In fact, we could be seriously colluding to actually increase global emissions by removing manufacturing industries from this country under the current legislation before this parliament, and that would be a great travesty for the world. If we are really serious about climate change and that is a factor, and if we are serious about emissions into the atmosphere, that alone should deter us from going down this path, because we could be increasing the gases that are potentially or allegedly causing problems to our planet. That is the main reason.

On top of that, if we do that, at the same time as not really helping the planet and maybe making the planet worse, we are going to remove jobs. We are going to make Australian families and workers less competitive. They will lose their jobs. There will be inflation because of all the carry-on effects of this legislation. So (a) we are not going to help the planet and (b) we are going to make life harder for good working Australians.

So why do we do this? What is the logic behind this? I come back to some of my opening remarks. The logic must only be that the government want to wedge us in some way, shape or form and to rush to Copenhagen. They feel as though they can cause a
problem for us by seeing that we are debating against these bills quite vigorously because we know they are flawed. They see an opportunity to create a double dissolution trigger; otherwise, this legislation could have been reintroduced a bit earlier. In fact, I understand they nearly made a mistake in the House of Representatives and introduced this bill a couple of days too early. Then they realised they could not, so they had to delay the introduction into the Senate even though it was on the way to completion in the House of Representatives.

So this really all points to a duplicitous Prime Minister saying one thing, really wanting to do something else and not really doing it in the interests of Australia. Maybe the rumours are true: maybe the Prime Minister does want to become the Secretary-General of the United Nations, and maybe that is his grand agenda. I do not know; that is a rumour. When he is sitting in New York in the United Nations chamber as Secretary-General, he really will not worry about what Australians are paying back in Australia for the mess he has left us in.

I reiterate—and I hope the media get this correct—that we are voting unanimously and are united against these 11 bills that are currently before this parliament and this Senate. We did that in the House of Representatives; we are doing it here. Our speeches have all reflected that we are voting against the Carbon Pollution Reduction Scheme bills, the 11 bills presented to the parliament, which we do not want to see implemented for the benefit of the planet. They will not assist the planet and they will certainly not help our country.

Senator WILLIAMS (New South Wales) (12.51 pm)—I rise to speak on the proposed Carbon Pollution Reduction Scheme Bill 2009 [No. 2] put forward by the Rudd government. I commence by looking at the term in it. My colleague Senator Parry has said he cannot see the word ‘tax’ anywhere, and perhaps ‘tax’ should be in it. It is called the Carbon Pollution Reduction Scheme, but carbon is not a pollutant. In fact, 70 per cent of the food we eat is carbon. So, under the title of this legislation, when you have your evening meal tonight enjoy it, because it is 70 per cent pollution that you will be eating under what is proposed here. I have in front of me the original list of hazardous air pollutants—173 pollutants are listed. There is carbon disulphide and carbon tetrachloride. There is no ‘carbon’ or ‘carbon dioxide’ mentioned there. So I say the title of this scheme is a furphy in itself.

Carbon is essential to life: 18 per cent of our bodyweight is carbon; carbon dioxide is food for our plants. Without carbon dioxide in the atmosphere we do not have anything green. Crops, trees, plants and grasses are destroyed without carbon dioxide. Everything around us contains carbon, yet the title of this legislation is about carbon pollution. That is wrong, and the word ‘pollution’ should be removed from it. If the government want to call it the carbon dioxide reduction scheme, so be it, but it is not a carbon pollution reduction scheme because carbon is not a pollutant.

We can see how the climate has changed. The climate has been changing for millions of years. The climate has been changing over time since day 1. We have been in and out of many ice ages. All of a sudden we now have some people pushing an agenda and saying that they are going to control the climate. I find that simply amazing. People say: ‘It’s climate change that caused the droughts in many parts of New South Wales since early 2002. They were caused by the coal fired generators producing electricity and by the exhaust fumes from motor vehicles and other transport, trucks, tractors et cetera.’ Well, I question what caused the 12-year drought in
western New South Wales from 1895 to 1907. There were not coal fired power generators in those days and there were very few motor vehicles, yet the droughts ran on. As Dorothea Mackellar said, in Australia we are in a land ‘Of droughts and flooding rains’. Just last week we heard the Prime Minister talking about climate change, global warming and how hot it has been in Adelaide, making records, but he did not mention that at the same time in Perth it was 19 degrees and raining. Yesterday I was interested to hear, when listening to Macca on Australia All Over, that they were talking about how 12 months ago yesterday it was snowing in Gundagai. But that does not get a mention. They only talk about the hot days; they do not talk about the cold days.

I intend to bring some common sense into this debate. I refer to the Minister for Climate Change and Water, Senator Penny Wong, when she said, ‘We must act now. It is vital to save the earth, to save the planet.’ On 27 March 2009 in an address to the International Peace Institute in New York, Minister Wong said:

And we have reached a point where action is needed, and needed now, while we still have an opportunity to act.

So what have the government done? They have delayed it for 12 months. What irony! What hypocrisy! Minister Wong said in March in New York that we must act now, but then she said: ‘Oh no, we are going to put it off for 12 months. We will put it off and introduce it on 1 July 2011.’ Why is that?

Senator Boswell interjecting—

Senator WILLIAMS—Aha! My colleague Senator Boswell has mentioned the word ‘election’. It is because the government know for sure that they can have an election prior to Australia’s commencement of pain—when people start to suffer the costs, when people’s jobs will be threatened et cetera. So I question how committed the government are to acting now when they have gone into delay tactics.

Let me talk about the science. We hear of the scientists who say that the globe is definitely warming as a result of more carbon dioxide in the atmosphere. We are well aware that there is more carbon dioxide—280 parts per million in the year 1750 having now risen to 380 parts per million in the year 2009. There is no question about that. Ice samples certainly prove it. The question is: are those extra levels of carbon dioxide in the atmosphere causing the globe to warm? That is the question here. I want to refer to one of the leading German scientists, a Professor Latif, who is one of the leading climate modellers in the world. He is a recipient of several international climate study prizes and a lead author of the United Nations International Panel on Climate Change. He has contributed significantly to the IPCC’s last two five-year reports that have stated unequivocally that man-made greenhouse gas emissions are causing the planet to warm dangerously. But in Geneva in September this year at the UN’s world climate conference, an annual gathering of the so-called scientific consensus on man-made climate change, Professor Latif conceded that the earth has not warmed for nearly a decade and that we are likely entering into one or two decades during which the temperatures will cool, so he is flip-flopping all over the place. This is one of the leading scientists, one of the advisors to the IPCC, and he is saying that the climate has not warmed for around a decade and that we are going to have 10 to 20 years of cooling.

I find that quite amazing when we look back at other scientific facts and real issues, such as the River Thames freezing in the mini ice age. From the 1400s to the late 1800s in the 19th century it was not uncommon for the River Thames in London to
freeze over. So why, at the start of the 1900s, did the Thames stop freezing? To me that is quite a logical, sensible question to ask. Why did the Thames stop freezing at the start of the 1900s? We know that there were not coal fired power generators. There were not Boeing 747 jets. There were not V8 Falcons and V12 Jags with members of the London population in them chucking donuts around Trafalgar Square or anything like that—this was the early 1900s. So why did the climate warm and why did the Thames stop freezing over when the CO2 levels were obviously not rising? The reason is climate change—climate change that we have had for millions of years. And, no matter what we do, we will never change, alter, prevent or do anything to stop nature running its course. That is the fact of the matter.

We have the argument about sea levels. It is quite amazing how at the centre of Australia you can find seashells. Obviously at some stage that land was under water. Yet we know that thousands of years ago the sea levels were so low that the Indigenous people travelled from Indonesia to the mainland of Australia and to Tasmania. That is a variation that we know of over thousands and thousands of years. But do not worry about it; it is going to rise by a couple of metres by the end of the century, according to the Minister for the Environment, Heritage and the Arts, Mr Garrett, and he will control it. What people are saying is just outrageous. He will not control it. Nature will run its course and climate change will go on forever.

So what is our solution to this? This is the government’s solution. For a start, they are going to impose a tax on our electricity industry. Everyone in Australia will pay, but the government will compensate some because they will get a fair bit of money from the permits they sell and they can distribute that to the pensioners and low-income earners for the tax they put on our industries. Let us look at some of the taxes we are going to suffer. They include energy, fuel, transport and food processing—costs on virtually everything. As my colleague Senator Joyce has made quite clear to the Australian people over months, Mr Rudd and his tax will be in every part of your life. Whether you are eating at home or travelling around on holidays, no matter where you go you will be taxed.

What is the result of that? We know the threat exists to shift our industries overseas—industries such as cement which will not survive in Australia because of this tax. We know that jobs are going to go. We know coalmines are going to close down. This is a cost that Australians must realise is going to happen if this emissions trading scheme proceeds. I raise a point that I think is vital to this whole debate. We know about inflation. We have heard about the ‘genie in the bottle’. Inflation is a situation where demand exceeds supply. As a result of demand exceeding supply, prices rise, and the amount the prices rise determines the inflation rate. I remember the criticism of Mr Keating when the Howard government had the courage to introduce a goods and services tax to give some proper funding to the states and territories of this nation: it was going to be a ‘monster tax’. In fact, it was a replacement tax.

The funds flowed to the states, but if we want to go the way of spending the money perhaps we could refer to Premier Nathan Rees, if my colleagues would like—we could go down that road with pleasure. But what do we have here? We have a new tax. The price of everything will rise. The price of electricity, the price of food, the price of transport, the price of travel—everything is going to go up. When those figures read into the inflation figures, my question is how much the Reserve Bank will raise interest rates. They run hand in hand: higher price rises and higher inflation rates mean higher interest rates to slow the economy. The last
thing that we want in this nation at the moment is another rise in interest rates; we are already getting enough of those because the government will not wind back its spending. There is too much money in the economy, according to the Reserve Bank, and the government is continuing on its borrowing-and-spending spree and is, hence, responsible for the rise we have had so far.

So the emissions trading scheme is going to give us higher inflation rates and, obviously, higher interest rates. Then we go on to the higher Australian dollar, which also runs hand in hand. Every time the dollar goes up a cent it wipes hundreds of millions of dollars off the nation’s income from exports. These are the ramifications that are going to result from this emissions trading scheme. But of course it will save the world. I will get to that in a minute. I just want to point to the serious parts of this emissions trading scheme. The serious parts are the cost to industry, the cost to households, the cost of doing business and remaining competitive in international markets and, of course, the interest rate rises that will put the pain on the battlers—the ones who are having a go—in Australia. They are the ones who suffer the most from higher interest rates.

Then the government propose to have a scheme where the price of carbon will be set on the stock market. It will trade around the world. I just mentioned the Australian dollar. We have the Australian dollar trading around the world, and in the last 12 months we have seen it go from 60c to 93c. That is the dealers trading it up. I had five years trading on the foreign exchange market during a time in my life I wished I had not been in a foreign currency loan. It was in Swiss francs. It is the dealers who trade the exchange rates up with positive sentiment, so we know exactly what the Australian dollar is doing. The dealers are trading it up, because as interest rates go up in Australia the differential between US and Australian interest rates gets wider and, hence, those overseas see an opportunity to make a bit of extra money. The sentiment in the market is positive.

We are going to do this with carbon. We are going to have a situation where the cost of running your household or the cost of running your business will depend on the dealers in stock markets all around the world. To me this is outrageous. Already the exchange rates cost Australia enough when it trades up. Now they are going to give us a double whammy; the cost of doing business in Australia will be determined by the dealers on the stock markets. We have already had reports from National Australia Bank saying the price of carbon could trade as high as $100 a tonne.

Senator McGauran—Whoa. Really?

Senator WILLIAMS—that is what their quotes are, Senator McGauran. Let us have a look at the costs that we are going to put on our industries. I refer to Macquarie Generation. Macquarie Generation run the Liddell and Bayswater power stations, as I am sure Senator Forshaw is familiar with. In the first year, at $10 a tonne and we know the government has fixed the price at $10 a tonne because it is going to go a lot higher—Macquarie Generation will have to buy 25 million permits. That is $250 million for Macquarie Generation. The only one who is going to be jubilant about that will be the bank. What industry—especially a government owned facility in New South Wales—would have a spare $250 million in their hip pocket? No, they will have to go borrow that and pass the cost on to consumers. In the second year, if carbon is at $25 a tonne Macquarie Generation will have to buy $625 million worth of permits. That is $250 million for Macquarie Generation. The only one who is going to be jubilant about that will be the bank. What industry—especially a government owned facility in New South Wales—would have a spare $250 million in their hip pocket? No, they will have to go borrow that and pass the cost on to consumers. In the second year, if carbon is at $25 a tonne Macquarie Generation will have to buy $625 million worth of permits. The federal government will welcome the money. That will be great—money in the kick for the feds—but
look at the cost to the people of New South Wales.

The question will be what it will do. The answer is that it will not do anything at all. The reason is that Australia produces 1.4 per cent of the world’s greenhouse gases. I will give some facts. If the rest of the world’s emissions remain the same till the year 2020 and we reduce ours by 20 per cent, instead of producing 1.4 per cent of the world’s greenhouse gases it will produce 1.12 per cent. To hope the rest of the world, including China, India and those growing countries, will stay the same is being very optimistic in itself, but when we reduce ours by 20 per cent at a cost of $120 billion or $200 billion—whatever the cost is, depending on the price of carbon by the year 2020—what we are going to do is reduce the carbon dioxide levels around the globe from 380 parts per million to 379 parts per million. One part per million is what the $200 billion tax is going to mean for the whole global atmosphere.

One part per million—how can I describe that? Imagine if we had a huge tub out on the floor down there and that big tub had one million $1 coins in it and we took one coin out of it: that is the difference it is going to make—absolutely nothing. But it is going to cost a swag of jobs, it is going to cost industry a fortune and it is going to cost the Australian people a tremendous amount of money. We all know that; it is going to cost high interest rates and put a cost through our economy that we simply cannot afford, especially at this time of the economic cycle. And we are going to take one $1 coin out of that tub of one million coins. To me that is just plain stupidity, but this is the proposal coming up.

This is why the National Party have opposed this from day 1. We know that regional Australia will cop the most. Even though agriculture is excluded, we know regional agriculture will cop the biggest one because agriculture will still have to pay for the extra costs on electricity, fertiliser, chemicals, freight and transport. Even though they are being excluded on the debit side as far as greenhouse gases with the ruminants go, it is still going to cost agriculture a fortune—and to achieve what? If we were serious about looking after our environment, we would be looking at carbon sequestration in the soil, building our soil better. I wish people could go out to Northparkes Mine and see the job that Geoff McCallum has done there.

If we were serious we would start managing our national parks and get grazing in there. The best way to reduce the fire fuel levels is by stock grazing those national parks. But, no, we will not do that. It is just amazing that for every bushfire there is around 200 tonnes of carbon dioxide per hectare, so what did it cost us in the 450,000 hectares of the terrible fires on Black Saturday? About nine million tonnes of carbon dioxide, about double what Australia produces in a year just in the bushfires of those days, not to mention the Canberra bushfires. If the government were serious they would get serious about managing the environment.

There is a lot about this whole plan that has been put forward that I find quite amazing. The government’s chief adviser, Professor Garnaut, is not a scientist; he is an economist. Why would you rely on someone who is an economist to give you all this information and detail on a scientific issue? That is simply unbelievable.

I foreshadow that I will move the second reading amendment standing in my name on sheet 6016:

At the end of the motion, add:

and further consideration of the bills, which will impose the single largest structural change to the Australian economy, be
made an order of the day for the first sitting day after:

(a) the Copenhagen Climate Change Summit has concluded; and

(b) the United States Senate has clarified its position by finally voting on the American Clean Energy and Security Act (the Waxman-Markey bill).

We think that this is just a way for the government to collect money. This is not about global climate change; it is about global taxation and global control. That is why we will never support it. I thank the Senate for its time.

Senator McGauran (Victoria) (1.11 pm)—I congratulate my colleague Senator Williams on a well-presented piece. I rise to support all my colleagues on this side of the chamber on what are momentous and controversial bills, the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and related bills. As all speakers have said, the bills place a tax on carbon, where industry must purchase permits to be able to operate. In the first year, the government tell us that they will cap it at $10 per tonne and then in the second year it will be opened up to the full market, and it is estimated it will be as high as $40 per tonne. I heard Senator Williams say that some of the estimates are even higher than that—we do not know for sure; it will be open to the market. But we do know that $40 per tonne is really what we are basing our objection on. Any more than that and you reach a really devastating situation.

While the government tell us there will be compensation distributed and paid out to certain trade affected industries, it is on a sliding scale over five years. It is a transition payment, if you like, and only a transition payment.

This is a very complex piece of legislation, and it is not yet properly completed. The devil is in the detail of this legislation, and we have yet to see the detail of this legislation. I will not be voting for these bills—the emissions trading scheme—in any shape or form until there is an international agreement that is indeed active. I should add to that: in place and active. I have the firmest conviction that these bills are not in the national interest. We often see bad bills come into this parliament, at least from our perspective, and we have seen the effect of bad bills that have not been stopped in this parliament. These bills are worse than bad: they are a hoax. They are pulling a hoax on the parliament and the Australian people. Moreover, it is the rural and regional areas in Australia, as my colleagues have previously said, that will be the most adversely affected. This has been my base constituency since being first elected to the parliament. I give evidence to that claim from a well-presented report by the Senate Select Committee on Fuel and Energy on the economic and environmental costs of the government’s CPRS scheme. It is a very good report. Frontier Economics, who were commissioned by the New South Wales government, tell us from the report that modelling has found that the impact on rural and regional areas will set them back by 20 per cent over 20 years. It is not as if they are going to go forward; they will go backwards over 20 years. That same report then refers to the Australian Local Government Association’s State of the regions report which comes to the exact same conclusion—that rural and regional areas will face a double effect if this bill is passed.

So I believe my stance does carry very strong electoral support, in particular in rural and regional areas. Where my view is not carried, I am willing to put and argue my case and beliefs. After all, that is our first duty as elected representatives. That is what we come into this parliament with—the ideal of public service and reflecting our constituency, who have entrusted us and elected us to speak for them up here. That is the essence
of the oath of office we take in this place. When it comes to the crunch, is that not the responsibility of every representative? At some point, the politics stops and the principle begins, and this is one such occasion.

Having said that, I am also very mindful of the need from time to time to be pragmatic in politics. It is necessary and proper to be able to weld the many views that make up this parliament, but there will always be a line drawn in public life, and indeed in any sphere of life, and this is a line I cannot cross. For me to cross it would forever dull my conscience and, if I may say, I have always striven to keep my conscience very sharp in politics. I think after all this time I will continue to do so and I will see it to the finish.

As every one of my colleagues has said, this is a momentous piece of legislation, but we have to ask: what is the government’s view on this, outside of what the Prime Minister and his ministers have said? What is the view of the other side in this debate? We have not heard anyone other than three speakers. We have put up 35; the other side to date have put up three speakers. Why aren’t their backbenchers coming forward and debating the case? They have just left it to the frontbench, and I see one from New South Wales sitting over there, very hushed now. He did not mind throwing in a few objections at the beginning of other people’s speeches, but why wouldn’t someone like Senator Forshaw stand up and give his point of view and debate the matter? Is it that he is not up to it? No, Senator Forshaw is up to it. Some of them are not up to it, I should add. Are they cowards? Well, most of them are but Senator Forshaw is not. Are they under the Prime Minister’s instruction—the gag? Yes, all of them are. Three of them have had the courage to stand up and give their point of view. I do not agree with it. Senator Furner was agonising. It was sad, actually, what he had to say, but at least he got up. He ran the old line that the Barrier Reef is going to be destroyed. I do not think time permits me to tackle that issue. I did on Thursday night.

Who else got up? Senator Lundy got up. It is very easy for someone from the ACT to get up and talk about the issue, but I think I would prefer to rely on Senator Humphries, as I turn around and see Senator Humphries from the ACT. As I say, I would prefer to rely on Senator Humphries’s contribution than Senator Lundy’s. Then there was Senator McEwen—good old Senator McEwen. She focused on the link between bushfires and climate change. What an absurd link that is. Not even the $100 million plus Victorian royal commission came up with that link. Why don’t you try something like the link between the state government’s management of those forests and those bushfires? But as I stand up as a Victorian—

*Senator Forshaw interjecting—*

*Senator McGauran—*Sorry?

*Senator Forshaw interjecting—*

*Senator McGauran—*As a Victorian, I stand up.

*Senator Forshaw—*Do you?

*Senator McGauran—*Indeed, and Victoria will be greatly affected by this. Anyone who lives in the Latrobe Valley knows that only too well—and the state government knows it only too well. It has been lobbying the federal government very heavily. So I would say, at the very least: where are the Victorian senators on this matter? Where is Senator Collins on this matter? She had some pretty big shoes to fill, I would say, replacing Senator Ray. This is her second time around. She is not up to this debate. She does not have her name on this debate. Is she representing the Latrobe Valley workers or not? I really think, watching Senator Collins, she
does not have her heart in her second term on this matter at all.

What about Senator Conroy? He has just come back from somewhere. He was absent. He will not speak up because the truth of the matter is everyone knows he is one of the greatest sceptics next to Minister Ferguson.

*Senator Nash interjecting—*

**Senator McGauran**—Yes, he would have to tell the truth. He is not that big a liar, is he? He would have to tell the truth. He and Minister Ferguson are the biggest sceptics—

**The ACTING DEPUTY PRESIDENT (Senator Crossin)**—Senator McGauran, I would just ask you to reflect on your inferences on senators in this place, please.

**Senator McGauran**—I withdraw it if I was reflecting on Senator Conroy. I believe that, if he stood up, he would have to have told the truth, as he would. Senator Marshall is a Victorian who, I would say, to give him a compliment, has actually blossomed in government. He is never short of a word. He always manages to get up on the most trivial pieces of legislation and rant and rave, but when it comes to the big stuff he has gone missing. Senator Marshall loves a debate but he has gone missing. Am I missing someone else? Let me just get out the list, because the Victorian senators are so obscure, I must admit. There is Senator Feeney, a great academic.

**Senator Forshaw**—Madam Acting Deputy President, I rise on a point of order. I know that senators are allowed to range widely in their second reading debate speeches, but I would ask you to draw Senator McGauran back to the legislation that he is speaking to. We do not need a rolcall of the senators from Senator McGauran.

**The ACTING DEPUTY PRESIDENT**—There is no point of order, Senator Forshaw.

**Senator Cormann**—On that point of order, Madam Acting Deputy President, Senator McGauran is very clearly speaking to the legislation and all of the comments he has made very clearly are highly relevant to the legislation before the Senate.

**The ACTING DEPUTY PRESIDENT**—Senator Cormann, I had said there was no point of order. I thank you for your assistance, but I had ruled there was no point of order. Senator McGauran, please continue.

**Senator McGauran**—I want to assure the chair I have done deep research into this matter. Look: I have book after book, and scientific modelling. I have really come well and truly prepared, but what has got under my skin—and I have wasted more than 10 minutes on it—is, lo and behold, the Victorian senators and what a useless mob they are.

**Senator Cormann**—Labor senators.

**Senator McGauran**—Labor senators, of course. Who would think otherwise? Rest assured, I have come to debate this issue: the politics of it, the science of it and, more so, the public representation of it. Everyone should be involved in this debate. Any Victorian senator worth their salt would stand up on this issue and this legislation. As I said, it is the greatest hoax of all and Victoria is probably going to suffer more than any state—let alone at the farm gates—because of the brown coal industry. I hear a Western Australian interject and rightly so. Everyone knows their economies are going to be devastated. Everyone is in here to represent their states. For once, can the Senate be a state representative body on the other side? At least get up and defend your case. I grew up in the Latrobe Valley coal mining district. It is my home district.

**Senator Forshaw**—Where is your office now?
Senator McGauran—Well, I had an office in Moe at one time. I am down to eight minutes, Senator; could you please? I have spent so long doing the research on this and I want to make this point. Having grown up in the Latrobe Valley, I learnt one thing very early: that a job is the cornerstone of people’s lives. This is for all the knock-on reasons that you know only too well over there—for personal reasons, for family reasons, for local community reasons and for the opportunity it brings to people. To strip away the chance to keep your job in the Latrobe Valley alone, a Labor area to its bootlaces, and to not even get up and explain why you are doing it—for absolutely meaningless reasons, as every speaker has properly pointed out—is a travesty.

Senator Nash—Shame!

Senator McGauran—it is a shame, a disgrace and a contravention of your own office. The Labor Party have now completed the whole circle. They have completely moved away from their working class roots. Not even the three speakers—there were only three of them—that bothered to get up mentioned the effect on jobs.

Senator Boswell—They don’t care about blue collar workers.

Senator McGauran—they don’t care about blue collar workers. They have studiously avoided how this legislation will affect the jobs of their constituency—let alone all Australians, industry or the economy at large—and, in a micro sense, how it will affect the jobs of those in the Latrobe Valley who work in those power stations and who have given loyalty to the Labor Party over so many years.

I always recall the Prime Minister, when he first came into office, saying that Gough Whitlam was his political hero. This sent a chill down my spine. But he was not kidding; he was serious. The apprentice has now truly surpassed the master. This is more destructive and more incompetent than any Khemlani affair. It is a bill that has no good intentions other than to meet the politics of the day of the Prime Minister. You were all cowed by that. Will you commit to at least standing up for five minutes? We are willing to make way on the list for you, Senator Forshaw. You are an intelligent man. You read books, you know science very well and we hear you pontificating on so many other issues. Just stand up and tell us why you will not defend this legislation, particularly in New South Wales?

Senator Forshaw—I would rather listen to you talking about me.

Senator McGauran—Where are the unions when it comes to jobs? Where are the unions on the issue of defending the workers’ jobs? We know jobs will be lost in the aluminium industry, we know jobs will be lost at BlueScope Steel in Port Kembla, we know jobs will be lost at Caltex, we know jobs will be lost at Xstrata and we know jobs will be lost at Ford—it is all listed and you can test their claims. We have tested their claims and they are absolutely correct. All these jobs are going to be lost.

You have got no responsibility. You have just proven it. You love the power of government more than the responsibility of public life. After all these years at least you are someone who could stand up there and debate this issue. Maybe some of the new senators have not got the courage to stand up to the government but what have you got to lose, Senator Forshaw? Why don’t you place public service and your public oath ahead of the power of government? You will not. You enjoy being in government too much. You are cowed from the top down and we are now seeing it on one of the most important pieces of legislation. Just as the unions have been bought off on the Fair Work Act, in the
end you will not stand up for workers on this bill.

The government has willingly entangled itself with the extreme end of this debate. What it thought was good politics in 2007—and it may well have been—is not good politics now, in 2009. You have put yourself in the hands of Professor Garnaut, who I heard Senator Williams mention. What a joke his report was, suggesting that we ought to replace cattle with kangaroos. That is his credibility. I know Tim Flannery declared that Adelaide was going to run out of water last year. You have put yourself into the hands of these people. You are at the extreme end. Professor Stein, who is one of the people who kicked off this whole debate as the senior adviser in England, has been shunted aside after he suggested that we all ought to be vegetarians. Even the English government has now shunted him and do not accept his findings. The government is certainly not acting on it. You have a shift in public opinion on all of this.

Senator Forshaw—Get your facts right. You said Professor Stein. Is that right? It's Stern. Who was it?

Senator McGauran—You are very talkative now. Why don't you get up and talk about it from your seat?

Senator Forshaw—Get your facts straight.

Senator McGauran—Well, get up and dispute the facts—dispute the facts of the 35 plus senators on this side who have put up a scientific policy, and who have represented their regions. Why don't you enter the policy debate instead of just interjecting? What a disgrace it is; particularly for you, Senator Forshaw, who have been here so long. I am saying it again because I hope, at the very least, I can prick your conscience and you have a sleepless night tonight, knowing that you have not properly stood up for your constituency and that after all these years your conscience is dulled. You have been dulled. You are now just a journeyman—just a dull backbencher in government who is enjoying all the luxuries but when it really comes to standing up, where are you? You have been made a fool of by the Prime Minister and he will continue to do it until you all crash and burn. I have said that public opinion has shifted on this. We know this, if nothing else, from the Lowy Institute poll and we also know that the science has properly shifted on all of this. Thank goodness it has; I was getting a bit worried in 2007.

Have you ever bothered to read the absolutely creditable research from Professor Garth Paltridge, the former CSIRO chief, called *The Climate Caper*? Of course you have not. What about *Heaven and Earth* by Professor Ian Plimer? It is credible documentation, shifting the debate and challenging the science. Even the scientists who were personally involved in the document from the IPCC, the Intergovernmental Panel on Climate Change, are now starting to come out and say, 'We have been verballed by a small minority of scientists.' Let me just quote one, the United Nations IPCC's Japanese scientist Dr Itoh, an award-winning environmental physical chemist. He said about the climate change alarmists:

The worst scientific scandal in the history … When people come to know what the truth is, they will feel deceived by science and scientists. There are hundreds of those scientists who are now starting to reject the IPCC's initial report, which is the foundation stone of this whole debate.

There is much to say in this debate. My colleagues have presented it well. Our outrage is obvious. The hoax, the fix, is in. But what I want to concentrate on is the great disappointment in those on the other side who are not willing to stand up and put their
case. Many of them actually believe what we on this side believe: that these bills ought not to be passed.

Senator Fifield—Name them.

Senator McGauran—Senator Conroy is chief among them. There is one sitting over there. There is Senator Sterle. There is a whole list of them. All right, if they do not want to bust their government they should at least stand up and say something in the debate. Tell us how jobs will be saved under this. You at least have that baseline responsibility. (Time expired)

Senator Humphries (Australian Capital Territory) (1.31 pm)—I heard the call from Senator McGauran for every senator to state his or her position on the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and related bills and I have come down to answer that challenge—not as entertainingly as he has, I am sure, but I will attempt to put my position clearly. It is three months since coalition senators and the crossbench voted to defeat the Labor government’s original package of climate change bills. I expressed some regret on that occasion that this debate was shrouded in misinformation and misrepresentation and I am sad to say that today, three months later, very little has changed. Very sadly, this is a political debate before it is a debate about the environment.

I want first to address the question of the status of climate science and the issue that many senators have raised in this place already about the extent to which we should be relying on that climate science to make decisions about this matter. In the course of these debates, many contributors with limited or no scientific knowledge have passed judgment on the validity of scientific findings about man-made global warming. I am not a scientist. I have difficulty on occasion understanding the technical arguments that are presented in many of the scientific papers which support the argument for climate science. To the best of my knowledge, there are no members of the federal parliament who in fact have expertise in climate science.

However, lest someone might say it is appalling and inappropriate that the Australian parliament should make a decision about what to do about climate science when we have no expertise in our ranks on that question, I would respond by saying it has always been the role of members of parliament not to necessarily acquire for themselves an intimate knowledge of the areas in which they are conducting a debate but to in fact take the best available advice on a particular area and learn and act accordingly. We live in a society with a very sophisticated and elaborate division of labour. It is not possible for all of us to understand completely areas of specialised knowledge. We must therefore rely on experts in those areas of specialised knowledge to guide us in the actions that we take, particularly as members of this place.

When I climb aboard a plane to fly to Sydney, I confess that I do not understand the functioning and the structure of the jet engine that lifts the plane out of the airport and into the sky. When I receive a vaccination I do not know what the chemical compounds are in the vaccine that is injected into my veins. I rely on a scientific consensus from chemists and medical practitioners that this vaccine will protect me from harm and that it will do what I am told it will do. I do not rely in those circumstances just on the knowledge of the technician who might have prepared that particular batch of vaccine; I rely in fact on the whole scientific orthodoxy which has created the environment in which that vaccine can be safely produced—scientific values, rigour, training and research principles. I put it to you, Mr Acting Deputy President, that every one of us, every day, relies on that kind of scientific consensus and knowledge that is filtered and sifted
over sometimes decades in order to arrive at a credible and appropriate use of that science by the broader population.

I see climate science in a very similar sense. It is true that climate science is not as settled as some other areas of science. It is true that there is dissent and disagreement about the prevailing orthodoxy in that area. In general terms, it would be best when confronted with uncertainty to wait until the science is settled. That option is not available to us here because, if we accept the majority scientific opinion, we have to accept that the need for action is immediate. The need is now, not in the 10, 20 or 30 years it might take to collect the data necessary to establish the truth or otherwise on climate science and climate change. It is not an academic debate about whether Pluto is the ninth planet in the solar system or something less than that or about the exact nature of the virus affecting the faces of Tasmanian devils. This is an immediate, real issue, the consequences of which, if the science is to be believed, will have an immediate and very real impact on not just our society but the entire world.

It is true that there are some specialists who argue that the science is wrong—that the evidence is not conclusive and that it points, in fact, in the other direction. But, to senators who are considering that argument, I say that we need to act not just on the basis of what appears to laypeople to be a convincing argument with respect to climate science but also to look at the majority consensus in this particular area. What is the majority consensus in the area of climate science? It is that man made activities are slowly and inexorably warming the globe and that the consequence of that, if the more severe scenarios eventuate, will be catastrophic for mankind. The majority opinion that I refer to is overwhelming in its verdict. Let me list some of the organisations which subscribe to the view I have just postulated: the Royal Society of Canada, the Chinese Academy of Sciences, the French academy of science, Germany’s National Academy of Sciences, the Indian National Science Academy, the Italian academy of sciences, the Science Council of Japan, the Mexican academy of sciences, the Russian academy of sciences, the Academy of Science of South Africa, the Royal Society of the United Kingdom and the National Academy of Sciences in the United States of America. We have heard from other senators about the work of the Intergovernmental Panel on Climate Change. That body recommends very strongly, notwithstanding what Senator McGauran has said, action on climate change, and its membership is impressive in its collection of scientific expertise on this area. It includes: the CSIRO of Australia, Environment Canada, the Forestry and Forest Products Research Institute of Japan, the Finnish Environment Institute, the National Institute of Water and Atmospheric Research in New Zealand, Germany’s federal environment agency, Russia’s institute of global climate and ecology, the Institute for Global Environmental Strategies in Japan, the United States Environmental Protection Agency, the Department for Environment, Food and Rural Affairs in the United Kingdom and the Centre for International Climate and Environmental Research of Norway to list only a few. That is the scientific consensus of which I spoke. That is the overwhelming majority opinion of the world’s scientists with expertise in these areas.

The National Academy of Sciences in the United States has said:

In the judgment of most climate scientists, Earth’s warming in recent decades has been caused primarily by human activities that have increased the amount of greenhouse gases in the atmosphere.
The Royal Society in Britain, also known as the UK’s national academy of science, says:
International scientific consensus agrees that increasing levels of man-made greenhouse gases are leading to global climate change.

Our own Australian Academy of Science has a very illustrious membership with many Nobel laureates represented amongst its members. Every one of us would have had some interaction with members of that organisation. It endorsed the findings of the fourth assessment report of the IPCC, saying, in a statement on 1 July 2008, that:

… the increases in global average temperatures and sea level are unambiguous and are almost certainly primarily due to greenhouse gas emissions.

If members of this place doubt that that does represent the majority opinion of the world’s climate scientists, I ask them to apply the following test themselves: we have heard reference to many people who do not agree with those views—Professor Bob Carter and Professor Ian Plimer, for example, within Australia—but how many of those points of view have been adopted by peak scientific bodies in any country of the world? The answer is, to the best of my knowledge, absolutely none. It tells us quite clearly that the opinions we are receiving from those organisations, and from peak scientific bodies, are close to unanimous in their warnings to us and that we would be foolish in the extreme to ignore those warnings. It tells us quite clearly that we would be foolish in the extreme to ignore those warnings.

I hope that they are, in fact, right. It would be infinitely easier, cheaper and more convenient if the danger of global warming were not to be a danger at all. But it is dangerous to delay action in the hope that they might be right. We simply do not have that luxury.

The problem of dealing with this situation, however, is compounded immensely by the fact that the Rudd government, in response to this urgent climate problem, has presented an emissions trading scheme which is deeply flawed and which contains many, many problems. They are problems which have been drawn attention to by a very large number of commentators, left and right, scientific and not scientific—all of them pointing to a need for serious revision of the government’s proposed response to this problem. It is flawed and will unnecessarily harm Australian exports, jobs and living standards. That is why the coalition has been negotiating with the federal government in good faith to attempt to mitigate the more extreme elements of this package. The ball is now in the Labor Party’s court because it is beyond question that there are flaws in the original bill and that the number of opponents of the legislation, as it now stands, is legion.

If the amendments proposed by the coalition are accepted by the government, I believe those amendments would prevent the closing down of important industries and save thousands of jobs in trade exposed sectors such as aluminium, coal and natural gas. The proposals would cushion the impact of power price increases on small businesses and consumers, in some cases cutting them by up to half, without taking the pressure off industry, particularly the energy industry, to develop alternative strategies for dealing with our global problem. We believe the exclusion of agriculture is a very important part of that process, and the allowance of offsets for forestry and soil carbon sequestration and other measures is very important.
It is important to recognise that in proposing these amendments the coalition is not suggesting, as some have said, that we should be rewarding polluters, that we should be simply watering down the effect of the measures the government has proposed in order to simply delay the inevitable. I think it is about managing a transition to a new low emissions future. I ask members to bear in mind that as a society we have a huge amount of adjustment to make to become genuinely less polluting than we are today. Bankrupting a coal fired power station might give some zealots in our society a great deal of satisfaction, but it would be a very dangerous step: it would disadvantage the customers of that power station, it would certainly create unemployment in the community in which that power station operated and I think it would ultimately lead to a weakening of a process of public support for an emissions trading scheme, and the other measures that go with it, to reduce our climate profile. As well, I believe it is important to acknowledge that the amendments proposed by the opposition would allow for voluntary action in energy efficiency to be recognised. It has been the power of individuals through personal choice and action that has shaped so much of our world, particularly in the area of climate change, and that kind of public support and pressure for change in societal activity is a very important part of this process and must be supported.

As I said, there are some serious flaws. One that I made reference to a moment ago, the lack of harnessing of community activity, is reflected in the government scheme by the inability of communities and individuals to make a difference with respect to Australia’s climate targets. Dr Richard Denniss of the Australia Institute—and that is not a body I usually quote—made a very important point about the way in which this government’s scheme works in that respect. He said in a research paper he wrote in November last year:

... Australian households will be largely disempowered and unable to help abate Australia’s emissions through their own efforts but with a higher emissions target, the consequences will not be as dire.

If a person decides to ride their bike to work or installs a solar hot water system on their roof, they are removing the obligation of their electricity company or their fuel company to buy an extra emissions permit. This means that another polluter, perhaps a cement kiln or a steel works, can instead buy a permit to cover increased pollution from their plant.

If people decide to spend money on voluntary offsets so that they can become ‘carbon neutral’, all they will have done is increase the amount of pollution that others can emit although Australia, as a country, will continue to stay within its ‘cap’.

That is a very serious flaw in this government’s policy. It effectively disempowers communities to take steps towards reducing the nation’s overall emissions levels. There is nothing in the government scheme as presently drafted which addresses that issue. That is one of the reasons the coalition has said we need to revise the way in which this government is operating.

Another concern is with respect to the way in which the government deals with the question of compensation. In its original form, the CPRS provided compensation to low-income households and non-government organisations for the rises that will be incurred in energy costs. This is not, however, the case for state government instrumentalities. I do not normally come in here to argue the case for state governments. However, I have to say on this particular occasion I acknowledge that these organisations will have to meet significantly higher costs because of the way that this government scheme has been designed. Access Economics estimates that those costs will be in the order of $2.1 billion every year. This amounts to a cost
which has to be borne ultimately in the form of reduced services by state government instrumentalities or by higher taxes and charges. Again, Dr Denniss from the Australian Institute said:

Responding to climate change involves ‘mitigation’, which means trying to reduce emissions in order to avoid dangerous climate change and ‘adaptation’, which means investing in new forms of infrastructure and services to help cope with the change that we cannot avoid. Unfortunately for the state governments, the way that the Rudd Government has divvied up these responsibilities ensures that the less effort the Commonwealth puts into avoiding climate change the more money the states will have to spend adapting to it.

He comes to the conclusion:

It is hard to imagine a scheme that is less fair than the CPRS.

I completely agree with him. Only a couple of weekends ago, UnionsACT—again a body I do not usually quote in this place—wrote an open letter to the Chief Minister of the ACT government that was published in the Canberra Times saying:

Rising electricity bills are an unavoidable consequence of the CPRS, but unless public sector budgets rise accordingly there will have to be a reduction in services, jobs and the wages budget—or an increase in ACT taxes—to meet these increased costs.

Based on the Access Economics report the costs are estimated to be $18 million in 2013 rising to $43 million by 2020. Those are the sorts of costs which, for a small jurisdiction like the ACT, would be very difficult to address. I want to see our community adopt real local solutions to some of these problems, but we cannot do that with the way that the current government’s CPRS is designed.

Rising in this place, as so many of my colleagues have, to say that the government scheme is fundamentally flawed and must change should not be interpreted as a call to stop any kind of change to address the challenges in our environment. It is a call to be realistic, to acknowledge that this community is a sophisticated, educated community which is capable of contributing to a debate about these matters so it is not dealt with in the very unsatisfactory way that this government has done by laying a take it or leave it proposal on the table and, until relatively recently, refusing to debate it. Our response to climate change will have to evolve over time. Whatever legislation we pass through the parliament this week or in the near future—if we pass anything at all—will inevitably need to change as circumstances change. We need to be part of that debate because this emissions trading scheme needs to be better than the one put on the table by this government.

Senator RYAN (Victoria) (1.51 pm)—Here we are again debating the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and related bills three months and a few days after the Senate first rejected the legislation. I think this timing belies the true agenda of this government. While our debate today is about the carbon pollution reduction scheme bills—all 13 of them—it is important to outline what this debate is not about: it is not about climate change and it is not about the human impact on it, whether in absolute terms or by degree. This parliament can no more unilaterally change the climate than it can make it rain, for Australia represents such a small percentage of the world’s carbon and other emissions that it is nothing more than extreme hubris to think that we alone can determine this issue.

This is a debate about these bills and Labor’s ETS, not a debate about the science of climate change, and it is important that we begin from this principle as the government seeks to conflate these two issues, not for the purposes of informing debate but to limit it, and for brazenly partisan goals. These bills were rejected by all the non-government
senators in this place just over three months ago—they are truly friendless—and nothing has changed. These bills still have all the flaws they did three months ago. The government has artificially created the timeline we face here today, firstly, by insisting that the vanity of our Prime Minister comes before our national interest as he sought legislative approval for his flawed ETS before Copenhagen and, secondly, in its efforts to intimidate the Senate with the threat of an early election. The first excuse has been destroyed by the failure of Copenhagen. Despite all the rhetoric and desperate attempts to claim otherwise, the lack of a legally binding document for consideration by countries and governments and the fallback to nothing more than a statement of intention belies the fact that there was not previously—and there is now—no need for Australia to act unilaterally before the rest of the world. The second excuse is so immature that it is not worthy of a response in this place.

The Senate has a duty to protect the people from governments intoxicated with their own power and righteousness and, just as it has stood in the way of previous dominating executives convinced of their own brilliance, it will continue to exercise this power of review. Indeed, this is all the more important as we know the Labor Party exercises its power as a monolithic block. Just as it constrains internal debate by factions and deals, it seeks to constrain debate in this place with false timelines.

What has also happened is that the rhetoric of the climate change alarmists has become more extreme—I hasten to add that it is indeed a minority who fall into this camp—and there are many Australians who have legitimate concerns about this issue. But this debate is increasingly dominated by a noisy and belligerent minority at the expense of a rational debate about the problem and the consequences and our ability to address these. Listening to these extremists every week, every month, the consequences of not passing these bills becomes greater—centimetres of forecast sea level increases become metres and fractions of degrees become calamitous increases in temperature. But what they do not say is that these bills will achieve nothing. None of these alleged scenarios will be avoided by the passage of these bills this week. It also betrays another aspect of the agenda of those who might be termed ‘climate change extremists’: to create a crisis, to scare people and to frighten them into silence.

Last week the Prime Minister raised the spectre of that great historic example of scientific intimidation—the suppression and trial of Galileo—when he said in the other place, ‘It is as if we are back at the trial of Galileo.’ But the reality is that Galileo was persecuted for challenging conventional wisdom and the powers that be. He challenged prevailing wisdom. The Prime Minister, the minister and the alarmists among us have more in common with Pope Urban VIII and the suppression of alleged heretical views than they do with scientists challenging the status quo, as they seek to belittle, sideline and attack anyone who raises an alternative view or question. The label ‘sceptic’ is the modern expression of the Middle Ages accusation of being a heretic. Your views will not be considered, regardless of their merit. But this pales into insignificance when considering the language used by a small number of extremists in this debate. For some proponents of radical action on emissions to use the term ‘denier’ and subtly or otherwise attempt to conflate the Holocaust with this debate is offensive in the extreme. It belittles the greatest abuse of alleged science in the history of mankind as well as the millions of Holocaust victims. It simply has no place in this debate or any other of this sort.
I remain open to changing science. In an area where technology and knowledge is developing as quickly as this, it cannot be deemed by a government or any institution as settled—other than to suppress its further development. I do not claim to make a definitive statement on climate science, but I know that any attempt to suppress debate can only constrain its future development. Indeed the Australian people do not react well to being told what they may or may not think or discuss or to any attempt to limit or circumscribe debate about an issue like this, and it will do its proponents no favours. The great gift of the Renaissance and the Enlightenment was that knowledge became contestable. It is a hallmark of human progress and we should not resile from this principle in this or other debates.

I highlighted earlier that these bills still contain all the flaws that they did just over three months ago. These bills represent a massive tax grab—tens of billions of dollars will be stripped out of the hands of Australians with no offsetting tax cuts elsewhere. The size of government will radically grow. This bill and these taxes will ensure that the government has indeed created for itself a new tax base to fund its profligacy and the debt it has accumulated in only two short years. But it will come at the expense of millions of Australians choosing to spend the money they have earned in the way that they choose; it will come at the expense of economic activity; it will come at the expense of jobs; and it will be handed to whomever the government deems worthy of support, assistance or compensation.

This is partly justified on the hope of these so-called 'green jobs'. I outlined in my last speech on these bills just over three months ago some of the research that has been undertaken on the true cost of these so-called green jobs. While the government can create jobs through subsidies, mandates and direct employment, these all come at a cost of the jobs of others. They have come at the expense of other jobs unless they add to overall employment. But we do not hear of these costs or of these job losses because they are hidden from public view. Imposing indirect costs on all to benefit a few is a path we abandoned years ago. We know that it failed; we know that hiding the costs of such programs is unfair; and we know that it hits the weakest in our job market and in our community. The mere adoption of the language of the market does not make something a market solution. We have spent decades unwinding the influence of government over such basic decisions in our economy and our community, and Australia and Australians are unquestionably better-off for it. But these bills represent a massive reversal of that. These bills will fulfil the aspirations of the Prime Minister and place government at the centre of the economy, as he put it earlier this year. These bills open up the opportunity for government patronage and preference to a degree this country has not seen since the days of the Tariff Board. If decisions about commercial viability of projects and businesses are to come down to the government providing assistance or exemptions from general laws then, quite simply, we have got the framework wrong.

Sadly, it appears that decades of misadventure and miserable failure in this regard, particularly by the Labor Party, have not taught this government any lessons. Furthermore, these bills, once passed, will have great impediments on their future amendment or repeal, for the bills create a personal property right and, as we know in this place, section 51(xxxi) of the Constitution limits the power of the parliament to the acquisition of property on just terms. The institution of a scheme such as this without detailed consideration of this particular issue is, quite simply, irresponsible. We should give much
more serious consideration to the prospect of binding future generations to such a degree. Our knowledge is not perfect; this scheme does not—

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Asylum Seekers

Senator McGAURAN (2.00 pm)—My question is to the Minister for Immigration and Citizenship, Senator Evans. I refer the minister to the minister’s admission this morning that the riot at Christmas Island over the weekend was due to ‘a bit of anxiety amongst Sri Lankan detainees’ who are waiting for their asylum claims to be assessed and are concerned about their possible return to Sri Lanka. What is the minister’s response to claims that the eruption of this riot is a result of the government’s decision to hand a special deal to some Sri Lankans formerly from the Oceanic Viking?

Senator CHRIS EVANS—I thank the senator for his question. Can I say at the outset that it was obviously a very serious incident on the weekend and we take it very seriously. We demand proper behaviour of people in detention, and when inquiries are complete we expect the AFP to lay charges, if they can, against those responsible. Certainly, that will be pursued with vigour, as will the immigration department’s inquiries.

On radio this morning, when asked what the cause of the disturbance was, I said that I was not sure and we would wait for the formal inquiries, but I did acknowledge that there had been some anxiety for some weeks now among Sri Lankan detainees, largely as a result of their concerns when we removed six men against their will to Sri Lanka a couple of weeks ago. That did cause some concern among those people that their claims for asylum might be unsuccessful. So there was a degree of anxiety in the centre as a result of those decisions and some other unfavourable decisions that went against those seeking asylum.

That was an underlying current inside the detention centre, and no doubt the interception of various boats may have added to that, but I am not sure of the exact causes. There are appropriate investigations underway, both by the department and by the AFP. I do want to make it clear that people will not be processed until they have met all the health, identity and security checks and their claim for asylum is properly processed. Those who are found to be owed our protection will be given it; those who are not will be removed.

Senator McGAURAN—Mr President, I ask a supplementary question. Will the three injured detainees who were brought to mainland Australia from Christmas Island for treatment in Perth now be treated as if they originally arrived on mainland Australia and be able to access our legal system?

Senator Abetz—Good question!

Senator CHRIS EVANS—I heard some Liberal senators saying ‘good question’. Under your legislation, under the Howard government’s legislation—

Opposition senators interjecting—

Senator CHRIS EVANS—Just to be clear: the answer is no; it has always been no. Under the legislation regarding excision introduced by the Howard government, once they have landed on an offshore excised place, that is their legal status established. Bringing someone to the mainland for health care does not impact on that status. Bringing them to the mainland for other purposes does not impact on that status. I made it clear to your opposition spokesperson on a number of occasions. She does not seem to get it. Clearly, Senator, you do not seem to have got it. Under the legislation you introduced, which has been maintained by this government—the excision of offshore islands and processing of asylum seekers who are unau-
thorised arrivals on Christmas Island—the legal status is established by virtue of them being detained on Christmas Island. If they are brought to— *(Time expired)*

**Senator McGAURAN**—Mr President, I ask a further supplementary question. What steps is the government taking to ensure that this riot is not repeated and that asylum seekers who are currently waiting on Christmas Island are not harmed?

**Senator CHRS EVANS**—Clearly, we are very concerned to ensure it does not occur again. As people are aware, when you have a large number of people in detention who are stressed and worried about whether their claims for asylum will be accepted, there are tensions involved. That has always been the case. I might refer the senator to the disruptions, violence and burning of buildings et cetera that occurred under the previous government’s detention regime. This is nothing new. What we had on this occasion was not an attack on the building or on the staff but a fight between groups of detainees that got out of hand. That is very concerning and, as I said, those responsible, if we can identify them, will be prosecuted after an AFP investigation. Clearly, security at the centre will be tightened to ensure we do not have an incident like this again, but this is a feature, obviously, of detention. *(Time expired)*

**Climate Change**

**Senator MOORE** *(2.05 pm)*—My question is to the Minister for Climate Change and Water, Senator Wong. Can the minister advise the Senate on progress on climate change science and give us some idea about how long scientists have been making the link between carbon emissions and global warming?

**Senator WONG**—I thank Senator Moore for the question. The need to act is patent. It is in everybody’s interests, and Australians demand it.

**Senator Nash**—Not the ones talking to us.

**Senator Williams interjecting**—

**Senator Joyce interjecting**—

**Senator WONG**—The need for action on climate change has been clear for quite some time; it is not new. Leaders and policymakers have had plenty of time to get their heads around it—even those at that end of the chamber. It has been more than 115 years since the realisation that increased carbon dioxide concentration could cause increases in global temperatures. Ever since then the evidence has been getting clearer that climate change is directly linked to carbon pollution, culminating two years ago in the fourth assessment report of the Intergovernmental Panel on Climate Change, including the work of around 1,250 climate experts from over 130 countries—a rigorous, peer reviewed scientific exercise there for the world to see.

This report found that there is a more than 90 per cent chance that most of the observed increase in global average temperatures since the mid-20th century is due to the observed increase in anthropogenic greenhouse gas emissions. No matter how much some senators down that end of the chamber or opposite want to rail against the science, the fact is that is what the weight of scientific opinion internationally tells this government, just as it tells other governments around the world. Since that time there have been fresh warnings from scientists, notably through the International Scientific Congress on Climate Change in Copenhagen this year, that climate change is only accelerating, with the ANU’s Professor Will Steffen saying: The climate system appears to be changing faster than earlier thought likely.
Senator MOORE—Mr President, I ask a supplementary question. Can the minister advise the Senate on how the debate on how to tackle climate change has been developing, and what has been the advice to government on how to tackle climate change at the lowest cost?

Senator WONG—In 1999 the Australian Greenhouse Office, which Senator Abetz loves to remind us was set up by the Howard government, released a series of discussion papers on the design of an Australian emissions trading scheme as the lowest-cost way to reduce Australia’s emissions. In 2007 Prime Minister Howard—

Senator Cormann—Why did you can your inquiry in February?

Senator WONG—I would have thought, Senator Cormann, that you would listen to what Prime Minister Howard did. Prime Minister Howard finally accepted the advice of the Prime Ministerial Task Group on Emissions Trading, a group of leading business representatives and senior officials, to act on climate change with an emissions trading scheme. Those on the other side might like to recall the comments of former Leader of the Government in the Senate Robert Hill, who said in July:

Well I started work on a potential cap and trade for Australia almost a decade ago. And the political time wasn’t right then. Perhaps it’s getting closer. But basically, as with most Western nations, I think a cap and trade is the way to go.

(Time expired)

Senator MOORE—Mr President, I ask a further supplementary question. Can the minister advise the Senate on what business is saying about action on climate change?

Senator WONG—One of the things that those who oppose action on climate change conveniently gloss over is the fact that many Australian business leaders have called for action on climate change and have called for certainty. Last week Heather Ridout wrote:

It is time for the government and the opposition to ... bring this exhausting game to a conclusion so Australia can get on with the real business of reducing emissions while maintaining our prosperity.

Just today, the Managing Director of Origin Energy, Grant King, has made it clear that a lack of certainty is having a serious impact on investment. He said:

An emissions trading scheme is the lowest cost, most flexible mechanism for driving the necessary change in the operation of existing assets, informing capital investment decisions for new assets and stimulating development in new technologies necessary to meet the long term challenge of climate change.

Those are not the government’s words; they are the words of a senior Australian businessman. (Time expired)

Asylum Seekers

Senator HUMPHRIES (2.10 pm)—My question is to the Minister for Immigration and Citizenship, Senator Evans. I refer to comments made by the Minister’s caucus colleague and Labor MP, Julia Irwin, that she is ashamed of Labor’s border protection policies. Does the minister agree with reports over the weekend that:

There is widespread agitation on the Government back bench, for example, over Rudd’s apparent absence of a clear policy to deal with an increase in asylum seekers?

Does the minister agree that the Rudd government is losing the support of its own party over the chaotic handling of its immigration policy?

Senator CHRIS EVANS—It is very rare that you get such dorothy dixers from the opposition. Of all the weeks in this parliament that you want to have a discussion about the internal affairs of political parties, this is one week you are very welcome to
have it. There is only one major political party in this parliament in total disarray and in open rebellion against its leader, and it is not the Labor Party.

Senator Ian Macdonald—Mr President, on a point of order on the grounds of relevance: the minister has been going for 27 seconds now and has not got anywhere near the question that was asked of him. I ask you to bring him to order. He should know better. He has been around long enough and you would think that the Leader of the Government in the Senate would know what it was all about.

The President—Order! This is not a debate. You have made your point of order, Senator Macdonald. Twenty-seven seconds have been taken off the clock—

Senator Conroy—Mr President, on the point of order: I think you were correctly pointing out that only 27 seconds had elapsed before Senator Macdonald once again stood up and wasted time with a spurious point of order. There is no substance whatsoever to his point of order and I ask you rule it out of order.

The President—Order! I need silence on both sides. Interjections across the chamber are disorderly. When there is silence, we will proceed.

Senator Chris Evans—I do not understand what happened at the Liberal Party tactics meeting this morning, but clearly they are totally confused. If you want to talk about unity on issues of immigration, I might point out to the Liberal opposition that they are actually again in total disarray on those issues. Whenever we have had a vote on those issues in the parliament in recent times, Liberals have crossed the floor. So to come into this parliament and try to point out concerns about the Labor Party’s position, given their history and given where they are now, is absolutely ludicrous and just shows how out of touch they are and how they have lost any connection to reality.

Senator Humphries—Apparently Julia Irwin is a black sheep. Mr President, I ask a supplementary question. How does the minister explain the comments made by a male Labor backbencher—who for some strange reason wishes to remain anonymous—that he does not know what the government’s policy is ‘because there is no policy’? In reference to the Prime Minister, this anonymous backbencher says, ‘How would I know when he does not know either?’ Will the minister now agree that the government’s mishandling of the Oceanic Viking fiasco is not only causing unrest at Christmas Island—

Opposition senators interjecting—
The PRESIDENT—Order! I need silence on both sides so that I can hear the question. Continue, Senator Humphries.

Senator HUMPHRIES—Will the minister now agree that the government’s mishandling of the Oceanic Viking fiasco is not only causing unrest at Christmas Island but also causing unrest within his own party?

Senator CHRIS EVANS—Why Senator Humphries bats on with this ludicrous proposition I do not know. He ought to complain to the tactics committee about being handed such rubbish. While the Liberal Party are in total disarray and are totally humiliated as a political force in this country, while people are backgrounding against their leader and while the Leader of the Opposition in the Senate is in total rebellion and revolting against his own leader, coming in here and asking me questions about differences of views in the Labor Party is a complete joke. I do not respond to allegations in a newspaper about someone saying something anonymously, Senator. But I do know that all the senators opposite are wandering around in total disarray, constantly undermining their leader. They ought to have a look at their performance as a political force rather than trying to raise something with us that they read in the paper.

Senator HUMPHRIES—Mr President, I ask a further supplementary question. Will the minister now concede that Labor caucus is right to be alarmed that 53 boats have been intercepted since August last year and, apart from special deals as each new boat arrives, that the government has no credible plans to bring the situation under control?

Senator CHRIS EVANS—Not only do they have no right to be alarmed; they are not alarmed. They know we are dealing with a serious public policy challenge—a challenge that has confronted Australian governments over many years.

Opposition senators interjecting—

The PRESIDENT—Order! When there is silence we will proceed. Senator Evans.

Senator CHRIS EVANS—This government are united and focused on the public policy challenge, unlike the Liberal Party opposite who are as divided on border protection policy as they are on climate change. They are totally divided on these issues. We have seen people crossing the floor on these issues in recent times—a great credit to them. They reject the alarmist approach that the Liberal Party have adopted—the attempt to try and promote fear rather than rational debate. We are seeing it again in the climate change debate. When they get their act together, when they actually can work out what their position is, then they can come and debate us on public policy matters. Until then, they are a joke among all those interested in politics in this country. (Time expired)

Economy

Senator MARK BISHOP (2.19 pm)—My question is to Senator Sherry, Assistant Treasurer. Can the Assistant Treasurer detail to the Senate the latest forecast for the Australian economy from the Organisation for Economic Cooperation and Development? What does the OECD Economic Outlook, which was released late last week, say about Australia’s world leading performance in the face of the worst global recession for 75 years? Does the OECD expect Australia to maintain its position as one of the best performing economies in the world, with stronger growth, lower debt and lower deficits than the major advanced economies? Does the OECD Economic Outlook recognise the important role the Rudd government’s fiscal stimulus package has played and continues to play in the recovery from the global financial crisis and the ensuing global recession?
Senator SHERRY—Thank you, Senator Bishop, for your interest. The OECD has released its Economic Outlook and it is an especially good report card for Australia, which is again at the head of the class on a global performance comparative. The report is further evidence that Australia is outperforming the rest of the advanced world with stronger growth, lower debt and lower deficits than the major advanced economies. Australia is one of only three member countries expected to record positive growth in 2009. Just three countries will have positive economic growth; Australia is one of them.

The forecasts for Australia’s growth are 0.8 per cent in 2009, 2.4 per cent in 2010 and 3.5 per cent in 2011. This compares with the OECD-wide forecast showing member economies will go backwards by an average of 3.5 per cent in 2009 before growing by 1.9 per cent in 2010. So they go backwards; Australia, at 0.8 per cent and 2.4 per cent, is well ahead of the average. The OECD expects unemployment in Australia to peak at 6.3 per cent—substantially lower than the average OECD performance of 9.1 per cent. I have reminded senators that unemployment in the United States has now reached 10.2 per cent. They are some of the reasons for Australia’s world leading performance.

The report notes Australia has been less affected by the crisis than other countries, with growth supported by expansive fiscal and monetary policy. Indeed, the Rudd Labor government stimulus package has protected jobs and positioned Australia as the best performing economy in the developed world. The package has saved some 200,000 jobs. Australians should be very proud of the way in which the entire Australian community, particularly the business community, has responded in these difficult times. There are many challenges. (Time expired)

Senator MARK BISHOP—Mr President, I ask a supplementary question. With the government stimulus package playing such a pivotal role in cushioning Australia from the worst effects of the global recession, does the OECD give an indication of when it should be withdrawn?

Senator SHERRY—I thank Senator Mark Bishop for his question. The OECD endorses Australia’s current planned schedule for stimulus withdrawal, noting that: … the planned reduction of the federal budgetary stimulus seems to be an appropriate response to the needs of the economy.

Opposition senators interjecting—

Senator SHERRY—Of course, we hear interjections from the Liberal Party opposite. They oppose the stimulus. They oppose the cushioning of the Australian economy.

Senator Bushby—That’s right!

Senator SHERRY—That is right. I will take that interjection—

The PRESIDENT—Order! Ignore interjections, Senator Sherry.

Senator SHERRY—The Liberal Party oppose the economic stimulus. They oppose the cushioning of the Australian economy. They oppose the saving of some 200,000 jobs. Their policy approach would have meant more than one million people unemployed in Australia. That was the policy approach of the Liberal Party opposite. Of course, the Liberal Party opposite continue to ignore independent evidence and commentary, such as that of the OECD, in support of our— (Time expired)

Senator MARK BISHOP—Mr President, I ask a further supplementary question. Does the OECD report examine the effect of the global recession on growth prospects for member countries, including Australia? Has the stimulus strategy had favourable impacts other than the all-important aim of saving the
jobs of some 200,000 Australians? Does it also express a view on Australia’s finances, as they relate to the job-saving, recession-busting stimulus package?

Senator Coonan—Very slack on infrastructure. No value for money!

Senator Sherry—Some members of the Liberal opposition interjected about infrastructure. If the opposition is interested in the performance of the Australian economy—and they have not shown much interest in recent months—and the views of the OECD about infrastructure, then they should ask about it. I cannot recall a question in recent months from those opposite about the economy. They have been ignoring economic issues totally for the last couple of months. The OECD report confirms that the Australian government’s finances remain amongst the strongest in the world. It confirms that Australia’s net debt is expected to peak at 10 per cent of GDP.

Opposition senators interjecting—

Senator Sherry—Again, if those opposite are so interested in the issue of government debt, they should ask me a question about it. They have all but ignored this issue and the general economic conditions in this country—which are comparatively very favourable. They should ask a question rather than make unruly interjections. (Time expired)

Asylum Seekers

Senator Fierravanti-Wells (2.25 pm)—My question is to the Minister for Immigration and Citizenship, Senator Evans. I refer to the government’s and now farcical assertion that no special deal was offered to the 78 asylum seekers on the Oceanic Viking. What special deals or arrangements has Australia made with the UNHCR to ensure that the asylum seekers from the Oceanic Viking will be resettled within four to six weeks of the time of disembarkation, as opposed to the years it would normally have taken?

Senator Chris Evans—I thank Senator Fierravanti-Wells for the question. It seems very much like the four or five questions she asked me last week, but I am very happy to assist again and respond to her question. What has occurred in relation to the Oceanic Viking is that there was an arrangement between the Indonesian government and the Australian government about how we dealt with the situation that arose following the rescue at sea of those persons who were on board the Oceanic Viking. At the Indonesian government’s request, we attended—in their search and rescue zone—and rescued people who were in fear of drowning. Under the arrangements with the Indonesian government, we took them to an Indonesian port and sought to have them disembark. I am pleased to say, despite us having to show an abundance of patience, eventually all persons disembarked from the Oceanic Viking and went into the detention facility. Women and children are housed in an immigration facility within close proximity of the centre. We tabled in the parliament the agreement between the Indonesian government and the Australian government for the processing and settlement of those persons on the Oceanic Viking and the time frames associated with that.

Senator Fierravanti-Wells—Mr President, I rise on a point of order. I asked the minister a very direct question: what special deal or arrangements has Australia made with the United Nations High Commissioner for Refugees, which is responsible for resettlement and for ensuring that the four to six weeks resettlement occurs? That is the question that I asked. Minister, could you please give me a direct answer.
The PRESIDENT—Minister Evans, you have 36 seconds remaining. I draw your attention to the question.

Senator CHRIS EVANS—As I was saying, the time frames that were agreed with the Indonesian government are being applied, and the UNHCR has begun processing the claims of those who were on the Oceanic Viking. As those who followed the case will know, a number had already been found to be refugees. So the UNHCR has begun that work of assessing the claims and processing those persons. Once that is finalised, those who are found to be refugees will be resettled. (Time expired)

Senator FIERRAVANTI-WELLS—Mr President, I ask a supplementary question. Minister, in order to honour the four to six week guarantee of resettlement in the special deal, noting that the United Nations High Commissioner for Refugees is responsible for resettlement, has Australia agreed with the UNHCR to take those people who have been found to be refugees? If not, which country will take them?

Senator CHRIS EVANS—Mr President, I suggest that Senator Fierravanti-Wells seek to read the document that the Prime Minister tabled in the parliament more than a week ago now. It makes clear—

Senator Fierravanti-Wells interjecting—

The PRESIDENT—Order! Senator Fierravanti-Wells, you have asked the question; allow the minister to answer the question.

Senator CHRIS EVANS—That makes clear what is to occur. We are working with the UNHCR, as we have in the past and as the Howard government did in the past, to assist with the resettlement of people who have been found to be refugees. As the Senate would be aware, refugees out of Indonesia have been referred to a number of resettlement countries. In the last nine years, about 1,300 have been resettled, of whom 450 or so have come to Australia, but others have gone to Canada, Sweden, Norway and New Zealand and, I think, some small numbers have gone to other countries. Those processes will be applied by UNHCR in this case. As I said, we expect Australia to take some of those processed, but the UNHCR will go through its processes and we will work with them on that basis.

Senator FIERRAVANTI-WELLS—Mr President, I ask a further supplementary question. I ask the minister: unless the government has entered into some special deal or arrangement with the United Nations High Commissioner for Refugees, how can the minister claim that asylum seekers from the Oceanic Viking will be resettled within 12 weeks rather than having to wait for months or years as is usually the case in these circumstances?

Senator CHRIS EVANS—We keep going over the same ground, but, if that is the choice of the opposition, I am happy to answer. We have made it very clear that there was an agreement between the Indonesian government and the Australian government to handle those persons who were on the Oceanic Viking—to deal with the circumstances regarding that rescue at sea by an Australian vessel of those persons in the Indonesian search and rescue zone.

We took them to Indonesia. They disembarked in accordance with the agreement between the two governments. They were not taken to Australia as requested by them and as suggested by a number of senior Liberals. They were processed in Indonesia. They will be processed, while in detention, by the UNHCR. They will have their claims for refugee status assessed. If they are found to be refugees, they will be resettled. If they are found not to be refugees, they will be returned to their country of origin. These are the sorts of arrangements that have been in
place and which, as I say, were reflected in the agreement with the Indonesian government.  *(Time expired)*

**Dialysis Services in Central Australia**

Senator SIEWERT (2.31 pm)—My question is to Senator Ludwig, the Minister representing the Minister for Indigenous Health, Rural and Regional Health and Regional Service Delivery. My question concerns the recent announcement that the Commonwealth will make a transportable dialysis facility available in Alice Springs to address the current crisis in renal services. Will new interstate patients such as Patrick Tjungurrayi be able to access this Commonwealth dialysis facility or will they be prevented from doing so? Was the provision of this facility by the Commonwealth made contingent on the Northern Territory agreeing to lift the ban on new interstate renal patients? If not, why not?

Senator LUDWIG—I thank Senator Siewert for the question. I know Senator Siewert has a longstanding interest in Northern Territory Indigenous health issues. I am aware that, on 6 November 2009, Minister Snowden offered the Northern Territory government the temporary use of a relocatable two-chair dialysis facility for placement in Flynn Drive in Alice Springs. This facility will be used as an interim measure to ease some of the pressures on Northern Territory dialysis facilities whilst the new 12-port facility is being constructed.

I understand that the Australian government is also working with the Northern Territory government, but the Australian government acknowledges that access to renal dialysis in Central Australia is, and continues to be, a major issue. Dialysis services are predominantly administered by state and territory governments, but I am aware that the Northern Territory government has implemented protocols to refer new patients presenting for treatment in Alice Springs who are nonresidents of the Northern Territory to their state of residence for treatment. The Northern Territory Department of Health and Families has advised that this decision was necessary due to delays in establishing a new 12-port renal facility in Alice Springs and to a substantial increase in patient numbers in Central Australia.

Given the high demand for dialysis services in Alice Springs, the Australian government, as I have indicated, has recently agreed to make available to the Northern Territory a two-port relocatable dialysis facility. It is only for temporary use while we await the 12-port facility, which will ensure that Central Australia is serviced with dialysis facilities, to come online. The Northern Territory government is— *(Time expired)*

Senator SIEWERT—Mr President, I ask a supplementary question. I will take it that the answer to my question is ‘No’—that the Commonwealth did not make it contingent on the Northern Territory dealing with new interstate patients. Could the minister tell me how much of the $5.3 million of funding the Commonwealth is contributing to dialysis services in the Northern Territory will be available to new interstate patients from the Western Desert in Western Australia and from the APY Lands in South Australia? Will any of those people have access to any of the $5.3 million that the Commonwealth is making available to the Northern Territory?

Senator LUDWIG—What I can say about the $5.3 million which was committed at the election to provide additional renal dialysis services in the Northern Territory is that, with this funding, in the first quarter of 2010 a mobile dialysis service will be piloted in Central Australia. This will help improve access for people in remote communities without their having to travel to major centres for treatment. In addition, renal-ready
rooms, to be co-located at community health centres, are also proposed for the communities around Maningrida, Lake Nash and—

Senator Bob Brown—Mr President, on a point or order: this is valuable information that the minister is giving, but it does not answer the very clear question, which was whether people outside the Northern Territory would be able to have access to the Commonwealth funded dialysis facilities.

The PRESIDENT—Senator Ludwig you have 19 seconds remaining to answer the question. I draw your attention to the question.

Senator Ludwig—I thank Senator Bob Brown for his assistance. There will also be drop-in, self-care dialysis—one facility in Darwin and one in Alice Springs—which will be established in 2010. I will take the other part of the question on notice to allow me to check with the health minister to see what additional information I can provide. (Time expired)

Senator Siewert—Mr President, I ask a further supplementary question. Does the minister believe that it is appropriate that new interstate patients are right now being denied access to Commonwealth funded services?

Senator Ludwig—This is in addition to the $2.19 million over 2006-07 to 2009-10 for a joint project with the Northern Territory government to support renal—

Senator Siewert—Mr President, on a point of order: I am sorry if I was not extremely direct. I asked a clear question. The minister is not answering the point of my question. His comments are not relevant. My question is clearly about access to dialysis services by new interstate patients right now. I would like that question answered, please.

The PRESIDENT—I cannot instruct the minister how to answer the question. I draw the minister’s attention to the fact that there are 46 seconds remaining to answer the question that has been asked by Senator Siewert.

Senator Ludwig—In fact, I am answering the question, and I will go on to say that the Northern Territory government has implemented protocols to refer new patients presenting for treatment at Alice Springs who are non-residents of the Northern Territory to their state of residence for treatment, which I indicated in the earlier part of my answer. In addition, the Commonwealth government would like to see, and will encourage, the three state and territory governments to come to a speedy resolution of these issues. To resolve the issue, the Northern Territory government is leading discussions with the Western Australian and South Australian governments to develop a plan for the management of renal patients from off-border regions.

Senator Bob Brown—Mr President, I rise on a point of order. The earlier question asked the minister: did the Commonwealth levy a condition on the spending of this money? The minister ought to be able to directly answer the question: are patients from over the border being denied access to that Commonwealth funded facility right now?

The PRESIDENT—Senator Brown, I believe the question is being answered by the minister. The minister has 11 seconds remaining to answer the question. I call the minister to continue his answer.

Senator Ludwig—The Northern Territory government’s plan dealing with cross-border patients will also look at the expected growth in the number of renal patients, analyse existing infrastructure—(Time expired)

Natural Disaster Management

Senator Williams (2.38 pm)—My question is to the Minister representing the Attorney-General, Senator Wong. I refer to a statement by the Attorney-General in which
he outlined the government’s preparations for the bushfire season. Can the minister tell the Senate which projects under the government’s Natural Disaster Resilience Program have been implemented and how these projects will help make national parks in New South Wales less prone to bushfire outbreaks this summer?

Senator WONG—I thank the senator for his question. I know he has a keen interest in these issues and has made a number of contributions to the Senate on these issues. In relation to the New South Wales issue, I am not sure I can provide that information today, Senator. But I can indicate some of the work that has been undertaken by the federal government to support states and territories to prepare for and to respond to bushfires. Obviously, the states and territories have primary responsibility for dealing with natural disasters, although the Commonwealth stand ready to assist in any way we can.

I am advised that the Commonwealth has committed over $26 million to assist the states and territories to develop a national telephony based emergency warning system. The Commonwealth has also, through the Ministerial Council for Police and Emergency Management, supported an endorsement of a national catastrophic natural disaster plan and a national work plan to reduce bushfire arson. In relation to the former, this is a plan which outlines contingency arrangements for the Commonwealth and for other governments to assist a jurisdiction affected by a catastrophic disaster that overwhelms that jurisdiction’s ability to respond. This is the first time that such a plan has been agreed in Australia and it meets key recommendations of the 2005 Review of Australia’s ability to respond to and recover from catastrophic disasters. The Commonwealth, through this council, has also endorsed a national work plan to reduce bushfire arson, which includes the development of a strategy on best practices to reduce bushfire arson.

The Commonwealth is also conducting a trial of bushfire detection technology, including the FireWatch system, promoted by the member for McEwen, to determine if these new technologies can offer a cost-effective way of detecting fires in Australian conditions. In September, the Attorney-General chaired an extraordinary meeting of the Ministerial Council for Police and Emergency Management—(Time expired)

Senator WILLIAMS—Mr President, I ask a supplementary question. Will the minister indicate how many of the 780 national parks and reserves in New South Wales have undergone controlled burn-offs in the past 12 months to reduce fuel levels and how this program will be affected by the New South Wales government’s decision to lay off over 200 parks and wildlife staff at a time when the state is facing a horror fire season?

Senator WONG—Everyone in this place and, I would suggest, in all parliaments—state and territory—would be deeply concerned about the preparation for bushfires and about the dangers that bushfires pose to many Australians. I would respectfully suggest to the Senate that that probably is a question more properly addressed to the New South Wales government. I would have thought that the management of national parks within New South Wales would have been a matter for the New South Wales government. I am happy to see if I can obtain further information, Senator, but I do not have any information on the specifics of burn-off or other aspects of the management of New South Wales national parks. I can say that, in relation to the matter I was raising, which was—(Time expired)

Senator WILLIAMS—Mr President, I ask a further supplementary question. What action will the Rudd government take to en-
sure grazing is allowed in national parks, when it is a proven method of hazard reduction and lessens the devastating impacts of fires such as those that claimed so many lives in Victoria on Black Saturday?

Senator WONG—As I was saying, with respect to the management of national parks, my understanding is—and I am happy to be corrected, Senator, and I will certainly take advice on this—that the management of national parks within New South Wales would be a matter for the New South Wales government. Obviously the federal government is working with the states. This includes the meeting of the ministerial council to which I referred which endorsed a new national framework for scaled advice and warnings, including a new fire danger rating of ‘catastrophic’—code red. Regrettably, we have already seen that warning level reached this year. The Bureau of Meteorology has incorporated this new rating into its bushfire, weather and warning systems and services. In fact, these ‘catastrophic’ fire danger warnings were issued in parts of South Australia and New South Wales just last week. The Commonwealth also provides direct assistance to states and territories, including under Australian emergency management arrangements—(Time expired)

Employment

Senator FURNER (2.44 pm)—My question is to the Minister for Employment Participation, Senator Arbib. Can the minister please inform the Senate of what the Rudd government is doing to prepare the labour market for the low-carbon economy of the future? In particular, how has the Jobs Fund assisted in creating jobs and training opportunities for all Australians?

Senator ARBIB—I thank Senator Furner for that question. Last week I talked about the numerous opportunities that are coming forth in terms of green jobs and also green skills development. As I said last week, Liberal and National Party senators are being left behind by the labour market, and are certainly being left behind by business. Last week we had members, apprentices, from the World Trade Organisation on the floor outside the parliament. They were talking about what they were doing in their own trades in relation to green skills. We are also undertaking a large number of training programs to develop green skills and green jobs.

The Jobs Fund, which was set up by this Senate, in cooperation with the government, with the Greens and with Senator Fielding, has provided $650 million to set up job programs throughout Australia and also to develop green skills. In terms of round 1 of the Jobs Fund, I am happy to announce that 1,838 green jobs were created, as were 435 traineeships and 786 work experience positions. This is an extremely positive result, supporting employment during the global recession but at the same time preparing our economy, preparing our labour force for the future—the low-carbon future.

Some of these projects are quite significant. The Western Australia Council of Social Services has a program called the Climate Change Readiness for Community Services project. It is a $2 million investment. Not only is it supporting over 48 jobs; it is also going to save this community organisation money. It is going to assist them in retrofitting their infrastructure, making sure that they are prepared—(Time expired)

Senator FURNER—Mr President, I ask a supplementary question. In the context of the global recession, where young people are among those hardest hit, can the minister please inform the Senate of what the government is doing to help young people transition into the low-carbon economy of the future? In particular, how is the government supporting training in the green jobs sector?
Senator ARBIB—We know, and I have told the Senate on numerous occasions, that young people have been the hardest hit from the global recession, the hardest hit in the labour market. As employers have kept on workers, young people have been the ones who have been left out. We have seen youth unemployment continue to rise. That is why the government has acted. The government has now passed through the Senate the Green Jobs Corps legislation, which will establish the new Green Jobs Corps—10,000 environmental work experience and training places for young people aged 17 to 24. It will focus on the conservation, protection and rejuvenation of Australia’s natural environment. It offers a combination of environmental and green work experience, skill development and training over 26 weeks for 25 hours per week. Participants will be encouraged to undertake certificate II training, so they will come out of the Jobs Corps with a year 12 equivalent. Those on the other side are not interested in—(Time expired)

Senator FURNER—Mr President, I ask a further supplementary question. Can the minister inform the Senate of industry support for the government’s green skills and jobs agenda, and outline some of the obstacles standing in the way of a low-carbon economy and green jobs for the future for Australians?

Senator ARBIB—Business has welcomed these initiatives—and again business has left the Liberal Party and left the National Party behind. Mr President, I draw to your attention the words of Heather Ridout, from the Australian Industry Group, who welcomed the 30,000 apprenticeships in green skills, which she said would address ‘a deficit in our national green skills capability’.

Opposition senators interjecting—

The PRESIDENT—Order! Senator Arbib, resume your seat. When there is silence we will proceed.

Honourable senators interjecting—

The PRESIDENT—Order, on both sides! Shouting across the chamber during question time is disorderly. I am waiting for silence and then we will proceed. Senator Arbib, proceed.

Senator ARBIB—Thank you, Mr President. I note Liberal senators deride the AiG. And they ask for what ACCI said. What did the Australian Chamber of Commerce and Industry say? I do have that. Mr Greg Evans, who was then the acting chief executive, said:

We support the take-up of the skills and technologies required to promote environmentally sustainable business practices where there is a market requirement …

This is ACCI. They continue:

In an economy with greater environmental awareness it will be necessary to meet this demand, including helping to develop appropriate skills.

So that is what ACCI have said. ACCI are taking up the challenge. It is just the Liberal Party and the National Party that are not taking up the challenge of climate change. (Time expired)

Climate Change

Senator JOYCE (2.50 pm)—My question is to the Minister for Climate Change and Water, Senator Wong. Is the minister aware of reports in today’s Australian, the Guardian, the Wall Street Journal and other leading world newspapers documenting Kevin Trenberth, the IPCC lead author in 2001-07, when he said:

… we can’t account for the lack of warming at the moment and it is a travesty that we can’t.

Is the minister also aware of the director of the British Climatic Research Unit, Phil
Jones, and emails that talk of ‘tricks’ to hide the decline in global warming? Or Phil Jones’ statement that he ‘cheered’ at the death of John L Daly in Launceston, a scientist and climate sceptic, in 2004? Is the minister also aware of the culture within the East Anglia University Climate Research Unit that has strong links, as demonstrated, with the IPCC of intimidation towards the free expression of views on climate change, referring to sceptical colleagues— (Time expired)

Senator Wong—I am asked about a free exchange of views on climate change. What I would say to the chamber is that we on this side are very happy to have that debate. But what we know is that Senator Joyce and those on that side—

Opposition senators interjecting—

The President—Order! Senator Wong, resume your seat. Your comments should be addressed to the chair.

Senator Bernardi—Mr President, I rise on a point of order. I think Senator Wong has just misled the Senate, because otherwise there would not be censorship of the CSIRO reports where they dispute climate change.

The President—Order! Senator Bernardi, that is not a point of order. It is a debating point, but it is not a point of order. Senator Wong, address your comments to the chair and continue.

Senator Wong—Through you, Mr President, what is clear to every senator, and to any Australian who is interested in what the Senate is doing, is that Senator Joyce, Senator Bernardi, Senator Minchin and many others on that side are not interested in the facts. It does not matter how many facts are put before them, they have a clear, rigid, ideological view—

The President—Order! Resume your seat. Senator Joyce is on his feet.

Senator Joyce—Mr President, a point of order on relevance: the direction of the question is whether the minister is aware of these absolute insults and accusations that have been hurled at other people overseas now that they have seen the light of day through these emails. Are you aware of it, Minister, or not or is that conveniently ignored—an inconvenient truth?

The President—That is not a point of order; that is a repeat of the question. Senator Wong, I advise you that you have one minute and 23 seconds remaining to answer the question.

Senator Wong—I am very happy to continue. The convenient ignoring in this chamber is by elected senators who went to the last election with a policy to act on climate change and now are spending an enormous amount of their time, an enormous amount of backgrounding and an enormous amount of column inches in the paper to do whatever they can to avoid action on climate change and to stymie any action on climate change. That is the real politics of what is happening here. There are people—

Opposition senators interjecting—

Senator Wong—QED.

Senator Joyce interjecting—

The President—There is no point of order.

Senator Ludwig interjecting—

The President—Senator Ludwig, I am ruling.

Senator Ludwig—Mr President, this goes to two parts: (1) the minister is being relevant and (2) this is the second time Senator Joyce has jumped to his feet to restate the question. In addition to that—

The President—Senator Ludwig, that is not a point of order.
Senator Boswell—Senator Ludwig is clearly disobeying your instructions. You told him you were ruling and he completely ignored you—

The PRESIDENT—Senator Boswell, resume your seat. That is not a point of order. Senator Joyce, I cannot instruct a minister how to answer the question. The answer they may give you may not be to your liking or suit the answer that you have in your own mind, but I cannot instruct the minister. I draw the minister’s attention—

Senator Faulkner interjecting—

The PRESIDENT—Just let me finish. I have not finished yet, Senator Faulkner. I cannot instruct the minister. The minister does have 49 seconds remaining in which to address the question that you have raised.

Senator Faulkner—Mr President, a further point of order: it is not a major point of order but four or five times now during question time senators from around the chamber have taken what have been described as points of order. You have given them the call, but they have not said their points of orders. With respect, I would suggest that the call should not be given to a senator who just stands up and begins to speak. They must take a point of order to be recognised by the chair.

Opposition senators interjecting—

Senator Faulkner—I have identified the fact that I am taking a point of order, which is incumbent on all senators. I would respectfully suggest that in future—

Opposition senators interjecting—

Senator Faulkner—Just so that you know, interjecting is also disorderly. Can I suggest, Mr President, that the call not be given to senators who just stand in their seat and begin to speak. They must take a point of order to be recognised by the chair.

The PRESIDENT—I am fairly tolerant of the way in which I conduct the business of the chamber. I do like people to identify that it is a point of order. I have ruled on the point of order that was raised by Senator Joyce initially. My aim is to get through the questions, and as many questions as is possible, so I am asking the minister to respond with 49 seconds remaining.

Senator WONG—In relation to the facts in this debate—which is one of the issues about which I was asked—again I remind the Senate of the extensive evidence, including from Australian scientists, about the fact of global warming, about the fact of the contribution that humanity is making to it through the carbon dioxide we are emitting and about the fact that Australia, according to our own Bureau of Meteorology, has experienced warmer than average mean annual temperatures for 17 of the last 19 years and that 13 of the 14 warmest years on record occurred between 1995 and 2008. The reality is that Senator Joyce simply does not want to believe this is real because he does not want—(Time expired)

Senator Joyce—Mr President, I ask a supplementary question. Since the minister is apparently not aware of the intimidation that has been placed on colleagues overseas, is the minister aware of the CSIRO’s censoring of economist Dr Clive Spash that suggests a similar culture is present within Australia in relation to the climate change debate? Would you like to answer that one, Minister?

Senator WONG—In relation to the CSIRO, that should probably be a question directed to Senator Carr, as the minister responsible for the CSIRO. But I will share with Senator Joyce what I have said publicly. I am happy to debate with this gentleman Dr Clive Spash or anyone else on why I believe and the government believes—and in fact the Liberal Party believed when they were in government—that a cap-and-trade system is more effective than a carbon tax. I am abso-
Absolutely happy to debate that. I do not think anyone in this chamber would suggest that I have not been happy to debate the merits of the Australian government’s scheme. The reality is that Senator Joyce has said, when asked about the CPRS and about action on climate change, that his answer was no, no, no, no. I may not have got the number of noses quite correct, Senator. Everything he does and everything he says needs to be listened to with that in mind—that he comes to this debate with a completely closed mind—(Time expired)

Senator JOYCE—Mr President, I ask a further supplementary question. Now that the world has become aware of the intimidation that is rife—referring to sceptical colleagues as prats, charlatans and idiots, though they have similar qualifications as any of the other scientists—is the minister aware of a culture within her own department to censure open and transparent debate about climate change? Can the minister guarantee that no such censorship exists within the minister’s own department?

Senator WONG—This government has been very willing to put into the public domain information about the latest climate science. We have put out a whole range of reports on this issue. I referred to one in answer to the question from Senator Moore, that had been put out by Professor Will Steffen. I released a report last Saturday—or possibly the Saturday before—in relation to the impact of climate change on Australia’s coast. These are factual reports which are put out and individuals within this country are very welcome to consider the science in those reports. What is happening here—and we all need to be very clear—is that those who oppose action are continuing to oppose action. That is it, clear and simple. You do not want to act on climate change and you never will.

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

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Natural Disaster Management

Senator WILLIAMS (New South Wales) (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 Williams today relating to bushfires.

I was fortunate enough, a few years ago, to have a lecture from one John Walmsley—a man who has done such a great job in managing the environment. Mr Walmsley told me how, despite the general perception that hundreds of years ago the nation burnt as the Aborigines lit country in the hope of rain and to get green feed going to attract kangaroos et cetera for their food, that was not the case. In fact, the case was that Australia had millions and millions of some smaller species of kangaroos that grazed the country. Once we introduced the fox and the cat to this nation that was the end of those species. What I am saying is that Australia was grazed prior to white settlement. The severe fires were not a matter of fact; it was management of the environment by nature, obviously brought about over thousands of years.

But now we have a situation where the Greens, with their dominance over the Labor Party, especially in the New South Wales parliament, insist on so many national parks being formed. And what are they? They are simply fire balls. It was so disappointing to drive through the Pilliga three years ago, from Narrabri to Coonabarabran and to see the burnt out mess that was a result of the fire there. Huge fires were brought about by huge fuel levels on the ground because there was no grazing, of course, and no hazard
reduction burning. And when you have a hot fire it gets up into the crown of the tree and destroys the tree. Thousands upon thousands of acres were burnt, and all that was left was dead, black sticks.

I find it amazing how the Koala Foundation is now kicking up a fuss because our koala population is reducing. Of course it is reducing. They are being burnt in national parks. How many koalas were killed in the Pilliga? Hundreds or thousands would have died in this bushfire. And there is the problem: unless you graze this country and keep the fuel levels down you will destroy the environment, the trees and the animals that live in those places.

It was interesting: I had a farmer call me just recently. He used to graze the state forest alongside his property. He ran 150 cows in it for months and reduced the fuel levels by reducing the grass. But now it has been turned into a national park and no longer is grazing allowed. We know what is going to happen. It is only a matter of time, as the grasses build up after rain and thunderstorms and then we have a dry spell with lightning strikes—along comes the fire. It is in pretty rough country, too, which is not easily accessible, especially on the ground. So we face the enormous cost of helicopters and aeroplanes trying to put the fire out. If we grazed that country and kept the fuel levels down we would not have the severe fires. We would not have the destruction of the environment. But this is the issue: by declaring more national parks the Greens and the Labor Party are saying, ‘We’re doing a great thing for the environment.’ No, they are destroying the environment. That is exactly what they are doing.

We will see it this summer. We will see it on Toorale Station, out near Bourke, where Minister Wong bought the property—90,000 hectares, I believe—without even looking at it. It is locked up now in a national park. It is only a matter of time before that burns from one end to the other and destroys the environment—destroys the trees and kills the animals. And they call it conservation! I find it a disgraceful way to manage the environment.

The point I make is this: when you have a severe bushfire, 200 tonnes of carbon-dioxide per hectare is released into the atmosphere. So, in the 450,000 hectares that unfortunately burnt in that tragic fire on black Saturday in Victoria this year, 90 million tonnes of carbon-dioxide were released, yet here we find a policy where they want to reduce carbon-dioxide levels. It is so ironic; it is so hypocritical. I urge the government to start to learn how to manage land and properties. The best way to do that is to graze with dry stock and steers—not cows, calves and bulls, so that you have all the trouble of cows calving et cetera—and manage the fuel levels on the ground. Then and only then will we stop destroying our environment—destroying our trees and our animals that are supposed to be there, preserved for future generations.

**Senator Polley** (Tasmania) (3.06 pm)—Question time in this place is getting more bizarre by the day. It is the last week of the Senate sitting, and those opposite have no strategy or tactics when it comes to question time. We had an opposition National Party senator get up and ask a question today in relation to fire strategies. Yet when it comes to the emissions trading scheme, they want to run a hundred miles away and deny that there is anything happening as far as the climate is concerned. When talking about national parks and state reserves, I find it astonishing that a senator would come in and ask a federal minister about something that is clearly within the bounds of the state governments. Why aren’t these questions being put to the New South Wales government?
Why would you, in the final week of the Senate, ask such a bizarre question of a federal minister? We have had nothing for weeks in relation to the economy—no questions on the economy. What is clearly foremost in the minds of those opposite is disunity. The common goal that too many of those opposite have is to undermine their own leader. They bring questions into this chamber on topics that clearly lie with the state government of New South Wales.

In terms of fire strategy and what we need to do in relation to ensuring that we do not have a repeat of the terrible disaster in Victoria earlier this year that we are all impacted by, of course we need to take steps. The federal government is taking its responsibilities in that area very seriously. In fact, the Commonwealth government has committed over $26 million to assist the states and territories develop a national telephone based emergency warning system. Those things are incredibly important, but it still comes back to the old question about climate change. Senator Williams has already left the chamber, which shows how little interest he really has in this issue. He denies that climate change is a fact.

*Senator Cash interjecting—*

*Senator Back interjecting—*

*Senator POLLEY—You always know when you hit a nerve when those Western Australian sceptics interject—two of them, at least. Once again, when you hit a nerve, they have to divert attention away from their own disunity and their scepticism regarding climate change.*

*Senator Ian Macdonald—Tell us about Shane Murphy. He was a good example of disunity in the Labor Party.*

*Senator POLLEY—I am more than happy to take any interjections from Senator Macdonald. If you want to talk about disunity, let us talk about disunity. Disunity is running rife within the Liberal Party. Where are they? No wonder they have no policy when it comes to climate change; they have no—*

*The DEPUTY PRESIDENT—Order! Senator Polley, I think that it is time you reverted to the subject matter before the chair.*

*Senator POLLEY—Mr Deputy President, in relation to the interjections about disunity, surely I have a right to respond.*

*The DEPUTY PRESIDENT—No. Ignore the interjections.*

*Senator POLLEY—Those are already out there in the chamber, Mr Deputy President. It is an important point to make in relation to not only this issue, which is natural disasters, but climate change and the economy. On this side of the chamber, we are united. Talking about people from the past is completely irrelevant to the debate that we are having here this afternoon.*

*Senator BACK (Western Australia) (3.11 pm)—I also rise to take note of answers given by Senator Wong. It is pleasing that Senator Polley made the point for Commonwealth federal intervention, simply because we see an absolute abrogation of responsibil-*
ity by the New South Wales government. In fact, the New South Wales government seems totally irrelevant. What we do see, unfortunately, as was stated by my colleague Senator Williams, is that that state has absolutely no influence, control or activity at all—they do at the operational level; they have a very effective rural fire service. Why is it that the Commonwealth needs to take a role? Simply because of the enormous expenditure that the Commonwealth now has to often undertake in regards to response and recovery. In other words, what we have seen this year particularly is the Commonwealth rewarding failure. That is the reason why there has to be activity and why Senator Williams is absolutely correct.

Only the other day, the dean of agriculture and a member of the bushfires CRC in New South Wales, Professor Mark Adams, lamented his state’s and the country’s poor preparedness. Have a look at that statistics in New South Wales. This year, a lousy 23,000 hectares have been burned in prescribed or fuel reduction burns. At least last year it was 60,000 hectares. Even the Victorians, who do very little at all, burned 154,000 hectares this year in fuel reduction burning.

This chamber should not need reminding that there are three key elements to fires and bushfires. The first is fuel, the second is a source of ignition and the third is oxygen. We cannot do much about the oxygen. We know that there are many sources of ignition, including lightning and men, women and children. But we can do something about fuel. In particular, we must undertake fuel reduction. As Senator Williams has already explained and I will not repeat, grazing by animals has been a time honoured means of fuel reduction. Fuel reduction burning in the cool time of the year is the preferred method and naturally there are attempts to clear vegetation.

Prior to the last bushfire season we saw something regrettable in Victoria. In 2004, a resident of Reedy Creek, Liam Sheahan, was fined some $50,000 for removing trees around his property and then he had to pay $50,000 more to battle the Mitchell Shire Council because he was in fact reducing fuel levels. Guess whose home was the only one in a two-kilometre area to survive the bushfires last year? We all know the answer: it was Mr Liam Sheehan’s home.

Aborigines have shown us for 30,000 years the value of fuel reduction burning in a mosaic pattern. Indeed, had they not done carried out that burning, we would not have had the forests that we have today, because they would have been subject to the same level of burning that we saw in Victoria this year. Incidentally, speaking of emissions, that fire alone produced greenhouse gases equivalent to Australia’s entire industry for one year. That was from one fire on one day. The shame of it, of course, is that we know the value of fuel reduction burning. The CSIRO-led Project Vesta in the mid- to late 1990s confirmed what we already knew and added to that information.

In my home state of Western Australia, we regard seven to eight per cent of the forest being burnt annually as the minimum that should be undertaken to protect the community. We know that the figure in Victoria is less than a half of one per cent, as against that seven to eight per cent ideal, and the figures I have seen for New South Wales would put it at a fraction of one per cent. How regrettable that is. We will always have fire in the mediterranean, eucalypt dominated bush of Australia. We will either have low intensity, cool season, controlled burns called fuel reduction burns or we will have uncontrolled hot season conflagrations like we have had.
I conclude with an acronym I have explained here before: DEAD—disaster, enquiry, apathy, further disaster. If we do nothing, we will have further disasters.

Senator LUNDY (Australian Capital Territory) (3.16 pm)—The motion to note of an answer on disaster management provides an insight into an intriguing tactic used by the National Party at this juncture in the climate change debate. It strikes me that they are so intent on trying to find some alternative, plausible explanation for extreme climatic events, including bushfires, that they are now pointing the finger at the absence of bovine grazing in our national parks as some alternative to the facts arrived at by the consensus of world scientists that climate change does in fact exist and there are likely to be more of the extreme climatic events that are the precursors of the ravages of the bushfires Australia is experiencing on an increasing basis. It is intriguing to see this tactic. No doubt the National Party are hurting as their own constituents depart from the National Party’s view on the CPRS. Now that farmers have been excluded, with agriculture outside of Labor’s proposed ETS system, the National Party have nowhere to go.

It is important to understand that bushfires are extremely dangerous events and that there is a great deal that the Commonwealth government has been doing, notwithstanding the state and territory responsibilities for managing their parks and bushfire issues. I would like to go through a couple of facts of the matter relating to the Commonwealth government and its activities through the Council of Australian Governments to ensure that all states and territories have considered their preparedness for the current bushfire season. I firmly believe, as the Rudd Labor government firmly believes, that we are all better prepared for this coming bushfire season. In fact, on 25 September, the Commonwealth held its first preseason operational briefing for states and territories on Commonwealth roles and capabilities, including those of Emergency Management Australia and the Australian Defence Force, in assisting states and territories, and this was a recommendation from the Victorian Bushfires Royal Commission.

The Commonwealth supports the states and territories with both policy and capability development and while the states and territories, as we have heard from my colleague Senator Polley, are primarily responsible for bushfire prevention and response within their jurisdictions the Commonwealth provides a key and supporting role through policy and capability development as well as supporting those jurisdictions on request. The sort of support that is provided by the Commonwealth includes providing things like meteorological and geospatial information through the Bureau of Meteorology and Geoscience Australia; funding for bushfire preparedness under the natural disaster resilience program, and, under the Commonwealth Government Disaster Response Plan, assistance to jurisdictions on request, including by closely monitoring the situation and being on standby to rapidly deploy assets if requested.

The Australian government has also provided $14 million per year towards aerial firefighting, an additional $4 million over previous years; aerial firefighting craft leased through the National Aerial Firefighting Centre, stationed at various locations around Australia and available for use by any jurisdiction that requires them; and Commonwealth-led development of a new scale of fire danger ratings introduced by the Bureau of Meteorology to better inform and advise the community. We saw the ‘catastrophic’ category of fire warning being used recently. There has also been the development of a national emergency warning system. That has now been established, and the Com-
Commonwealth committed over $26 million to assist states and territories to develop a telephone-based emergency warning capability, allowing alerts to be sent by voice and text messages to landlines and mobile phones based on an owner’s billing address. The feasibility of expanding this system to enable it to send messages to mobile phones based on the handset’s location is currently being evaluated with funding support by the Commonwealth. The government has also established an ongoing forum of peak broadcast media organisations to facilitate improvements in the effectiveness and consistency of emergency warnings.

There is no doubt that the issue of the ravages of extremely dangerous bushfires is something that weighs heavily on everyone’s minds. Clearly the Commonwealth is responding to that in conjunction with states and territories, which is the appropriate way. I find it difficult to believe that the National Party are scratching around at the bottom of the barrel to such an extent that they use the reduction in grazing in our national parks as some explanation for the ravages brought about by climate change.

Senator IAN MACDONALD (Queensland) (3.22 pm)—Senator Williams’s question in question time today highlights that for the Labor Party politics and power are always far more important than policy. You only have to look at the issue of national parks to see that. Right around Australia, state Labor governments set up national parks—why? Because, politically, they are threatened by the Greens political party—the successors to the Communist Party of Australia—that, unless they do that, they will not get preferences. If they did not get preferences, very few Labor governments would ever achieve power.

Look at the Traveston Crossing Dam in Queensland—the Greens on one hand said they were against the dam and on the other hand gave preferences to a party that was determined to build the dam, so ensuring the election of that party. Right around Australia the Labor Party do the same thing. They set up these national parks to get Green preferences. The problem is that they do not resource them and they throw out of what used to be good Australian forest the people who used to manage them. The timber industry very selectively harvested Australia’s native forests. In doing that, they put tracks through all the forests, they had a workforce on hand and they did controlled burns so that in the fire season the forests were much safer. But the Labor Party and the Greens political party got rid of those on-the-spot protectors of the forests, leaving the forest without any protection.

As Senator Williams and Senator Back have pointed out, more trees are destroyed in the annual bushfires than were ever harvested under the controlled forestry regimes of Australian governments. We got rid of the people who controlled them because the Greens said: ‘You’re cutting down trees. You’re destroying trees. You’re destroying the habitat of the koalas.’ And what did they leave us with? A situation where the forests are decimated. It is not every second tree, every 10th tree or this hectare against that hectare—the whole lot is destroyed, and every living animal with it. That is the result of the Greens political party and the Labor Party taking away those that protected Australia’s native forests. The Labor Party set up these national parks because it was good for politics and they never resourced them. That was the point of Senator Williams’s question.

The New South Wales Labor government—initially in power because of the Greens political party—is reducing the number of national parks employees by 200. You would think that, at this time of the year, in the height of the bushfire season, they would
be putting on an extra thousand employees. But, at this crucial time, the New South Wales Labor government is axing 200 jobs in the New South Wales National Parks and Wildlife Services—that is, 200 fewer people with knowledge will be available to help quell the bushfire disaster that is waiting at our doors.

That is why I return to the truism that, for the Labor Party, politics—getting Green preferences so they can stay in power is far more important than decent policy in looking after our national parks and wildlife. Wherever you look in Australia, you will find that, for the Labor Party, politics and power are far more important than policy. A look at the way the parks and our natural landscape have been managed under Labor will show you that the Labor Party have no interest in properly addressing the issues and are only making sure they can hold on to the power that they achieved with the support of the Greens political party. The sooner Australians wake up to this political power struggle, or push, by the parties of the left, the sooner we will be able to get back to real policy which will look after and properly manage our national parks—(Time expired)

Question agreed to.

**Dialysis Services in Central Australia**

**Senator SIEWERT** (Western Australia)

(3.27 pm)—I move:

That the Senate take note of the answer given by the Special Minister of State (Senator Ludwig) to a question without notice asked by Senator Siewert today relating to a transportable dialysis machine in Alice Springs, Northern Territory.

It is quite clear that the government has failed to grasp the opportunity of pursuing funding and support for interstate patients needing dialysis in Alice Springs. As the minister articulated, the Commonwealth on 6 November said that they would be providing a transportable dialysis facility, to be placed in Alice Springs on a temporary basis until the new unit is in place in April—although it looks like that will not be available until June. That facility, apparently, is not going to accept new interstate patients.

As I articulated in this place last week, there are a number of patients located in Kiwirrkurra, for example, in the APY Lands, who are being refused access to Alice Springs. As the minister said, they are being told to go to their own states. Mr Tjungurrayi from Kiwirrkurra lives over 2,400 kilometres from Perth. He lives around 550 kilometres from Alice Springs and to get to Perth he has to fly via Alice Springs. So the Commonwealth government appears to accept that it is okay for patients not to have access to Alice Springs dialysis equipment and to be sent to Perth, where they do not speak the language, they have no family members and they feel totally isolated. As someone said to me, they see it as a one-way trip because you cannot go home for dialysis holidays from Perth like you can from Alice Springs.

Patrick, living in Kiwirrkurra, can go back to his home and go to Kintore if the NT government is willing to enter into a shared facility arrangement. He could have his first dialysis, have his medical condition stabilised, have a fistula implanted and then go home to Kiwirrkurra. He would then have to travel only 140 kilometres to Kintore. Patrick says he does not want to go to Perth and that he will stay in community, because he sees going to Perth, as I said, as a one-way trip. There are a number of patients in Central Australia who are choosing not to have dialysis because they do not want to leave country. In other words, these people, without this treatment, will pass away.

The Commonwealth have missed a golden opportunity to use their funding leverage. Last week they were arguing that dialysis is not provided by the Commonwealth. We
have cleared that up; it clearly is. For a start, the Commonwealth have provided over $5.3 million for dialysis equipment, service and support. On top of that, they have provided a transportable dialysis service. Clearly, they are funding dialysis services and support in the Northern Territory. Why aren’t they making the provision of those services dependent on the Northern Territory treating patients who come from across the border—in other words, from Central Australia?

The Commonwealth have also funded facilities to go into remote communities, so quite clearly they also understand the importance of providing dialysis equipment and support in community. Yet again their response is: ‘People can go off community to Adelaide, Kalgoorlie or Perth—oh, except that Kalgoorlie is full. Sorry, you’ll have to go to Perth.’ The amazing thing is that if Mr Tjungurrayi were to go to Kalgoorlie he would have to fly from Kiwirrkurra to Alice Springs, from Alice Springs to Perth and from Perth to Kalgoorlie. Tell me how that is rational!

Alice Springs is the regional centre for people living in Central Australia. It is ridiculous for the Commonwealth to pretend it is acceptable for people to pass away rather than use its funding as a lever to require the Northern Territory to provide support for those people in Alice Springs. It would be the most sensible thing to do. The Commonwealth knows that. The Commonwealth should be putting pressure, unashamedly, on the Northern Territory, WA and South Australia to come up with an answer.

It is unacceptable to leave these Aboriginal Australians to be pawns in a state-territory-federal game, which is essentially what the government is doing. I do not know how it can say it is closing the gap when it is prepared to let these people pass away or to let this have a negative impact on their health. It is laughable to claim that we are closing the gap in Australia if that is what the Commonwealth is prepared to say. These people cannot wait till the new facility is in place in April or, as we have heard, probably not until June. They need urgent treatment now.

Question agreed to.

PETITIONS

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

Climate Change

To the Honourable President and members of the Senate in Parliament assembled:
The petition of the undersigned shows: Climate change poses a grave threat to the planet. Australia is one of the world’s worst greenhouse gas polluters and we have a responsibility to drastically cut our greenhouse gas emissions. Legislation introduced by the Government into the Senate goes nowhere near taking the urgent action required to move this country to a sustainable economy. With decisive action, we can create clean energy jobs and have Australia powered by renewable energy.

Your petitioners request that the Senate:

• Adopt targets for greenhouse gas reduction that are guided by the best available science and that will give us the maximum chance of avoiding catastrophic runaway climate change.

• Pass new legislation that will ensure Australia becomes powered by renewable energy as quickly as possible.

• Pass new legislation to ensure the creation of new, sustainable energy industries that will create real clean energy jobs for current and future generations.

by Senator Siewert (from 1,186 citizens)

Sri Lanka

To the Honourable President and members of the Senate in Parliament assembled:
The Petition of the undersigned citizens shows that, following the end of the bloody conflict be-
Between forces of the Sri Lankan government and the Tamil Tigers:

- Almost 300,000 Tamils are detained in highly overcrowded camps;
- Sanitation and hygiene standards in camps are inadequate and various diseases are spreading as a result;
- Health facilities are inadequate to meet the needs of those detained;
- Aid agencies and human rights organisations are not able to move freely through the camps to assist detainees and monitor their treatment;
- Detainees are not free to return to their homes and have been given no guarantees about when and where they can resettle;
- Family members are separated from each other, are not aware of the whereabouts of their loved ones and are not able to reunite;
- No satisfactory process has been established to identify and address possible breaches of the Geneva Convention and other human rights breaches;
- No clear effort is being made by the Sri Lankan Government to address the long-standing grievances of Tamils.

Your petitioners ask that the Senate takes urgent action to pressure the Sri Lankan Government to:

- Allow immediate and unrestricted access to all camps by aid agencies and international human rights monitors;
- Allow detainees to reunite with family members immediately and to return to their homes without further delay;
- Establish an independent inquiry into human rights violations committed during the recent conflict;
- Embark on a genuine reconciliation process which addresses the grievances of Tamils.

by Senator Moore (from 246 citizens)

Petitions received.

NOTICES

Presentation

Senator Forshaw to move on the next day of sitting:
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 Wednesday, 25 November 2009, from 11 am, to take evidence for the committee’s inquiry into Australia’s trade and investment relations with Asia, the Pacific and Latin America.

Senator Siewert to move on the next day of sitting:
That the time for the presentation of the report of the Community Affairs References Committee on the impact of gene patents on the provision of healthcare in Australia be extended to 18 March 2010.

Senator Fielding to move on the next day of sitting:
That the question for the third reading of the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and 10 related bills not be put until the third sitting day in February 2010.

Senator Boyce to move on the next day of sitting:
That the following matter be referred to the Community Affairs References Committee for inquiry and report by 2 September 2010:
Access to planning options and services for people with a disability to ensure their continued quality as they and their carers age, and to identify any inadequacies in the choice and funding of planning options currently available to people ageing with a disability and their carers.

Senator Mason to move on the next day of sitting:
That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 25 November 2009, from 5 pm, to take evidence for the committee’s inquiry into the continuing oversight of the operations of the Australian Securities and Investments Commission.
**Senator Heffernan** to move on the next day of sitting:

That the Select Committee on Agricultural and Related Industries be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 24 November 2009, from 4 pm, to take evidence for the committee’s inquiry into food production in Australia.

**Senator Ludwig** to move on the next day of sitting:

That, on Tuesday, 24 November 2009:

(a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm;

(b) the routine of business from 7.30 pm shall be consideration of the government business order of the day relating to the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and 10 related bills; and

(c) the question for the adjournment of the Senate shall be proposed at 11 pm.

**Senator Fierravanti-Wells** to move on the next day of sitting:

That there be laid on the table by the Minister representing the Prime Minister, no later than 2 pm on Wednesday, 25 November 2009, documents outlining or including, the following:

(a) the date, time and duration of the meetings of the Border Protection Committee of Cabinet since it was established in about April 2009;

(b) in relation to each of the meetings referred to above, details of all the attendees at each meeting, including the name and position of each attendee and the capacity in which they attended the meeting;

(c) in relation to any ministerial staff attending any meeting, the level of security clearance of all ministerial staff who attended each meeting;

(d) all documents relating to the formulation, discussion and approval (including any drafts) of the letter from Mr Jim O’Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta, Indonesia, entitled *Message to the 78 passengers on the Oceanic Viking*, dated November 2009, including by the Border Protection Committee of Cabinet or any other committee, taskforce or entity;

(e) all documents relating to the formulation, discussion and approval (including any drafts) of the letter from Mr Andrew Metcalfe, Department of Immigration and Citizenship to Senator Evans, Minister for Immigration and Citizenship, dated 16 November 2009, including by the Border Protection Committee of Cabinet or any other committee, taskforce or entity;

(f) in relation to the formulation, discussion or approval referred to in paragraphs (d) and (e), which was undertaken by any other committee, taskforce or entity other than the Border Protection Committee of Cabinet, documents outlining or including:

(i) the name of the other committee, taskforce or entity;

(ii) the date, time and duration of the meeting/s of the other committee, taskforce or entity, and

(iii) details of all the attendees at each meeting of the other committee, taskforce or entity, including the name and position of each attendee and the capacity in which they attended the meeting;

(g) in relation to any ministerial staff attending any meeting, the level of security clearance of all ministerial staff who attended each meeting of the Border Protection Committee of Cabinet or any other committee, taskforce or entity;

(h) in relation to approval referred to in paragraphs (d) and (e) above, details of the date, time, duration and attendees at the meeting or meetings that resulted in such approval by the Border Protection Committee of Cabinet or any other committee, taskforce or entity;

(i) details of when the Prime Minister became aware of the decision of the Border Protection Committee of Cabinet or any other committee, taskforce or entity to make the offer referred to in paragraphs...
(d) and (e) above and how he became aware of this decision;

(j) in relation to the letter from Mr Jim O’Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta, Indonesia, entitled Message to the 78 passengers on the Oceanic Viking, dated November 2009, all documents relating to the formulation, discussion and approval (including drafts) of any arrangements, undertakings or special circumstances with the United Nations High Commissioner for Refugees regarding processing and resettlement of the asylum seekers;

(k) in relation to the letter from Mr Jim O’Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta, Indonesia, entitled Message to the 78 passengers on the Oceanic Viking, dated November 2009 and the letter from Mr Andrew Metcalfe, Department of Immigration and Citizenship to Senator Evans, Minister for Immigration and Citizenship, dated 16 November 2009, all documents relating to the formulation, discussion and approval (including drafts) of any arrangements, undertakings or special circumstances with Indonesia regarding the detention, processing and resettlement of the asylum seekers; and

(l) in relation to any approval covered by paragraphs (h) and (i), a statement of whether the Prime Minister or any member of the Prime Minister’s staff approved any part, aspect, detail or condition contained in the letter from Mr Jim O’Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta, Indonesia, entitled Message to the 78 passengers on the Oceanic Viking, dated November 2009 and in the letter from Mr Andrew Metcalfe, Department of Immigration and Citizenship to Senator Evans, Minister for Immigration and Citizenship, dated 16 November 2009.

Senator Bob Brown to move on the next day of sitting:
That the Senate, noting that:

(a) Rwanda’s nomination to join the Commonwealth will be decided at the Commonwealth Heads of Government Meeting in Trinidad and Tobago from 27 November to 29 November 2009; and

(b) Rwanda’s ruling party, the Rwandan Patriotic Front, has actively stopped alternative political parties from operating and has been implicated in electoral irregularities and restrictions on press freedom, calls on the Government to review Rwanda’s record on human rights according to the standards agreed to by the Commonwealth’s 1991 Harare Declaration, before supporting its membership of the Commonwealth.

Withdrawal

Senator WORTLEY (South Australia)
(3.33 pm)—Pursuant to notice given on the last day of sitting, I now withdraw business of the Senate notice of motion No. 1 standing in my name for seven sitting days after today.

Presentation

Senator Ludwig to move on the next day of sitting:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period:

Foreign Acquisitions and Takeovers Amendment Bill 2009
Higher Education Legislation Amendment (Student Services and Amenities) Bill 2009.

I also table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hansard.

Leave granted.

The statements read as follows—

Foreign Acquisitions and Takeovers Amendment Bill 2009

Purpose of the Bill

The Bill amends the Foreign Acquisitions and Takeovers Act 1975 to clarify that the foreign
investment screening regime applies equally to all foreign investments irrespective of the way they are structured.

**Reasons for Urgency**

On 12 February 2009, the Treasurer announced that the Government will amend the Foreign Acquisitions and Takeovers Act 1975 to clarify the operation of the foreign investment screening regime. In particular, the amendments will ensure that any investment, including through instruments such as convertible notes, will be treated as equity for the purposes of the Act.

These amendments will apply retrospectively from the date of the Treasurer’s announcement. Introduction and passage of this Bill in the 2009 Spring sittings will ensure that the Government has the capacity to examine all investment proposals that could potentially be against Australia’s national interest. Delaying the passage of this Bill may potentially cause confusion for prospective foreign investors wishing to invest in Australia.

**Purpose of the Bill**

The bill amends the Higher Education Support Act 2003 to provide for student services and amenities fees and associated loans for students.

**Reasons for urgency**

The bill will enable higher education providers to charge a student services and amenities fee and for eligible students to access Services and Amenities-HELP (SA-HELP) loans from the Australian Government to pay their fees. The Government announced on 3 November 2008 that it will allow higher education providers to charge a compulsory student services and amenities fee, capped at a maximum of $250 per annum (indexed).

The Government will provide access to a new element of the Higher Education Loan Program, SA-HELP, enabling eligible students to take out a loan for the payment of the student services and amenities fee. It is intended that higher education providers would not be able to charge a fee if they do not also provide access to SA-HELP.

In order to implement the fee and loan scheme, higher education providers will require upgrades to their IT systems in advance of the fee being charged, including implementation of electronic forms for SA-HELP to administer the new loan.

Prior to the commencement of the fee and loan, new student information pamphlets and Commonwealth assistance forms must be developed, printed and ready for distribution to higher education providers to be available to students. Guidelines will need to be made under the new provisions to enable administrative arrangements to be finalised.

Additional data elements for the Higher Education Information Management System for the administration of the fee and SA-HELP will also have to be issued by Ministerial notice, following passage of the amendment with sufficient lead time for providers.

Generally the higher education sector expects that the Department will provide 12 months notice of any changes/new reporting requirements, particularly where system modifications are required, to allow for development timeframes, including software supplier negotiations.

A Ministerial Notice to determine the reporting requirements for SA-HELP can only be made following the passage of legislation and the development of guidelines for the program. If legislation is not passed and guidelines not finalised as soon as possible, this would prevent timely implementation of this initiative.

**COMMITTEES**

Finance and Public Administration References Committee

**Meeting**

Senator CASH (Western Australia) (3.35 pm)—by leave—At the request of Senator Bernardi, I move:

That the Finance and Public Administration References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today, from 4 pm to 5 pm, in relation to its inquiry on the relationship between the Central Land Council and Centrecorp Aboriginal Investment Corporation Pty Ltd.
Question agreed to.

NOTICES

Postponement

The following item of business was postponed:

Business of the Senate notice of motion no. 2 standing in the name of Senator Xenophon for today, proposing a reference to the Community Affairs References Committee, postponed till 24 November 2009.

COMMITTEES

Community Affairs Legislation Committee

Reference

Senator SIEWERT (Western Australia) (3.36 pm)—I move:

(1) That the following bills:

Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009

Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009,

be again referred to the Community Affairs Legislation Committee, together with the Government amendments to the bills circulated on 28 October 2009, for inquiry and report by 1 February 2010.

(2) In undertaking this inquiry, the committee shall consider:

(a) whether the consequences of the Government’s amendments for professional regulation of midwifery will give doctors medical veto over midwives’ ability to renew their licence to practice;

(b) whether the Government’s amendments’ influence on the health care market will be anti-competitive;

(c) whether the Government’s amendments will create difficulties in delivering intended access and choice for Australian women;

(d) why the Government’s amendments require ‘collaborative arrangements’ that do not specifically include maternity service providers including hospitals;

(e) whether the Government’s amendments will have a negative impact on safety and continuity of care for Australian mothers; and

(f) any other related matter.

Question agreed to.

Senator O’BRIEN (Tasmania) (3.36 pm)—by leave—The government oppose this motion. We recognise that, with the support of the opposition, the Greens have the numbers and we will not call a division.

HEALTH INSURANCE AMENDMENT (REVIVAL OF TABLE ITEMS) LEGISLATION

Order

Senator CORMANN (Western Australia) (3.36 pm)—I move:

That the Senate:

(a) Notes that:

1) the Minister for Health and Ageing told the House of Representatives on 29 October 2009, that the Government had legal advice that the Health Insurance Amendment (Revival of Table Items) Bill 2009 was unconstitutional, that it should not have been introduced in the Senate and had not been appropriately passed.

2) the Minister also told the House of Representatives that the Government was “happy to provide that legal advice” (9.59am, 29/10/2009),

3) on 17 November the Senate ordered “that there be laid on the table by the Minister representing the Minister for Health and Ageing in the Senate, by no later than 5pm on 17 November 2009, a copy of the legal advice referred to by the Minister on 29 October 2009, indicating that the Health Insurance Amendment (Revival of Table Items) Bill 2009 was unconstitutional” under section 53 of the Constitution,

CHAMBER
4) in response, on 18 November the Minis-
ter for Health and Ageing tabled a letter
stating that the legal advice would not be
provided to the Senate on the grounds
that it could “prejudice the Common-
wealth’s position in the event of future
legal proceedings”, and
5) advice from the Clerk of the Senate
makes it clear that section 53 of the
Constitution is non-justiciable and
“[t]herefore there cannot be any legal
proceedings which might be prejudiced
by disclosure of advice to the govern-
ment on its interpretation of section 53”.

(b) Considers that release of a copy of the legal
advice referred to by the Minister on 29 Oc-
tober 2009 is in the public interest.

(c) Orders that there be laid on the table by the
Minister representing the Minister for Health
and Ageing in the Senate, by no later than
12pm on 24 November 2009, a copy of the
legal advice referred to by the Minister on
29 October 2009, indicating that the Health
Insurance Amendment (Revival of Table
Items) Bill 2009 was unconstitutional.

Question agreed to.

Senator O’BRIEN (Tasmania) (3.37
pm)—by leave—The government opposes
this motion. On this occasion it is Senator
Cormann who has the support of the Greens
for his motion. Therefore he has the majority
and we will not call a division.

COMMITTEES

Corporations and Financial Services
Committee

Extension of Time

Senator PARRY (Tasmania) (3.38 pm)—
At the request of Senator Mason, I move:

That the time for the presentation of the report
of the Parliamentary Joint Committee on Corpo-
rations and Financial Services on financial pro-
ducts and services in Australia be extended to
24 November 2009.

Question agreed to.

National Broadband Committee

Extension of Time

Senator PARRY (Tasmania) (3.38 pm)—
At the request of Senator Fisher, I move:

That the time for the presentation of the report
of the Select Committee on the National Broad-
band Network be extended to 25 November 2009.

Question agreed to.

National Broadband Committee

Meeting

Senator PARRY (Tasmania) (3.38 pm)—
At the request of Senator Fisher, I move:

That the Select Committee on the National
Broadband Network be authorised to hold a pri-
vate meeting otherwise than in accordance with
standing order 33(1) during the sitting of the Sen-
ate on Monday, 23 November 2009, from 3.30
pm.

Question agreed to.

Foreign Affairs, Defence and Trade
References Committee

Report

Senator PARRY (Tasmania) (3.38 pm)—
At the request of Senator Trood, I move:

That the report of the Foreign Affairs, Defence
and Trade References Committee on its inquiry
into security challenges facing Papua New
Guinea and the island states of the southwest Pa-
cific be presented by 24 December 2009.

Question agreed to.

FOREIGN AID SUPPORT FOR
MATERNAL HEALTH SERVICES

Senator MOORE (Queensland) (3.38
pm)—I move:

That the Senate:

(a) notes the Government’s increase of total
health funding in the foreign aid budget and
its support for maternal, newborn and child
health and acknowledges that this is much
needed when in our region, including South
Asia, 200 000 mothers and 3.2 million chil-


CHAMBER
(b) notes that:
   (i) Australia still requires a strong commitment to provide health funding through the foreign aid budget to progress towards Millennium Development Goals (MDGs) 4 and 5 by 2015,
   (ii) MDG 4, to reduce child mortality by two-thirds, and MDG 5, to reduce maternal mortality by three-quarters, have made slow progress and are off-track to being achieved by 2015,
   (iii) MDG 5 has made virtually no progress globally and has reversed in most of sub-Saharan Africa in the past 20 years, and
   (iv) the health MDGs are achievable but require increased effort and greater cooperation from all developing and developed countries, given that evidence indicates that successful proven, cost-effective strategies exist that can reduce child deaths by at least 60 per cent and maternal deaths by 75 per cent, saving the lives of 240,000 children and 26,000 mothers in our immediate region each year;
(c) acknowledges the Australian Government’s support for health systems in the Asia-Pacific region (through coordinated mechanisms including the international Health Partnership) to ensure that adequate, coordinated, long-term and predictable donor resources are available in each developing country in our region;
(d) recognises that greater focus must be placed on training health professionals and midwives to ensure significant reductions in newborn, child and maternal mortality and that system strengthening must also be ensured to provide incentives for staff to remain in country and in areas of need; and
(e) recognises that continued Australian commitment to maternal and child health is required to support the provision of basic health services and strengthened health systems and that this will demonstrate Australia’s leadership and commitment to ending the preventable deaths of children and mothers globally.

Question agreed to.

NATIONAL DISASTER RESPONSE PLAN

Senator MILNE (Tasmania) (3.38 pm)—

I move:

That the Senate:

(a) notes that:
   (i) Commonwealth Scientific and Industrial Research Organisation scientists have warned that Australia will experience more high fire danger days as a result of climate change,
   (ii) three Australian states are on high fire danger alert and record high temperatures are being recorded for November 2009 in several Australian cities and towns including Adelaide,
   (iii) a government report in 2005 said that no single state or territory is likely to have the human and material resources required to resolve a catastrophic event, and
   (iv) Emergency Management Australia, the national coordination unit for operational responses to disasters:
      (A) was not called in on Black Saturday in Victoria, and
      (B) did not ask the Department of Defence or Defence Imaging to track the Victorian fires because no request to do so was made from Victoria; and
(b) calls on the Government immediately to:
   (i) develop and implement a national disaster response plan,
   (ii) appoint the operational fire chiefs from each state and territory to Emergency Management Australia,
   (iii) reverse the onus so that the Commonwealth has the power to oversee a national disaster and to intervene without having to wait for a state to request such assistance, and
(iv) implement the remaining recommendations of the 2005 Commonwealth report into national disaster readiness.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (3.39 pm)—Mr Deputy President, I seek leave to make a short statement.

The DEPUTY PRESIDENT—Leave is granted for two minutes.

Senator LUDWIG—The Commonwealth government has worked with the states and territories to bolster their preparedness for the bushfire season. The states and territories have the primary responsibility for dealing with natural disasters and the Commonwealth stands ready to assist. This is consistent with the historical and constitutional responsibilities of state governments. Operationally, state and territory emergency service organisations have good local links and a good understanding of local needs and conditions. The Australian Government Disaster Response Plan outlines the provision of assistance to states and territories in responding to natural disasters. Assistance is granted on the request of the affected jurisdiction, which is appropriate and operationally effective given that the jurisdiction has the primary responsibility and the operational assets for dealing with the disaster.

On Friday, 20 November, the Ministerial Council for Police and Emergency Management endorsed the National Catastrophic Natural Disaster Plan, which describes national coordination arrangements for supporting states and territories and the Australian government in responding to and recovering from catastrophic natural disasters in Australia. This plan is important to help govern responses to those catastrophic disasters which overwhelm the ability of a state or territory to respond. While the states and territories hold primary responsibility for the protection of life and property, the Australian government, as I have indicated, stands ready to assist if requested.

The Attorney-General’s Department, through Emergency Management Australia, was actively monitoring and reporting on bushfire conditions throughout Australia from 28 January 2009. On Saturday, 7 February 2009, EMA was made aware of the fires in Victoria that impacted townships and resulted in fatalities. The Director General of EMA immediately briefed the Prime Minister. The Australian Government Disaster Response Plan was activated and EMA deployed liaison officers to Victoria to provide assistance and to facilitate Australian government assistance. On 9 February 2009, EMA tasked defence to supply an aircraft capable of aerial imagery to search the affected areas to enable the identification of all residents affected by the fires. This request was completed by 16 February 2009.

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

The Senate divided. [3.45 pm]
(The Deputy President—Senator the Hon. AB Ferguson)

Ayes ............... 6
Noes ............... 39
Majority .......... 33

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

NOES
Adams, J.
Barnett, G.
Bishop, T.M.
Royce, S.
Bushby, D.C.
Cash, M.C.
Cormann, M.H.P.
Feeney, D.
Fielding, S.
Hanson-Young, S.C.
Milne, C.
Xenophon, N.

Back, C.J.
Bilyk, C.L.
Boswell, R.L.D.
Brown, C.L.
Cameron, D.N.
Colbeck, R.
Farrell, D.E.
Ferguson, A.B.
Fierravanti-Wells, C.
Forshaw, M.G. Furner, M.L.
Hurley, A. Hutchins, S.P.
Kroger, H. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
Moore, C. Nash, F.
O’Brien, K.W.K. Parry, S. *
Polley, H. Pratt, L.C.
Sterle, G. Troeth, J.M.
Trood, R.B. Williams, J.R.
Wortley, D.

* denotes teller

Question negatived.

FOOD STANDARDS AMENDMENT (TRUTH IN LABELLING—PALM OIL) BILL 2009

First Reading

Senator XENOPHON (South Australia) (3.48 pm)—I, and on behalf of Senators Bob Brown and Joyce, move:

That the following bill be introduced: A Bill for an Act to provide for the accurate labelling of palm oil in food, and for related purposes.

Question agreed to.

Senator XENOPHON (South Australia) (3.48 pm)—I present the bill and move:

That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator XENOPHON (South Australia) (3.48 pm)—I present the explanatory memorandum and move:

That this bill be now read a second time.

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

Leave granted.

Senator XENOPHON—The incorporated speech read as follows—

When you’re shopping for your weekly groceries at the supermarket, and you turn over the packet to read the ingredients of a bag of chips, a block of chocolate or a box of biscuits, you’d expect that “what you see is what you get”.

But, believe it or not, that’s not always the case.

And what’s being hidden from us is impacting our health, and destroying the environment.

Palm oil is one of the world’s leading agricultural commodities and is widely used as an ingredient in food products, cosmetics and other household items.

In fact, palm oil can be found in approximately 40 percent of food products at the supermarket, and every year, the average Australian consumes around 10 kilograms of palm oil, and doesn’t even know it.

Instead, under the current rules of Food Standards Australia New Zealand, manufacturers are able to label palm oil as “vegetable oil” on their packaging.

Well, for starters, the oil palm is a fruit, not a vegetable.

Secondly, palm oil is high in saturated fat and low in polyunsaturated fat, and, according to the Heart Foundation, biomedical research indicates that the consumption of palm oil increases the risk of heart disease.

Thirdly, in South East Asia alone, the equivalent of 300 soccer fields are deforested every hour for oil palm plantations, and each year more than 1,000 Orang-utans die as a result of land clearing in this region.

There’s no question that the current labelling laws are inadequate and are misleading consumers.

And being allowed to disguise palm oil as “vegetable oil” means that Australians aren’t able to make an informed choice for themselves and for their family about what they buy at the supermarket because they’re not being given all the facts.

This Bill builds on the Food Standards Amendment (Truth in Labelling Laws) Bill 2009 introduced to the Senate on 20 August 2009 by myself, the Leader of the Nationals in the Senate, Senator Barnaby Joyce, and the Leader of the Australian Greens, Senator Bob Brown.

It requires Food Standards Australia New Zealand in its authority to develop and approve certain food labelling standards regarding the use of the word “Australian” on packaging of food products.
and also to require greater detail of the country of origin of ingredients used in food products.
Put simply, if we are what we eat, we have a right to know what we are eating, and these two Bills will give consumers truthful, accurate and clear information about what they are purchasing.

May I take a moment at this time to acknowledge the support of my colleagues, Senator Bob Brown and Senator Barnaby Joyce who have co-sponsored both this and the initial Truth in Labelling Laws Bill with me. Their continued support and work towards ensuring consumer protection and to seek improvement in labelling laws for the betterment of the public is encouraging and admirable.

Zoos Victoria, Adelaide Zoo and Auckland Zoo in New Zealand recently launched the “Don’t Palm Us Off” campaign calling for palm oil to be labelled specifically on food packaging.

To date, over 41,000 Australians have already signed onto the campaign.

So, the community is behind this Bill. Some manufacturers are even behind this Bill. Yet why isn’t it compulsory for palm oil to be specifically listed as an ingredient on all packaging?

In the United States, the Code of Federal Regulations requires that each individual fat and/or oil ingredient of a food is to be declared by its specific common or usual name.

That is, palm oil is listed as “palm oil”.

Similarly, under the provisions of this Bill, regardless of the amount of palm oil used in the food or to produce the food, palm oil must be listed as an ingredient of the food.

It’s important to be clear that this Bill is not calling for a boycott of products which contain palm oil – rather, it is designed to enable consumers to know the whole truth about the ingredients that particular product contains so that they can make their own choice prior to purchase.

Just like the inclusion of wheat in a product is labelled to inform consumers with possible allergies, so too should shoppers be told that palm oil is contained in a particular food product.

Since announcing my intention to move this Bill, I have been contacted by a dozens of people outraged that they didn’t know.

Angry they hadn’t been told that palm oil was contained in so many of the foods they consume on a daily basis.

Feeling duped that they believed the ingredients list on the food packaging.

And why shouldn’t they?

Why shouldn’t consumers assume that when the list of ingredients is printed on the packaging, that ALL the ingredients are included in that list?

Quite simply, under today’s current food labelling laws, they can’t.

The current rules means Australians can’t trust what they read on the packaging.

On the issue of conservation – palm oil can be produced sustainably and manufacturers should be encouraged to use certified sustainable palm oil rather than palm oil which is produced as a result of deforestation and loss of wildlife habitat.

In Malaysia and Indonesia, for example, a farmer will chop down all the trees on his land and sell the timber for money. He’ll then burn the stumps and plant oil palm which is fast growing and from which he can crush the fruit to produce palm oil and also sell the shells of the palm fruit as food for cattle.

But by cutting down these trees, Orang-utans lose their habitat. In fact, 90 percent of Orangutan habitat has been lost already and it’s forecast that at the current rate of deforestation, Orang-utans could be extinct in the wild in less than 10 years.

And on a broader scale, the environmental impact of deforestation is significant. How can we be serious about looking after the environment, when we’re not encouraging businesses to farm sustainably?

Palm oil can be produced sustainably. Under criteria set out by the international Roundtable on Sustainable Palm Oil, sustainable palm oil plantations are ones which are established in already cleared land, rather than through deforestation.

It also includes requirements for reforestation along the river-line, bans on pesticides, appropriate labour conditions and wildlife friendly practices.
Under this Bill, manufacturers who use certified sustainable palm oil will be able to list the use of the ingredient as “CS Palm Oil” to indicate its sustainable origins and to show consumers that they are sourcing their ingredient from a sustainable oil palm plantation.

If anything, this is a business benefit for manufacturers because it will show a social conscience and a genuine interest in working towards a better environmental future.

Consumers will welcome manufacturers who use certified sustainable palm oil and it will be a business’ point of difference.

This Bill will encourage food manufacturers to purchase from sustainable palm oil producers and will provide consumers with all the information they need to make their own choice.

Calling palm oil “vegetable oil” is misleading. Not telling Australians that palm oil is one of the ingredients in or used to make a product is unfair.

This Bill will make it compulsory for manufacturers to list palm oil as a specific ingredient if palm oil has been used in the food or to produce the food.

Consumers have a right to know and this Bill gives them that right.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.48 pm)—The incorporated speech read as follows—

This Bill provides for a clear and accurate system of food labelling, specifically information on the use of palm oil as an ingredient. The use of palm oil as a food ingredient and as a biofuel is having a devastating impact on tropical forests, creating widespread deforestation in Malaysia and Indonesia, destroying the food crops and the way of life of the indigenous people and importantly causing the destruction of the habitat of the orangutan in those countries.

A system of clear and accurate labelling on food products containing palm oil will enable Australian consumers to make informed choices about the products they purchase.

There is a large and growing international campaign against the use of palm oil and the practice of food crops being displaced by fuel crops and the ongoing deforestation of tropical regions for palm oil. The Australian Greens are among many organisations, including Zoos Victoria, the Rainforest Action Network and Friends of the Earth International, which support calls for an immediate moratorium on forest and peat land conversion to oil palm plantations.

Palm oil is an edible vegetable oil obtained from the fruit of the African oil palm tree (Elaeis guineensis). African Oil palms originated in West Africa, but flourish wherever heat and rainfall are abundant. For that reason palm oil has been introduced as an agricultural crop in a range of countries. However, it is estimated that over 85% of the world’s palm oil comes from Malaysia and Indonesia. Oil palm is the world’s most productive oil seed.

Palm oil is used as an alternative for partially hydrogenated oil and is found in many everyday products including biscuits, crackers, batters, chips, shampoo, skin care and beauty products. An estimated 40% of our food contains palm oil. It is also used as a biofuel and it is this usage that is markedly increasing the global demand for this product.

The increased demand for palm oil is fuelling destruction of the rainforest habitat of orangutans. In South East Asia the equivalent of 300 football fields are deforested every hour for palm oil production. The combined effect of logging and oil palm expansion resulted in Indonesia having the world’s highest deforestation rate in 2006 according to a United Nations Environment Programme (UNEP) report from 2007. It concluded that up to 98% of the orangutan habitat in Borneo and Sumatra may be destroyed by 2022 without urgent action.

While there are millions of hectares of already degraded land that could be used for plantations, many oil palm companies choose instead to increase their profits by logging the rainforest before planting oil palms. Palm oil companies also frequently use uncontrolled burning to clear the land, resulting in thousands of orangutans being burned to death. Those that survive have nowhere to live and nothing left to eat.

Orangutans are the species most at risk by the widespread deforestation of tropical rainforests for palm oil plantations. They are found on two
islands, Borneo and Sumatra and live in lowland and hilly tropical rainforests. The World Conservation Union’s Red List of Threatened Animals lists the Sumatran species of the orangutan as critically endangered and the Bornean species is listed as endangered.

Indigenous peoples of Indonesia and Malaysia call this ape “Orang Hutan” literally translating into English as “People of the Forest”. These long-haired, orangish primates are highly intelligent and are close relatives of humans, sharing 97% of our DNA.

The orangutan is regarded as an “umbrella” species. Its arboreal tree-swinging journeys help to spread tree seeds - in fact some trees can only germinate when they have passed through its gut. The orangutan plays a pivotal role in creating the necessary environment for the thousands of fauna and flora species which make up the biodiversity of the South East Asian rain forest.

According to National Geographic, because orangutans live in only a few places, and because they are so dependent upon trees, they are particularly susceptible to logging in these areas. Unfortunately, deforestation and other human activities, such as hunting, have placed the orangutan in danger of extinction.

For all these reasons this Bill, the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009 is important, timely and necessary legislation. Through our everyday shopping habits Australians are unwittingly complicit in this destruction of habitat and the threat to the survival of a unique species.

It is currently difficult to know whether a product contains palm oil, as there are no requirements to label palm oil as a specific ingredient. Palm oil is usually simply labelled “vegetable oil” causing Australians to unknowingly consume on average 10 kilograms of palm oil each year.

Once palm oil is labelled, consumers will be able to drive a market for properly certified sustainable palm oil. This Bill encourages the use of certified sustainable palm oil. Sustainable palm oil uses land which has already been cleared, preventing further destruction of orang-utan habitat. A similar phenomenon has been witnessed with labelling schemes such as Fair Trade, Rainforest Alliance and Marine Stewardship Council.

Consumers deserve to know whether the products they purchase contain palm oil. This bill enables consumers to make the active choice of protecting orangutans and their habitat.

I am pleased to be co-sponsoring this Bill with Senators Xenophon and Joyce and I commend it to the Senate.

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

Leave granted.

Debate (on motion by Senator Xenophon) adjourned.

THREAT ABATEMENT PLAN FOR PHYTOPHTHORA CINNAMOMI

Senator SIEWERT (Western Australia) (3.49 pm)—I, and on behalf of Senator Macdonald, move:

That the Senate:

(a) notes the significant disease threat posed by the introduced species Phytophthora cinnamommi to ecological communities across Australia;

(b) expresses disappointment with the lack of effective action at the national level to address the scale of this threat; and

(c) calls on the Commonwealth Government to:

(i) develop an effective national threat abatement plan including specific, measurable, achievable, relevant, time-bound goals, objectives and actions, and

(ii) negotiate on the basis of this plan with state and territory agencies and land managers to leverage the resources, commitments and expertise needed to deliver its outcomes.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (3.49 pm)—Mr President, I seek leave to make a short statement.

The DEPUTY PRESIDENT—Leave is granted for two minutes.
Senator LUDWIG—The government do not support this motion. This motion has come about because of the actions of the Greens and coalition senators in disallowing the threat abatement plan for *Phytophthora cinnamomi* last week in the Senate. The government had in place a plan which it considered effective. The plan included appropriate goals, objectives, actions, performance indicators, milestones and monitoring programs. The actions are specific, measurable, achievable, relevant and time bound. The plan had been developed through negotiation with state and territory agencies, who had indicated their support for it.

By disallowing the plan the Senate has thrown out this work and significantly set back the process of addressing this major threat to biodiversity. As senators would know, the government is not permitted to make a regulation within six months that is the same in substance as the one disallowed. Having disallowed the 2009 plan, the outdated 2001 plan is reinstated. The actions in the 2001 plan either have been completed or do not reflect the latest research. So there is now no authoritative statement on the environmental effects of *Phytophthora cinnamomi* nor the best methods of responding to this threat. The government will now consider whether the 2001 plan remains a feasible, effective and efficient way to abate this key threat, as section 270A(2) of the EPBC Act requires. If that is not found to be the case, the minister may need to consider revoking the 2001 plan.

The uncertainty caused by the Greens and coalition senators also raises more serious questions about the future of threat abatement planning. The Senate has never before disallowed, as far as I am aware, a threat abatement plan, despite 11 other plans having been made, many during the term of the coalition government. It is difficult to understand why this one was disallowed while the others were allowed to stand. Given this uncertainty, it is unclear whether further work on threat abatement planning is warranted in the terms of the current Senate. The government will be considering this issue very carefully.

Senator SIEWERT (Western Australia) (3.51 pm)—Mr President, I seek leave to make a short statement.

The DEPUTY PRESIDENT—Leave is granted for two minutes.

Senator SIEWERT—The Senate debated this issue last week and the government is well aware why the Senate chose to disallow this particular threat abatement plan. It was because it was already outdated. The consultation process was not thorough. The information was from 2006. It was not a SMART program. I articulated the details during the debate, as did Senator Macdonald.

It is ridiculous for the government to claim that the Senate disallowing this particular threat abatement plan puts at risk the process for any threat abatement plan. Obviously, the threat abatement plans that have been passed by this place were reviewed and found to be satisfactory. The point here is that the Senate has done its job; it reviewed this threat abatement plan and found that it was unsatisfactory. The Greens—and Senator Macdonald also, I am sure—consulted the experts on *Phytophthora cinnamomi*, commonly known as ‘dieback’ in Australia, and were advised very clearly that the threat abatement plan was not adequate, was not what we would call a ‘smart program’ and was not efficient or effective. It did not have actions and, most of all, it did not have any resources attached to it with which to implement it. So whether it was the 2009—read ‘2006’, which was when it was first consulted on—plan or the 2001 plan is immaterial, because there are no resources attached to it and, therefore, no way of carrying out
said plan. So we very strongly suggest that the Commonwealth does not spit its dummy. The government should develop a strong, effective, efficient and smart threat abatement plan, instead of threatening the Senate with taking its bat and going home on threat abatement plans in the future.

Question agreed to.

MATTERS OF PUBLIC IMPORTANCE

Immigration Policy

The DEPUTY PRESIDENT—The President has received a letter from Senator Parry proposing that a definite matter of public importance be submitted to the Senate for discussion, namely:

The failure of the Rudd Labor Government’s immigration policy.

I call upon those senators who approve of the proposed discussion to rise in their places.

More than the number of senators required by the standing orders having risen in their places—

The DEPUTY PRESIDENT—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator FIERRAVANTI-WELLS (New South Wales) (3.54 pm)—I rise to speak on this matter of public importance. Immigration has always been about order and process. What we are seeing at the moment is an immigration policy which has descended into chaos—a series of ad hoc measures dealing with things as they come up or as they sail into our waters. It is little wonder that today we have in the press one ALP backbencher—who prefers to remain anonymous and not go on the record—saying, ‘We don’t actually know what our policy is.’ Why don’t we know? Because Prime Minister K Rudd does not know what our policy is.

On Saturday evening we had a situation on Christmas Island—a riot, in which, sadly, people were injured. But it is not surprising that this happened, because Christmas Island is now at almost full capacity. At the last estimates hearings we were told that the government was increasing the capacity. We understand that the recreation area is now being used for people to sleep on. We know that there is a Herc coming in with tents and stretchers. Apparently dongas are being flown in from Alice Springs. Quite frankly, the whole thing is now very chaotic. And it is little wonder, with so many different people and these conditions, that it is at breaking point. If we stop the boats arriving, we are not going to have this problem at Christmas Island. We are going to have fewer people there.

We are now going to see this government fast-tracking people off Christmas Island into other detention centres around Australia. Today we heard the minister, in answer to a question, say that the excision status of people who arrive on Christmas Island remains with them. But in estimates it was made clear that in most cases people would be moved towards the end of their processing period, when it was clear that they would be found to be refugees. But with the growing number of people on Christmas Island, we are most likely to see this process hastened and fast-tracked. The question is then: is this going to be at the expense of a compromise of proper security, health and other checks that are so vital in relation to maintaining border security? Whilst the minister gave us these assurances at last estimates, I have to say that I do not, given what has happened in recent weeks, believe that those assurances can be met. The minister has said that this matter will be investigated and potentially people could be charged. The question then becomes: if people are charged, what will be
the impact on their application for asylum? I will leave the issue in relation to Christmas Island at that point.

Then we have seen the government’s other farcical situation: when is a special deal not a special deal? In the words of Paul Kelly—and I do not normally cite Paul Kelly—in the Australian on 18 November 2009, ‘Rudd is treating us like mugs.’ Of course he is treating us like mugs! For goodness sake, just admit this is a special deal and that you did everything you possibly could to make sure that these people got off that boat. You made them an extraordinary offer. But you will not admit that. You give us weasel words like ‘non-extraordinary circumstances’! I think it is time the Prime Minister just admitted it. The Australian people can take spin to a certain point, but this is getting way beyond a joke.

Let us start dissecting this so-called special offer, which we are told is a ‘non-extraordinary offer’ and ‘not really a special offer’—although it looks pretty special to me. The offer says that if you are found to be a refugee Australian officials will assist you to be resettled within four to six weeks from the time you disembarked from the vessel. Can I just say that this is extraordinary. In the annual report of the Department of Immigration and Citizenship, even the department itself says that processing times are 52 weeks. What we have here is that people are going to be resettled within four to six weeks when normally it would take years and years for people to be resettled. The literature regarding the United Nations High Commissioner for Refugees is littered with anecdotal evidence of people having to wait years and years to be resettled. There are approximately 19,000 people waiting in Indonesia to be resettled, most of whom have been waiting for years and years, yet these people are being offered resettlement—probably in Australia, but nobody seems to be able to give us a clear answer on this—within four to six weeks. You tell me that that is not a special deal.

If you have already registered with the United Nations High Commissioner for Refugees, Australian officials will assist with your UNHCR processing. If you are found to be a refugee, you will be resettled within 12 weeks from the time that you disembarked—the same situation. There are people who have been waiting for months or years to even be approached by UNHCR to help them with their processing—but not these people. These people, who have held an Australian ship to ransom, are now going to be assisted by Australian officials to jump the queue and to have their situation fast-tracked to get a resettlement outcome of weeks rather than having to wait years.

If you have not been registered with UNHCR, Australian officials will assist with your UNHCR processing. If you are found to be a refugee, you will be resettled within 12 weeks—again, the same situation. The Minister for Immigration and Citizenship, Senator Evans, cannot have it both ways. You cannot come in here and say that it is the responsibility of the United Nations High Commissioner to resettle refugees and then, in the same breath, say that we have done a deal with the Indonesian government. There must be a special deal with somebody in UNHCR. Somebody in our government must have given an undertaking. There must be a special agreement somewhere because, for this government to honour its guarantee within such a short time frame and to have got people off that boat, Australia must have agreed with the United Nations High Commissioner for Refugees to resettle refugees and then, in the same breath, say that we have done a deal with the Indonesian government. There must be a special deal with somebody in UNHCR. Somebody in our government must have given an undertaking. There must be a special agreement somewhere because, for this government to honour its guarantee within such a short time frame and to have got people off that boat, Australia must have agreed with the United Nations High Commissioner to take those people who have been found to be refugees and to fast-track their processing.

The UNHCR has to determine where people are resettled. One has only to look at the
body of legislation and the framework of the United Nations resettlement determination procedures. Whilst the asylum seekers themselves may have an opinion about where they want to go, it is really a matter for the United Nations High Commissioner for Refugees. I think what has happened here is that the government has told the United Nations High Commissioner for Refugees that we will take them—and that really is what this government has to answer. What are the special deals that have been done to secure this outcome? Indeed, on this point of resettlement, let us not forget that the object of seeking asylum is ultimately to achieve a durable solution. For every one person that is resettled around the world, about 14 are returned to their country of origin. So, again, how does this special deal fit into the framework of what we know to be the usual procedures and the usual practices that are followed in resettling refugees?

The border protection committee of cabinet was established in about April 2009 and, all of a sudden, we are now hearing that the Prime Minister’s staff are attending the meetings. I have made repeated efforts to find out about this and the minister gets quite upset that I keep asking him the same questions. The reason I keep asking him the same questions is that he deliberately avoids answering the questions. The reason, I think, he does not want to answer the questions is that he is deliberately hiding the situation. I think it is incumbent on him to come into this chamber and be upfront with the Australian people, admit the special deal that was entered into and just get on with it rather than continuing with his evasion and weasel-wording to try and get out of this with spin.

I am very concerned about the impact that this offer will have on the broader picture. We have seen the reports of what happened at Christmas Island on Saturday night and we have also seen reports in the press last week about the need for the asylum seekers off the Oceanic Viking to be quarantined from other asylum seekers. That is not surprising. It is not surprising that they would want to be quarantined. I think we are increasingly going to see divisions. This perception of preferential treatment—it is not a perception; it is a reality—for one group of people over and above other groups of people is, naturally, not only going to cause tensions in detention centres in Indonesia but also likely to cause tensions at Christmas Island. When all is said and done, I think the inquiry will show that that is the basis of some of the tensions that we are actually seeing at Christmas Island.

One of the questions that the minister is evading is that of who actually authorised the special deal. It beggars belief that this Prime Minister, who is a person who is immersed in detail, if I can put it that way, comes and says, ‘I knew absolutely nothing about it,’ and then fobs it off and says that it was a committee or, as Minister Evans says, various committees who made this decision. I have absolutely no doubt that the offer made to get the people off the Oceanic Viking was sanctioned and it would be foolish to even contemplate that it was not sanctioned at the highest levels of this government.

But let us look at where that leaves us. Of course, the special deal that has now been done in relation to this group is only going to add greater incentive to the people smugglers. If they know that they can get away with this and they can pressure the Australian government to offer this sort of special deal, I think that they have achieved their objective. Regrettably, this whole sad and sorry affair and this chaos that the government has created have provided a greater impetus to the people smugglers to try to sell the product that they are selling. And let us not forget that they are selling a product. The product is sure, permanent residency in Australia—and, of course, with permanent residency comes
family reunion and a whole range of other benefits. For every person who is given permanent residency, there are on average four people who ultimately come in under the family reunion program.

This government continues to deny the pull factors. It is ignoring the comments of the Sri Lankan Ambassador to the United Nations, who only recently strongly asserted that pull factors were the main reason for this surge. He said:

If the pull factors are addressed, attempts to enter Australia will cease. The lucky country is a magnet and many will seek to enter it.

Indeed, Jonathan Coleman, the New Zealand immigration minister, has also commented, saying:

The New Zealand Government does not believe that an ad hoc approach to dealing with individual cases like the Oceanic Viking will send the right message.

And it is sending the wrong message. This chaos that has now become this government’s immigration policy is well and truly sending the wrong message—that we are a softer touch.

Senator PRATT (Western Australia) (4.09 pm)—I welcome the opportunity to debate this important issue to our community and, indeed, the Rudd government’s record on this issue. This matter of public importance debate is a great opportunity to outline the robustness of the government’s immigration policies and to demonstrate, in contrast, how shallow, vacuous, politically driven and confused the opposition’s debate on policy is—and, in fact, always has been.

When it comes to immigration policy and all other major policy areas, the Rudd government has demonstrated policy substance and action by developing immigration policy that is based on evidence and facts; policy that reflects values that are held widely throughout the Australian community—values of compassion and tolerance; and policy that recognises that strong border security and the humane treatment of asylum seekers and others seeking to migrate are not mutually exclusive. This strong policy informs the actions that the government has taken to address the policy failings of the past—failings that belong with the opposition. Our actions have included increasing the protection of our borders, introducing the new directions in detention policy and working to address the outflow of people from other countries—policy and action based on strong evidence and strong values.

While the government has been in the business of getting on with the job, those opposite have been searching and overreaching themselves for any policy on immigration, because their past policies failed our country on a number of measures. Because they are unable to come up with any alternative, the government has taken action to get rid of things like the inefficient and failed so-called Pacific solution. The coalition did not oppose this move and, after the government action to abolish it, they said that they would not reintroduce it. But what would they introduce? We do not really know because, until recently, they did not have a policy. But, as I understand it, there is now a coalition policy on immigration consisting of four dot points. Four points is hardly substance—four points, not based on evidence or strong Australian values of compassion and tolerance; four points based on fear and lack of understanding of the issues.

Amidst this policy vacuum is a call by members of the coalition to reintroduce temporary protection visas. But we know, from real evidence and past experience, that TPVs were a policy failure. TPVs did not result in a decrease in arrivals and they resulted in inconsistent treatment of refugees. TPVs were introduced in October 1999. In 1998 there were 200 arrivals on 17 boats. Follow-
ing the introduction of TPVs, by late 2001 the number of irregular maritime arrivals had increased to 5½ thousand in that year alone. In the two years after the introduction of TPVs there were 8½ thousand irregular arrivals on 94 boats. Between late 1999 and mid-2007 over 10,000 unauthorised boat arrivals were granted TPVs. By the time TPVs were abolished, nearly 90 per cent of people granted a temporary protection visa had been granted a permanent visa to remain in Australia. Only three per cent of those granted a temporary protection visa departed Australia. TPVs did not allow for family reunions or enable refugees to travel freely. Therefore, they actually encouraged women and children to make the dangerous journey to Australia by boat.

So not only do we have a policy vacuum amongst those opposite on immigration but also we have policy confusion. We have seen coalition members on the Joint Standing Committee on Migration, including the shadow immigration minister, endorse the Rudd government’s New Directions in Detention policy. As I have pointed out on other occasions, this new government policy sought, amongst other things, to abolish detention debt, a particularly insidious policy legacy of the previous government. The Labor government rejected the Howard government’s policy of requiring detainees to repay the costs of their detention. We rejected it because it did nothing to offset the costs of detention to taxpayers, nor was it a deterrent. There was no evidence that it was a deterrent—and, as we know, if people are desperate enough to risk detention, they are hardly likely to be dissuaded by the thought of repaying its costs. This situation advantaged no-one—not the taxing public nor the new arrivals seeking to settle here. So, when the government moved to abolish that poor policy, it was endorsed by the shadow minister for immigration through the Joint Standing Committee on Migration. But what happened when the legislation to abolish detention debt was introduced by the government? The coalition opposed it; that is what happened. On the one hand they wanted to support the abolition of detention debt and on the other hand they simply rejected it—a clear case of policy confusion on the part of those opposite.

But there is more policy confusion. While on the Joint Standing Committee on Migration the shadow minister expressed concern about people without work rights and access to Medicare. But, when the government moved to address these issues by reforming work rights for asylum seekers, the coalition moved to disallow the regulations. So here we have policy vacuum, policy confusion and, as this motion raises, a policy failure—not from the government but from those opposite. Let me compare and contrast here. There has been substantive policy development and action on the part of the government, which compares with the politically driven, confused nonpolicies of those opposite—vacuous confusion.

Those opposite have also failed to recognise the global nature of this problem. There are 42 million displaced people in the world—42 million people who are fleeing war and conflict, persecution and disaster. Is it any wonder that desperate people should resort to desperate measures to improve the situation? It is a global problem and it has been with us for a long time, as the figures that I outlined on previous boat arrivals demonstrates. This is underscored by the fact that, under the previous government, there were 246 boats carrying more than 13,000 asylum seekers. And now, under the Rudd government, we have seen 47 boats with about 2,000 asylum seekers aboard.

Why does this happen? It happens because of the sorts of things that are happening in
Sri Lanka. Sri Lanka has just emerged from a decades-long civil war, which cost tens of thousands of lives, uprooted hundreds of thousands of Sri Lankans and left an economic divide between north and south, east and west. We are all aware of the recent escalation in conflict in Sri Lanka, and yet the opposition appears to be blind to the tragedy that has unfolded there. Between 2005 and 2008 the number of internally displaced people assisted by the UNHCR in Sri Lanka increased from just over 300,000 to just over 500,000—an increase of 55 per cent. There are currently 250,000 Tamils from the north of Sri Lanka in camps for internally displaced people. These are the factors that contribute to what we are seeing happening on our borders. And it is why the government has invested more resources in border protection, more boats patrolling our waters and has a stronger interception record than the previous government.

It is also significant, I think, in recognition of these factors that Australia is providing more than $35 million in development assistance to Sri Lanka this financial year. That includes $5 million to support the resettlement of internally displaced persons and $2.3 million for the de-mining of former conflict areas. That is a substantial commitment but, when you look at the scale of this tragedy unfolding, and the time it is going to take to put Sri Lanka back together, these push factors are going to continue. Australia has already helped to resettle international displaced persons in north-west Sri Lanka by funding the construction of housing and providing support for basic services and livelihoods. In turn, at home near our borders we are increasing funding for border protection. Only Labor has put a real priority on the protection of our borders. The Howard government spent $289 million running the Nauru and Manus Island offshore processing centres. For the same period, the Howard government’s funding on aerial and surface surveillance by Customs was $25 million less, at $264 million.

In contrast, we have increased sea patrols of our borders by 25 per cent since 2007. As a result, the Rudd government has intercepted 98 per cent of all boats before they reached the mainland. Under the previous government more than one in 10 boats reached the mainland. All irregular maritime arrivals to Australia are placed in mandatory detention for mandatory health, security and identity checks. We know that no-one is granted a visa to Australia, or released into the community, without undergoing a comprehensive security and identity checking process. And those assessments are conducted by ASIO. ASIO conduct security assessments for irregular maritime arrivals. They work closely with the department of immigration and other government agencies to ensure all arrivals are assessed as quickly as possible for indicators of security concern and that all relevant information about an individual is taken into account.

It is for this reason that we are able to process people more speedily. The security risk presented by a person depends on individual circumstances and is assessed on a case-by-case basis. Factors including the particular circumstances of each case and the individual’s background, attitudes and activities influence the complexity of cases and can extend the time required to complete assessments. We have seen under the Rudd government a substantial improvement in making speedy assessments of people’s asylum claims. In contrast, I am appalled that the opposition seems driven to score political points out of human misery. Its motivation on border protection issues is not driven by good policy or recognition of the need to take a humane approach to these issues; rather, it is driven by a willingness that has been proved time and time again to make
Australians feel insecure about the desperation of others. Labor will not be dragged into a race to the bottom on immigration policy. We will continue to pursue strong border protection policies underpinned by humane principles.

Senator TROOD (Queensland) (4.23 pm)—It is a great pleasure to be able to participate in this matter of public importance because this is a spectacularly good example of how not to manage Australia’s immigration policy. The Rudd government deserves censure for the way, as a result of the Oceania Viking incident, it has undermined Australia’s border security regime, it deserves censure for the way it has undermined the foundations of equity upon which Australia’s immigration policy rests, it deserves censure for the way the Prime Minister has fundamentally misrepresented to the parliament and the Australian people the nature of the agreement which ultimately concluded this messy business and it deserves censure for the absolutely disgraceful way in which he, the Prime Minister, has dragged a senior and respected public servant into the middle of this particular mess. Not only did the Prime Minister drag him into the mess but then he used him as a shield for his dissembling of the result. The whole episode has been a series of mistakes in policy making, for which I suspect and I fear Australia will be paying the consequences for a long time to come.

There is another aspect of this matter for which the Prime Minister deserves censure, and that is for the consequences of Australia’s important bilateral relationship with Indonesia. It is common ground between the opposition and the government that we need Indonesian cooperation if we are to successfully contain, deter or restrict the activities of people smugglers and if we are going to have any success in trying to end the scourge which affects so many people in our own region. There now has to be a serious question mark over whether or not we can expect that cooperation, which we so vitally need, with Indonesia in the future. The regrettable thing about this whole incident and how it affects our relations with Indonesia is that this is part of a pattern of behaviour with many of our important bilateral relationships around the Asia-Pacific region.

When the Rudd government came to office in November 2007 there was a high expectation amongst commentators, and indeed among some of my own colleagues in academe, who thought that the arrival of the Rudd government would herald a new era in Australia’s relations with Indonesia. There was an argument and, in my view, a completely unsustainable proposition that the Howard government had mismanaged Australia’s relations with countries of Asia. Nothing could be further from the truth, particularly in light of what has happened in the last two years. The high expectations centred around the idea that Mr Rudd in particular had apparently a kind of unique understanding of Australia’s relations with Asia. He was rather like the 21st century equivalent of Lawrence of Arabia—Kevin of Asia, the man who was more prepared than any other to manage Australia’s relationship with Asia, the man who was more fully in tune with the rhythms of Asian societies with their politics, with their strategic interests and with the nature of Asian societies. No man and no prime minister in Australia’s history, it was argued, had a deeper comprehension of the Asian mind than Kevin Rudd when he came to office. As a result of all of these understandings, this comprehension and this unique ability that the Prime Minister was supposedly bringing to office, he would manage this relationship very well.

Of course, what happened immediately was that our bilateral relationship with Japan was in trouble. Our bilateral relationship with China was in trouble. Our bilateral rela-
tionship with India is in trouble. From my perspective I actually thought, ‘Perhaps the Indonesian relationship has escaped this mayhem; perhaps the bilateral relationship which we handed over in such good form to the Rudd government in November 2007 would escape the chaos which had been caused elsewhere around the region.’ It was not to be. A former Labor Minister for Foreign Affairs, Gareth Evans, recognised—surprisingly, I must say, for a Labor foreign minister—that the management of Australia’s relationship with Indonesia depended on a large number of things. One of the things it depended on was what he called ballast: the capacity to keep relations in good repair over a period of time. Regrettably, that is what the Labor government has failed to do during its two short years in office. It has been delinquent. The Prime Minister in particular has been delinquent. He has made a few trips to Indonesia during his period in office, but in none of them he has neither invested any serious time in trying to manage this relationship successfully nor understood the proposition which most prime ministers have understood in relation to Indonesia, which is that megaphone diplomacy does not work. The best way for Australia to sustain its good, cooperative relationship with Asia is essentially through quiet diplomacy.

There is a default position in relation to Labor foreign policy—it goes back to Dr Evatt, immediately after the Second World War—and that is megaphone diplomacy. That is what the Labor government seems to think works in terms of our relationship with Asia. It has been disproved time and time again, as it has been disproved on this particular occasion. The Rudd government, from the very beginning, mismanaged this relationship. The Prime Minister, having asked the Indonesians to render some assistance in relation to the Oceanic Viking and in relation to other vessels in the area, then engaged in an activity in which he is well practiced—ringing the Prime Minister of Indonesia and then leaking the contents of that telephone conversation for his own interests. He was undermining the security of that conversation to try and dig himself out of a hole that he created.

And the situation continued to go on: failing to be frank and candid in relation to the matter; casting aspersions on the nature of the agreement that was reached with the Indonesians—for whom there is no fault in this matter, so far as I am concerned—and causing embarrassment to Indonesian officials and the Indonesian government in relation to the nature of facilities et cetera. (Time expired)

Senator CAMERON (New South Wales) (4.31 pm)—I am very pleased to participate in this debate. I totally reject the proposition that the Rudd government has failed on immigration policy. We need to put the coalition’s assertions in context. We need to understand the politics of what the coalition are trying to do here and we need to expose why immigration and asylum seekers have been the focus of the coalition over the last few weeks. What is happening is that the coalition are trying to make up for their own incapacities and their own failures. This is a vain, futile and desperate attempt to divert attention from their failures, their weaknesses and the disintegration of the coalition forces in this country as an effective opposition.

The coalition have demonstrated a clear failure of policy. There is a failure of leadership in the coalition. The member for Wentworth, the Leader of the Opposition, Malcolm Turnbull, is under constant siege from many of the opposition senators sitting across this chamber. And that has meant that his leadership is a failed leadership—a leadership that is delivering nothing for this
country, because we have a coalition that is no more than a disorganised rabble.

There is a failure of ideas. There are no ideas coming from the opposition as to what is required to develop a proper future for this country. There is a failure of compassion when it comes to the issue of refugees. There is a failure to properly analyse the issues that are involved in refugees seeking asylum within Australia. And on this basis we have a coalition that is failing the nation. They have a weak leadership, they are divided and disorganised, they are at each other’s throats and they are relying on a fear and smear campaign.

They have no policies and no ideas; they simply rely on smear and fear. And we see the smear and fear campaign in their approach to climate change. It is a totally disorganised and divided opposition on climate change. They have no policy and no ideas on industrial relations, where they meekly gave up on the jewel in the crown of the previous government: Work Choices. When you are weak you fail and you end up with policies like Work Choices. On the issue of refugees, we had children overboard and children behind razor wire. As a government, we are not going to accept that proposition.

On health insurance, again, the opposition rely on smear and fear. They argue that the industry would collapse if you gave low-paid workers a fair go on health insurance. On the economic stimulus package the fear campaign is on government debt, when we have the lowest debt of all the major advanced countries. What was the opposition’s position on the global financial crisis? It was to wait and see: to do nothing. And when the Labor government acted on that issue we were the only advanced economy to register positive economic growth during that financial crisis. We have the second lowest unemployment rate of major advanced economies. We had the lowest budget deficit of major advanced economies. And, as I said, we have the lowest debt of advanced economies—13.8 per cent of GDP by 2013-14. Ours is the only advanced economy not to go into recession, and without the stimulus package the government introduced, one million more workers would have been unemployed.

Yet what does the opposition do? The opposition, with no policy and no ideas, resorts to what we have seen coming out of Senator Ronaldson’s office, an email headlined, ‘Digging dirt’. It calls on media advisers in the coalition to concentrate on quirky stories which draw the attention of journalists rather than policy discussions. ‘Quirky stories’: that is what we have from the opposition. Quirky stories, but no policy; quirky stories, but no ideas. What we saw was this from Senator Ronaldson’s office:

You don’t get news stories by trying to change perceptions, you get them by reinforcing stereotypes.

That is what the email from Peter Phelps, media adviser to Senator Michael Ronaldson, said.

Reinforcing stereotypes is what the coalition is very good at: stereotypes of refugees, stereotypes of trade unionists and stereotypes of the poor in this country. That is the form of the opposition. They go on to say:

Stories worth pursuing should cover: Fat cat public servants not caring about taxpayers, pollies with snouts in the trough, special interest groups getting undeserved handouts from tax taken from hard-working Aussies, a favoured pro-Labor contractor who seems to be getting all the work for a particular job etc.

This is what we are seeing in relation to immigration and refugees. The argument is that they should look for a quirky story and not bother about policy. Worry about the truth or worry if it is about trying to stereotype refugees or asylum seekers? They are being told to do the Ronaldson job, which is to stereo-
type refugees—look for the quirky story and do not develop proper policy. That is what the opposition is about.

Labor are determined to expose the hypocrisy of the coalition regarding these issues. We will continue to expose the weakness of this opposition, who do not have any ideas or policy. We will continue to expose the divisions within the opposition. This is an opposition that is not ready to be a real alternative government in this country. They have no compassion, no ideas and no economic policies. They want to smear and to use fear. That is the approach from the opposition in this country. We will expose the smear and fear.

There is a debate within the coalition on this issue of asylum seekers and immigration. There are two arguments being made. These arguments were clearly identified in the Australian when Kevin Andrews, on 16 October, published an opinion piece in which he said:

Hardly a week goes by without another boatload of people arriving in Australian waters ... 1800 people have unlawfully been smuggled to Australia in the past 12 months.

Let us have a look at the Howard government’s record in similar circumstances to those that this government is facing.

Severe social dislocation and wars taking place in some of our neighbours. In Iraq we had the war and in Afghanistan we had the Taliban insurgency. During the period of 1999 to 2001, 12,000 refugees sought help from the Australian government; 12,000 came to the shores of this country. Yet Kevin Andrews simply calls this mass illegal immigration. Kevin Andrews talks about an open door policy towards people smugglers. Nothing could be further from the truth. There is no open door policy for people smugglers. Anyone who knows anything about what is happening knows that the Labor government has established a dedicated border protection committee of cabinet to deal with these issues. We have created a single point of accountability for matters relating to the prevention of maritime people smuggling. We have continued regional engagement and cooperation, including reinvigorating the Bali process at ministerial level. We have increased maritime surveillance and patrolling by Border Protection Command. We have successfully prosecuted people smugglers and we have successfully extradited alleged people smugglers.

Compare that to the rhetoric that you have heard from the opposition today, both in question time and in this debate before the chamber. There is no substance to it; there is no policy. It is all about smear and fear. That is the position that this coalition adopts. There is absolutely no way that you could argue that the Labor government does not have strong border security provisions and is not dealing with the issue of illegal immigration seriously.

The debate that is going on within the coalition is epitomised by that of Petro Georgiou, who in a response to the Kevin Andrews opinion piece said this:

Unless we are very careful, we are about to engage in a corrosive debate about people seeking refuge in our country. The portents are there. Political skirmishing is intensifying about who is tough, tougher or toughest on border protection. The term ‘illegal immigrant’ is being bandied about. Refugees are being labelled ‘back-door’ immigrants. Anecdotes about asylum seekers not looking genuine are being recounted. Unsubstantiated assertions about the number in asylum seeker “pipelines” are being given currency.

He goes on:

Uninvited refugees may offend a sense of order, but escaping persecution is not always an orderly business. The circumstances under which asylum seekers travel and arrive can unsettle societies
that are used to order and control, and can obscure a sense of perspective.

This Liberal backbencher finishes up by saying:

The current bout of chest thumping, of assertions of toughness and accusations of weakness undermine all this. Responsible leadership should not be about using vulnerable people as a political football. The arrival of a small number of people fleeing persecution requires an evidence-based and humane response, not a macho slanging match. We have been there before. It was a dark chapter in our history. We should not turn the page back to it.

When was this dark chapter in history? It was under the Howard government. I think we would do well to look at what Petro Georgiou is saying, because you see the results of what is happening in the UK when this debate gets used as smear and fear by political parties. You see the rise of the British National Party who want to send every immigrant home, who want to use immigration as a fear campaign against working-class people within the UK. That is what you are opening up. That is what the member for Kooyong is actually indicating. (Time expired)

Senator ADAMS (Western Australia) (4.46 pm)—I rise in this matter of public importance to speak on the failure of the Rudd Labor government’s immigration policy. Through you, Mr Acting Deputy President, I would like to comment on—what is his name?

Senator Payne—His name is Senator Cameron.

Senator ADAMS—I would like to comment on Senator Cameron’s comment about the Labor government’s strong immigration—

Senator Cameron—If you cannot get my name right, how are you going to get any policy right?

Senator Payne interjecting—

Senator Cameron—What a pathetic performance.

Senator Payne—That is offensive.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Order! Senator Adams, please continue.

Senator ADAMS—Thank you, Mr Acting Deputy President. I would like to comment on Senator Cameron’s comment that the Rudd Labor government has a strong policy. I wonder where the Rudd Labor government would be if the Christmas Island detention facility had not been expanded. The former Howard coalition government fixed the problem and, with its strong border protection measures, made sure that there was a place where illegal immigrants could come and be properly processed. At that stage, Labor labelled it a ‘white elephant’. Do Labor senators still call that facility a white elephant? As a result of Labor’s failing policy, the Christmas Island detention centre is now almost overflowing. Unfortunately, there were riots there last Saturday night. I feel that this is very sad and I think that the Rudd Labor government should be doing a lot more than it is to prevent a recurrence of this incident.

Really, the government’s border protection policy is in complete chaos. It clearly has no solution to the influx of boats bringing people illegally into Australian territory. The former Howard coalition government fixed this problem. Labor then dismantled the policies and the boats started arriving in our waters again. It is Labor’s systematic softening of what was a very strong and successful border protection policy that has resulted in this sharp increase in people smuggling to Australia. As I said, the riots going on inside a detention centre over the weekend are very disturbing, and I do feel very
sorry for the staff that are having to try to cope with the situation.

I wonder just what the Rudd government is going to do. There has been a record of violence and threats of violence associated with illegal boat arrivals in the blackmailing tactics of trying to get entry to Australia on boats. The Oceanic Viking episode of the past month was a complete debacle and an illustration of bad border protection policy and its processes. The government was effectively held to ransom, and the only way out of the mess it had created was to offer a special deal to entice the people off the boat. The Prime Minister was at pains to say there was no special deal done to get the people off the boat, but clearly there was, and even the media are saying that it is laughable to suggest otherwise. Day after day in this place, Senator Evans has been asked, 'What was the special deal?' I quote from the Sunday Territorian, where Senator Evans said:

They will be offered resettlement in resettlement countries. There’s no guarantee they will come to Australia, that was never part of the offer.

So now we have a deal, an offer and a message which says: ‘You can come to Australia. The gate is open. We will certainly make sure that everything is done to accommodate you.’ To get people off the boat, there must have been some offer made. What message does this send? The message spreads immediately. These people are very well organised, using mobile phones and the internet to spread the message immediately from the boats as to how they are getting on and whether they are making progress in getting to Australia or Christmas Island. Australia’s weakened border protection policies are well known and the boats, unfortunately, will continue to come until the policies are properly strengthened again.

As a Western Australian senator, it really concerns me that, as these boats tend to come further south, they are going to be coming into Western Australian waters. What is going to happen if they are not seen and they get to shore? We could end up with all sorts of different diseases, and of course foot and mouth is probably the most frightening of the lot. Being a farmer, I certainly would not like to see that. The Rudd Labor government has to do something to strengthen border protection; otherwise, Western Australia is certainly going to suffer.

My other concern is the debacle of the Oceanic Viking, sitting idle in an Indonesian port while it should be down in the Southern Ocean. As we have heard in the media, our valuable Patagonian toothfish stocks have been raided. A very long driftnet captured some 29 tonnes of fish. The Oceanic Viking was built for the icy, rough conditions of the Southern Ocean, not to sit off a port in Indonesia with a number of illegal immigrants on it. Going to the expense of the whole saga, it has cost the Australian taxpayers an exorbitant amount of money each day to have the Oceanic Viking sit idle—valuable tax dollars which should have been used on better border measures.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Order! The discussion on the matter of public importance has concluded.

BUSINESS
Consideration of Legislation

Senator CORMANN (Western Australia) (4.54 pm)—by leave—Pursuant to contingent notice and at the request of the Leader of the Opposition in the Senate, Senator Minchin, I move:

That so much of the standing orders be suspended as would prevent Senator Minchin moving a motion relating to the conduct of the business of the Senate, namely a motion to provide that the Health Insurance Amendment (Compliance) Bill 2009 be called on immediately and
have precedence over all other government business today till determined.

I will not hold the Senate up for long. Our actions in relation to this bill are directly related to the government’s ill-considered decision to cut patient rebates for cataract surgery by 46 per cent. This was implemented by the government immediately after a previous 50 per cent cut was disallowed by the Senate. We would have preferred to do this in a much more timely and efficient manner. The Manager of Opposition Business had a discussion with the Leader of the Government in the Senate to find a way to smoothly handle this process, with the intention of essentially wasting as little time as possible so that we could go back to other important business of the Senate. However, given that the government did not cooperate with the very constructive suggestions made by the Manager of Opposition Business, the government does not leave us any other choice than to proceed along these lines.

I remind the Senate that on 28 October 2009 the Senate disallowed the Rudd government’s cold-hearted cut to patient rebates for cataract surgery through Medicare. We as a Senate did that in a very responsible way. We first passed a private member’s bill, which would have seen any disallowed items revert back to the previously applicable rebates for cataract surgery. Only then did we move the disallowance.

Instead of taking due note of and accepting the Senate’s actions, the minister completely thumbed her nose at the Senate. We have a Minister for Health and Ageing who does not realise that she is a minister in a parliamentary democracy. We have a Minister for Health and Ageing who seems to think that she is a minister in a dictatorship. We have a Minister for Health and Ageing who does not realise that in our parliamentary democracy there is both the House of Representatives and the Senate and that if the Senate passes a disallowance motion there are some consequences. If the government wants to take certain actions through regulations and those actions are disallowed in the Senate, there ought to be consequences. But this is a minister who does not think that what happens in the Senate matters one bit.

The minister came out with a series of spurious claims and assertions. The first thing she said was that the bill that was passed by the Senate was unconstitutional and it should not have been introduced and passed in the Senate. That was a completely unfounded and incorrect assertion made by the minister. I remind the Senate that the minister said in the House of Representatives at the time that she was happy to provide a copy of the legal advice that was provided to her. Since then, we have chased the minister incessantly and she has refused to provide us with a copy of that advice, even though she herself promised in the House of Representatives that she would provide one. Every time that the Senate has passed an order in relation to this, government senators have voted to help the Minister for Health and Ageing essentially duck and weave and not provide us with that information. She has also said a whole range of other things which are not right, and I will deal with those on the debate proper on the amendment.

I have a final point—a bit of a constitutional newsflash for Minister Roxon. Minister Roxon, I am sending you this message: you can not limit the constitutional power of the Senate through a departmental briefing note to executive government and you can not expand the constitutional power of executive government through a departmental briefing note to executive government. We had advice from the Clerk of the Senate that those bills were completely constitutional. We have to deal with this now through the Health Insurance Amendment (Compliance) Bill, which we want to bring on for debate.
now so that, prior to the disallowance motion being dealt with by the Senate on Wednesday, the government will have had the opportunity to deal with this piece of legislation in the House of Representatives. I remind the Senate that a fortnight ago the government stopped this legislation in the House of Representatives at the last minute.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (4.59 pm)—Clearly, the opposition are now trying any tactic they can not to deal with the Carbon Pollution Reduction Scheme. In addition they are making sure—this is about choices—that we are not going to deal with the student income support bill. There are many, many students out there whose needs are not being dealt with.

We now see clearly the position the opposition are seeking to take in dealing with the legislative program. It is a longstanding principle in this place—a convention that has existed as far back as when I was the Manager of Opposition Business and, as I understand it, as far back as when Senator Carr was the Manager of Opposition Business—that in this place the government, not the opposition, determines the program. Why? Because it ensures that the business of the Senate is dealt with. The opposition do not get to lecture from their side. They can of course deal with how the vote is then taken. It is always within the opposition’s power to dictate that.

The opposition are trying on a stunt to ensure that we are not going to go on to deal with the Carbon Pollution Reduction Scheme. More importantly, you are not only delaying—

Senator Cormann—You’re wasting time.

Senator LUDWIG—but overturning the longstanding principle in this place that the government determines the legislative program and taking it upon yourselves to determine it. Whereas last week you complained about the ability of the government to deal with the program and complained of not having enough hours, you are now sucking hours from the debate that could be available for the Carbon Pollution Reduction Scheme legislation and the income support for students legislation.

Senator Cormann—Where is the deal?

Senator LUDWIG—in dealing with that you are then determining how the program will run, so, whether you like it or not, you are actually arguing against yourself. It is the government’s right to reorganise and deal with the program. The opposition does not have the ability to do that. You are now breaking longstanding principles in this place.

Last week I had a lecture from Senator Fielding in this place about managing the program. It is your right to be critical of the program but if you want to manage the program as you are now doing you are putting at risk the proper order as to how bills are dealt with in this place. The delay that you are now inflicting—as you have indicated, I have roughly three or four minutes to deal with the rejection of this motion, and it should be rejected out of hand—is nothing more than a stunt perpetrated by Senator Cormann. Senator Cormann is seeking to give precedence to a bill that this government has not given priority to; that this government has not determined shall be dealt with today.

Senator Cormann—it was on the red last fortnight.

Senator LUDWIG—it is the prerogative of the government, not of the opposition, to deal with the legislative program. Senator Cormann has drawn the bill from the Notice Paper not so that he can amend it with a related amendment but so that he can tack an unrelated amendment onto it and send it off
to the House to deal with. It is nothing more than a foolish stunt perpetrated by the opposition to hijack the legislative program in this place. Senator Cormann is in defiance of the program that we have set. It is not the prerogative of the opposition to cherry pick legislation.

Senator Cormann—It is the prerogative of the Senate.

Senator Ludwig—This is clearly an abuse of the Senate and Senator Cormann knows that, which is why he protests so much about the position that he has taken. It is also tactically dumb. The opposition will have to call themselves on to decide how they are going to vote on this—whether they are going to support the delaying tactic that Senator Cormann has put forward or whether they will pull him into line and indicate to this chamber that it is the government’s prerogative, not the opposition’s prerogative, to deal with the legislative program. There is no argument about how you might want to vote on a particular piece of legislation; that is clearly within your purview—although I am not sure you will be up to it when we turn to the Carbon Pollution Reduction Scheme, Senator Cormann.

Another thing I want to deal with is that the bill Senator Cormann seeks to give precedence to does not deal with the substance of the matter. (Time expired)

Senator Parry (Tasmania) (5.04 pm)—I did not propose to rise to speak on this motion until I heard some of the horrendous comments from the Manager of Government Business in the Senate and indicated that we would like to do this in a far more conducive manner, and he refused, which is his right. He wanted to test it on the floor of the chamber and he wanted to have the suspension debate as well, which he is doing. I have no problem with him doing that. The problem is that he is blaming us for the delay. It is you delaying it—through you, Mr Acting Deputy President Bernardi—not us.

It is not just the opposition raising this. If it were, we could not effect it. It is the opposition with the support of two other senators. On that side you have to get used to the reality that the dynamics of this chamber are different. The government does not have a majority. Nor does the opposition but, when a majority of senators agree on a course of action, that means it is the will of the Senate. Just accept the will of the Senate when it happens. Once you get over that, I think you will find the place runs a lot more smoothly.

We are not delaying the Carbon Pollution Reduction Scheme debate. We will not be ready to go into the committee stage tomorrow because we will still be considering the legislation in the party room, so we would have had a gap in the legislative agenda. It is an absolute furphy that this is a delaying tactic. It is not, because we would have ended up with a vacuum.

Another reason we are dealing with it now—which I offered you; you wanted to do it on Wednesday—is that the House of Representatives have to have the chance to consider it before they rise. So we are going to deal with it now and get it across to the House of Representatives, then it can come back again. We are considering all the aspects of this. We are actually assisting you with a process. You wanted to have a debate on suspension; you now have the debate. We were going to deal with it quickly. We had an
agreement for brief contributions by the senators wishing to speak so it would be a brief debate to facilitate us getting the bill out of here and getting back onto the legislative program.

Contrary to the suggestion that this has got nothing to do with health insurance, the amending bill that Senator Cormann is seeking to deal with is the Health Insurance Amendment (Compliance) Bill 2009. It has got everything to do with what Senator Cormann is suggesting and proposing. I think a bit of honesty and a bit of factual debate would assist. I will sit down now. I will not take my full five minutes so as to allow us to get on with the job, but do not blame us. You are the one, Senator Ludwig, who brought on the suspension because you would not give us time.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (5.07 pm)—I have been in this chamber now for 16 years and there have been two occasions when attempts have been made to reorganise the program from the opposition benches—both of them by Senator Cormann. In those 16 years, what I have seen is the acceptance by all sides of this chamber that it is the government that takes responsibility for the production of the legislative program and the order of business for that legislative program. That is the position that has been held fast to through governments from both sides of this chamber. We have here an opposition that feels it is able to rip up the conventions of this Senate and of this parliament because it cannot get what it wants through the ballot box. We heard this before in 1975.

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The ACTING DEPUTY PRESIDENT (Senator Bernardi)—There is no point of order.

Senator CARR—In 1975 we had a view being expressed by the Liberal-Country Party coalition, as they were known at the time, that they could run the government from the opposition benches in the Senate. They took the view that they were able to determine the direction of this country, in terms of the government’s program, from the opposition benches. We are seeing a repeat of that sort of reckless disregard for the conventions of our parliamentary democracy by this group of constitutional hooligans, who are seeking to avoid their responsibilities when it comes to fulfilling their functions in our bicameral system of government. It is the job of the opposition to criticise the government. It is the job of the opposition to evaluate legislation. It is not the job of the opposition to order the legislative program in the manner that they see fit. That was the position we took in opposition. Throughout the entire period in which I was Manager of Opposition Business, not once did we seek to determine the legislative program by order. That was the government’s prerogative.

The result of the opposition’s cavalier disregard for the conventions of this parliament and this chamber is that we are not able to discuss the question of whether or not 150,000 students will be able to receive scholarships next year. The government’s intention was to bring back a bill on the question of student scholarships. There are 150,000 Australian students whose welfare will be adversely affected if the dispute between this Senate and the House of Representatives is not resolved in the next three days. If that does not occur, then 150,000 students will not be able to access scholarships next year. The decision of this opposition to move on this stunt, to determine to flex their muscles in order to avoid the po-
The evidence of students facing the withdrawal of government money for scholarships next year is clear. The opposition are reckless. They are behaving in a completely irresponsible manner. They are contemptuous of the political conventions of this house. They have a complete disregard for the political conventions of this house. They have a complete disregard for the proper governance of this country. Why? Because there is a political and ideological problem inside the coalition, which means that they are not able to determine the direction of their own coalition yet are trying to determine the direction of the legislative program in this chamber so that they can get away with avoiding the contradiction that exists within their ranks. The government will expose them for what they have done. The government will seek at every possible opportunity to highlight the obstructionist nature of the political position they are taking in this chamber. They are reckless and they have a complete disregard for the political conventions of this chamber and it will weigh very heavily upon them when the public comes to understand the reckless nature of their attitudes and the cavalier disregard they have for the proper running of this chamber.

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

The Senate divided. [5.17 pm]
(The President—Senator the Hon. JJ Hogg)

Ayes............. 36
Noes............. 34
Majority......... 2

AYES
Abetz, E. Adams, J. Bushby, D.C.
Back, C.J. Barnett, G. Cormann, M.H.P.
Bernardi, C. Birmingham, S. Fierroatti-Wells, C.
Boswell, R.L.D. Brandis, G.H. Fisher, M.J.

NOES
Arbib, M.V. Bilyk, C.L. Cash, M.C.
Bishop, T.M. Brown, B.J. Cormann, M.H.P.
Brown, C.L. Cameron, D.N. Fergusson, A.B.
Carr, K.J. Collins, J. Fierravanti-Wells, C.
Conroy, S.M. Crossin, P.M. Fihla-Harrisons, I.
Farrell, D.E. Faulkner, J.P. Forshaw, M.G.
Feeley, D. Hanson-Young, S.C. Forshaw, M.G.
Furner, M.L. Hurley, A. Hindmarsh, S.
Hogg, J.J. Ludlam, S. Hogg, J.J.
Hutchins, S.P. Lundy, K.A. Hurley, A.
Marshall, G. Meneley, C. Pratt, L.C.
McLucas, J.E. Milne, C. Siewert, R.
Moore, C. O'Brien, K.W.K. Siewert, R.
Polley, H. Pratt, L.C. Wortley, D.
Sherry, N.J. Siewert, R. Wortley, D.
Sterle, G. Siewert, R.

PAIRS
Boyce, S. Stephens, U.
Coonan, H.L. Wong, P.
Minchin, N.H. Evans, C.V.

* denotes teller

Question agreed to.

Rearrangement

Senator CORMANN (Western Australia) (5.19 pm)—At the request of Senator Minchin, I move:

That the Health Insurance Amendment (Compliance) Bill 2009 be called on immediately and have precedence over all other government business today until determined.

Senator CORMANN—The reason we want to bring this bill on now—
The PRESIDENT—No, it is a procedural motion, Senator Cormann. I just put the motion.

Senator CORMANN—Is it? I spoke for 10 minutes last time.

The PRESIDENT—That is my advice from the clerk at the table.

The bells having been rung—

The PRESIDENT—Before calling the division, I will just point out that I made a wrong call based on advice I received from the clerk at the table. Senator Cormann should have been given the right to address that motion. I was advised by the clerk that there was no debate on the motion, because it was procedural.

Question put.

The Senate divided. [5.24 pm]

(The President—Senator the Hon. JJ Hogg)

Ayes……………… 37
Noes……………… 35
Majority………… 2

AYES

Abetz, E. 
Bak, C.J. 
Bernardi, C. 
Bowell, R.L.D. 
Brandis, G.H. 
Cash, M.C. 
Cormann, M.H.P. 
Ferguson, A.B. 
Fierravanti-Wells, C. 
Fisher, M.J. 
Humphries, G. 
Joyce, B. 
Mason, B.J. 
Minchin, N.H. 
Parry, S. 
Ronaldson, M. 
Scullion, N.G. 
Troy, R.B. 
Xenophon, N.

NOES

Arbib, M.V. 
Bishop, T.M. 
Brown, C.L. 
Carr, K.J. 
Conroy, S.M. 
Evans, C.V. 
Faulkner, J.P. 
Forshaw, M.G. 
Hanson-Young, S.C. 
Hurley, A. 
Ludlam, S. 
Lundy, K.A. 
McEwen, A. 
Milne, C. 
O’Brien, K.W.K. 
Pratt, L.C. 
Siewert, R. 
Wortley, D. 
Bilyk, C.L. 
Brown, B.J. 
Cameron, D.N. 
Collins, J. 
Crossin, P.M. 
Farrell, D.E. 
Feeney, D. 
Furner, M.L. 
Hogg, J.J. 
Hutchins, S.P. 
Ladwig, J.W. 
Marshall, G. 
McLucas, J.E. 
Moore, C. 
Pooley, H. 
Sherry, N.J. 
Sterle, G.

PAIRS

Coonan, H.L. 
Macdonald, I. 
* denotes teller

Question agreed to.

HEALTH INSURANCE AMENDMENT (COMPLIANCE) BILL 2009

Second Reading

Debate resumed from 17 November, on motion by Senator McEwen:

That this bill be now read a second time.

Senator SCULLION (Northern Territory) (5.29 pm)—By agreement, I will ensure that I keep this as short as possible. It is my contribution as part of the second reading debate on the—

Senator Carr interjecting—

The ACTING DEPUTY PRESIDENT (Senator Bernardi)—Order! Senator Carr, if you are going to make a contribution, please do it from your seat.

Senator SCULLION—I rise to make a contribution to the second reading debate on the Health Insurance Amendment (Compliance) Bill 2009. In effect, this bill is going to provide the CEO of Medicare with powers to request patient medical records, or an extract
of patient records, in the event of a Medicare compliance audit. The background is that the list of MBS scheduled items has grown by some 23 per cent in the last five years; the number of providers has grown by some 15 per cent and now exceeds 60,000; a number of allied health professionals now get access to it; and there is a greater diversity of items. Given that, we would see that a change in the auditing process is appropriate.

The government claims that approximately 20 per cent of providers who have been subject to an audit have declined to respond to an audit request for supporting documentation and that that needs to be addressed. Having now spoken to all of the associations representing the provider side of the industry, I do not think you should take it from that that they are simply refusing to comply because they wish to avoid an audit. There are some more sophisticated issues involved.

The government’s response to this issue was to present this legislation to enforce audit compliance. If we look at some of the information that was released by Medicare, it shows that in 2008-09 some $4.5 million was recouped from false claims by 756 practitioners, with only five convictions recorded. This would indicate that the audit system is effective in preserving Medicare’s integrity, except for the fact that 20 per cent have not provided the requested information. That is clearly associated with their concerns about the privacy of the information and their relationship with the patient.

In the legislation before us, the CEO of Medicare can only issue a notice to provide documents after he or she has satisfied three criteria. They are: the CEO must establish a reasonable concern that incorrect Medicare benefits have been claimed; the CEO must take advice from a medical practitioner employed by Medicare Australia on potential sensitivities of the types of documents that may need to be provided to substantiate a claim; and the CEO must give the person a reasonable opportunity to voluntarily respond to an audit request. Medical professionals support this part of the audit system because it is going to be targeted and is not going to be some random system that would not be anywhere near efficient. They believe that this will serve to strengthen the integrity of the Medicare system.

Medicare providers—certainly the ones that I have spoken to—strongly oppose the contentious part of this legislation that gives the CEO the power to require the production of a document, or an extract or copy, containing health information about an individual which is within the meaning of the Privacy Act 1998. One should not be at all surprised that the Medicare providers strongly oppose this power. Patient records are fundamental to the relationship between the patient and the provider and, most importantly, the providers only keep those records for medical reasons. None of those records are kept, or are required to be kept, to provide for auditing arrangements or questions that come from Medicare.

There is particular concern in the areas of psychiatry and psychology. There is a great deal of concern given that, even now, there are a number of practices where people would prefer to simply pay cash. They do not even want their name registered to show that they have been there—such is the stigma associated with some presentations in that area. So it is very important that we recognise that this legislation covers a whole range of circumstances and we need to ensure that any remedies provide the same level of diversity.

Some providers already provide partial patient records in their auditing responses. This is a judgment call made on a case-by-
case basis by the relevant provider. From this, all providers and all patient records can be accessed in the same way without placing patient welfare and doctor-patient confidentiality, so important to that relationship, at risk. The legislation requires Medicare to discuss internally what information may need to be provided. However, it specifically states that Medicare will not specify what information must be provided by a provider to satisfy an audit. Instead, it introduces a power to simply request patient records and that is clearly unacceptable. This is viewed by professional peak bodies as Medicare fishing for information and, therefore, they strongly state that this power should be opposed. The opposition agree with that and we will be introducing amendments to reflect that.

The power to request patient records as part of an audit compliance regime is uniformly viewed as severely heavy-handed and, again, putting at risk the doctor-patient relationship. Powers already exist to compel medical practitioners to provide patient records during professional reviews or through legal action, with well-defined and established privacy requirements. Given the sensitivity of such documents, requesting access to patient records is a higher order action, not a first response action. Because the facility or power is available to Medicare through other bodies, the escalation of suspected Medicare fraud or noncompliance could be achieved without the need to further compromise patient privacy and confidentiality.

We will be introducing some eight amendments that reflect those concerns. I would like to commend the government for accepting, notionally, seven of those eight. I think that is a very sensible approach and I look forward to talking about those amendments in a moment.

Senator SIEWERT (Western Australia) (5.36 pm)—I, likewise, will try to keep my comments on Health Insurance Amendment (Compliance) Bill 2009 brief. However, I will note that this is an important bill. We have had a Senate inquiry into it and there are important issues here which need to be discussed. The Greens have signalled in their minority report that we will be circulating amendments. These issues need sufficient discussion. I am concerned that the privacy issues may not be thoroughly discussed here because of the need to deal with this bill in an expedient and quick manner. The Greens do support the need to ensure the integrity of public revenue expended on Medicare services. Expenditure on the Medicare scheme was over $14 billion in 2008-09 and has grown by more than $1 billion per annum over the past two years.

The Greens believe that compliance audits are necessary checks to confirm that a medical practitioner has been eligible to provide a Medicare service, that the service was actually provided and that the service met the requirements of the Medicare item paid in respect of the service. We understand that, at present, many practitioners voluntarily cooperate with Medicare Australia during such compliance audits. However, on average, 20 per cent of practitioners requested either do not respond to or refuse to cooperate with a request for documents—which, I must say, we find unacceptable. When this occurs, Medicare Australia does not have the authority to require the production of relevant documents and cannot confirm that the Medicare payment is correct.

The Greens believe that health reform has to be underpinned by a greater understanding of our health needs, and we have called for payments to be monitored and measured by the relevance to the patient’s needs, not just the provider and the number of the services that they are willing or able to perform. In
2007-08, 81,224 providers generated nearly 280 million MBS services. New groups of practitioners, such as allied health professionals, are also now able to provide Medicare eligible services. It does not seem unreasonable for the taxpayer to want to be sure that the services being paid for are in fact audited.

In 1996-97 the Australian National Audit Office found that non-compliant MBS payments equated to around 1.3 to 2.3 per cent of expenditure. According to the Australian National Audit Office, this suggests that current levels of annual non-compliant payments could be as much as $170 million to $300 million per annum. Of course, the Greens would much rather that money be spent on our very important public health system, where we know resources are constantly strapped.

The Greens believe that requiring providers to verify their claims when there are specific concerns about the claims is a reasonable and responsible way of protecting the public purse. We agree with Medicare Australia’s view that:

The consequence of not having a penalty system for ‘non-criminal’ acts resulting in incorrect claims is that providers can repeatedly make incorrect claims with little or no adverse outcome, other than possibly having to repay monies that are specifically identified as being incorrectly received.

Similarly, the Greens accept the view of the Department of Health and Ageing, who have argued that ‘key risks to the integrity of the Medicare scheme’ need to be addressed ‘by establishing a simple, cost effective administrative mechanism to deal with incorrect Medicare payments which constitute a substantial risk to Medicare expenditure’.

The debate here is about potentially competing public interest principles. They are the interests of Medicare consumers in the maintenance and integrity of the health system and the public interest in the confidentiality of communications in the doctor-patient relationship and the medical records of patients. The Public Interest Advocacy Centre suggested that with some amendments, the proposed changes and the existing privacy protections ‘appropriately balance’ the public interest in the integrity of Medicare and the public interest in the maintenance of patient confidentiality and privacy of health records.

The Greens have put forward amendments that reflect the initiatives proposed by the Public Interest Advocacy Centre in a submission to the committee inquiry on this bill. We have proposed a two-stage process to minimise the need to access clinical records in the audit process by, first, introducing a mandatory electronic data collection mechanism as part of every patient consultation, which would not only aid this data collection but also aid the doctors or medical practitioners; and, second, outlining a process to determine when clinical records must be accessed and provide maximum protection for patient confidentiality once it is determined and access is necessary.

The first-stage measure would enable the provision of more accurate detail of patient consultations as a matter of course. This would require doctors to complete an electronic form for each consultation, which would provide the basic relevant details to the Medicare audit process, such as length of time, process, referral et cetera, in a very simple ‘tick box’ format. This would be completed online during the consultation as a matter of course. The second-stage measure would be a multi-stage review process—and we have set this review process out in our amendments. This process ensures that any decision to access clinical information is made separately from the routine audit process and follows a number of steps to ensure sensitive information is handled with due care and confidentiality.
The Greens understand that Medicare Australia is working on guidelines to look at sensitivities around privacy. The Greens welcome this but we are not satisfied. We believe that, unless amendments are made, the privacy of patient records will still not be sufficiently protected. The Greens are pleased to see the government include a provision that medical advisers should have oversight of all audits. However, we do not believe it is appropriate that senior officers inside Medicare who may not be medical advisers but are in fact bureaucrats— and I do not in any way mean to have a go at bureaucrats; it is just that they are not medical advisers—should have a role to play in auditing patient records. The Greens believe that, if it is decided that reasonable concern exists, a privacy impact assessment should be made to justify accessing patient records, including that there is no other way to obtain the necessary information and that the investigation is in the public interest. We believe that the privacy impact assessment should include assessment of whether the necessary information can be gained by de-identified records without undermining the integrity of the audit process.

Finally, the Greens believe that the patients or their authorised decision maker should be advised that their personal health record is to be accessed for the purpose of a compliance audit. We believe that, if the patient or the authorised decision makers object to the use of their personal medical records and provide reasons, the decision to access information should be subject to an internal review and the patient should be provided with written reasons for the decision. The Greens hope that the Senate sees the wisdom of these amendments, as we believe they improve this important piece of legislation.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (5.43 pm)—In closing the debate on the Health Insurance Amendment (Compliance) Bill 2009, I am pushed to thank senators for their contribution, but I will respect the chamber and thank senators for their contribution. I will not deal with the matters that were dealt with earlier; I will address the bill itself. This bill will enable the chief executive officer of Medicare Australia to give a notice requiring the production of documents to a practitioner, or another person who has custody, control or possession of the documents, to substantiate whether a Medicare benefit paid in respect of a service should have been paid. However, before a notice to produce documents can be given to a person the CEO must fulfil several conditions—and I will not go through each of those. This bill addresses what has been a long-outstanding matter in the health area, particularly around ensuring that we have an effective compliance scheme. I understand that there is broad support in this place for a compliance scheme and the procedures that are outlined within it.

We have listened carefully to the short contributions from both the opposition and the Greens. We do understand that there are some issues that the opposition and the Greens have, and that they are seeking to use the committee stage to propose amendments. We will deal with those amendments shortly, as we go into committee stage, but Senator Scullion has outlined one concern. As the senator acknowledged, the government has had good discussions with the opposition in relation to these issues. We do think we may need further discussion in relation to some of those, to finalise those matters, but there are of course some that we can address in a meaningful way.

The bill itself has been, as I think we have indicated, subject to consultation and has been through a Senate inquiry and report, which has made various recommendations. I will deal with some of those during the
committee stage of the bill as quickly as I can. However, can I say categorically to Senator Cormann that, in respect of the cataract amendment, we will not be accepting anything dealing with cataracts outside of what is dealt with within the reasonable scope of this bill. I understand Senator Scullion has carriage of this bill. To the extent that we deal with the substantive matters, we are in meaningful discussion with Senator Scullion in relation to this. This bill has been brought on without the government setting the agenda. It does mean that it will be difficult to address some amendments, as they have not been through our process. We will provide a call where we can to ensure that we can deal with this in a meaningful way. I will conclude on that basis and thank the senators for their contributions.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator Scullion (Northern Territory)

(5.47 pm)—I seek leave to move amendments (1) to (7) on sheet 5987 standing in my name. I will perhaps give a brief explanation of that. Notwithstanding your explanation that some of these matters may be unresolved, Minister, I certainly had the understanding that my amendments (1) to (7) were, in a sense, non-controversial. You may wish to check that, but that is how I understood it, which is why I am seeking to move them in that way.

The CHAIRMAN—Is leave granted?

Senator Siewert (Western Australia)

(5.48 pm)—No, it is not, because the Greens actually disagree with some of the amendments. We support some of the amendments, but not all of the amendments. I can indicate which ones we can support and which ones we cannot.

The CHAIRMAN—I could divide the question at the end, but it may be just as quick to go through them as they are on the running sheet. So I suggest you move (1) and (2) together, Senator Scullion, and then move down the running sheet.

Senator Scullion (Northern Territory)

(5.48 pm)—by leave—I move amendments (1) and (2) on sheet 5987 standing in my name:

(1) Schedule 1, item 2, page 3 (line 23), at the end of paragraph 129AAD(1)(b), add:

; and (c) has taken reasonable steps to consult with a relevant professional body about the types of documents that contain information relevant to ascertaining whether amounts paid in respect of professional services of the same kind or kinds as the service or services referred to in paragraph (a) should have been paid.

(2) Schedule 1, item 2, page 3 (after line 30), after subsection 129AAD(1), insert:

(1A) In this section:

relevant professional body means a body declared by the Minister to be a relevant body for the purpose of this section.

The first of these two amendments deals with supporting documentation. The purpose of the amendment is to require Medicare Australia to work with the professional peak bodies, to design and develop a process that would capture relevant factual information specifically tailored to a medical specialty or medical practice, which could then be submitted, in the event of a Medicare compliance audit, to substantiate Medicare claims. I am probably addressing many of my remarks to Senator Siewert. As I spoke to many of the organisations—the AMA, the college of psychiatrists, the College of General Practitioners—there seemed to be a constant theme: ‘If only Medicare would come and talk to us about the sort of documentation we could
keep to ensure that we met our auditing re-
quirements, that would be something we
would do. But we don’t keep medical records
to meet any auditing requirements from
Medicare; that’s not why they are kept, so
they are probably going to be meaningless to
them.’ So all of them indicated that, if Medi-
care came and sat down with them, it would
be quite easy and they would be quite happy
to talk sector by sector about what sort of
information they could keep to assist Medi-
care in dealing with that. The reason I speak
directly to you, Senator Siewert, is that it
goes to the heart of the amendment about
requiring the electronic medical records.
What I am saying is that this is perhaps less
specific but it gives the opportunity, sector
by sector, to sit down and provide a suite of
information, which they may keep as an ad-
dendum but specifically for auditing ar-
rangements of Medicare.

The second aspect of the amendment deal-
ing with supporting documentation is that at
present the proposed legislation only requires
that Medicare discuss internally the types of
documents or evidence that is required, and
specifically states that Medicare would not
reveal what evidence is required. Clearly, I
think that is a situation that has compounded
the circumstance where Medicare is saying,
‘We want to audit you’, but you do not even
know what sort of arrangements you need to
keep in place.

Senator Siewert (Western Australia)
(5.50 pm)—Perhaps I will address my ques-
tion to Senator Scullion on this issue. Do you
intend that this process would be for when-
ever they are formulating a new process for
auditing a particular type of service, or for
each investigation?

Senator Scullion (Northern Territory)
(5.51 pm)—The idea would be to do it sector
by sector, because the needs of each sector
are somewhat different. For example, the
psychiatry sector has different concerns, if
you like, than some of the other sectors, and
it would be simply by agreement; it would
not be case by case. With respect, I felt that,
had we an opportunity to talk about this, the
situation would have been a little different
with respect to one of the amendments that
you put forward, but I suspect we are going
down the same path. I did not want to make
this process far too onerous. So, rather than
saying, ‘You have to do these things with
every single audit’, we simply want to put in
place, with each of the sectors, a process
whereby they would know that they are
keeping this specific data so that, when
Medicare comes knocking on the door or
whatever, that is the data they are keeping for
Medicare and it is not going to include things
that would cut across the provisions of pri-
vacy and those relationships. But that would
have to be done sector by sector. That was
the intent.

Senator Siewert (Western Australia)
(5.52 pm)—That gives me some comfort,
because we were concerned that the intent
here was that this consultation process would
be required before each investigation. That
would not be appropriate because it would
allow a professional body to influence the
CEO. So you have allayed my concerns
somewhat by saying this would be the be-
inning of the process. I note that it is only
about consulting. They do not have to kick
off on the form; they have to be consulted. Is
that a correct understanding?

Senator Scullion (Northern Territory)
(5.52 pm)—It certainly is the intent that this
is done just once, and it is an agreement. It is
not about ticking the box or anything to do
with the single audit. It is about an arrange-
ment that recognises the peculiar sensitivities
within each of the sectors. It is to be done
once so that at least if we ask for some com-
pliance we are going to know that that is a
requirement now, but that is through a con-
sultation process that may be put in regulations at some later stage. One would hope that it is simply an informal process that is agreed to at this stage.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (5.53 pm)—We do understand that there have been discussions on amendments (1) and (2), and on that basis we will not oppose them. I understand, similarly, there have been discussions on amendments (3) to (5). We did understand that there was a different position on amendment (6). Instead of the wording indicated in the opposition’s amendment, the government would prefer the wording, ‘The CEO may not develop a reasonable concern under this section about the clinical relevance of a particular service.’ I am not sure we got to an agreed position. We would prefer that wording to the wording that is in the opposition’s amendment. On that basis, we will not be agreeing to opposition amendment (6), unless the opposition wants to amend its wording to accord with what I have just indicated. I understand that our position is to agree to amendment (7), which relates to schedule 1 item 2. We also indicate that we will not oppose amendment (8).

More broadly, we understand that the opposition supports the intent of the bill, and on the basis which I have outlined we are happy to support the majority of the amendments which have been negotiated in good faith. However, as the process has been brought on earlier than we had anticipated—the discussions I understand have not quite concluded on amendment (6)—that does leave us in a bit of a quandary and we would prefer to maintain our opposition to that amendment.

Question agreed to.

Senator SIEWERT (Western Australia) (5.56 pm)—by leave—I move Green amendments (1) and (2) on sheet 5963 together:

(1) Schedule 1, item 2, page 3 (line 32), omit “If”, substitute “Subject to section 129AADA, if”.

(2) Schedule 1, item 2, page 6 (after line 7), after section 129AAD, insert:

**129 AADA Additional requirements for personal clinical records**

*When section applies*

(1) This section applies if, in relation to a decision under section 129AAD to require a person to produce or copy a document or an extract of any document:

(a) the Medicare Australia CEO; or

(b) the medical practitioner referred to in paragraph 129AAD(1)(b); knows or believes on reasonable grounds that the document, extract or copy contains clinical details relating to an individual.

*What happens*

(2) Any decision to require the person to produce or copy the document or an extract of the document:

(a) may only be made by the CEO; and

(b) must be made with oversight by qualified medical advisers.

(3) Before requiring the person to produce or copy the document or an extract of the document, the CEO must cause a Privacy Impact Assessment to be prepared, which must address:

(a) whether there is any other way to obtain the information being sought; and

(b) whether the requirement to produce the document is in the public interest; and

(c) whether the information being sought could be gained using de-identified records without undermining the integrity of the audit process.
(4) Before requiring the person to produce or copy the document or an extract of the document, the CEO must take all reasonable steps to advise the individual, or the individual’s representative, that his or her personal clinical records are to be accessed for the purpose of a compliance audit.

(5) If the individual, or the individual’s representative, objects to the use of the individual’s personal clinical records:

(a) the individual, or the individual’s representative, must be given the opportunity to provide reasons for that objection; and

(b) the CEO must review the decision to seek information by requiring the person to produce or copy the document or an extract of the document; and

(c) if the CEO decides to proceed to require the person to produce or copy the document or an extract of the document—the patient must be provided with written reasons for that decision.

I will try to be quick, as I did talk about these amendments in my speech on the second reading. Our concern is about making sure that patient confidentiality is maintained. The first amendment is fairly simple. It removes the word ‘if’ and replaces it with ‘Subject to section 129AADA, if’, which is contained in amendment (2). This means that the CEO should indicate the additional requirements for clinical and patient records. These additional requirements for patient records include defining reasonable concerns in order to investigate and having oversight of, as I articulated earlier, the medical advisers, not just the bureaucrats. It provides alternative ways to get the information. It deals with the public interest and the identification of records. It deals with advising individuals that their records are about to be used in an audit.

I understand there is a debate about whether they should be told because there are issues around privacy for the medical practitioner. However, when we reviewed those issues, on balance we came down on the side of the patients and believed patients had a right to know that their records were being accessed. It deals with a case where a patient objects to their records being assessed. These issues relate to amendments (1) and (2) and I did articulate the reasons for these in my speech on the second reading.

Senator SCULLION (Northern Territory) (5.58 pm)—Briefly, we will not be supporting the Greens amendments. We think they are fundamentally aligned with the opposition’s. It is unfortunate that we did not have the opportunity to discuss this, and I apologise for that. Regarding the contentious area of advising the individual, we spoke to a number of people involved in this area. When you ring and advise an individual it is very difficult for them not to leave with a question. For example, whether it is auditing a doctor for Medicare compliance or whether it is a probity issue with the doctor or whether they have been malpractised, you are unable to provide that information to the individual and so they very well be left in doubt.

I have been informed that a couple of processes exist at the moment. One is that there is a professional body that can look into the activities and behaviours—the standards—of practitioners in a clinical sense. The other is the legislative process, which we alluded to, where you can see the records et cetera. Currently, neither of those informs the individual. I have a lot of confidence in that process, but I have absolutely no confidence in the process that the government previously had in the legislation. I understand the government has now agreed to amend its position. It is for those reasons particularly that we will not be supporting your amendments. They are good amend-
ments, but we think that our amendments cover the situation more comprehensively.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (6.00 pm)—Perhaps the Greens can understand, partly, the predicament the government is in, in dealing with a bill that it did not want to deal with today at this particular hour. If I frame my comments in that way it may assist a little bit, but it will not assist us to support the Greens amendments, unfortunately.

We have, in the short time available, had a look at the issue. We think we are grappling with two matters. One is that the opposition are seeking to ensure that we provide sufficient and meaningful consultation around the changes—and we accept that—and the second matter is the Greens issues of privacy. The issue of privacy was one of the critical and fundamental issues that were developed. I can say this with some experience in this portfolio, because when this area was first mooted as being in need of compliance measures the Privacy Commissioner came on board very early in the piece to deal with how the process would actually work in the legislation.

Medicare Australia deals with a range of information about providers and medical services. It deals with that in a sensitive way and it ensures that its protections around privacy are of the highest standard—so much so that last year they won an award from the Privacy Commissioner for the way they dealt with privacy in handling a range of issues.

If you look at Medicare Australia you will find that when people put in for an item number it provides for a particular service. On occasion, sufficient information is able to be gained from that to identify what that service might be. That may have clinical implications. Medicare Australia has always recognised the sensitivity of the material and has maintained all of the matters that you would expect in order to ensure privacy and confidentiality for patients. And of course the onus is on providers as well to ensure that when they deal with medical records and when they store their medical records at the practices—or through whatever process they put in place—they similarly meet high standards. I think there is an expectation from the population more broadly that that is done.

This bill has been drafted so that a provider can provide documents in the easiest and most convenient way but the bill does protect patient privacy. If you turn your mind to how the process works, submitting a claim will sometimes require documents about a medical service. The government believes that the bill provides a sensible way of dealing with sensitive information. You could imagine the enormous amount of information that Medicare Australia maintains when it pays a bill. It does not simply pay a bill; it provides information on a particular item number that the provider then seeks to get a rebate claim for. The person who is dispensed the particular service by the medical provider will then claim that particular item number from Medicare—or alternatively it will be bulk billed. But Medicare Australia does understand that in all that information there is a significant requirement to maintain the confidentiality and privacy of the patients and the providers. It has demonstrated, time and time again, that it does this in the most sensitive way possible.

What we cannot do in this area is prescribe a particular way that this should be transacted. Particularly with regard to compliance this will depend on the nature of the audit and the type of information that is sought in order to substantiate a particular claim. I am sure, Senator Siewert, that you sat on the committee and heard from Medicare Australia. Unfortunately I did not, but I can assume that they would have explained
to you that they only seek the minimum amount of information necessary to substantiate the particular claim. If the providers can provide that without going to clinical records that is fantastic. They can maintain a whole range of information that can be provided to Medicare Australia. On occasion, depending on the particular item number, and depending on the type of records that the provider maintains, it will switch to the private provider to meet the requisite audit by saying: ‘Yes, we provided this item number. We provided it to this patient. Here is our record’—whatever that record or document might be—to substantiate that claim.

On occasion it will be sensitive, but Medicare has demonstrated time and time again that it will maintain that information with a full understanding of the privacy requirements. That is why the Privacy Commissioner was involved throughout the whole process. I hope that goes some way to providing some explanation as to why this government takes this issue very seriously and understands the position that you are advancing. We agree with the principle completely—that privacy for patients is one of those areas that we have to deal with. It is a Privacy Act requirement but it is more than that for Medicare Australia. I think that Medicare has demonstrated that they want to ensure that patients and providers have confidence in providing that information, knowing that Medicare Australia will keep it confidential.

But keep in mind that this is about compliance and an audit process for the particular provider that is being audited. That is why, as I have indicated, we cannot agree with your amendments as put. I have gone on a little bit longer than I should have to explain that it is a principle that we can all agree with.

Question negatived.

**Senator SCULLION** (Northern Territory) (6.07 pm)—I seek leave to move opposition amendments (3) to (6) on sheet 5987 together.

**Senator Siewert**—I am willing to agree to leave as long as the questions are put separately. I indicate that I will be voting differently on different amendments.

**The CHAIRMAN**—I can put the questions separately by request.

Leave granted.

**Senator SCULLION**—I move:

(3) Schedule 1, item 2, page 4 (line 14), omit “request”, substitute “written request”.

(4) Schedule 1, item 2, page 5 (after line 19), after paragraph 129AAD(8)(b), insert:

(ba) specify the information relevant to ascertaining whether amounts paid in respect of each such service should have been paid; and

(5) Schedule 1, item 2, page 5 (after line 31), at the end of subsection 129AAD(8), add:

Note: For the purpose of paragraph (8)(ba) the notice will include the reason for the CEO’s concern about the payment and explain the factual issue that the person is required to substantiate.

(6) Schedule 1, item 2, page 6 (after line 7), at the end of section 129AAD, add:

(11) Notices to produce documents issued under this section will not include requests for information about whether a particular service was clinically relevant.

Minister, when you rose a moment ago you indicated that there was perhaps some agreement about some words in amendment (6). My feeling is that, after having as much of a look in these circumstances as I can, we had agreed to that. I understood that there was some change of wording and that we had agreed to. I was hoping that perhaps one of my minders could sneak across and sort of
check on that. I do not think that that is a problem. In fact, since you have stood and spoken to most of those, as I understand it it was only the review of decisions to claim amounts as debts that was the problem. The reason that I am speaking briefly to that is so that if people who are giving us some assistance want to clarify that while we are discussing amendments (3) to (6) that might be very useful.

Amendments (3) to (6) are about notices to produce documents. Prior to the CEO of Medicare issuing a notice to produce documents that may contain health information within the meaning of the Privacy Act, the CEO of Medicare must first provide an opportunity for the medical provider or the authorised entity to respond to a written audit. This is just part of a process to ensure that we are articulating every opportunity for providers to voluntarily provide information to Medicare.

We initially tried to exclude all documents that might be covered under the Privacy Act from being requested by a Medicare audit. Unfortunately, we were informed—rightly, and thanks to the government for the assistance—that that would probably invalidate the audit process. So this amendment essentially inserts an additional step in the audit process. Upon establishing a reasonable concern—in other words, it is not a random audit—about a provider’s Medicare claim, the CEO of Medicare must allow the provider sufficient opportunity to respond to a written request for factual substantiating evidence as identified through the consultative process outlined in the amendment that I have just spoken of. In time, that will obviously get better, because the provider will understand what they are providing and Medicare will know that they have agreement about some factual processes that are being requested. The CEO of Medicare can only issue a notice to produce documents, including patient health records, if the issue remains unresolved through the supply of factual information.

The second part of that amendment says that any notice to produce documents issued by the CEO of Medicare must specify both the claims that are being audited as well as the factual information required to substantiate the notice request. This amendment will require Medicare to clearly identify what issues are being investigated and what specific information is required to substantiate the claim. Much of the feedback we had was that when people are carrying out an audit, it is often a fishing claim. ‘Just give us all the information you’ve got, and we’ll sort it out.’ We think it is appropriate that they should have to say, ‘These are the claims that we’ve got a problem with and these are the sorts of bits of information that you can provide to us that are going to give us some satisfaction.’

All privacy safeguards introduced through government amendments to the act must be applied to all documents containing patient health records that may be received through the notice to produce documents.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (6.11 pm)—I will provide an explanation. As I understand, what occurred in relation to amendment (6) is that the agreement was that if you agree to the words that I read into the transcript then you could seek to amend your amendment (6) to adopt that wording. If you sought to do that, we would be in a position to agree to that amendment to the amendment, if that is the correct wording or phrase that I should be using. Then we would be able to proceed on that basis. If that reflects the undertakings that we have given, then we will honour them. If it also reflects the agreement to which we arrived at, then we will similarly honour that. But you can accept that I am flying a little blind here in respect of the matter.
Senator SIEWERT (Western Australia) (6.12 pm)—I want to make two indications. We do not support amendment (6) as it is. Perhaps the minister could repeat the words that he thinks that the government can agree to. That would be appreciated, because that would help us reach some decision over amendment (6) in particular.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (6.13 pm)—Going to amendment (6), I want to make sure that I can identify the exact provision. It would be on sheet 5987. If we turn over the page, amendment (6) says:

(6) Schedule 1, item 2, page 6 (after line 7), at the end of section 129AAD, add:

Notices to produce documents ...

We would want to substitute this phrase: ‘The CEO may not develop a reasonable concern under this section about the clinical relevance of a particular service.’ That is in distinction from the current words, which are:

Notices to produce documents issued under this section will not include requests for information about whether a particular service was clinically relevant.

Senator SIEWERT (Western Australia) (6.14 pm)—I saw that Senator Scullion was about to speak. Perhaps he could make his comments while I think about what the minister has just said.

The CHAIRMAN—Senator Scullion, are you going to move that as an amendment to no. 6?

Senator SCULLION (Northern Territory) (6.14 pm)—I have the words that we are about to circulate; in fact, I have stolen the words of someone who is writing the amendment down to be circulated. I thought that, if I could read it out, at least Senator Siewert might then have some clarification. The words to insert are:

The CEO may not develop a reasonable concern under this section about the clinical relevance of a particular service.

In other words, this is not about whether you are good at being a doctor; this is all about the fraud aspect of it. So it is just ensuring that Medicare does not go into an area that was not intended.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (6.15 pm)—The import of that would be that the CEO ensures that they deal with administrative matters, not clinical issues. They will not be called upon to determine. We started with this compliance legislation some time ago. It is about ensuring that it would be maintained in the administrative field and that Medicare would not be making clinical decisions about the information or judgments on whether or not it is clinical information. I am looking to the adviser and I am getting a nod, so that is as I understand it.

Senator SIEWERT (Western Australia) (6.16 pm)—I do recall that we did talk about this during the Senate inquiry. The process that we are dealing with is separate, so one presumes that that is to enable the two processes to be separate. There is not an understanding that that would not be dealt with under another process if that were felt to be or deemed appropriate. Perhaps I could confirm that with both the proposer of the amendment and the government. If that is what they understand, that would satisfy me.

The CHAIRMAN—I need some clarification as well. Someone must move the amendment. Are you replacing amendment (6) with those words or are you amending the amendment? I also need to know who is moving that amendment.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (6.17 pm)—I understand, Chair, that Senator Scullion will move that amendment and the
amendment will be deleting the words in his amendment and replacing them with other words.

Senator SCULLION (Northern Territory) (6.17 pm)—by leave—I move:
Schedule 1, item 2, page 6 (after line 7), at the end of section 129AAD, add:

(11) The CEO may not develop a reasonable concern under this section about the clinical relevance of a particular service.

The CHAIRMAN—The question is that amendments (3), (4) and (5) and amended amendment (6) moved by Senator Scullion be agreed to.

Question agreed to.

Senator FIELDING (Victoria—Leader of the Family First Party) (6.18 pm)—I move:
Family First amendment on sheet 5975:
(1) Schedule 1, item 2, page 8 (lines 13 to 15), omit subsection 129AAG(7), substitute:

(7) Where a document has been produced to an employee of Medicare Australia who is a medical practitioner, this section does not authorise an employee who is not a medical practitioner to exercise powers under subsection (2) in relation to the document.

This amendment is intended to protect the handling of a patient’s medical records. At the moment, documents containing patient clinical details that are provided to the medical practitioner in Medicare Australia can be handled by non-medical employees. Clause 129AAG(7) permits an administrative officer to inspect those documents and to make and retain copies of these confidential patient records. My amendment would ensure that, where a document containing clinical details is provided to a medical practitioner who is an employee of Medicare Australia, only a medical practitioner in Medicare Australia could handle that clinical information.

The government will probably say, ‘This stifles the process a bit from here,’ but this requirement that I am putting forward is the same requirement that the parliament imposed for the handling in Medicare Australia of pathology records that contain clinical details relating to a patient under section 23DKA(7)(b) of the Health Insurance Act 1973. So maybe the advisers can have a look at that one. For the same reasons, the same principle should be applied to these other records—the patient’s private clinical records. This protects patient privacy, and the same requirement should be in place in relation to the handling of documents or extracts of documents containing details relating to an individual. I move this amendment so that other senators can think hard about the principle this parliament has already imposed for the handling of patients’ pathology records that contain clinical details. I urge senators to support this amendment.

Senator SCULLION (Northern Territory) (6.21 pm)—We will support this amendment. As Senator Fielding indicates, the government may wobble in the margins, but the amendment in effect ensures that there is some clarity around the protection of any records while they are in the care of Medicare. We say that there is a medical practitioner and you have basically thrown a fence around it to specify who else apart from the medical practitioner can get access to the records and in what circumstances. I think that is quite reasonable. We will be supporting this amendment.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (6.21 pm)—There might be a pointer in Senator Scullion’s response, but Senator Fielding should understand that the amendment he is seeking to progress would prevent necessary filing and administration tasks such as the secure storage of documents. It would be administratively unworkable for
the one individual who receives the document to keep possession of it permanently. There is the question of what would happen if that person then went on sick leave, took long-service leave or shifted employment. The amendment would also require trained medical practitioners to perform routine administrative tasks which are best undertaken by trained auditors. We would be giving the administrative tasks that auditors do—and are well trained to do—to doctors. It would take up a significant amount of their time for little gain. We do not want our medical workforce performing administrative tasks when they could be providing health services or sharing their expertise.

I understand that Senator Fielding has likened this to the pathology position. I have a recollection of that issue; I dealt with it at that time. I am not sure the advisors are familiar with it. When you bring on a bill to be debated with little or no notice, you cannot expect all of the relevant advisors to be here, able to answer all of your questions and deal with your amendments in the comprehensive way they should be. It would be absurd to expect that. This bill was not in the range of bills we would have ordinarily dealt with this side of Christmas.

**Senator Cormann**—Starting date of 1 January 2010.

**Senator Ludwig**—We would have expected to deal with it if we had sufficient time and had dealt with the range of other urgent bills. Usually, with a day’s notice on the red, all the relevant advisors can be here.

I got a helpful interjection from Senator Cormann, who always tends to provide helpful interjections. I indicated, and Senator Cormann seems to have missed this again, that with relevant notice we can marshal relevant advisors to provide input into these debates.

**Senator Cormann**—We offered for you to do it tomorrow—you know that.

**Senator Ludwig**—Senator Cormann bleats again about how he—not I—sought to reorganise the program. Senator Fielding, you have agreed to that reorganisation. I do not think you can walk away from that. You have perhaps sought to arrange the program to suit your own circumstances or position. I do not think you can be critical of the government if it cannot provide a response in the short time that you have made available. You have also been critical of the government for not managing the program—well, you are managing it now. Senator Fielding is now seeking to manage the government’s program by agreeing with the opposition. Senator Fielding might want to turn his mind to managing his way out of a wet paper bag. It was his decision to bring this on with little or no notice, expecting us to be able to deal comprehensively with the amendments. As a government, we will manage as best we can. I have indicated our position. That is the advice we have to date. It has not been finalised, but we do understand that we have a broad agreement.

As for your amendment, Senator Fielding, I can only indicate that the principles may be there but I cannot agree to it. On face value, it does not look like a sensible amendment, and I understand it was not in the committee’s recommendations—although I am happy to be corrected. It came from you. I understand that you are genuinely trying to provide effective input into the legislation and that you have at heart the best interests of both the providers and the patients. But in this instance we do not see any merit in the amendment.

**Senator Fielding** (Victoria—Leader of the Family First Party) (6.27 pm)—It is always interesting watching Joe on the run.
The CHAIRMAN—Order! Senator Fielding, you must refer to a senator by their job title.

Senator FIELDING—Sorry. From my recollection, Minister, you have had this amendment for weeks. I am sure your advisors are reasonably senior, and I am finding it very hard to understand—

Senator Cormann—He’s playing games.

Senator FIELDING—I will be real with you. You do not even have the decency to look at one of the amendments to this bill. Then you come in here and say, ‘It’s because you’ve rearranged the business.’ You turn things on a pinhead in here and expect me to follow, and I do. When something happens that you do not like, you do not have a clue what to do. This amendment is nearly identical to what has been passed before. It is a disgrace that you are not standing up for patient’s records. They are worried about their privacy. They are worried about their own clinical needs and not being seen by someone who is qualified. It is a disgrace that you are coming in here using as an excuse some sort of problem with rearranging the business. Frankly, you have not been able to arrange the business. You could not arrange the business out of a wet paper bag.

The CHAIRMAN—Order! Senator Fielding, you must address the chair.

Senator FIELDING—Sorry, Chair. I do get very concerned. We have seven groups of amendments, and this amendment has been out for some time. You would have thought they would be quite okay to work on this quickly. It is a very simple amendment. Then they come in here saying, ‘Look, you’ve reordered the business on us; we don’t know what’s going on.’ The reason we have had to reorder it is that you are, Minister, proving incompetent to do so. Fifty days next year—we will be in the same position—

Sitting suspended from 6.30 pm to 7.30 pm

Senator FIELDING—I am sure that during the dinner break the minister in charge tonight will have had a bit more time to go through the issue at hand. As I said, this amendment was put out weeks ago, so there has been plenty of time for the government to look at this issue. I am also advised that the words are very similar to the requirement that this parliament imposed for handling Medicare Australia pathology records.

To help those who may be listening, the amendment moved by Family First is intended to make sure that patients’ medical records are handled by appropriate people, not by non-medical employees. The amendment would ensure that where a document containing clinical details is provided to a medical practitioner who is an employee of Medicare Australia only a medical practitioner in Medicare Australia can handle that clinical information. This is a very similar requirement to that which is in place for Medicare Australia, under paragraph 23DKA(7)(b) of the Health Insurance Act 1973, with regard to pathology records that contain clinical details relating to patients and, for that reason, should be applied here.

I hope that the response from the minister will be focused more on the issue than on how to manage the chamber. I am happy to go there any day of the week, but let us try to stick to the debate if we can.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (7.32 pm)—I do have advice in relation to the amendment. The provision within the Health Insurance Act 1973 that relates to pathology, specifically section 23DKA, allows the CEO of Medicare Australia to compel the production of entire pathology records. These provisions do not have a requirement that there be a reasonable concern
about the accuracy of a Medicare payment. They operate, quite simply, to require a person to produce entire pathology records within seven days of receiving a request. Section 23DKA states that only a medical practitioner employed by Medicare Australia may make and retain copies of the documents produced by a pathologist. It does not limit who may handle or inspect the documents for administrative purposes. The bill that is currently before the Senate does not allow the Medicare Australia CEO to request the production of whole documents and contains additional privacy protections, including a limitation on the circumstances in which documents may be requested.

To begin with, the clause dealing with pathology relates to producing the whole record, whereas this instance is quite a different circumstance. Here we are seeking from the provider only those documents that they want to provide to substantiate the claim. The amendment that Senator Fielding has moved would have a significant impact in that it would limit all use and administration of a document to medical advisers. That would mean Medicare would have to have medical advisers to deal with the administration as well—in other words, the subsidiary matters of handling a particular document. In this way the amendment is an overreach and, in some parts, a misunderstanding of how the pathology section of the act works. It would create an administrative burden which would be, as I indicated, highly unworkable and would require highly qualified medical advisers to undertake simple administrative and processing tasks.

I do not think, in all reasonableness, that is what you actually are trying to achieve, Senator Fielding. I think you are trying to achieve something similar to the pathology clause, which would provide some safeguards—if I am to use your words not mine. If we look at the volume of audits currently undertaken by Medicare Australia within the Medicare program we find it is about 2,500 per annum or roughly four per cent of the active number of providers. Requiring a medical adviser to be the sole person who could handle documents for audits would be an inefficient and impractical use of medical expertise. I think everyone would agree with that. The government would much prefer them to provide their valuable knowledge in the audit process, which is why their involvement in providing advice in a decision to audit is proposed in the legislation.

We will not be supporting the amendment. I can say, however, that the principle you are trying to enunciate is something we want to look at a little more closely. I do not want to stretch to saying that we agree in principle, but I think that with a little time we might be able to meet somewhere very close to you. We will hold on to the concept you are putting forward—that is, our intention is not to support the amendment as distributed in the Senate, but the bill will have to go to the House and come back. In that process we might invite the minister, when he returns, or an adviser to provide some input into how we might meet you halfway. If that meets your expectations of how the section could work then I am sure we would lean heavily in favour of supporting it. I think we can probably get there but I do not want to make that commitment to something I am not in control of and that the minister will have to have the final call on. That is why we will not be supporting your amendment. I would prefer that it not go down, but that will depend on the opposition as well.

Senator SIEWERT (Western Australia) (7.37 pm)—I indicate that the Greens will not be supporting this amendment. I have put on record that the Greens are concerned about privacy, which is why we tried to move those previous amendments—we deeply believe that the decision making
should be with a medical practitioner. However, that relates to decision making rather than this particular section. If you read this as I presume it is intended to be read, it applies to all of section 129AAG(7)(2), and that means that a medical practitioner would be the person who is responsible for doing the photocopying, keeping copies et cetera—in other words, all the administration work. While I know that medical practitioners are capable of multitasking, I am sure that is not what Senator Fielding is trying to achieve.

So we support the intent and we are very concerned about the protection of privacy, which is obvious from the amendments that we unsuccessfully moved, but we cannot support this amendment because it will have unintended consequences. I am sure that is not what Senator Fielding intended, but unfortunately that is the case and we cannot support it. We would perhaps support an amendment to this amendment but, as it stands at the moment, it is totally impractical and will not achieve its objective. It will just tie the process up and will not make the audit process any easier, which is what we are trying to achieve with this bill.

Senator SCULLION (Northern Territory) (7.39 pm)—I indicated earlier that we will be supporting this amendment, but I will just make a couple of comments. My first point is about the motive for the government saying that it will provide a medical practitioner as part of Medicare to scrutinise these things. We all thought that was pretty good and people thought they had a high level of safety. The reason they thought they had a high level of safety was not because a medical practitioner would know a knee bone from an elbow bone; it was because we respect doctors and we respect the Hippocratic oath. If your patient records eventually went somewhere, they were effectively not leaving the medical profession. That is the reason we are supporting Senator Fielding’s amendment. This discussion has concerned me a little bit and I think I have even more support for it now. I understand that we are saying, ‘Who would want to go and photocopy it?’

Senator Ludwig—The receptionist of the provider.

Senator SCULLION—Just hear me out, Minister. This is not mischievous; I am just trying to quickly get to the nub of this. Are we now saying that these records would be copied and filed? In the judicial system, they ensure that copies are not made or that they are certified copies and only certain people have access to them, and that is why it works. I am trying not to get the wrong end of the stick and I am not trying to assert that you are being loose and free with people’s records, but the notion that a medical practitioner would look at it and no-one else is something that I think we should stick to. We are not talking about voluminous notes. We are not talking about those sorts of administrative things. Frankly, nobody except the medical practitioner should be looking at patient records in any circumstances unless they are somehow de-identified, and those are not the circumstances we are talking about.

It may appear from Senator Fielding’s submission that it is more onerous, but so be it. We have already heard that in the last year there were some 765 people identified by the audit. Eventually it came down to only five prosecutions, but I think it would give Australians comfort to know the file actually belongs to a doctor and that someone who has taken the Hippocratic oath is the only person who will look at it. Whilst I understand that we need to ensure that we are efficient in this matter, Australians would say that the only people who should be looking at files are doctors.

One would assume we are not casually handing these files to people. I am quite sure
that you would follow normal privacy procedures. Somebody has to file it but it would already be in an envelope and be covered up. Senator Fielding’s amendment does not interfere with any of those things. I am not trying to verbal Senator Fielding, and he will correct me if I am wrong, but I am assuming from this that the normal privacy provisions would apply to the material. If they are not medical practitioners then they should not be looking at it. Frankly, I think the fundamental point of having a medical practitioner there is not only that they know what they are doing but also that they are covered by the Hippocratic oath, and for those reasons we will be supporting Senator Fielding’s amendments.

Senator XENOPHON (South Australia) (7.42 pm)—I would like to indicate very briefly that I cannot support this amendment because I am concerned that it will really cause problems in the system. I appreciate Senator Fielding’s intentions in relation to this, but the problem I have with it is that the issue is one of privacy, whether you are a medical practitioner or not. As long as there are sufficient privacy safeguards and they are built into the system, I think that provides a sufficient safeguard. I am worried, for instance, about the medical practitioner having to photocopy the documents, because that is what it would mean. It goes too far. I appreciate Senator Fielding’s intentions in relation to this, but I would have thought it could be dealt with by ensuring that there are strong privacy safeguards in the regulations. That is something that ought to be appropriately scrutinised.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (7.43 pm)—I want to dispel a couple of assertions that have been put here this evening. It seems to have been suggested that only a medical practitioner would handle the document, and that seemed to have been qualified by saying it might be in a manila folder. Common sense should prevail here. If it is a doctors surgery, there are people within the doctors surgery who understand the requirement to maintain confidentiality for privacy purposes and the need to keep confidential information about patients secure. They do the filing, the writing, the tabulating, the receipting of all of these matters and they are not doctors. They are usually receptionists who are highly trained.

Within Medicare Australia, doctors will be required to deal with the aspect we are talking about. Medicare public servants understand the APS values and code of conduct. They are highly professional and understand privacy. They have been taught privacy and respect privacy because they are public servants with a long history of maintaining the confidentiality of all their work. They would do the writing, filing and tabulating of documents, as they have done in the past with other documents that have required auditing within the system.

I have made an open offer to Senator Fielding that I think we can get to where Senator Fielding wants to go, if he gives us the ability to come back and deal with this. I do not want to amend it on the run because that is fraught with danger. I think the principle stays. I understand if Senator Fielding insists on dealing with it tonight. I will continue to honour the commitment that we will look at it no matter what Senator Fielding does with this amendment. I would prefer if the amendment were not moved—I will not pick up my bat and ball and go home over it. I will deal with it in a practical way and ensure that the minister and the agency can deal with this in a way that may meet some of the issues Senator Fielding raises. I am not sure I can meet the opposition’s position, which seems to be a little further than Senator Fielding’s, quite frankly, as it was articulated—though that may have just been in the
telling. In short, although the government oppose it, it is opposed on the basis that we would not mind another look at it to see if we can meet some of the issues raised.

Senator FIELDING (Victoria—Leader of the Family First Party) (7.46 pm)—The conversation after the dinner break has been more constructive and productive than before the dinner break. I have moved the amendment and I want it put to the chamber because I think the principle is very important to lay on the table. But, quite clearly, there is no majority support around the chamber for a division on it. I do thank the coalition. The amendment really goes to the heart of the issue of patient information and who will be looking at these documents. It is an auditing trail. What I have put forward has a lot of merit given that patients will still be able to get the documents they want. They may not find it as efficient as they would like, but it gives them what they are after. I still think it will work, so I want the amendment put to the chamber.

Question negatived.

Senator SIEWERT (Western Australia) (7.48 pm)—I move Australian Greens amendment (3) on sheet 5963:

(3) Schedule 1, page 10 (after line 19), after section 129AAJ, insert:

129AAK Routine audit requirements

(1) The regulations may prescribe requirements for medical practitioners to submit routine records of consultations online for the purposes of Medicare audit processes, including the following:

(a) the purpose of the consultation;
(b) the service or services rendered;
(c) length of time;
(d) referrals made.

(2) The regulations may prescribe a time-frame for compliance with the requirement to submit records, reflecting a general intention that records will be submitted online during each consultation as a matter of course.

(3) The Minister must take all reasonable steps to ensure that regulations for the purposes of subsection (1) are made before 1 July 2010.

As foreshadowed in my second reading contribution, this amendment relates to the two-stage process we are trying to establish through our amendments. This one particularly deals with medical practitioners capturing accurate details for patient consultations as a matter of course. The details of the records will be captured to include the purpose of the consultation, services rendered, time span and referrals made. It asks for the regulations to prescribe a time frame for how long the medical practitioner should have to upload these details to ensure they are done in a timely manner, and the time frame required in order to implement these regulations.

The Greens think this is important. It is an issue that was highlighted during the committee phase. The committee heard a lot of evidence from medical practitioners that the audit process was overly burdensome. Essentially, some medical practitioners admitted that their record keeping was not up to scratch. They said they had to go through boxes of medical records—something I found quite astounding. The objection put to us by some medical practitioners is that it would take a long time to pull this information out of their records. We thought that the way to ensure this data was collected would be to do it electronically. Frankly, I am astonished this is not required to be filled in as a matter of course. I must admit I have not been to a surgery lately that does not do all their records electronically straightaway. The Greens believe this amendment will assist with the audit process and help those medical practitioners.
practitioners who find it hard to keep their records.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (7.50 pm)—The government do not support increasing red tape for doctors, who perform a valuable and important task within the Australian community. The proposed amendment suggests that audits should occur routinely, perhaps without any perceived reason or justification for the audit—and I am sure that is not the intent. The amendment also proposes a set method for responding to audits, whereas the bill provides flexibility to providers who may be audited by allowing them to respond with the document via a channel that best suits their mode and style of practice. This was an important element that came through the stakeholder consultation process where many doctors requested that the bill not place new record keeping requirements on them. The process set out in the bill proposes that a targeted compliance audit program requires that Medicare Australia have a reasonable concern that a Medicare payment exceeds the amount that should have been paid. This limits audits to situations where there is a risk that taxpayer money has been spent incorrectly. The government are of the view that limiting audits to situations where there is a reasonable concern is appropriate as it ensures the government only audits where there are justifiable reasons.

Senator SCULLION (Northern Territory) (7.52 pm)—Briefly, we support the government in not supporting this amendment. On top of the government’s reasons, we would also indicate that, for the purpose of Medicare audits, we would include the following specifically: the purpose of the consultation, the time of services rendered, the length of time or the referrals made. As I have already indicated, the feedback, particularly from the Royal Australian and New Zealand College of Psychiatrists, is that you would have to negotiate with each sector, because one of those things may be completely inappropriate. I think that opposition amendment (1) will ensure that the sorts of things you are asking for are the sorts of things that industry has agreed to.

The second point I would make is that the purpose and length of time of the service as well as any referrals is in fact held within the Medicare number itself. So, on application, they are getting all that information. Certainly the industry resists strongly the notion of a random audit and, given the figures of only five prosecutions out of 765, I think everyone in this place would understand that the best thing doctors can be doing is not routinely dealing with audit requirements but getting on with the business of providing health care in Australia.

Question negatived.

Senator SCULLION (Northern Territory) (7.54 pm)—by leave—I move opposition amendment (7) on sheet 5987:

(7) Schedule 1, item 2, page 10 (after line 5), after subsection 129AAJ(1), insert:

(1A) In making an application under subsection (1), the person or estate may provide the Medicare Australia CEO with additional information to substantiate (wholly or partly) that the amount paid, purportedly by way of benefit or payment under this Act in respect of the service, should have been paid.

The opposition opposes item 2 in schedule 1 in the following terms:

Schedule 1, item 2, page 10 (lines 15 and 16), subsection 129AAJ(5) to be opposed.

I understand, Minister, that amendment (7), through negotiation, has been agreed to. It is item (8) that is under some sort of contention. Hopefully I will be addressing it, perhaps to the advisers.
Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (7.54 pm)—We will wear it in the interests of time.

Senator SCULLION (Northern Territory) (7.54 pm)—No worries. Thank you very much for your compliance on this very important amendment.

Senator SIEWERT (Western Australia) (7.55 pm)—I missed that interchange across the chamber. Could Senator Ludwig please articulate the government’s position?

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (7.55 pm)—Sorry, Senator Siewert. I apologise to the chamber and to you specifically. I have indicated that, yes, we will accept amendment (7) and, yes, in the interests of expediting this, we will accept item (8).

Senator SIEWERT (Western Australia) (7.55 pm)—Just for the purposes of the record then, I would like to say that the Greens are supportive of amendment (7) but not item (8).

The CHAIRMAN—I will put them separately, Senator Siewert. The question is the opposition amendment (7) be agreed to.

Question agreed to.

The CHAIRMAN—The question now is that item 2 of schedule 1 stand as printed.

Question negatived.

Senator CORMANN (Western Australia) (7.57 pm)—by leave—I move amendments (1) and (2) standing in my name on behalf of the opposition and Senators Fielding and Xenophon:

(1) Clause 2, page 1 (lines 7 and 8), omit the clause, substitute:

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

(2) Page 19 (after line 16), at the end of the bill, add:

Schedule 2—Amendment relating to disallowance of medical services items

Health Insurance Act 1973

1 At the end of section 4

Add:

(3) If an item in a table of medical services prescribed in accordance with subsection (1) is disallowed under section 42 of the Legislative Instruments Act 2003, the corresponding item, if any, in the previous regulations is taken to apply in place of the disallowed item from the time of disallowance.
In subsection (3):

**corresponding item** means:

(a) the item in the previous regulations with the same item number; or

(b) if no item satisfies paragraph (a)—the item in the previous regulations covering the same medical services; as the disallowed item.

**previous regulations** means the regulations that were in force immediately prior to the commencement of the disallowed item.

2 Application

The amendment made by this Schedule applies in relation to any disallowance after 26 October 2009 of an item in a table of medical services prescribed in accordance with subsection 4(1) of the Health Insurance Act 1973.

Fundamentally, these amendments are designed to address a serious flaw in the way the parliament is able to scrutinise changes in Medicare rebates. The effect of these amendments is the same as that which the Senate pursued through the Health Insurance Amendment (Revival of Table Items) Bill 2009. In the interests of time, I refer you for a more detailed explanation as to what we seek to achieve through these amendments to the second reading speech on that bill.

Specifically, these amendments seek to ensure—as did the private members bill—that the disallowance process is workable in relation to the general medical services tables. At present the situation is that, faced with the government making even the most inappropriate decision to reduce the Medicare rebate, the Senate cannot disallow that reduction in rebates but can only disallow the item number in question itself, with the well-advertised effect—which has been focused on by the Minister for Health and Ageing—that the rebate in that circumstance would go down to zero. If the government wants to reduce patient rebates through Medicare and the Senate disagrees with the government’s actions, the reality is that the Senate should be able to move a disallowance of the reduction not just of the item number. At present that is not the case. As per advice from the Clerk of the Senate, our private members’ bill and, as such, also our amendment, will apply the general rule of revival contained in the Legislative Instruments Act to particular parts of these regulations.

The problem at present is that, if what Minister Roxon is doing is allowed to stand unchallenged and if it can continue to go ahead into the future, it would mean in effect that governments could make any cuts they like to the Medicare Benefits Schedule without the Senate ever being able in practice to stop them—70 per cent, 80 per cent, 90 per cent cuts, and the parliament cannot do anything about it. So, however ill-considered the budget cut, however many senators are opposed to it, however sound and well-considered the reasons for disallowance may be, the Senate would not be able to do anything about it. If this situation were allowed to stand, any disallowance motion in relation to cuts to the Medicare Benefits Schedule now or at any time in the future would be completely ineffective. Clearly that cannot have been the intention of the parliament when delegating the power to make regulations to the government under the Health Insurance Act 1973.

Given that, at present, the Health Insurance Act 1973 appears to delegate power to the government to make regulations reducing any Medicare item rebate without the Senate being able to do anything about it in practice, clearly that legislation needs to be changed. This is the intention of these amendments. On this occasion, it is about elderly patients in need of life-changing cataract surgery, but another time it could be cancer patients, it could be heart patients or it could be patients across a whole range of medical specialties.
If the government is able to do what this government has done, in the face of the express and formalised opposition of the Senate as expressed through a disallowance motion, and if the government can proceed without any recourse to the Senate, even if a majority of the Senate disagrees with the government’s action, then that is entirely inappropriate.

In the short term, this amendment is aimed at helping to protect the more than 100,000 elderly patients who access life-changing cataract surgery every year. The Rudd government, through what we consider to be an ill-considered, short-sighted 50 per cent cut in rebates, sought to impose significant additional out-of-pocket expenses onto mostly elderly patients. This amendment will ensure that the disallowance of that measure, which was passed by the Senate on 28 October 2009, will see the rebate for cataract surgery related items revert to the previous level of rebate.

I will quickly talk about the amendments. The most substantial part of the amendments is amendment (2), which provides that, if any item in the table of medical services prescribed in accordance with subsection (1) is disallowed under section 42 of the Legislative Instruments Act 2003, the corresponding item, if any, in the previous regulations is taken to apply in place of the disallowed item from the time of disallowance. The application would be from 26 October 2009.

The changes in amendment (1) relate to the commencement provisions. I note again that commencement of this bill, the Health Insurance Amendment (Compliance) Bill 2009, according to the government and the way it has been drafted, is 1 January 2010, but in order for that to be possible this legislation has to be passed by the end of this week. The opposition has, very constructively, enabled the government to meet its own deadlines, which they have flagged in this legislation, because we all know that, from tomorrow, we will not be dealing with much legislation other than the CPRS legislation.

I will quickly talk about two comments made by the Minister for Health and Ageing, after the Senate passed the Health Insurance Amendment (Revival of Table Items) Bill 2009. Firstly, she claimed that that bill—and, as such, I guess, these amendments, because these amendments are the same as that bill—was unconstitutional, should not have been introduced into the Senate and should not have been passed by the Senate, supposedly because it was a bill appropriating money and, as such, a money bill. Let me be very clear that that argument is incorrect. Advice from the Clerk of the Senate and independent legal advice from Blake Dawson to the AMA very clearly point out that this is not a bill appropriating money and that it was quite appropriately introduced and passed by the Senate—entirely consistent with section 53 of the Constitution.

I note that, even though Minister Roxon, in the House of Representatives on 29 October 2009 promised that she would provide a copy of the government’s legal advice, which supposedly indicated otherwise, so far she has not, despite repeated orders of the Senate. It does raise the question: given that we have been prepared to put all of our advice on the table and that the government promised to provide its advice, what has the government got to hide?

Finally, in her press conference after the Senate passed the disallowance motion and the private members bill, the minister made the observation that, if our private member’s bill were to be passed into law—and presumably those remarks apply equally to these amendments—this would mean that governments would not be able to change or
reduce Medicare rebates in the future. That is, of course, completely incorrect. What it does mean is that, if the Senate were opposed to changes or reductions in Medicare rebates which the government wanted to pursue, and chose to express that opposition by passing a disallowance motion, then the government would not be able to reduce or change Medicare rebates. But, if a government were to seek to reduce or change Medicare rebates and were able to make a case to the Senate, as well as to the House of Representatives, that that was justified, then there would be absolutely no problem.

I repeat again that the minister’s assertion that the effect of the bill passed by the Senate, and the effect of these amendments, would be that the government could at no time reduce Medicare rebates in the future is false. But it is very clearly the intention of this amendment, and unashamedly so, that if the Senate is opposed to a particular reduction in Medicare rebates because it considers it to be inappropriate, and if the Senate gives expression to that opposition through a disallowance motion, then clearly the government cannot go ahead with that reduction—nor should it be able to. From our point of view, we think that is Democracy 101 and that the minister should clearly be forced to take note of the Senate’s wishes in those circumstances.

In closing, this has been a very messy exercise. We grant you that. We do not take responsibility for this. The minister has known since 8 September that she did not have a majority in the Senate for these cold-hearted cuts in patient rebates for cataract surgery through Medicare. We are going to have a more substantial debate about why we think the government’s cuts are ill-thought out, ill-considered, short-sighted and very bad for our health system. I will not hold up the Senate with this now, but the reality is that, from a process point of view, the reason these amendments have become necessary is that this is a government that does not take note when the Senate says, ‘We do not agree with what you are doing—go back to the drawing board.’

This minister has form. This minister has shown that she cannot be trusted with the delegated authority that has been granted to the government under the Health Insurance Act 1973. In order to make the disallowance process appropriately effective in practice, these two amendments are necessary. I commend them to the Senate.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (8.06 pm)—It does seem that it is an arrogant and incompetent submission that is being put forward. It is clearly another political stunt that is being used as a cover for the proposed reckless behaviour that Senator Cormann is proposing in disallowing the existing MBS items for cataract surgery. Senator Cormann understands that there will be no MBS rebate for cataract surgery as a consequence of the action that is being taken. If the opposition were serious about this bill before the chamber, they would confine their amendments and debate—

Senator Cormann—This is not the disallowance motion, Minister.

Senator LUDWIG—It seems to be, Chairman, that those on the other side do not want to listen to my submission. If that is the case, they can either leave the chamber or remain quiet. It seems to me that the opportunity which I afforded them—when I listened to their rants in silence—similarly should be afforded to me. Senator Cormann, of course, does not agree with my submission.

The CHAIRMAN—Minister, if it gets too unruly, I promise you that I will bring them to order. Otherwise, I would ask you to continue.
Senator LUDWIG—Thank you. The government has fixed the mess that the Liberal Party created in the Senate three weeks ago regarding cataract procedures, by introducing new items to ensure that patients were not left with no rebate at all. The new fee for the most common cataract procedure—which typically takes between 15 to 20 minutes—is $454.35. Complex procedures will receive $975. As everyone understands, improvements in technology have made cataract procedures quicker and less expensive. This is a view shared by some of the medical profession. For example, Dr Walters was reported in the Canberra Times of 19 November as saying:

The real issue here is the sustainability of public funds—in other words, the Medicare pie. When technology catches up and makes the procedure, as in this case, easier then you move the lines in the pie so funds are available for other health services.

The government believe patients and taxpayers should share the benefits of these improvements. International fee comparisons do indicate that the fee charged for cataract surgery is much higher in Australia than in other similar countries that use the same technology.

The Minister for Health and Ageing had a discussion with the ophthalmologists late last week and we are advised that those conversations are continuing. But we do have a position here; whereas the purpose of Senator Cormann’s submission really remains opaque to the government, and even me on this side of the chamber. Why he would seek to use an important health compliance bill, to pull it off the program and use it to tack amendments such as these onto it—amendments which are unrelated to the substance of the health compliance bill—and seek to waste the time of the Senate dealing with this now when we could be dealing with the government’s agenda with the Carbon Pollution Reduction Scheme escapes me, quite frankly. Senator Cormann knows that this is a political stunt. He understands the ramifications of what he does. One wonders whether or not he is a stalking horse for the opposition, who do not want to deal with the Carbon Pollution Reduction Scheme.

Senator CORMANN (Western Australia) (8.10 pm)—I was not going to make an additional contribution; however, given some of the statements made by the minister, I cannot leave them unanswered on behalf of the opposition. Firstly, the government do not seem to be able to look past partisan politics. They do not seem to be able to look past the Labor Party and Liberal Party divide. It was not the Liberal Party who made a decision two weeks ago to disallow the government’s cold-hearted actions in relation to patient rebates for cataract surgery; it was the Senate. Nobody but the Australian Labor Party—if the minister wants to talk in those terms—voted in favour of those cuts; in fact, everybody but the Australian Labor Party supported the actions of the Senate in relation to the Rudd government’s cold-hearted 50 per cent cut in patient rebates for cataract surgery; these are cold-hearted cuts which will hurt mostly elderly patients, which will impose significant additional out-of-pocket expenses on them, which will make life-changing surgery unaffordable for many of them, and which will push many of them into the public system—where the taxpayer will have to pick up the whole bill, which is in excess of $3½ thousand. We have a minister here who wants to save about $300 at a Commonwealth level and cost-shift it to the states and territories, who will have to pick up about $3½ thousand for exactly the same procedure. It is completely ill-thought-out policy—and patients are getting caught up in the middle of it.

The minister here mentioned the assertion—and I think he should have been a bit
more careful about this—made by the Minister for Health and Ageing that this procedure now takes 15 to 20 minutes. The Minister for Health and Ageing has been very good at making assertions—like she has been promising that she would provide a copy of the legal advice indicating that the actions of the Senate were unconstitutional—but she is not very good at backing up her assertions with evidence, facts or documents. We have been asking questions about how this supposedly now takes 15 to 20 minutes—and every now and then the minister has let the 20 minutes drop and has talked about 15 minutes. We have been asking her for evidence and she has not been able to point to any Australian data. She was able to quote a specialist who wrote an article in the British Medical Journal, and that specialist has approached us to say that he was quoted completely out of context and that he had not relied on any Australian data whatsoever for the article.

We also know that the AMA has done a survey of ophthalmologists which indicated that, for 70 per cent of specialists, the procedure takes between 25 and 40 minutes. We also know that it was only after the Senate disallowed the government’s drastic, massive, 50 per cent cut that the minister, her office or her department went out there and did a ring-around and asked some health stakeholders how much time it actually takes. I believe that the government has been told that the procedure takes about 30 minutes on average. The Senate has asked the minister to come clean and table some of the information that she has been collecting, but of course again today she has been refusing to do so.

The minister also raised improvements in technology—and I cannot leave these assertions unanswered. There have been improvements in technologies and the procedure is now shorter than it was when it was first introduced. Since the rebate for this procedure was first introduced, it has been reduced twice. This is not disputed; the department confirmed this during Senate estimates. It was reduced by 30 per cent in 1987 and the rebate for this surgery was reduced again by 10 per cent in 1996. Since 1996—and even before then, I believe, but certainly since 1996—indexation of rebates for this procedure has been below the CPI. That was intentionally so because of an inbuilt assumption of productivity gains. The minister has not acknowledged any of these facts. She has not answered any of these questions. Instead, when the Senate passed the disallowance to prevent the government from going ahead with a further 50 per cent cut in patient rebates for cataract surgery, she turned around the next day, thumbed her nose at the Senate and replaced the massive 50 per cent cut with a massive 46 per cent cut.

This is not the way to do business. This is not the way to be accountable to the parliament. I will say it again, and close on those remarks: we have a minister here who thinks that she is a minister in a dictatorship. She does not understand her responsibilities as a minister in a parliamentary democracy with a bicameral system, where there is both a House of Representatives and a Senate. The minister has not given us a copy of her legal advice. We have put it all on the table, but all the minister has provided us with is some departmental advice to say that what the opposition is doing is unconstitutional. Since when can the government give advice to itself about how much power it has? I have a message, as I have said before, for minister Roxon: no departmental briefing note to the government will be able to limit the constitutional powers of the Senate and no departmental briefing note to the government will be able to expand the government’s powers under the Constitution.

This is an important change to the Health Insurance Act. Clearly, this government is
intent on persisting with abusing the powers that it has been delegated so far under the Health Insurance Act. There has to be a limit put on it. Incidentally, the minister has referred to a meeting with ophthalmologists earlier in the week. Again, I advise the Senate: I have been advised on how this meeting went. One of the things the minister said in that meeting to ophthalmologists was that, if the Senate were to disallow it again, she would reintroduce another determination regulation immediately afterwards—and that the next one could well be lower, so she was threatening ophthalmologists. The Senate has made its views very clear. We do not want the government to reduce the patient rebates through Medicare for cataract surgery—as the Minister for Veterans’ Affairs has not; he has increased them. So the government is all at sea. The arguments are totally inconsistent across the board.

For exactly the same item number, exactly the same procedure, we have one minister in the Rudd government saying rebates should be increased, we have another minister saying they should be reduced—but without putting any evidence forward—and we have a minister who promises to release legal advice to the House of Representatives but then backs out of it, because clearly she has something to hide. And here we have a government that think that, if they tell themselves they have more power than everybody else think they have, somehow that gives them a divine addition to government power. This is what dictatorships do. Dictatorships say, ‘We’ve got all these new powers, which nobody ever thought we had.’

We are ruled by the Constitution. Section 53 of the Constitution enables the Senate to do what it is doing. I urge the government to very carefully reflect on what they do next with this, and on their threats to ophthalmologists. This is not actually about ophthalmologists; this is about patients. This is about patients who the Rudd government want to slug with $600 to $900 in additional out-of-pocket expenses. And these are mostly elderly patients. These are people across Australia who for decades have done the right thing, putting additional resources into the healthcare system through private health insurance. And, at a time when they think they can use their private health insurance to get timely and affordable access to this surgery, this cold-hearted government turns around and say, ‘No, we’re going to cut this rebate by 50 per cent; we are going to increase the out-of-pocket expenses to such an extent that you will not be able to afford it.’ Then this government have the cheek to say to the Senate: ‘Even though you think that our actions are inappropriate, you won’t be able to do anything about it. All you can do is pass a disallowance of the motion itself, which takes the rebate to zero. You won’t be able to do anything about us reducing this.’ These amendments are a very effective legislative way to ensure that the intentions of the Senate can be practically implemented.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.18 pm)—Amendments (1) and (2) are also in the name of Family First. They have been moved for a very important reason. I am not so sure the government could actually argue very hard against these amendments in their totality because, when you think about it, if the Senate does disallow something, surely it should go back to where it was previously. That is a simple proposition. Quite clearly, the Senate here is trying to fix something that probably should have been fixed some time ago. I cannot understand why the government would argue contrary to the proposition that, if you disallow an item, it should revert to where it was previously, because that is where the status quo was and that is where it should be until there is a majority in the Senate to change it. I will stick to the topic—I
will not go elsewhere, to the specific items—but I cannot understand why the government would not support these amendments. They may say, ‘Oh, it’s because of cataracts’—or something—but it is just common sense. This is where the Senate works best—when we find a problem, rather than sweeping it under the carpet and turning a blind eye to it, it is a matter of addressing it and making sure that the Senate fixes something that is a problem. If this Senate’s majority decision is to disallow an item then, quite frankly, it should revert to where it was. I just cannot understand how the government could argue against this common-sense amendment. If the minister on duty could actually respond to the question: what harm would this do to the Australian people? When the Senate disallows a change brought in by any government, whether it is this Labor government or a coalition government in the future, when the Senate thinks that an item should be disallowed, and the majority is there, it should revert to where it was so that there is not the chaos of going back to zero. This is the government’s doing. They have had plenty of time to think this thing through, and plenty of time to address it. Let’s stick to the arguments. This is a common-sense amendment that the Rudd government should fully support, because it makes sense.

Senator SIEWERT (Western Australia) (8.21 pm)—I will not speak for any longer than is absolutely necessary. The Greens will be supporting this amendment, for the same reason that we did last time: we think we need to, firstly, deal with this issue of when a schedule fee is disallowed; and, secondly, we do not think there has been enough effort put into actually fixing this issue around cataracts. I spoke at more length last time I addressed this issue, but there is still a stand-off in dealing with this issue of the schedule fees for cataracts. To my mind there has not been enough information presented about what the real costs are in terms of the rebates. There is dispute about how long operations take. I have heard some evidence regarding the number of patients who are going through a certain number of procedures per day, but I have also heard counterevidence to that as well. Yes, there was a meeting, and I understand that it was unsatisfactory—it takes two sides in such an issue to have a meeting. I must admit, we have not adequately heard the minister’s side; we have heard the ophthalmologist’s side. But the Greens have yet to be convinced that this issue has been adequately dealt with, so we will be supporting this amendment.

Question put:
That the amendments (Senator Cormann’s) be agreed to.

The committee divided. [8.27 pm]
(The Chairman—Senator the Hon. AB Ferguson)

Ayes.............. 41
Noes.............. 29
Majority......... 12

AYES

Abetz, E.               Adams, J.
Back, C.J.             Barnett, G.
Bernardi, C.           Birmingham, S.
Boyce, S.              Brown, B.J.
Bushby, D.C.           Cash, M.C.
Colbeck, R.            Coonan, H.L.
Cormann, M.H.P.        Eggleston, A.
Ferguson, A.B.         Fielding, S.
Ferravanti-Wells, C.   Fisher, M.J.
Hanson-Young, S.C.     Heffernan, W.
Humphries, G.          Johnston, D.
Joyce, B.              Kroger, H.
Ludlam, S.             Macdonald, I.
Mason, B.J.            McGauran, J.J.J.
Milne, C.              Minchin, N.H.
Nash, F.               Parry, S.
Payne, M.A.            Ronaldson, M.
Ryan, S.M.             Scullion, N.G.
Siewert, R.            Troeth, J.M.
Trood, R.B.            Williams, J.R. *
Xenophon, N.
NOES
Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, C.L.
Cameron, D.N. Carr, K.J.
Collins, J. Conroy, S.M.
Crossin, P.M. Evans, C.V.
Farrell, D.E. * Feeney, D.
Forshaw, M.G. Furner, M.L.
Hogg, J.J. Hurley, A.
Hutchins, S.P. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Polley, H. Pratt, L.C.
Sherry, N.J. Sterle, G.
Wortley, D.

PAIRS
Fifield, M.P. Stephens, U.
Boswell, R.L.D. Faulkner, J.P.
Brandis, G.H. Wong, P.
* denotes teller

Question agreed to.
Bill, as amended, agreed to.
Bill reported with amendments; report adopted.

Third Reading
Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (8.30 pm)—by leave—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

DOCUMENTS
Tabling
The DEPUTY PRESIDENT—Pursuant to standing order 166, I present the following document, which was presented to the President and a temporary chair of committees on 20 November 2009. In accordance with the terms of the standing order, the publication of the document was authorised.

Australian Prudential Regulation Authority (APRA)—Report for 2008-09

Senator BUSHBY (Tasmania) (8.31 pm)—by leave—I move:
That the Senate take note of the document.

On 20 November 2009, APRA released its annual report. The report highlights the activities of APRA over the 12 months that it covers and shows that we have a well resourced, competent and active prudential regulator. Of particular interest, however, are the comments made in the report, primarily by the chairman, Dr John Laker, but also throughout the report.

The comments that interested me in particular are twofold. The first comments that I would like to speak briefly to are the extent to which the report highlights the challenges that the Australian financial sector faced over the past two years. Dr Laker stated:

A prolonged downturn and rising unemployment would have put strong pressure on asset quality, profitability and capital and, inevitably, would have invited harsh market sanctions against financial institutions with poorer risk profiles. Acknowledging these possibilities, APRA’s supervisory intensity was dialled to its highest level.

However, as also noted by Dr Laker, events that have transpired since that time have proven that the situation was otherwise. Why is this the case? Why have the events not transpired as thought possible by Treasury, the Reserve Bank and APRA, as noted in their report? There is at least one obvious and primary reason for this: because the financial sector reforms put into place in Australia by the then Treasurer, Peter Costello, set Australia up very well to survive this crisis.

In response to the recommendations of the Wallis inquiry, the coalition put in place a new regulatory regime for financial services in Australia a little over 10 years ago. These reforms involved major changes to the regulatory structure, basing them on four agencies: the Reserve Bank of Australia, the Aus-
Australian Securities and Investments Commission, the Australian Prudential Regulation Authority and the Australian Competition and Consumer Commission. Prudential regulation was focused on a twin-peaks model, under which the already established ASIC regulated the markets and a new APRA supervised the banks and insurance companies.

As part of the coalition reforms, responsibility for prudential supervision of approved deposit-taking institutions was taken away from the Reserve Bank of Australia and given to APRA. The RBA retained responsibility for achieving overall financial stability. The simple fact is—and this has been proven by its performance through what presented as a very real challenge—that the coalition-developed structure for regulating the banking and financial industry, combined with strong and effective links between the regulators, have achieved an extremely innovative and stable financial system for Australia.

The role that APRA played, through its activities in prudentially regulating the financial sector prior to and during the worse of the crisis, laid a strong basis for ensuring the solvency and, with the RBA, the stability of our main financial institutions. This has been a key factor in delivering the strength of Australia’s financial sector performance over the past two years.

This report that we are looking at today highlights how the twin-peaks model of prudential regulation has served Australia well throughout this period. Again, I quote Dr Laker from the report:

In a number of the major industrial economies, the global financial crisis has shone an unflattering spotlight on the regulatory architecture, coordination arrangements and the performance of the prudential regulator itself. Australia’s ‘twin peaks’ model, in contrast, has stood up well to scrutiny. Having a single and clear mandate—namely, to promote prudent behaviour on the part of financial institutions—has kept APRA free of the distractions and the resourcing and other conflicts that can arise in attempting to pursue multiple objectives.

The second issue raised in this report is what I would call not throwing the baby out with the bathwater. Clearly, the regulatory framework the coalition implemented for prudential regulation in Australia has worked well in protecting Australians from the financial problems suffered in most comparable countries. For this reason it is vital that regulatory changes being discussed and implemented in jurisdictions where they did suffer a failure of regulation are not implemented here unless a demonstrable need is evident. In other words, we should not be implementing solutions to problems that we do not have, particularly if they add complexity, restrict innovation and add to the cost of doing business in Australia.

Reassuringly, this was acknowledged by Dr Laker in his comments in the report. He said:

Australia’s prudential framework has performed well during the global financial crisis and a ‘root and branch’ review is neither necessary nor contemplated. Nonetheless, global reform initiatives will have implications for this framework.

The recent involvement of APRA in the Basel committee is also reassuring as it will allow our voice to be heard to minimise the risk that international agreements will impose restrictive regulation on us in a way that Australians do not need. My confidence in APRA’s ability to recognise threats and to work against them is high. Unfortunately, my confidence in the government’s ability to do so is not so high, particularly given comments by the Prime Minister and other ministers railing against the lack of regulation in Australia and the failure of existing frameworks to address the problems that led to this crisis.

Question agreed to.
CATARACT SURGERY REBATES
Return to Order

The DEPUTY PRESIDENT—I present the following document, received on 20 November 2009:
Health—Cataract surgery times—Data—Interim response to order for the production of documents (motion of Senator Cormann agreed to 19 November 2009)

NOTICES
Presentation
Senator Williams to move on the next day of sitting:
That the following matter be referred to the Economics References Committee for inquiry and report by 31 August 2010:
The role of liquidators and administrators, their fees and their practices, with particular reference to:
(a) the role and practices of liquidators and administrators and associated companies including, accounting and law firms, prior to and following the collapse of a business; and
(b) the involvement and activities of the Australian Securities and Investments Commission following the collapse of a business.

COMMITTEES
Privileges Committee
Report
Senator BRANDIS (Queensland) (8.38 pm)—On behalf of the Committee of Privileges, I present the 141st report of the committee, entitled Possible interference with, or imposition of a penalty on, a witness before the Legal and Constitutional Affairs References Committee.

Ordered that the report be printed.

Senator BRANDIS—I seek leave to move a motion in relation to the report.
Leave granted.

Senator BRANDIS—I move:
That:
(a) the Senate endorse the finding in paragraph 1.25 of the report, that no contempt should be found in respect of the Chief Executive Officer, or another staff member, of the Aboriginal Service of Western Australia; and
(b) that the Chairs’ Committee, established under standing order 25(10), consider the adequacy of information provided to witnesses on the subject of possible intimidation or imposition of a penalty in consequence of a witness’s evidence to a Senate committee.

This matter was referred to the committee on 10 September 2009 on the motion of the chair of the Legal and Constitutional Affairs References Committee, Senator Barnett, as a consequence of that committee’s report entitled A possible contempt in relation to a witness to the committee’s inquiry into access to justice.

Ms Rowena Puertollano was an employee of the Aboriginal Legal Service of Western Australia who made a submission to the inquiry of the Legal and Constitutional Affairs References Committee into access to justice. She signed herself as the coordinator of the Broome Family Violence Prevention Legal Service and made references to her experiences in that role, but she did not purport to represent the organisation or its views. When the submission became known to her employer, her supervisor issued her with a written warning for serious misconduct for having made the submission. Ms Puertollano then did the right thing by notifying the references committee of what had happened.

The references committee wrote to the employer indicating that its action was possibly in contempt of the Senate, and seeking an assurance that Ms Puertollano would suffer no disadvantage for having made the submission. The references committee also recommended that the warning be withdrawn. The references committee was not
satisfied with the response of the Chief Executive Officer of the Aboriginal Legal Service of Western Australia, Mr Dennis Eggington, who took issue with the references committee’s view that the warning letter constituted a possible contempt and appeared to insist that the ALSWA continued to assert its right to regulate what its employees told parliamentary committees. However, Mr Eggington also apologised to the committee and indicated that the warning letter would be withdrawn. In the meantime, Ms Puertollano had resigned.

On receiving the reference, the Committee of Privileges sought and received submissions from Ms Puertollano and the ALSWA, in respect of Mr Eggington and Ms Puertollano’s supervisor. The tenor of those submissions is outlined in the report. Importantly, Mr Eggington assured the committee that he was not seeking to justify an erroneous position and that there had been no intention to interfere with the references committee’s conduct of the inquiry. He also suggested that clearer guidance on these matters would be useful. The committee has accepted his submission for the reasons given in the report and has concluded that no contempt should be found.

Because Ms Puertollano resigned from her employment before these matters had been resolved, the committee is unable to offer her any practical comfort, other than to say that she did the right thing in reporting to the references committee what had happened to her. She had every right to make her submission to the access to justice inquiry. Her former employer was in the wrong in issuing her with a written warning of serious misconduct, though not, in the committee’s view, in contempt.

The report contains the requested guidance in paragraphs 1.23 and 1.24, to which I draw the attention of all Senate committees, which, from time to time, encounter similar circumstances. In particular, the report states: ... for any person who seeks to take action of any kind against another person as a consequence of their evidence to a Senate committee ... the committee’s advice is that such action should not be taken in any circumstances. If it is taken, such action may constitute a contempt of the Senate. A person’s right to communicate with the parliament and its committees is an untrammelled right, overriding all other considerations.

A simple alternative remedy is for the affected body, be it an employer, a professional association or any other body, to put in its own submission to the inquiry, disavowing the individual’s submission as representing the views of the organisation. Under no circumstances should direct action be taken against the individual. In order to keep this matter on the Notice Paper so that senators may consider the issues before they vote on the motion, I seek leave to continue my remarks.

Leave granted; debate adjourned.

**Public Works Committee Reports**


Leave granted.

**Senator McLUCAS**—I move:

That the Senate take note of the reports.

This report addresses the Redevelopment of Villawood Immigration Detention Facility project, jointly proposed by the Department of Finance and Deregulation and the Department of Immigration and Citizenship at an estimated cost of $186.7 million.
The Villawood Immigration Detention Centre is an essential component of Australia’s immigration detention infrastructure and is in urgent and critical need of upgrade. The committee found that the current centre is largely inappropriate for housing people under administrative detention. It looks and feels like an antiquated prison, offering little recreation space and very little individual privacy. The committee is well aware of the importance of this facility to Australia’s migration system and was concerned to ensure that the redeveloped centre would both be operationally effective and respect the rights of detainees. The report’s nine recommendations focus on this outcome.

The committee has recommended that the proposed works proceed, with some recommendations to be implemented immediately, including providing a lockable space for detainees and ceasing use of the loudspeaker paging system, as in our view it breaches the privacy of detainees. However, the committee has reserved its judgment over certain elements of the project, recommending that the final designs and costings be brought to the committee prior to construction commencing. This is because the committee is not confident that the existing buildings can either be adequately retrofitted to afford dignity to detainees or cope with surge conditions.

In addition, the committee was concerned that no decision has been made on the stage 1 high-security facility, which we were told would be phased out of use. This facility is so inappropriate that the committee has recommended that it be demolished. The committee has also recommended that, in line with the centre being renamed the Villawood Immigration Detention Facility, the accommodation sections within it be renamed more appropriately to help break down some of the institutional culture of the place.

The committee was pleased to note that, as a result of its 2005 inquiry into the Maribyrnong Immigration Detention Centre, DIAC has written standards for the design of immigration facilities. In recognition of the importance of this document, the committee has recommended that it be accredited by Standards Australia to ensure that all future facilities are of the highest possible standard. The committee received submissions from local residents concerned about security and site management, and we have recommended that the proponent agencies work more closely with the local council and residents throughout the redevelopment.

Finally, the committee met with a group of detainees while at the VIDC. This meeting informed many of the committee’s deliberations on the state of the current centre, and the committee is grateful for their input. I would like to thank senators and members for their work in relation to this inquiry, and I commend the report to the Senate.

The committee was pleased to note that, as a result of its 2005 inquiry into the Maribyrnong Immigration Detention Centre, DIAC has written standards for the design of immigration facilities. In recognition of the importance of this document, the committee has recommended that it be accredited by Standards Australia to ensure that all future facilities are of the highest possible standard. The committee received submissions from local residents concerned about security and site management, and we have recommended that the proponent agencies work more closely with the local council and residents throughout the redevelopment.

The second report I table this evening is entitled Referrals made August to October 2009. The report addresses six works, located from Queensland to Afghanistan and from Sydney to Paris. Unfortunately, we did not do an inspection in Paris! Together, these projects represent $1.7 billion of infrastructure investment. In each case, the committee has recommended that the House of Representatives agree to the works proceeding.

The works in this report are: Defence housing at the Gordon Olive Estate in McDowall, Brisbane for Defence Housing Australia at an estimated cost of $27.2 million; Defence housing on Larrakeyah Barracks in Darwin, also for DHA, at an estimated cost of $52.4 million; a midlife engineering services refurbishment of the Australian Embassy in Paris for the Department of Foreign Affairs and Trade at an estimated cost of $28.3 million; the Enhanced Land
Force Stage 2 Facilities Project for the Department of Defence at 12 Defence bases and training areas across Australia at an estimated cost of $1.457 billion; the redevelopment of Tarin Kowt in Afghanistan, also by the Department of Defence, at an estimated cost of $86.4 million; and the tropical marine research facilities in Townsville and Cape Ferguson near Townsville for the Australian Institute of Marine Science at an estimated cost of $49.5 million.

This report demonstrates the breadth of projects regularly considered by the committee, and the committee is pleased to table a report that is so diverse in both its subject matter and the geographical locations of the proposed projects. The works approved by the committee in this report will help protect Australian soldiers serving in Afghanistan, develop internationally unique marine research facilities, provide housing for members of the ADF and their families and ensure the viability of one of Australia’s best known embassy buildings as well as providing the Army with facilities for its expansion.

The committee was pleased throughout the inquiry process to have a number of submissions from members of the public about projects under consideration. We are particularly pleased to note that practical solutions to some project issues were developed through discussion amongst witnesses and proponents at the hearings. The committee will continue to promote broader community consultation and discussion as an essential part of all projects, as members have seen repeatedly how this leads to tangible results.

In respect of the Enhanced Land Force Stage 2 Facilities Project, for example, the committee has recommended the Department of Defence develop a consultation protocol to ensure that it mirrors consultation required under routine local planning procedures. This is particularly important for Defence given the constraints that are increasingly imposed on established bases by growing urban areas. There is sometimes a tension between competing priorities and, whilst everyone demonstrates considerable interest in working toward practical and workable solutions, the committee is of the view that Defence needs to follow a predictable consultation plan that allows community members with an interest in a project to have input. The consultation protocol would also allow local governments and, where relevant, state governments to be provided with information about a proposal prior to the planning works getting to finalisation.

Given the obvious diversity of projects considered by the community, it is worth noting some common threads running through the proposed works. In each case, the committee has sought to ensure that agencies plan and design facilities with reference to local climate and weather conditions. The committee has also placed an emphasis on the environmental sustainability of each project as a whole, including demolitions, adaptive reuse, new construction and ongoing use of facilities. The committee inquired about the flexibility of projects and the capacity for future expansion of planned facilities as well as their impact on local communities. The committee was pleased to note that agencies are attentive to these considerations throughout the planning, design and construction process.

I again thank senators and members for their work on these various inquiries. As this will be the last report to the parliament of 2009, I take this opportunity to also thank the secretariat for their excellent work over the year. It is our view as a committee that we should deal with matters that are brought before us in a very timely way. I particularly want to thank the secretariat for assisting the committee to deal quickly and efficiently, but
also fulsomely, with proposals that are brought to us. I commend the report to the Senate.

Question agreed to.

DELEGATION REPORTS

Australian Parliamentary Delegation to Tonga and Vanuatu, 22 July to 1 August 2009

Senator IAN MACDONALD (Queensland) (8.53 pm)—by leave—I present the report of the Australian parliamentary delegation to Tonga and Vanuatu, which took place from 22 July to 1 August 2009 and seek leave to move a motion to take note of the document.

Leave granted.

Senator IAN MACDONALD—I move:

That the Senate take note of the document.

I am delighted to speak to the report of the Australian parliamentary delegation to Tonga and Vanuatu. I start by paying tribute to the leader of the delegation, Mr Kelvin Thomson, the member for Wills, and to the other member of the delegation apart from me, Senator Claire Moore, a colleague in the Senate and a fellow Queenslander. I do not agree with Senator Moore on many things, but on this report I certainly do. Senator Moore made a very significant contribution and I hope she has an opportunity tonight to speak to the report and the issues of particular importance to her.

While the delegation that went to these two South Pacific friends and neighbours of Australia was very small in number, I would like to think that that was more than counterbalanced by its quality and efficiency. I want to pay particular tribute to Ms Lynette Mollard, who, as many in this chamber will know, does a fantastic job in whatever she puts her mind to. In this instance, she was the secretary of the delegation and I—and I am sure I speak for all delegation members—have the utmost admiration for the work that Ms Mollard did in this delegation and does generally.

I would also like to thank some people in the nations we visited. In Tonga, His Majesty King George Tupou V was not in the country, but the delegation were grateful to be received by the Prime Minister of Tonga, Dr Feleti V Sevele. In Vanuatu, we were delighted to be associated with and welcomed by the President, Kalkot Mataskelekele Mauliliu. We were also privileged to meet with the Prime Minister and the leader of the opposition in our visit there. For personal reasons I was unable to be in Tonga, which was a great disappointment to me because I had an association with Tonga before I came to this parliament. As fate would have it, I was not able to be there. My remarks will be confined, unfortunately perhaps, to our visit to Vanuatu, which was a very enlightening experience for me and, I am sure, for the rest of the Australian delegation.

I pay particular tribute to Mr Pablo Kang, our High Commissioner to Vanuatu. I also pay tribute to his staff and to the staff of Tonga for the tremendous support and assistance provided both prior to and during the delegation, particularly Ms Carol Gransbury, the first secretary in Tonga; Ms Sue Langford, the Deputy High Commissioner; and Ms Kendra Derousseau and Ms Freya Beaumont, both from AusAID, who are running the Australian program in Vanuatu.

I smiled when I mentioned our High Commissioner in Vanuatu, His Excellency Mr Pablo Kang. He will not mind me saying this. With a name like Pablo Kang you would think he would have to be either Mexican or Chinese. He is neither—he is a very Australian Australian. But he has the facial consequences of his obvious Chinese birth. The delegation were competing with a delegation from mainland China, who tried to engage
our high commissioner in conversation, assuming he was well versed in the Chinese language. It was an interesting and humorous by-product of our visit. He neither spoke Mandarin nor had more than a family relationship with the Republic of China. But that is by the way. I congratulate His Excellency and his staff on the fabulous work that they do in Vanuatu and certainly on the way they looked after the delegation.

Time does not permit me to go through the report at any length, but I urge honourable senators and those who might be listening to look at the report. It does give a very good insight into Australia’s relationships with both Tonga and Vanuatu. Can I highlight that Vanuatu—and, as I indicated, this was the part of the visit that I concentrated on—is the only Pacific Island country eligible for funding under the Millennium Challenge Account. It is in that position because it has been recognised for encouraging good governance. Under the auspices of the Millennium Challenge Account, Vanuatu is receiving over US$65 million for a new transport infrastructure program to benefit rural agricultural producers and providers of tourism related goods and services. I want to emphasise that Vanuatu is one of the few countries around the world that is recognised for its commitment to democracy and to parliamentary administration. It is for that reason that it is able to participate in the Millennium Challenge Account.

I want to mention with some pride that 72 per cent of the GDP of Vanuatu relates to Australia’s direct involvement in commercial tourism—and I am proud to say I have been there a couple of times myself on a cruise boat. It is what keeps the main economy of Vanuatu going. It is estimated that some 1,200 people are directly employed in the tourism sector. Increased tourism has had a flow-on effect on the services economy, with heightened demand for production of goods and services such as transport, communications, wholesale and retail trade, banking, insurance, hotel accommodation and service. Almost all of the 180 cruise ship passengers who come into Port Vila are Australian, and two-thirds of the long stay tourists are Australian. The port that we docked at is small and, I regret to say, inefficient, outdated and expensive to operate. The Japanese are looking at building a new wharf. Continued growth in Vanuatu’s tourism sector will be crucial to providing employment opportunities for the young and the rapidly growing population in Vanuatu.

The delegation spent a night on Tanna, and I want to spend a couple of seconds in the very limited opportunity I have to debate this motion to say to anyone who might be listening that Tanna is a place you should go. I always thought we had bad roads in Northern Australia but, compared to Tanna, Northern Australian roads look first class. The road from the airport is awful, but if you follow it to the volcano it is worth every bump that you feel on the way. The volcano is a fabulous tourism experience. There are not many places in the world where you can stand on top of a volcano and see it erupt, I think, every six seconds. It was a real experience and one I recommend.

I am proud to say that AusAID, the Australian overseas development organisation, is upgrading the road. As I recall, some $20 million has gone into building the road from the airport up to the volcano. It is great for the local economy. They will use the road for many other purposes. But to bring very much needed foreign currency into the country Tanna, with its volcano, is something you must see. I recommend to any senator and any member of the Australian public who happens to be listening to go to Tanna. The volcano is something you will never experience anywhere else in your life. There are many more things I would like to say about
this, and I hope we have an opportunity later to highlight the experiences of the delegation. *(Time expired)*

Question agreed to.

**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.

**APPROPRIATION (WATER ENTITLEMENTS AND HOME INSULATION) BILL 2009-2010**

**APPROPRIATION (WATER ENTITLEMENTS) BILL 2009-2010**

**CRIMES LEGISLATION AMENDMENT (SERIOUS AND ORGANISED CRIME) BILL 2009**

**FAIR WORK AMENDMENT (STATE REFERRALS AND OTHER MEASURES) BILL 2009**

**FAMILY ASSISTANCE LEGISLATION AMENDMENT (PARTICIPATION REQUIREMENT) BILL 2009**

**HIGHER EDUCATION SUPPORT AMENDMENT (VET FEE-HELP AND TERTIARY ADMISSION CENTRES) BILL 2009**

**PERSONAL PROPERTY SECURITIES (CONSEQUENTIAL AMENDMENTS) BILL 2009**

**TAX LAWS AMENDMENT (RESALE ROYALTY RIGHT FOR VISUAL ARTISTS) BILL 2009**

**First Reading**

Bills received from the House of Representatives.

*Senator SHERRY* (Tasmania—Assistant Treasurer) (9.05 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 SHERRY* (Tasmania—Assistant Treasurer) (9.07 pm)—I table revised explanatory memoranda relating to the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009 and the Fair Work Amendment (State Referrals and Other Measures) Bill 2009 and 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—*

**Appropriation (Water Entitlements and Home Insulation) Bill 2009-2010**

The Appropriation (Water Entitlements and Home Insulation) Bill 2009–2010 provides urgent funding to cover rebate payments made under the Home Insulation Program and departmental costs associated with the acceleration of the water buy backs within the Murray-Darling Basin system that are addressed in a further Bill to be introduced shortly.

The measures provided for in this Bill allow administered funding of $695.8 million for the Home Insulation Program to be brought forward (from 2010-11) and departmental funds of $4.9 million to be brought forward ($4.4 million from 2013-14 and $0.5 million from 2014-15) from the Water for the Future – Restoring the Balance in the Murray-Darling Basin program.

The $695.8 million for the Home Insulation Program is part of the $985.8 million bring forward of funding included in the Mid-Year Economic and Fiscal Outlook 2009-10. The remaining $290 million is required less urgently and will be in-
cluded in the 2009-10 Additional Estimates Appropriation Bill (No.3).
The Home Insulation Program has seen unprecedented demand from householders with over half a million homes being insulated to date. The uptake level has exceeded initial expectations for the program.

The Bill requires immediate passage as the administered appropriations provided to the Department of the Environment, Water, Heritage and the Arts for 2009–10 are close to being exhausted. Based on the current take-up rate under the Home Insulation Program, the 2009–10 appropriation will be exhausted by late December 2009.

The current uptake rate for the Program is another positive confirmation of the success of one of the Government’s Stimulus Package measures in supporting jobs in not only the manufacturing industry but also in installer job creation and associated logistics. The rate of expenditure is in keeping with providing rapid job support and economic stimulus. Improved energy efficiency for Australian households is also being delivered.

The departmental costs within this Bill are for the Department of the Environment, Water, Heritage and the Arts and will provide adequate resourcing to efficiently implement the Government’s water purchase program in 2009–10.

Appropriation (Water Entitlements) Bill 2009-2010

The Appropriation (Water Entitlements) Bill 2009-2010 requests urgent funding for the Department of the Environment, Water, Heritage and the Arts to accelerate water buy backs within the Murray-Darling Basin system.

The measures provided for in the Bill will enable $650 million for water buy backs to be brought forward from later years of the Restoring the Balance in the Murray-Darling Basin Program under Water for the Future.

The objective of the Restoring the Balance in the Murray-Darling Basin Program is to purchase water entitlements to restore the environmental health of the Murray-Darling Basin system, and to smooth the transition to the lower sustainable diversion limits anticipated in the new Basin Plan.

To date, the Restoring the Balance in the Murray-Darling Basin Program has secured the purchase of more than 600 gigalitres of water entitlements. The funding bring forward in this Bill will enable a further acceleration of environmental water purchasing and provide for new water purchase initiatives in 2009-10.

The total appropriation sought in this bill is $650 million, comprising:

- $320 million, which the Minister for Climate Change and Water announced on 3 November 2009, and which was included in the Mid-Year Economic and Fiscal Outlook (MYEFO) 2009-10 - brought forward from 2010-11 ($220 million) and 2011-12 ($100 million); and

- a further $330 million, brought forward from 2010-11 ($100 million), 2011-12 ($100 million) and 2013-14 ($130 million), to provide for additional water buy backs in 2009-10, and which has been decided since MYEFO 2009-10.

The Bill requires immediate passage. The administered appropriations currently provided to the Department of the Environment, Water, Heritage and the Arts are not sufficient to cover the cost of trades that are likely to be offered to the Government under the water purchase program in 2009-10. With the additional appropriation, vendors will receive timely settlement of their water trades under the Restoring the Balance in the Murray-Darling Basin program.

Departmental costs of $4.9 million will also be provided to the Department of the Environment, Water, Heritage and the Arts to support the accelerated water buy backs. The departmental funding is outlined in the Appropriation (Water Entitlements and Home Insulation) Bill 2009-2010.

Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009

General introduction

Organised crime affects many areas of social and economic activity, inflicting substantial harm on the community, business and government.

It has been estimated to cost the Australian economy at least $15 billion each year.
In his Inaugural National Security Statement, the Prime Minister, the Hon Kevin Rudd MP, gave an assurance that the Government would act to address the threat posed by organised criminal activity. The Crimes Legislation Amendment (Serious and Organised Crime) Bill delivers on that assurance.

The security of Australia is the Government’s highest priority, and maintaining that security requires decisive action to target serious and organised crime.

It is important that we put strong laws in place to combat organised crime.

We need to target the profits of crime and remove the incentive for criminals to engage in organised criminal activity.

We also need to empower our law enforcement agencies to defeat the sophisticated methods used by those involved in organised criminal activity to avoid detection. Appropriate access to covert investigative tools, such as controlled operations, assumed identities and telecommunications interception, will assist police to investigate and disrupt criminal activities.

It is also vital to ensure offences extend to people who commit crimes as part of a group.

In April 2009, the Standing Committee of Attorneys-General (SCAG) agreed to a set of resolutions for a national response to organised crime. This Bill implements the Commonwealth’s commitment as part of the national response to enhance its legislation to combat organised crime by:

1. strengthening criminal asset confiscation and targeting unexplained wealth
2. enhancing police powers to investigate organised crime by implementing model laws for controlled operations, assumed identities and witness identity protection
3. addressing the joint commission of criminal offences, and
4. facilitating greater access to telecommunications interception for criminal organisation offences.

1. Strengthened criminal asset confiscation

The ability to trace, restrain and confiscate the benefits criminals derive from offences is a vital part of an effective justice system.

The Bill will implement a range of measures to extend and enhance the Commonwealth confiscation regime. Several of these measures respond to recommendations in the review of the Proceeds of Crime Act 2002 made by Mr Tom Sherman AO, in 2006.

New unexplained wealth provisions will be a key addition to the Commonwealth criminal asset confiscation regime.

These provisions will target people who derive profit from crime and whose wealth exceeds the value of their lawful earnings.

In many cases, senior organised crime figures, who organise and derive profit from crime are not linked directly to the commission of the offence. They may seek to distance themselves from the offence to avoid prosecution or confiscation action.

Unlike existing confiscation orders, unexplained wealth orders will not require proof of a link to the commission of a specific offence.

However, there must still be a connection between the unexplained wealth and criminal offences within Commonwealth legislative power.

The Bill will also provide for freezing orders that will prevent a financial institution from processing withdrawals from a specified account for a period of up to three days.

Sometimes, there is only a very short window between law enforcement uncovering the illegitimate assets of a criminal group and those assets being transferred to avoid confiscation.

The new freezing orders will ensure offenders cannot frustrate restraining orders by using the time it takes to obtain a restraining order to dissipate funds.

Freezing orders will be strictly limited in duration and application and can only be sought where there are reasonable grounds to suspect an account contains the proceeds of an offence. A person affected by a freezing order may also apply to have reasonable expenses excluded from the order.
The Bill will simplify arrangements for legal aid commissions to recover costs incurred by people who have assets restrained under the Proceeds of Crime Act 2002.

It has always been intended that legal aid commissions be reimbursed for the provision of legal assistance to persons whose assets have been restrained under that Act.

This is to ensure that all persons the subject of proceedings under the Act would be able to seek assistance from legal aid commissions without impacting adversely on other legal aid priorities.

The existing scheme, which requires legal aid commissions to recover legal costs directly from a person’s restrained assets, has proven complex and at times, subject to delay.

Under the new scheme, legal aid commissions will be able to recover legal costs incurred by a person with restrained assets directly from the Confiscated Assets Account.

The Commonwealth will then recover the amount from the person who received the legal aid, up to the value of the restrained assets.

The Bill will also improve other aspects of the existing confiscation regime, including by ensuring information obtained under the regime can be disclosed to agencies with functions under the Act, which are generally law enforcement functions. The information may be provided if it will assist in the prevention, investigation or prosecution of criminal conduct.

2. Cross-border investigative powers

Organised crime does not respect borders, and it is vital that police are able to work across jurisdictions with the same ease.

The 2002 Leaders Summit on Terrorism and Multi-Jurisdictional Crime agreed that there should be a national set of laws for cross-border investigative powers.

Model laws for controlled operations, assumed identities, surveillance devices, and witness identity protection were then endorsed by the Standing Committee of Attorneys-General in 2004.

A key aspect of the model laws is that they provide for the mutual recognition of authorisations and warrants issued in other jurisdictions.

This will enable more effective investigations across jurisdictions and reduce the risk of losing evidence. The availability of consistent sets of powers across jurisdictions also facilitates closer cooperation between law enforcement agencies.

The Commonwealth implemented model laws for the use of surveillance devices in 2004.

This Bill implements the model laws for controlled operations, assumed identities and witness identity protection, replacing the existing regimes in the Crimes Act 1914.

In doing so, some modifications have been necessary to reflect, for example, the unique role of the Commonwealth for national security and the investigation of crimes with a foreign aspect.

Controlled operations

In undercover operations, law enforcement officers may be authorised to do certain things that would otherwise be illegal in order to obtain evidence of a serious offence.

For example, a shipment of drugs might be allowed to pass through border control in order to follow the trail to the buyers or distributors.

In these kinds of operations – called controlled operations – the authorised person is protected from criminal responsibility and indemnified against civil liability for their actions.

The admissibility of the evidence that is obtained is also preserved.

There are appropriate limits on this; controlled operations do not authorise conduct likely to cause death or serious injury, or involve the commission of a sexual offence.

There are also strong accountability mechanisms in place to ensure that the exercise of these powers is publicly accountable.

The Bill also responds to concerns arising from the High Court’s decision in Gedeon v Commissioner of the New South Wales Crime Commission.

Following Gedeon, there is a real risk that there is insufficient protection for persons authorised under State or Territory controlled operations laws who commit Commonwealth offences.

The new controlled operations regime will recognise corresponding State and Territory laws –
removing the need to seek a separate Commonwealth authorisation.

Further, the Bill will provide for retrospective protection for evidence obtained from, and persons who participated in, validly authorised State or Territory controlled operations.

Assumed identities
The use of assumed – or false – identities is an important law enforcement tool allowing operatives to protect their real identity and infiltrate criminal groups.

Authorised persons can make requests to government and non-government agencies to obtain evidence of an assumed identity.

For example, a fictitious driver’s licence or credit card.

Persons using assumed identities would be protected from criminal liability arising only from their authorised use of that identity.

For example, a person using a fake driver’s licence would not be prosecuted for having a fake ID, but could still be prosecuted for dangerous driving.

Further, a person who is authorised to acquire a fake driver’s licence, but is not qualified to drive, will not be authorised to drive a vehicle.

The new assumed identities regime will recognise things done in relation to an assumed identity authorised under a corresponding State or Territory law.

The safeguards and accountability measures for the new assumed identities regime in some cases exceed the protections provided in the model laws.

For example, a person who has an assumed identity will commit an offence if he or she fails to return evidence of an assumed identity when requested to do so.

This will act as a deterrent to those who may seek to use their false identity after the authorisation has ceased.

Witness identity protection
The Bill also puts in place a comprehensive scheme that protects the safety of witnesses who are undercover operatives and the integrity of operations in a transparent and accountable way.

This will ensure that participants in controlled operations and authorised users of assumed identities are not exposed in court proceedings.

Undercover operatives may be required to give evidence in legal proceedings.

The witness identity protection regime will allow an operative to give evidence using a pseudonym.

For example, the operative could appear in court under his or her assumed identity.

In some cases, it may be necessary to protect the operative’s true identity to ensure their safety or to avoid prejudicing current or future investigations or security activity.

While this is clearly in the public interest, this must be balanced against the right of an accused person to a fair trial.

The witness is not anonymous or secret – defence counsel can still cross examine them and test their credibility.

The operative is still bound to tell the truth.

The operative will need to declare matters relevant to their credibility, for example, any prior convictions or allegations of professional misconduct.

This information is made available to defence counsel as part of the witness identity protection certificate.

The court may allow defence counsel to ask questions which may reveal the witness’ true identity where there are compelling circumstances and it is in the interests of justice to do so.

The court will also be able to require the real identity of the witness to be disclosed to it.

3. Joint commission
The Bill introduces a new joint commission provision which is targeted at offenders who commit crimes in organised groups. This provision builds upon the common law principle of ‘joint criminal enterprise.’

If a group of two or more offenders agree to commit an offence together, the effect of joint commission is that responsibility for criminal activity engaged in under the agreement by one member of the group is extended to all other members of the group.
Joint commission targets members of organised groups who divide criminal activity between them. If, for example, three offenders agree to import heroin into Australia and two of the offenders each bring in 750 grams of heroin, all three offenders can be charged with importing a commercial quantity.

4. Telecommunications interception
The ability for law enforcement to intercept telecommunications is integral to the fight against organised crime.

Telecommunications interception warrants are already available for the investigation of serious offences of a certain type or which carry a penalty of more than seven years imprisonment.

The penalties for organised crime association and facilitation offences are generally lower and therefore telecommunications interception cannot currently be used to investigate them.

However, in order to fight organised crime we must be able to target those who support the activities of criminal groups.

The Bill will make telecommunications interception available for the investigation of offences relating to an individual’s involvement in serious and organised crime.

This will be limited to the individual’s involvement in criminal organisations committing offences that are punishable by at least three years imprisonment.

The amendments will allow law enforcement agencies to access stored communications such as emails and text messages, as well as real-time interception of targets’ communications.

This limit recognises the invasive nature of telecommunications interception and seeks to balance the need for operational effectiveness.

These amendments will ensure that law enforcement agencies are equipped with the necessary tools to effectively combat organised crime.

Summary
In conclusion, this Bill contains a range of measures to comprehensively target serious and organised crime through enhanced asset confiscation, the introduction of joint commission and improving the ability of law enforcement agencies to conduct investigations.

Together these measures represent a significant advance on the tools available in the fight against serious and organised crime. They are an important part of this Government’s commitment to keeping Australia safe and secure.

I commend this Bill.

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Fair Work Amendment (State Referrals and Other Measures) Bill 2009
The Rudd Labor Government promised in Forward with Fairness to abolish the Coalition Government’s unfair Work Choices industrial relations laws and create a simpler, balanced and modern workplace relations system.

We achieved this with the commencement of the Fair Work Act 2009 on 1 July this year.

We now mark the next stage in implementing our plan, with the introduction today of the Fair Work Amendment (State Referrals and Other Measures) Bill 2009.

Before I outline the key features of the Bill, it is important to recall the stages of the Government’s workplace relations reforms that have been implemented to date.

Legislation passed by the Parliament to date
The Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 was introduced into Parliament on 13 February 2008.

It abolished the making of new AWAs and introduced the No-Disadvantage Test to ensure workplace agreements could no longer disadvantage employees. That Act also started the process to create new modern awards, which when coupled with the National Employment Standards, will complete a fair and comprehensive safety net of conditions for employees.

Award modernisation will result in the creation of around 150 easy to find and apply modern awards with national application to replace more than 4,000 state and federal instruments.

The next step of the Government’s workplace relations reform process was the passage of the Fair Work Act 2009 which commenced on 1 July 2009 and established:
• A comprehensive safety net of minimum wages and employment conditions that cannot be stripped away;
• a new agreements framework, with bargaining in good faith at the enterprise level at its heart; and
• A new industrial umpire to oversee the system, Fair Work Australia, and a new education and enforcement body, the Fair Work Ombudsman.

We proposed in Forward with Fairness that a uniform national system would be achieved either by State Governments referring powers for private sector workplace relations, or other forms of cooperation and harmonisation. Our vision is for a workplace relations system that is fairer, simpler and more flexible and promotes productivity and economic growth; and a system where businesses, large and small, are covered by one national law and system.

The Fair Work (State Referral and Consequential and Other Amendments) Act 2009 which I introduced to Parliament on 27 May this year was the first stage in implementing this national system.

That Act supported a renewal of Victoria’s referral of workplace relations powers from 1 July 2009 to provide continued certainty of coverage to the working people and employers of Victoria.

I indicated that the Act’s framework would be adapted in future Commonwealth legislation to accommodate anticipated further references of power from other States, while observing that the reference framework may require amendment to account for the views and needs of other States choosing to refer.

The benefits of a national workplace relations system for the private sector

The Bill I introduce today answers the many calls made by business over many years to end the overlap and duplication of state and federal workplace relations systems; to end the inefficiency, uncertainty and legal complexity for Australian businesses and employees.

For example, the Australian Chamber of Commerce and Industry has stated:

The level of complexity created by competing state and federal workplace relations systems is a decades-old problem which has been thrown into sharp relief by our contemporary market economy. Replication, overlap and confusion between state and federal workplace regulation has become increasingly unsustainable.

And the Australian Industry Group has also noted the complexity and wastefulness of multiple systems:

On top of this, all but one of the States continued to develop and enhance their own industrial systems. No matter how well many of these systems operate the fact remains that no employer wants to be faced with dealing with six different systems in order to expand its business throughout Australia. The intermeshing and clash of these systems has nourished generations of industrial lawyers.

In answer to these calls, the previous Government took the significant step of relying upon the corporations power of the Constitution to regulate for a national workplace relations system.

But for many Australian employers and employees, Work Choices only continued – and exacerbated – the problems of complexity, confusion, overlap and waste.

We committed in Forward with Fairness to work cooperatively with the state governments to create a uniform national workplace relations system for the private sector. And with today’s Bill, we demonstrate once more the Rudd Labor Government’s commitment to achieving important national reform through cooperative federalism.

This partnership approach is in stark contrast to the bullying tactics of the former Coalition Government. Their refusal to work with the States resulted not only in grossly unfair laws, but in an unwieldy system characterised by legal complexity and uncertainty of coverage.

In the absence of referrals of power from the states, the question of which system applies depends upon whether a business is a ‘constitutional corporation’ or not.

This means that corporations that derive revenue through donations (such as charities) or through government grants may not fall within the corporations power. The jurisdictional coverage of an
employer can change at any particular point in time if its activities change.

For example, a charity raising money for medical research could open a second-hand goods shop to raise funds only to find it is now seen as 'trading' and that this leads to a change in its jurisdictional coverage.

The question of coverage also depends on the nature of the entity running the business. For example, a professional services firm (say an accounting or medical practice) might run as a partnership or sole trader and be in a state system. A very similar business down the street might be incorporated and therefore in the federal system and on a different award.

And there are many more examples of perverse outcomes, confusion and complexity.

There are thousands of employers and employees who are not trading corporations but who have been in the federal system for a long time, as a result of long-standing awards made in settlement of an inter-state industrial dispute. These awards were preserved on a transitional basis under Work Choices. In the absence of state referrals of power, employers and employees on these transitional awards would have fallen back to the state systems from March 2011.

For example, approximately 70% of the farm businesses covered by the Transitional Pastoral Award are unincorporated and without this Bill, these farmers and their employees would fall back into State systems. And the uncertainty they were facing under Work Choices was exacerbated by the fact that many farmers operate across state borders and would have had to commence to apply different state and federal workplace relations laws.

In support of farmers, the National Farmers Federation has been a vocal proponent of a uniform national workplace relations system, stating that “the overwhelming majority of farmers will be stranded [in the event that states do not refer their powers to the Commonwealth]” and that this would be “totally unacceptable”.

The uniform national workplace relations system for the private sector will resolve once and for all the confusion and complexity I have described. Employers and employees will for the first time have the same laws, tribunals, minimum conditions, rights and entitlements as their counterparts doing the same work, regardless of whether they are within the same state or across a border, regardless of whether they are trading as a corporation, a sole trader or a partnership.

The new national system will make it far easier for businesses and employees to find the information they need. This will result in a permanent, intrinsic efficiency for businesses, especially for small businesses that do not have the benefit of specialised human resources staff.

With this Bill and associated state referrals, the Fair Work system will provide a single point of access for all private sector workplace relations services for Australia. There will be one website, one phone number, one tribunal and one inspectorate.

This means that governments and tax-payers will benefit too. Nationally, state governments spend upwards of $60 million of tax-payers’ money each year maintaining duplicate administrative functions and regulation. The new system will be far more efficient into the future.

Cooperative federalism and the benefits of State referrals

For all of these reasons, there is significant support among the states for the national system. The Governments of South Australia and Tasmania have announced their intentions to follow the Victorian Government’s lead and make referrals of their private sector workplace relations powers. This is a significant vote of confidence in the new Fair Work laws.

Both State governments have introduced legislation into their respective parliaments to facilitate these referrals of power from 1 January 2010. In leading these important reforms for their respective states, South Australian Minister for Industrial Relations, the Hon Paul Caica MP, and the Tasmanian Minister for Workplace Relations, the Hon Lisa Singh MP, have noted the broad support within their states to participate in a national workplace relations system and the significant benefits that will flow to employees and employers.
At this time, the Queensland Government has agreed in principle to refer powers to the Commonwealth, subject to resolution of related issues. I am confident that we can reach an agreement on these issues.

The New South Wales Government has not yet made a decision regarding its participation, but has engaged cooperatively with the Commonwealth to progress the national workplace relations system.

This leaves Western Australia as the only State to declare publicly that it will not refer its powers. Unfortunately this decision puts Western Australia out of step with all other states and prevents Western Australian employers and employees from reaping the benefits of the national system.

I note that the Chamber of Commerce and Industry of Western Australia has publicly indicated support for a Western Australia referral, citing the obvious problems of complexity, uncertainty and duplication.

The Chamber joins many other business groups in supporting a national approach to workplace relations including harmonisation of occupational health safety laws, as essential reforms for the long-term productivity and efficiency of the national economy.

I urge the Western Australian Government to reconsider its decision.

**Supporting state referrals**

And this brings me to the Bill before us today. To give effect to South Australia and Tasmania’s referrals, I introduce to the House the Fair Work Amendment (State Referral and Other Measures) Bill 2009.

Once enacted the Bill will give effect to the references of South Australia, Tasmania and any other State that refers its workplace relations matters to the Commonwealth on or before 1 January 2010. These references will enable the Commonwealth to:

- extend the Fair Work Act in referring States to cover unincorporated employers and their employees, outworker entities and extend the operation of the general protections;
- amend the Fair Work Act so that it applies uniformly in referring States; and
- establish arrangements for the transition of referral employees and employers from State industrial or workplace relations systems to the new national system.

**Initial reference**


Schedule 1 to this Bill will insert Division 2B into Part 1-3 of the Fair Work Act to give effect to State references of workplace relations matters to the Commonwealth after 1 July 2009 but on or before 1 January 2010. The creation of Division 2B is necessary to accommodate differences in the timing of State references.

Like Division 2A, Division 2B will extend the meaning of national system employee and national system employer to encompass all employees and employers in referring States subject to exclusions relating to State public sector and local government employment.

Like Division 2A, Division 2B will also extend the definition of outworker entity, and extend the operation of the Fair Work Act’s general protections in referring States.

**Amendment reference**

The Bill will give effect to references enabling amendment of the Fair Work Act in respect of specified subject matters, to the extent that such amendments would otherwise be outside Commonwealth power. The Bill’s amendment reference provisions will enable the Fair Work Act to be amended to apply to all employers and employees in referring States uniformly. Consultation on amendments will be governed by a supporting inter-governmental agreement.

The subject matters of the amendment reference provisions correspond with the matters regulated by the Fair Work Act.

**State public sector and local government**

The Bill recognises that referring States can choose the extent to which matters relating to State public sector or local government employment are included or excluded from references.
Schedule 3 to the Bill amends the Fair Work Act to also enable States to exclude by declaration certain State public sector and local government employers over which the Commonwealth currently has jurisdiction (such as constitutional corporations) from the Fair Work Act.

Declarations would be able to be made by the State in relation to certain kinds of entities that are integral to State public administration or local government activities and which are therefore regarded as appropriately regulated in State systems. To be effective, a declaration would need to be endorsed by the Minister administering the Fair Work Act.

Termination of reference

The Bill will enable referring States to terminate their amendment references and remain in the national system in the following circumstances:

- by proclamation of the State Governor with six months notice, if the amendment references of other referring States all terminate on the same day; or
- by proclamation of the State Governor with three months notice, if the Governor considers that an amendment to the Fair Work Act is inconsistent with the fundamental workplace relations principles.

The fundamental workplace relations principles encompass requirements that the Fair Work Act should provide for, and continue to provide, for:

- a strong, simple and enforceable safety net of minimum employment standards;
- genuine rights and responsibilities to ensure fairness, choice and representation at work;
- collective bargaining at the enterprise level with no provision for individual statutory agreements;
- fair and effective remedies through an independent umpire;
- protection from unfair dismissal; and
- an independent tribunal system and an independent authority able to assist employers and employees within a national workplace relations system.

These principles prescribe fundamental values that the Commonwealth and relevant states have jointly declared to be essential features underpinning a fair and effective national workplace relations system.

Transitional arrangements for State referral employers and employees

The State references will support the transitional arrangements for State referral employers and employees set out in Schedule 2 to this Bill.

Schedule 2 to the Bill deals with instruments and processes on foot in State workplace or industrial relations systems and deals with federal awards and agreements made in reliance on the conciliation and arbitration power.

Schedule 2 to the Bill also makes amendments to the Fair Work Act and other Commonwealth Acts that are consequential on new referrals.

The transitional arrangements set out for incoming State instruments are, as far as possible, consistent with current arrangements for existing national system employers and employees.

The key features of the transitional arrangements are as follows:

- State awards and State agreements will be preserved as federal instruments in the same terms as the State instrument. These will be known as Division 2B State awards and Division 2B State employment agreements.
- Division 2B State awards and State employment agreements will operate on a ‘no-detriment’ basis with the National Employment Standards and the national minimum wage order.
- A Division 2B State award (other than a Division 2B State enterprise award) will continue to apply as a federal instrument for a period of 12 months from referral commencement. After that time, a relevant modern award will cover the relevant employees and employers.
- During the 12 month period, Fair Work Australia will be required to consider whether a modern award should be varied to provide appropriate transitional arrangements for incoming State employees and employers.
- Further, FWA will be able to make remedial take-home pay orders where the take-home
pay of one or more employees is reduced as a result of movement to the modern award.

- A Division 2B State employment agreement will continue to operate as a federal instrument until replaced at any time by a new enterprise agreement under the Fair Work Act or terminated in accordance with the provisions of the Bill.

- This Bill provides a model dispute resolution clause to be prescribed by the regulations which applies in relation to Division 2B State awards. Dispute resolution terms in State employment agreements will continue as terms of the Division 2B State employment agreements derived from them.

- The new transfer of business rules in the Fair Work Act will apply to transfers that occur on or after the referral commencement. Division 2B State instruments will be transferable instruments for the purposes of the Fair Work Act transfer of business provisions.

- Bargaining and industrial dispute processes under State systems will not be carried over into the new system. Bargaining participants will either have lodged a State agreement for approval by a State tribunal before the referral commencement or commence bargaining for a new enterprise agreement under the Fair Work Act. This will ensure an orderly transition to collective bargaining in the national system.

- As a general rule, proceedings in relation to conduct that occurred before the referral commencement will remain subject to State laws and be dealt with in State systems.

Other amendments
Schedule 1 to the Bill also makes a number of amendments to Division 2A of Part 1-3 of the Fair Work Act for consistency with the arrangements set out in new Division 2B.
Schedule 3 to the Bill makes a number of amendments to the Fair Work Act to enable State Ministers to intervene in court proceedings and make submissions in relation to matters before Fair Work Australia.

Inter-governmental agreement
States participating in the national system will each be party to a multilateral inter-governmental agreement which outlines the principles of the national workplace relations system for the private sector and the roles and responsibilities of those participating States and Territories and the Commonwealth.

On 25 September 2009, workplace relations ministers from the Commonwealth, Victoria, South Australia, Tasmania, the Northern Territory and the Australian Capital Territory signed the multilateral agreement.

Education activities to accompany references
I advise the House that the Commonwealth will provide additional services to assist transferring employers and employees to understand the new system. Education activities will include telephone advice and visits to workplaces to be implemented in cooperation with referring states. There is scope for states to deliver services on behalf of the Commonwealth during the transition and constructive discussions on these arrangements are continuing.

Conclusion
The Government is well on the way to achieving a uniform national workplace relations system for the private sector.

The fundamental basis of the new system was established with the passage of the Fair Work Act: fairness for working people, flexibility for business and the promotion of productivity and economic growth for the future prosperity of our nation.

I commend the Bill.
Exemptions may be granted in special circumstances which will be detailed shortly.

This new participation requirement for FTB part A supports the Australian Government’s determination to increase the number of young people with a Year 12 or equivalent qualification.

The FTB changes complement the requirement recently introduced for youth allowance by the Social Security Amendment (Training Incentives) Act 2009.

The evidence makes it clear that young people who leave school early are less likely to make the transition into employment or further education than those who complete Year 12.

We also know that people of working age who don’t reach Year 12 or an equivalent level of education are more likely to be unemployed.

And if they are working, they are less likely to earn as much as people with a higher education.

In fact, for every year of extra education a person can expect to earn - on average - around $100 a week more.

And in times of economic downturn, early school leavers are at greater risk of disadvantage.

Looking back at the recession of the early 1990s, we find young people who didn’t complete Year 12 were around three times more likely to be unemployed or not undertaking further education than their peers who had completed Year 12.

This bill implements an important element of the agreement reached at the Council of Australian Governments meeting on 30 April 2009 - as part of the National Youth Participation Requirement and the Compact with Young Australians.

Broadly, the Compact with Young Australians will guarantee an education or training place for all young Australians under 25 who are not in work or education.

To support the Compact, the National Youth Participation Requirement will make participation in education, training or employment compulsory for all young people until they turn 17.

This bill introduces an activity test into eligibility requirements for an FTB child aged between 16 and 20 under the family assistance law.

To be eligible, a young person must be undertaking full time study in an approved course of education or study that will allow or assist them to complete Year 12 or an equivalent level of education.

The activity test will also be satisfied if a young person has completed their final year of secondary school or equivalent level of education, generally considered to be a Certificate level II qualification.

Exemptions may be granted if a young person’s circumstances meet one of three criteria.

The first is that there is no locally accessible approved course of education or study, and no such course available by distance education.

The second is that there is no place available in the course, or the young person is not qualified to undertake it, or lacks the capacity to study due to a physical, psychiatric, intellectual or learning disability.

An exemption may also be granted if there are special circumstances which make it unreasonable for the young person to undertake the course.

The Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs will be able to establish guidelines concerning the special circumstances discretion, through a legislative instrument which will be subject to Parliamentary scrutiny.

There will also be some flexibility for a different study load, where this is appropriate to the young person’s circumstances.

The Secretary will be able to set a specific number of hours per week of study for a young person for the purposes of the new activity test.

The changes made by this bill complement existing eligibility rules for family tax benefit part A for dependants aged 21 to 24, and for family tax benefit part B for young people aged 16 to 18, which both specify a full-time study requirement.

FTB part B is not paid to a family after the end of the calendar year in which the young person turns 18.

The new participation requirements will apply from 1 January 2010 for new claimants and end of year lump sum claimants.
Families who have already claimed payments by instalment for a period before 1 January 2010 will have the new rules applied from 1 May 2010.

This later starting date for existing customers will give Centrelink adequate time to make necessary IT system changes.

This bill, along with the new youth allowance legislation, encourages young Australians to gain the skills and experience they need to move into work or further education.

It reflects the Australian Government’s commitment to do all we can to give every young Australian the best possible chance in life - recognising that education is vital to securing a productive, independent future.

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Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Bill 2009

This R4194 Bill amends the Higher Education Support Act 2003 as part of the Australian Government’s extension of the VET FEE-HELP Assistance Scheme to certain subsidised students from 1 July 2009.

The Government’s VET FEE-HELP Assistance Scheme provides financial assistance to students to ensure those wanting to study diploma and above qualifications in the vocational education and training sector are able to make real choices about their training without the burden of paying up-front fees.

The Government is committed to broadening and increasing Australia’s skill levels, and increasing the number of people with diploma and advanced diploma level skills is a key element of this commitment.

The availability of VET FEE-HELP is expected to significantly contribute to the Council of Australian Governments target to double the number of diploma and advanced diploma completions by 2020.

In this context, the Bill allows for provisions which support the expansion of VET FEE-HELP to more training organisations and State government subsidised students, even further removing financial barriers to study for those students.

From 1 July 2009, the Government extended VET FEE-HELP assistance to certain State government funded students with the aim of increasing access to financial assistance. As part of that extension, eligible State government-subsidised students will have a reduced VET FEE-HELP debt. This bill implements these changes for all eligible students from 1 July 2009, ensuring no eligible students are disadvantaged.

In addition, the Bill includes technical amendments to ensure that Tertiary Admissions Centres are able to perform certain functions in relation to personal information on behalf of both higher education and VET providers.

Tertiary Admissions Centres play an increasingly important role in the Australian tertiary system. These Centres add to the efficiency and productivity of the administration of the Australian tertiary system by centralising and co-ordinating admissions procedures on a state-wide basis.

These amendments ensure that student information may be appropriately shared between relevant Commonwealth agencies, higher education and VET providers and Tertiary Admissions Centres.

These measures are part of the Government’s commitment to ensuring that higher education and VET providers continue to play a leading role in equipping Australians with the knowledge and skills to make Australia a more productive and prosperous nation.

I commend this Bill.

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Personal Property Securities (Consequential Amendments) Bill 2009

Introduction

The Personal Property Securities (Consequential Amendments) Bill represents the next stage in the Government’s harmonisation of Australia’s personal property securities laws.

Currently there are over 70 Commonwealth, State and Territory laws, as well as common law and rules of equity governing security interests in personal property.

These different laws vary in their application according to the form of the transaction, the nature of the debtor or the jurisdiction in which the
property is located. This adds significantly to transaction costs.

Personal property securities reform is an important part of COAG’s deregulation agenda.

By harmonising the current laws and creating a single national online register, the reform will have a real impact for business and consumers. Transaction costs will be reduced and businesses will be able to use more types of personal property to secure lending, resulting in them being able to secure lower interest rates.

This Bill will amend 25 Commonwealth Acts that deal with the creation, registration, priority, extinguishment or enforcement of interests in personal property.

The amendments are necessary to facilitate the establishment of a single national legal regime for security interests in personal property. The amendments will clarify the operation of legislation that will operate concurrently with the Personal Property Securities Bill once enacted.

This Bill also makes minor amendments to the Personal Property Securities Bill 2009 which was passed by the House on 16 September.

Amendments to other legislation

The Personal Property Securities (Consequential Amendments) Bill contains measures designed to harmonise language and concepts with the Personal Property Securities Bill.

The amendments will reduce complexity and increase consistency in the arrangements for creating, dealing with and enforcing security interests in personal property.

Importantly, the amendments will support a seamless transition to a single national Personal Property Securities Register by amending provisions in Commonwealth legislation that provide for the registration of security interests on a separate Commonwealth register.

For example, the Shipping Registration Act 1981 will be amended to change the current regime for creating and registering mortgages over ships. Such transactions solely within the ambit of the Personal Property Securities Bill.

Existing mortgages over ships, currently registered on the Australia Register of Ships, will be migrated to the Personal Property Securities Register.

The result will be that the Personal Property Securities Register will be the sole register for the registration of mortgages and other security interests in ships.

Amendments will also be made to the Designs Act 2003, the Trade Marks Act 1995 and the Patents Act 1990.

The registration of security interests on registers created by those Acts made after the commencement of the PPS scheme will have no effect on the registered owner of the intellectual property interest.

This will encourage registration of security interests in intellectual property on the PPS register and resolve any conflict between the PPS register and the intellectual property registers.

This Bill will also reinforce the privacy protections applied to the PPS Register.

The Privacy Act 1988 will be amended to confirm that unauthorised uses of Register data are ‘interferences with privacy’ under the Privacy Act and subject to the Privacy Commissioner’s powers of investigation.

The amendments effected by the Bill will resolve possible conflicts between the PPS Bill and Commonwealth legislation that provides for other interests in personal property.

The Bill will make it clear that the PPS scheme cannot be used to frustrate other legitimate interests in personal property.

In relation to the Commonwealth’s maritime and fisheries legislation for example, this Bill ensures that enforcement action taken under such legislation will not be circumvented by a secured party attempting to enforce a security interest under the Personal Property Securities Bill.

This Bill will also ensure that current rights and interests are preserved after the new PPS scheme commences operation.

In particular, where Commonwealth legislation has clearly provided for the priority of an interest in relation to a security interest in the same property, that priority will be preserved upon implementation of the Personal Property Securities Bill. An example is the priority of statutory liens
Some additional amendments to Commonwealth legislation will be needed before the PPS scheme commences.

I foreshadow now that the Corporations Act 2001 will need to be amended as part of personal property securities reform.

Prior to the introduction of those amendments, the Government will conduct a consultation process on the proposed amendments in accordance with the inter-governmental Corporations Agreement. That consultation process will begin shortly.

Amendments to the PPS Bill

On 25 June 2009, the Senate referred the provisions of the Personal Property Securities Bill to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report.

I thank the Committee for its thoughtful consideration of the Bill.

The Committee released its report in August 2009 and recommended that the Government consider the stakeholder concerns raised with the Committee and any further concerns brought to the Government’s attention until 30 September 2009. The Government has done this.

Following consideration of the submissions made to the Senate Committee and subsequently to my Department, a small number of minor amendments to the Personal Property Securities Bill were identified and are included in the Bill I introduce today.

The amendments will, among other things, address stakeholder comments that the operation of some provisions could be clarified and correct drafting errors.

The amendments have been included in this Bill because the PPS Bill is supported by a referral of legislative power by the States.

Moving Government amendments to the PPS Bill itself would cause some States to have to revisit their referral legislation.

The method adopted here - which provides the Parliament with the same opportunity to consider the changes to the Bill as Government amendments - will allow the States to continue the referral process without interruption.

Conclusion

This Bill will facilitate the establishment of a single national regime for secured lending over personal property.

By harmonising legislation across the Commonwealth statute book, the Bill will provide greater consistency and support a seamless transition to the new national personal property securities regime.

A recent World Economic Forum survey ranked Australia second among global financial centres.

Making Australia’s secured transactions law more certain and consistent and less complex and costly will facilitate international investment in Australian businesses.

This will further strengthen Australia’s position as a leading global financial centre.

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Tax Laws Amendment (Resale Royalty Right for Visual Artists) Bill 2009

This R4206Bill amends the tax law to apply a streamlined tax treatment to payments made in relation to the resale royalty right for visual artists, instead of the more complex trust taxation rules which would otherwise apply.

The proposed resale royalty right, which the Resale Royalty Right for Visual Artists Bill 2008 will establish, entitles eligible visual artists to a royalty payment on the sale price of any commercial resale of their original works of art over $1,000 for works acquired after that legislation takes effect. This will allow visual artists to share in the commercialisation of their work in the secondary art market. The resale royalty payable is 5 per cent of the sale price.

This Bill ensures that the body appointed by the Arts Minister as the resale royalty collecting society is not taxed on amounts it collects on behalf of resale royalty right owners and holds pending allocation to them. Specifically, the Bill exempts from income tax in the hands of the collecting society resale royalties, and interest on resale
royalties, collected or derived by the collecting society. The collecting society is also not taxed on other income it may derive in an income year, up to a maximum of either 5 per cent of its total income or $5 million, whichever is the lesser.

When a payment is made from the collecting society to the resale royalty right holder, this amount is generally included in the individual’s assessable income. However if, for any reason, any part of this amount is or has been taxable in the hands of the collecting society, the amount to be included in the artist’s assessable income is reduced to reflect this.

This streamlined treatment is analogous to that which already exists for copyright payments handled by copyright collecting societies.

The Bill also makes several technical amendments to simplify the existing provisions in the tax law dealing with the treatment of copyright collecting societies. The operation of these provisions is not affected.

Finally, the Bill also amends the definition in the tax law of a copyright collecting society to ensure that if such a body were appointed as the resale royalty collecting society, it would not lose its status as a copyright collecting society merely because of that fact.

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

Debate (on motion by Senator Sherry) adjourned.


COMMITTEES

Education, Employment and Workplace Relations References Committee Report

Senator HUMPHRIES (Australian Capital Territory) (9.07 pm)—I present the report of the Education, Employment and Workplace Relations References Committee on the provision of childcare, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator HUMPHRIES—by leave—I move:

That the Senate take note of the report.

I think it needs to be acknowledged that the report I have just presented is probably the most significant report of the Education, Employment and Workplace Relations References Committee in the course of 2009. Indeed, the inquiry lasted for the entirety of the year. It was extended on a number of occasions because of the amount of material and contentious issues that were placed before it. The catalyst for this inquiry was the collapse of listed childcare provider ABC Developmental Learning Centres Pty Ltd. ABC Learning went into receivership in late 2008. At the time, it was the largest provider of childcare in Australia, supplying about a quarter of all available childcare places. Its collapse was a serious issue for the many families who relied upon childcare services that they provided.

Although the sale of all ABC Learning centres is yet to be finalised, some centres have already been sold and others are currently trading successfully pending their sale. Despite accusations of market failure, ABC’s collapse was largely due to a number of factors, including high levels of debt coinciding
with the global financial crisis. There were many critical comments made in the course of the inquiry about the role and the practices of ABC Learning. It was difficult from the committee’s perspective to be able to pass judgment, particularly on the comments about its financial or commercial practices. It is also true to note that bodies such as ASIC continue to investigate the way in which regulatory processes apply to ABC Learning and it may not be productive to rake over those issues in this particular debate.

What is clear is that accusations of market gouging and aggressive tactics by ABC Learning have been proposed as justification by some for ridding the sector of corporate providers—indeed, in some people’s submissions of all private providers. I think the committee would say that such views are an overstatement of the position and are not warranted on the evidence. Whatever the reasons for ABC’s collapse, the actions of one corporate provider are certainly not representative of all private providers, given that most private providers in the sector are not corporations but in fact small businesses running only one or a small number of centres. There is no evidence that one particular sector or one type of provider in that particular part of the economy is better or worse than any other. In fact, the committee would probably take the view that the common factors to be found in quality childcare centres—and there are many of them across Australia—are management that is low to the ground, operators that are in touch with the parent community and a sensitive policy of delivering services to and meeting the needs of the local community.

It is clear that a great deal has changed about the provision of child care in Australia in recent years. It is also very clear that the explosion in the number of childcare places which occurred between about 1993 to 1995 and a decade or so later was in large part the result of the privatisation of the childcare sector, including the advent of corporate child care. There are many critics of that particular policy, but it is also clear that the approximate doubling of the number of childcare places between about 1996 and 2006 from 300,000 to 600,000 places was in large part the product of a freeing-up of the sector and the encouragement of corporate investment in child care. Such a large increase in the number of places would probably not have been possible without such a policy being pursued.

Historically, child care was viewed before that time as a means of enabling parents to remain in or return to the workforce. However, it is clear that the expectation of many in the sector, including providers and parents, is that child care should be viewed not merely as a means of minding children but as a way of providing young children with vital skills for their future lives; hence the focus on the provision of this service in the form of early childhood education and care rather than child care per se. Quality in early childhood education and care is central to meeting the needs of all children and there is renewed focus upon the ways in which the quality of childcare programs can be improved.

In large part, high-quality programs are dependent upon having skilled staff. The committee recommends minimal levels of qualifications be introduced to contribute to quality improvements in the sector. However, the committee acknowledges that many dedicated and highly skilled carers currently in the workforce do not hold formal qualifications. Those carers—and there are a great many of them—are extremely valuable assets in the sector and offer a wealth of experience. It is important to recognise and value the role those carers play and put in place requirements that are flexible enough to support those carers continuing to offer their experience to the sector.
As a federal system, Australia experiences a variety of models of regulation and a variety of standards of childcare provision. The committee heard that that variety of outcomes causes confusion and there is some inequity of outcomes between different states and territories. The committee does not believe that working towards nationally agreed standards will pose significant difficulties, given the advances already made in working towards common goals in this area. The committee recommends that that process continue.

The committee also found that higher levels of childcare services are lacking. It recommends that the provision of child care be more deliberately planned and coordinated at the federal level in consultation with state, territory and local governments. The process should take into account areas of need, local contexts and the need for flexibility in provision. In particular, the committee recommends the establishment of a new statutory body to assume responsibility for the oversight of the provision of child care be quickly considered by the government. The accreditation of childcare providers is a function carried out by the National Childcare Accreditation Council. The committee believes that the new statutory body should operate separately from but alongside the National Childcare Accreditation Council to effectively plan the provision of child care, ensuring services are established where needed. The committee believes that the new statutory body should also be inclusive of state, territory and local government representatives.

One of the most significant issues before the committee was the question of what funding mechanism should be put in place in the future, given a background of expansion in the sector in recent years with the childcare benefit and childcare rebates—the chief mechanisms whereby the federal government furnished affordable child care to the Australian community. Despite reports in the media that the committee would recommend in this report that the childcare rebate be abolished, the committee decided to rely upon the work of the review into the tax system, the Henry review, in order to guide the future work of developing the best possible model of childcare funding. There are complex and sometimes conflicting arguments about the best model. As a result, the committee avoided forming a view about this before the Henry review is handed down. The committee believes and hopes that there will be some useful contribution to this debate from the Henry review, but if not it expects to have to return that issue.

Finally, I want to comment on the question of increased funding. This was a difficult issue but the overwhelming strength of evidence presented to the committee was that the sector needed additional funding, particularly in certain areas and areas of particular need—for example, children in rural and remote areas of Australia. Accordingly, the committee recommends that increases in funding be considered by the federal government to deal with a number of challenges facing child care in the community. I close by saying that, notwithstanding the criticisms and weaknesses in a number of areas such as training and retention rates and so forth, the committee found a system that was strong, robust and generally of a very high standard.

Senator BILYK (Tasmania) (9.18 pm)—As a member of the Senate Education, Employment and Workplace Relations References Committee, I rise to speak about the inquiry into the provision of child care. Having previously been an on-the-ground childcare worker for over a decade, I was particularly pleased to participate in this inquiry that followed the collapse of the largest provider of child care in the country, ABC Developmental Learning Centres Pty Ltd. When
ABC was placed into receivership towards the end of 2008, almost a quarter of all the childcare places available in Australia were placed at risk.

ABC operated over 1,000 centres, providing care for more than 100,000 children. For the families who relied upon this child care and for the workers at these centres, ABC’s collapse just prior to Christmas created a great deal of stress—one might say a crisis. Families dropped their children off in the mornings, not knowing whether the centres’ doors would actually be open or whether the centres would continue to operate beyond that day. Workers did not know if they would still have jobs the next day or at the end of the week. This was an unacceptable situation for the government, the workers, the families and most of all the children.

The Rudd government addressed this crisis with funding of $24 million, which allowed the centres to keep operating and allowed the receivers time to investigate the financial state of all the centres. The receivers identified 720 centres which were profitable. Fifty-five centres had to be closed. The children from those centres were transferred to other childcare centres nearby. Two hundred and sixty-two centres were deemed unviable—these became known as ABC2. Again, the government stepped in to provide reassurance and stability for workers and families, providing a further $34 million to prevent the closure of more than 200 childcare centres—closed with little notice, basically overnight. Because of the government’s support, the majority of ABC2 centres continued to operate—236 have now been sold to 78 different operators, a process which has ensured greater diversity in the sector. Of the ABC2 centres sold, 34 were purchased by not-for-profit organisations. This is a good outcome for the sector and for those centres. The majority of the workforce has also been retained which is good for the workers and good of the children because they remain with familiar caregivers.

The ABC1 centres have been operating successfully and the receivers are currently in the process of negotiating their sale also. It is anticipated that this process will be complete by early 2010. While a small number of ABC centres were closed, the threatened loss of almost one-quarter of all childcare places has been resolved in a positive manner for the majority of the workers in these centres and the many families who relied upon these childcare services.

Despite accusations of market failure, ABC’s collapse was largely due to high levels of debt resulting from its expansion based business model. Accusations of market gouging and aggressive tactics by ABC have been proposed as justification for ridding the sector of corporate and, indeed, all private operators. But, whatever the reasons for ABC’s collapse, the actions of one corporate provider are certainly not representative of all private operators, given that most private providers in the sector are not corporations but small-business owners running only one or a small number of centres. We support and value the inclusion of a diverse range of providers in the sector, including small business owners and not-for-profit providers.

The most important consideration is not the type of provider but the quality of the care provided. There must be a focus upon quality of care and an adequate regulatory framework ensuring such quality. Now is the time for us to act on the quality of child care. Quality in care and education of our young children was ignored for 12 long years under the Howard government. In contrast, the Rudd government recognises that the early years are crucial to ensuring each child has the best start to life. That is why we have firmly placed early childhood on the national agenda.
Our report highlights the need for change. We know quality varies considerably across different childcare centres. Recent national childcare accreditation reports show that 25 per cent of services are failing on basic safety standards, and this must concern parents. We know that quality is important and that children deserve individual time, attention and affection. In some states, carers are looking after eight toddlers aged two to three. Childcare workers are doing the best they can. They are generally hardworking and completely committed to delivering quality services. But, as every parent knows, one young child is a handful; imagine looking after eight toddlers. We want each carer to have fewer children to look after so that they have more time to spend with each child to give them the individual attention, care and affection they deserve.

The Rudd government also believes childcare workers need better qualifications so that they can lead play and activities that inspire children and help them learn and develop. Better qualifications, amongst other things, mean staff can design programs and activities that best suit each individual child. The committee also recommends that minimum qualification levels be introduced into the sector. The Rudd government is committed to introducing a new ratings system for childcare so each service will have a rating based on the quality of care they provide. This will help parents decide upon the most appropriate care for their child. A ratings system will also give more incentive—for those services that need to—to improve. Lower staff-to-child ratios and improved qualifications will mean a happier, less stressed workplace, with less staff turnover and greater continuity of care for each child. That can only be of benefit to the children in care. Better quality care means that parents can confidently participate in the workforce, knowing their child is getting a good education and care.

The Rudd government has also delivered on a range of initiatives to improve the affordability and accessibility of child care. We delivered on our commitment to raise the childcare rebate to 50 per cent of parents' out-of-pocket expenses, with an investment of more than $4 billion over four years. ABS data demonstrates that this reduced parents' childcare costs by over 20 per cent. Other key achievements include the development through COAG of a national early childhood development strategy—Investing in the Early Years. The government is also working on an early childhood development workforce strategy, outlining how to build skill levels and improve the retention and remuneration of workers in the sector. Working towards these outcomes, the government has committed more than $60 million to remove the fees for childcare courses at TAFE and has committed in excess of $53 million to fund extra university places for early childhood teachers. Overall, the Rudd government has committed almost $16 billion over four years to early childhood education and care. This is an increase of $1 billion per year compared to investment under the Howard government. We recognise that the early years are critical to give children the best start to life and we will deliver on our vision.

In concluding, I would like to thank the secretariat for their hard work and patience throughout the inquiry and for finalising the report.

**Senator HANSON-YOUNG** (South Australia) (9.26 pm)—I rise this evening to add my comments about the report tabled by the Senate Education, Employment and Workplace Relations References Committee about the provision of child care. It was some 12 months ago that I moved that this issue be referred to a committee. It has been a long
inquiry. When the inquiry was first referred to the committee, John Carter, the former secretary of the committee, said, ‘I can’t remember the last time we looked into child care.’ I guess that said it all from the word go. We needed to have a good look at the childcare sector in Australia, because over the last decade or more it has changed significantly. It has gone from being a service that some people use to being a service that almost all working parents use in some form these days. With the growth of demand comes the growth in expectations of quality, of cost and of who foots the bill. There is also the opportunity for the sector to be manipulated by what was referred to various times during the committee as the ‘Kentucky Fried Kids’ approach to delivering child care.

This inquiry came out of the collapse of ABC Learning. Twelve months ago this chamber faced some decisions that needed to be made. It was an example of government needing to step in and support what was essentially a service that had been run for quite a while as almost a luxury, a market based industry—as if parents could choose if they needed to send their children to child care and which childcare centre. When we look at the facts about the needs parents have when they send their children to child care or put their child into the care of a provider, where they choose—there are many complexities that go into making those decisions. When ABC Learning collapsed, it left over 100,000 families in the lurch. People did not know what they were going to do. Over 11,000 centres closed or were in limbo. People did not know if they were going to be able to send their kids to child care that week, next month or the next year. This meant turbulence for those individual families—let alone the staff of those centres. Everything was up in the air. We did not know what kind of stability they were going to be given.

I saw this as an opportunity for us to have a really good rethink about the way we deliver child care in Australia. The collapse of the corporate giant ABC Learning has presented us with opportunities to reform child care across the country. I would argue that, perhaps, some of those opportunities needed to be taken sooner by the government. We needed to see a number of the centres that were resold under the ABC2 Group prioritised to non-profit, community based childcare providers. I am concerned that the remaining 700-odd centres that are in receivership will simply go to another ABC look-alike. Those are opportunities that I believe we have missed in the last 12 months, but, having said that, there are still some great reforms that could be happening and which we can take the opportunity to pursue.

I think the majority report of the committee outlines a number of those—really important things that the government should grab hold of and run with. Being quite passionate about this issue, I put in my own additional comments and the Greens have included eight additional recommendations to the majority report dealing with a few more of the complexities of how we view child care and how we use the mechanisms available to government to link quality issues with funding.

At the moment, we—both parents and the government—spend a considerable amount on child care around the country, yet there is no link to the quality of care. You may pay $100 a day for long day care for your child; you may pay $80; you may pay $50—this is before the childcare tax rebate—but there is no link between the money that is going to that place and the quality of care that you are getting because the quality standards and the benchmarks are different across the different states. There is no real link between the money that goes in and the type of service you get back. I think it is something that the
government seriously needs to consider. I know that the majority report recommends a little bit of a rethink of the mechanisms currently used to fund child care in order to drive some good quality outcomes.

We know we need to address the ratio issue. Children from birth to the age of two years should be looked after by a carer who is looking after one to three kids. That is what the experts tell us. That is going to give us the best quality care and the best quality educational outcomes. For those children over two years, it should be one to four. These are significant reforms that, if they were made across the country, would deliver good quality educational outcomes for our youngest Australians and good quality care, but they are things that governments need to be brave about and take forward.

How do we do it? We need to fund it. We need a better investment and an increased investment from the federal government, but we also need to ensure that we link that funding with the delivery of good quality outcomes. Therefore, we need to have a look at how we set those funding levers so that we deliver those policy outcomes. It is no good just saying, ‘Here are our quality standards—okay, COAG, you tick off and sign all these things’ if we are not going to set the levers right to deliver them. So we need to do that. Addressing the ratios issue is one part of the solution.

The other thing that struck me as the inquiry travelled around the country and we heard various submissions from people was the lack of qualified staff looking after kids around the country. Do not get me wrong; there are some amazing people working in child care—people who are passionate about it, know their stuff and have been in the field for years—but there are no guarantees that, if you put your child into a childcare centre, the person who is looking after them on a day-to-day basis is actually qualified. I think most parents would assume that, if you pay $50 to $100 per day to get your child looked after in child care, the person looking after your kid is qualified. You would assume that that is the case. Unfortunately, it is not. We need to tackle the issue of qualified staff in centres and ensure that we can support providers to deliver the best quality care by ensuring that they can give training and support to their childcare workers.

We simply do not value kids enough and that is one of the problems. If we were valuing children—our youngest children and most vulnerable kids—then we would be investing significantly in early childhood education and care and ensuring we are delivering those good quality outcomes. We need to start valuing kids more. We need to ensure that they are looked after properly, that they have the best facilities, based on developmental outcomes, and that the staff looking after them are qualified. To do that, we need to be valuing those childcare workers. It is a hard job looking after kids and we do not value it enough, so we obviously need to see an increase in wages and better conditions for childcare workers.

The last issue that I want to address in the remaining one minute and 42 seconds that I have is the corporatisation of child care. I referred earlier to the Kentucky Fried Kids approach to delivering child care. The ABC-McDonald’s style of child care simply does not work. We know that it does not deliver the best outcomes. It is pretty difficult to make a profit from child care and to do it you have to cut back or skimp on something. What gets skimped on? It is quality. It is how much time and interaction the kid has with their carer, the types of activities that are provided and the qualifications of staff looking after them. The corporatised style delivery of child care—an essential service—just
does not work. The collapse of ABC Learning has proven that.

We need to seriously question whether providers of early childhood education and care should be allowed to float themselves on the share market and have making a profit as their primary objective. We do not accept it in the school sector. Parents would be outraged if the school sector was run for profit. Parents expect that we—as the government, as the parliament and as the state—have a special investment in education. We need to see nothing less for the education of our youngest children.

We cannot continue to go down a Kentucky Fried Kids approach to child care. We need a rethink. Here is the opportunity. I hope the government takes the committee report seriously and adopts the recommendations. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Legal and Constitutional Affairs Legislation Committee

Report

Senator FORSHAW (New South Wales) (9.37 pm)—At the request of the chair of the Legal and Constitutional Affairs Legislation Committee, Senator Crossin, I present the report of the committee on the provisions of the Personal Property Securities (Consequential Amendments) Bill 2009, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

CARBON POLLUTION REDUCTION SCHEME BILL 2009 [No. 2]
CARBON POLLUTION REDUCTION SCHEME (CONSEQUENTIAL AMENDMENTS) BILL 2009 [No. 2]
AUSTRALIAN CLIMATE CHANGE REGULATORY AUTHORITY BILL 2009 [No. 2]

Senator RYAN (Victoria) (9.37 pm)—Earlier today I concluded the first part of my speech on the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and related bills by outlining my concerns with these bills creating a personal property right and the implications that would have to future amendment or repeal of the bills because of the constitutionally entrenched protection of private property. We should give much more serious consideration to the prospect of binding future generations to such a degree. Our knowledge is not perfect. This scheme does not promise to address the problem it claims to, and future generations should not be
weighed down with the threat of potentially billions of dollars of compensation claims if they need to amend or repeal this scheme.

This scheme represents the single most significant change to our economy in decades. It is a hidden, embedded tax that all Australians will pay but about which none will know the details or the true costs. Indeed, as Terry McCrann has pointed out, it is like a variable GST. It effectively reverses the tariff cuts we have seen in the last three decades but, perversely, it replaces them with a tariff on internal production, for which the government then seeks to pass on compensation to preferred companies and industries affected and to select individuals.

Indeed, it has specific effects in my own state. There are very serious concerns about the stability and future of electricity generation in Victoria. And, with our national electricity market, this will affect most Australians. Respected business commentator, Robert Gottliebsen, comprehensively outlined this when he stated only a week ago:

Within a week of the current proposed legislation being passed, the boards of each of the companies that own the Latrobe generators will meet with their auditors on whether the companies' debt covenants have been broken. Almost certainly a majority, if not all the boards, will decide to appoint official administrators.

There is a real risk that that is what this legislation in its current form will do, with the associated risk to the security of our energy supplies. This parliament should not be contemplating such a result. The government will not even entrust the people or this parliament with all of the information regarding this. We are asked to take their commitments at face value. I mentioned earlier this afternoon the continued refusal to release the details of the Morgan Stanley report. If this legislation passes and electricity generation becomes unreliably, rather than something Australians—and particularly Victorians—can take for granted, it will rest on this government's head.

One final issue I would like to raise is that of procedural fairness. This has been covered by a number of my colleagues but it is worth restating. These bills contain extraordinary powers for the government, in the guise of the Australian Climate Change Regulatory Authority. It can require companies to keep and produce voluminous records and it can demand information and force questions to be answered—all without the traditional protections against self-incrimination and the right to silence. These are historical freedoms and liberties that this parliament should be loath to whittle away—and most definitely not without a much more substantial level of public security and debate about these specific issues.

I state again: this is not a debate about climate change; it is a debate about Labor's proposed flawed ETS. The climate is undoubtedly changing, but this is a highly complex issue and the science will constantly evolve. I am not standing here saying that it is not happening, nor that people are not contributing to it, but that I do believe that firm conclusions about the degree of change or our contribution cannot be settled here today or this week.

I am in favour of risk management, both on economic and environmental grounds. Acting to ensure we limit and ameliorate the risk of climate change—anthropogenic and otherwise—and reduce the amount of pollution in our sky and local environment is common sense. I am in favour of good policy to achieve these goals, but these bills will not achieve that. Any such action has to be affordable in order for it to be sustainable, and it has to be a burden fairly shared. I do not believe we should act unilaterally and in a way that hurts our economy. It is important to note that we do not have all of the infor-
mation required to make these assessments. The Treasury modelling is flawed in its assumptions about international measures and other information has been concealed.

While ‘the economy’ is an abstract term to some, it represents the jobs, businesses, livelihoods and homes of our fellow Australians. And some are hit a lot harder than others—the dairy farmers across Victoria who will pay substantially higher costs despite the government’s claim that some agriculture will be exempt; the workers in the Latrobe Valley; those who work in energy-intensive industries, particularly those who are export exposed; and the thousands of small- and medium-size businesses and their employees who will see costs skyrocket. None of these qualify for taxpayer funded largesse and patronage. This package simply fails the fairness test.

When I buy an insurance policy for my home, I ask myself two questions. Firstly, I ask: does the policy protect me? Secondly, I ask: how much does it cost? This ETS fails on both counts. Firstly, it does not protect us. These bills will achieve virtually nothing in environmental terms. Indeed, the way these bills and the ETS are structured, they could well worsen the problem they aspire to address, by exporting emissions to other nations without our already high environmental standards and safeguards—along with the jobs of fellow Australians. The forecast events that the government claims justify this massive intrusion into every business and home will still occur. Secondly, it costs too much. Put simply, I pay hundreds to insure my home, but not tens of thousands of dollars. But thousands of Australians will lose their jobs on the altar of Australia acting first and millions of Australians will face higher costs and bills—and all for nought, as this legislation does not address the problem it claims to address and has no effect on the other 98 per cent of emissions around the world.

I have not been here long but, while all the decisions we take in this place are important, these bills are likely to be among the most significant in my time in this place—bigger than the GST, which was a once-off transition and transparent in its costs to the Australian people. These bills should not be rushed. They should not be determined on the basis of a deadline set by a government that has constantly shown that politics is more important than policy. We have the time to consider our position further. We have the time to better inform the Australian people of the real costs involved—as opposed to concealing them. We have the time to ensure the burden is fairly shared. The false deadline of Copenhagen has now been blown. We do not need to act now, in the rush of the last sitting hours of this year.

Senator FERGUSON (South Australia) (9.44 pm)—My first question to this chamber on the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and related bills is: why on earth are we debating these bills at this time? We have a Copenhagen conference, which is going to take place very shortly, in which not one other country is committing to the same sorts of proposals that this government is putting to this parliament—not one other country. In my almost-18 years in this parliament—and I heard Senator Carr talking about his 16 years earlier today—I have not seen more important legislation come before this parliament. We spent some 28 hours debating a regional forest agreement. We spent some 50 hours debating the Wik amendments to the native title legislation. And yet this government would have us debate these most important bills in what is just a matter of a few hours at the end of a session. I cannot believe that this government, or even my own party for that matter, would even consider debating these
bills in such a short time. What is their aim? What do they really want to achieve? Do they want to truncate the debate? Do they want the Greens not to be able to put forward their 24 packages of amendments? Do they want there not to be a full debate from the crossbench senators? We are talking about the Senate, where all bills are looked at in far greater depth than they ever are in the House of Representatives.

We are talking about bills that would put into place a scheme that would have absolutely no effect on the world’s environment whatsoever—no effect whatsoever. We are responsible for less than 1½ per cent of the world’s emissions, and yet we would go out there and put into place bills which will say that we are committing Australians in the future to pay in excess, by way of taxes, through a new tax regime—which is what the general population of Australia does not understand—which will affect them forever. Once we put these bills into place, there is no chance they will be repealed—no chance whatsoever, because the compensation that would be liable to be repaid should we repeal these bills would be far greater than this country could afford.

We have a situation where deals are apparently being negotiated, between the climate change minister and the representative of the Liberal Party, which in fact exclude everybody else. There are only a couple of people involved in the deals. And we are expected to fall into line with whatever might be decided. I have not come into this place for the last 18 years to allow such a thing to take place without protesting at both the process and the outcome. As I move around my rural district in South Australia, I cannot find anybody who thinks we should pass these bills—well, that’s not true; there is one person who has approached me who believes we should be passing these bills, because they feel that climate change is a fact and that it is affecting all the things we do in Australia and that, if we don’t show the way, we are letting down ourselves and the rest of the world. But on Saturday afternoon I was at a function where there was a group of rural people and a group of townspeople from rural South Australia. Every single person I spoke to urged me not to support these bills. And, Madam Acting Deputy President, can I tell you: I will not ignore the pleas of those people. I will not ignore the pleas of those people who say, ‘You should not pass these bills.’

I am not sure that, if we decided to debate these bills after the Copenhagen conference, I would have the same view. I will tell you why. I may be wrong—in my 18 years in this parliament, I have been wrong once or twice; I am quite prepared to admit it—but if the rest of the world, if the United States, Canada and all those other countries in the world who have deferred their decisions until after Copenhagen, were to come to an agreement that we should have an emissions trading scheme that affects everybody in the world, then I would probably say, ‘Well, if it’s not going to affect our exporters, if it’s not going to affect our primary producers, if it’s not going to affect all the people I am very close to in Australia, I may consider taking out some insurance.’ But I will only do so on the understanding that the rest of the world, the other countries in the world, are prepared to do the same—and, until they are prepared to do the same, I simply am not prepared to support these bills. And I will not, regardless of what my party might decide or despite whatever other advice I may get.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Moore)—Order! It being 9.50 pm, I propose the question:

That the Senate do now adjourn.
Tonight I rise to note the passing of a truly significant figure in academia, in the study and teaching of the history of Australia, in the Labor Party and in the union movement. I wish to note the passing of Professor Jim Hagan. Jim was a significant figure in the Illawarra region, as I said, in the academic world, in the study of Australian history and in the Australian Labor Party and in the union movement. Jim passed away suddenly on 20 October this year. Let me first put a few biographical details onto the Senate record, and in doing so I take much of the information from an obituary by Malcolm Brown in the Sydney Morning Herald on 4 November 2009.

Jim was born on 23 October 1929, so when he passed away he was just three days short of his 80th birthday. Jim was educated at Bondi Public School and then at Sydney Boys High School. He was a highly intelligent young man and, in 1939, at the age of 12, he became one of the 'quiz kids'. There are people as old as me, or older, maybe some younger, who remember the great radio program compered by John Dease, the Quiz Kids. We all used to sit around the radio—radiogram, I think we used to call it—listening to the Quiz Kids. Jim Hagan was one of the quiz kids. He was on that program until 1945.

He went on to study at the University of Sydney, graduating with an honours degree in arts in 1943. He then took up teaching. Through his involvement in teaching and in studying for his diploma of education, he became involved and active in politics and in the labour movement. He was concerned about the plight of trainee teachers and helped to found the Trainee Teachers Association. He went on to teach at schools in Parramatta and then in the Sutherland shire at Sutherland and Caringbah. Whilst in Caringbah, in 1956 he joined the Caringbah branch of the Australian Labor Party. Subsequently, in 1963 he moved to Canberra and completed his PhD in history. His PhD thesis was on the history of the printing unions and the role of printing in the history of this country. In 1966 he moved to the Illawarra and commenced a long and distinguished career as a history lecturer at Wollongong College. Wollongong College at that stage was a campus of the University of New South Wales. At that time Jim joined the Thirroul branch of the Australian Labor Party. He remained a member of that branch for the rest of his life until his sudden passing last month.

It was around 1966 or 1967 that I first met Jim Hagan. I was a young man becoming involved in the Labor Party. I joined the Cronulla branch of the Labor Party in 1967. My father and my mother were very active in Labor Party politics and I followed that tradition. I met Jim, who at the time was President of the Hughes Federal Electorate Council. In those days the seat of Hughes was represented by Les Johnson, a distinguished former minister of this parliament and a former high commissioner to New Zealand. Les Johnson represented the seat of Hughes, which stretched from Cronulla down the south coast of Illawarra to Bulli and out west to Cabramatta. As an added piece of history, the seat of Hughes was created in 1955, but prior to that it was part of the greater seat of Werriwa represented by the one and only Gough Whitlam, also a resident of the Sutherland shire in his early years in Cronulla.

Jim Hagan spent the next 43 years as either the Vice-President or the President of the Hughes FEC and of the Thirroul branch up until a redistribution occurred and Thirroul became part of the seat of Cunningham, which it is still today. One of my clear recollections of those years was travelling from...
Cronulla down to Thirroul, a slower journey than it is today, and going to Labor Party branch meetings and federal electorate council branch meetings in the Thirroul Railway Institute, the old building next to the Thirroul railway station. On the walls were photographs and memorabilia of the railways industry and the mining industry of the Illawarra region, industries that played a critical part in the development of that great industrial area of the Illawarra. I also remember going there for many other functions over the years. Dinners were held in that restored railway hall where I was able to taste Jim Hagan’s home brew. He loved making home brew. There are lots of Australians who think they can make home brew beer, but Jim actually could. He used to bring it along to these functions and we would all partake.

Jim was an exceptional Australian historian. He wrote The History of the ACTU and co-authored A History of the Labor Party in New South Wales, 1891-1991. He also co-authored a significant and groundbreaking history titled People and politics in regional New South Wales. Jim, in addition to his lifelong dedication to the labour movement and to the Labor Party, was an exceptional person who taught at university and who campaigned to achieve autonomy for the University of Wollongong. The University of Wollongong is now one of our leading tertiary institutions. It has been named the Australian University of the Year on at least two occasions. I know that there are thousands of students in the Sutherland shire and the Illawarra region—my two older sons are amongst them—who have attended the University of Wollongong and benefited from the great education they received at that institution. Jim was instrumental in turning Wollongong College into a fully fledged university. In 1976 he became chairman of the board of governors of the Riverina College of Advanced Education. That later became Charles Sturt University and Jim became its deputy chancellor. The University of Wollongong recognised Jim Hagan’s outstanding contribution when it awarded him the position of Emeritus Professor in history. I quote from the article I referred to earlier in the Sydney Morning Herald:

Wollongong University’s Deputy Vice-Chancellor … Professor Rob Castle, co-authored a paper with Hagan in 1998, entitled: Settlers and the state: The creation of an Aboriginal workforce in Australia. Castle said: ‘Jim was always extremely loyal, dedicated and he was still working literally right up until the end. He was talking to his publisher about a new book on the day he died.’

The former Premier Bob Carr sent an email saying that at the beginning of a history lecture he had just given, he had expressed his debt of gratitude to Professor Hagan, who had written a history textbook, Modern History and its Themes, which Carr had studied for his Leaving Certificate.

I last saw Jim Hagan and his wife Lois on 24 September at a forum in the Sutherland shire on electricity privatisation in New South Wales—a rather contentious topic. Jim was still passionately arguing his point of view at that forum, but doing it in his quiet, diligent and erudite way. Jim Hagan was a great man, supported over 45 years by his wife Lois and his family. Tonight I express my gratitude and the gratitude of many, many other people in the region to the late Professor Jim Hagan.

Darling Downs: Coalmining

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (10.00 pm)—I rise tonight to speak about an area in the Darling Downs called Felton. The Darling Downs is one of the jewels in the crown of Australia. Its famous fertile black soil and reliable climate have fed this nation for generations. Under this land lie large coal deposits, and this has resulted in the Darling Downs becoming the front line in the conflict between farming and mining.
Coal is abundant in Queensland, from the Darling Downs west past Wandoan and north to the central highlands. Queensland Premier Anna Bligh said recently that there was enough coal in Queensland to last 300 years. One of the companies at the forefront of this conflict is Ambre Energy, an unlisted public company based in Brisbane with an office in Salt Lake City, Utah, United States. The so-called Felton clean coal project—hereafter referred to as the Felton coal project—is a staged development proposal being advocated by Ambre Energy Ltd for a site at Felton.

Ambre Energy have applied to the Queensland government for a mining lease and are currently conducting an environmental impact study, which they expect to complete early in 2010. The Felton coal project is proposed to commence with an initial ‘demonstration’ project on 355 hectares, which includes an open-cut coal mine and the building of a pilot petrochemical plant to produce dimethyl ether—DME—a diesel substitute fuel. The stage 1 proposal involves extraction of 800,000 tonnes of coal per annum, with expansion under stage 2 to 3.8 million tonnes per annum.

If the project proceeds to full scale as planned, it would cover an area of some 2,800 hectares, and extract 12.8 million tonnes of coal per annum, making it about as large as any currently operating Queensland coal mine. The planned size of the mine is a major concern for Felton residents as we can infer environmental and infrastructure impacts of a proportional magnitude. For a rural area, Felton is densely settled so many people would find themselves adversely affected by the mining related externalities at and around the site. Research carried out by the community group Friends of Felton indicates some 700 people live within 10 kilometres of the proposed mine site.

The thriving town of Pittsworth, population 2,500, lies on the western edge of this 10-kilometre radius, and Cambooya, population 700, lies some 12 kilometre to the north-east. The affected area currently supports a fully sustainable agricultural system comprising fertile soils, an uncontaminated and reliable water supply, specialised capital, technical know-how, cultural history and strong social networks. The Ambre Energy proposition is to sacrifice this system, with its capacity to provide food and biomass in perpetuity, for a high-emissions coalmine that will last for around 50 years and compromise any return to productive agriculture post-mining.

The Felton valley consists of black-soil alluvial plains rising to low slopes of Walloon sandstone and to higher, steeper basalt ridges. Broad-acre cropping—summer and winter—horticulture, egg production, dairying and beef cattle are the main primary industries. It is a closely settled area with relatively small, yet productive, acreages. Friends of Felton Incorporated conducted a survey of properties within a 10-kilometre radius of the proposed mine site. In summary, 185 households had 700 occupants and 55 per cent of these relied on farm income as their primary income source. The properties are highly dependent on underground water for household, stock and irrigation water. In 2007-08, agricultural production was 23,755 tonnes of summer crops, 7,450 tonnes of winter crops, 3,350 tonnes of hay, 3,700 tonnes of silage, four million lettuce heads, 320 tonnes of onions, 150 tonnes of organic mixed vegetables, 4.3 million litres of milk, 18,280 tonnes of beef, 1,540 tonnes of pork, 0.2 tonnes of wool, 10 tonnes of honey, and 1,300 horses in horse breeding enterprises.

Further significant horticultural production is carried out to the north-east of Felton. Indeed, eight enterprises situated between Felton and Toowoomba produce 750,000
lettuces, 65,000 cauliflowers, 60,000 bunches of celery, and 18,000 cabbages every week—and 2,000 tonnes of onions and 500 tonnes of potatoes per annum. These eight growers have a gross value of production of over $23 million, and employ 400 people. All of the irrigation water required for these farms is sourced from shallow underground aquifers.

The Felton-Toowoomba horticulture industry is a vital part of this nation’s food supply and produces salad crops and vegetables for distribution right along the east coast of Australia. It is managed efficiently and sustainably and is capable of producing food for this nation indefinitely. However, coal mining development at Felton would place this entire industry in jeopardy. The prevailing south-westerly winds would blow coal dust from a Felton mine, and pollution from a Felton petrochemical plant, right across this area. Who would eat a lettuce covered in coal dust and laced with pollution? A coal mine at Felton would intersect and drain underground aquifers that run west from the Great Dividing Range around Toowoomba, and supply the horticultural industry. These aquifers are the lifeblood of this region. If they run dry then this vital food production dies with them. The loss of 400 jobs would be a body blow to the region and many more would be lost from the supply chain which delivers this food to the customer. There is no way that coal mining could deliver a net gain in jobs to the Felton area.

The egg production industry in the Felton-Pittsworth district is of national significance, with some 750,000 laying hens producing eggs for Australian households and providing hundreds of jobs. Ambre Energy state that stages 1 and 2 of the Felton coal project would use 1,000 megalitres of water per annum. Since there is very little local water the project could acquire, it would have to import it from waste water sources located up to 100 kilometres from the nominated site. Ambre Energy’s initial advice statement refers to piping coal-seam methane water from the Dalby gas fields. This water is known to be salty and contaminated with other minerals. The proposed mine site is adjacent to Hodgson Creek, 15 kilometres from its confluence with the Condamine River in the headwaters of the Murray-Darling.

The proponent plans to build a 30 metre high levee bank on the western side of the Hodgson Creek to protect the mine and infrastructure from flooding and to collect runoff water for use by the Felton Coal Project. It also plans to build a large water storage dam. The building of these structures, which would be forbidden for agricultural purposes under the current moratorium, is likely to disrupt the hydrology of the local catchment leading to greatly increased flooding upstream of the project site.

Recent flooding of mine sites in Central Queensland highlights the risk of contaminated water escaping into river systems. In January 2008, a number of flooded mine sites were permitted by the Queensland government’s EPA to pump polluted water into the Fitzroy River system. Water quality was very badly affected by heavy metal and salt contamination, which caused major problems for graziers and local communities. The Queensland government apologised to the City of Rockhampton for the impact on drinking water quality. More recently, in February this year, a number of mine sites were flooded in Northwest Queensland, with subsequent pollution turning affected rivers blue for hundreds of kilometres, poisoning fish, and rendering water dangerous to livestock. Are we going to allow this to happen at Felton, in the headwaters of the Murray?

Felton farms are highly dependent on underground water for stock and domestic supplies, and for irrigation. There are some 500
water bores within a 10 kilometre radius of
the proposed mine site. Recent research by
CSIRO and the Queensland government De-
partment of Natural Resources using radioac-
tive isotope markers has shown a high degree
of interconnectivity between groundwater
and surface water in the Hodgson Creek
catchment. The risk of contamination and
drawdown are real and significant threats.

The Felton Coal Project would place at
risk populations of a number of nationally
and state listed endangered native species
and remnants of listed ecological communi-
ties either known to be or likely to be present
in the Felton Valley. These include two en-
dangered ecosystems, three endangered spe-
cies and six vulnerable species which are
listed under the Commonwealth Environ-
ment Protection and Biodiversity Conserva-
tion Act 1999. A further 22 locally-occuring
species are listed under the Queensland Na-
ture Conservation Act 1992 as rare and
threatened. These include the endangered
grassland earless dragon, a lizard which was
thought to be extinct until recently rediscover-
ered near Mount Tyson. There was a con-
firmed sighting of the grassland earless
dragon at Felton this year.

The Felton Valley is currently distin-
guished by its unity, space, beauty, cleanli-
ness and tranquillity. These qualities are part
of the cultural heritage and the reputation of
the Darling Downs. The Darling Downs was
one of the early settled areas of Queensland
and as such several of the Felton families are
fifth or sixth generation. Rudd’s Pub, from
Steele Rudd fame, is located in the vicinity,
adding to the heritage value of the area.

At times in the past, these values have
been blithely dismissed in the name of pro-
gress. While communities have been strug-
gling for years to express their wish that
these and other natural values be preserved,
our decision makers have been slow to read
the signs and to consciously pursue alterna-
tives for satisfying the material necessities of
life. The emergence of China and India and
the subsequent increase in commodity prices
in recent years have created a mining boom
in Australia the likes of which have never
been seen before. Many projects that were
previously unviable have now become vi-
able. Australia, with its vast reserves, is in
the box seat to capitalise on the opportunity.
However, it is important that Australia does
not become the world’s mining industry
playground to be dug up without considera-
tion of other factors.

Australia is also a net exporter of agricul-
tural commodities. This production comes
from an ever shrinking parcel of prime agri-
cultural land, constantly under pressure from
urbanization and, more recently, mining. The
continued loss of prime agricultural land has
national biosecurity importance, from the
loss of long term sustainable export income
from agriculture as well as the ability for
Australia to feed itself.

I seek to leave to incorporate the rest of
my speech.

Leave granted.

The speech read as follows—

This shrinking parcel of prime agricultural land
should be protected from development, whether
this occurs by urbanization or mining. Until re-
cently, the greatest threat to prime agricultural
land has been from property developers due to the
land’s proximity to towns and cities. The threat
posed by mining has gradually increased as the
industry spreads from marginal land in sparsely
populated areas onto increasingly better quality
land where it impacts on many more people.

Mining and agriculture combined make up the
greater mass of Australia’s export income and
have coexisted in relative harmony until recent
years. The footprint of the mining industry has
mainly been in remote and undeveloped areas and
posed little threat to agriculture. Now that some
mineral deposits are more viable, the mining in-
Industry is seeking to develop deposits on farmland that is either considered prime or is of national or state importance or is considered unique.

With the potential impacts of climate change, the need to protect the best agricultural areas in Australia for the future is also enhanced.

Agriculture is a sustainable industry, and with correct use, will provide Australia with export income for generations to come, and not just for the lifetime of a mining project.

The use of the nation’s water assets is also to be considered. The mining industry is a heavy user of water in its extraction and processing stages. Drought and overuse have left many of Australia’s river and underground reserves severely depleted.

Both future land use and water use issues have national importance from a food security and production point of view, and to maintain sustainable export income in perpetuity.

Moratoriums on irrigation development, reduced irrigation allocations, tree clearing restrictions, etc. are unfortunately facts of life for farmers these days. Preferential treatment (or exclusion from existing regulations) seems to be allowed for mining developments by governments in the pursuit of mining royalties for short term incomes.

The implications of the decision on the Felton Mining Lease Application will be of national significance. It will act as a test case for the definition of farmland worthy of protection from mining development.

No Mining Lease Application has ever been rejected on the basis of its impact on prime agricultural land. Refusal of the Felton Mining Lease Application would set a precedent which would afford protection to other threatened prime agricultural areas such as the Haystack and Jimbour Plains on the Darling Downs, and Caroona on the Liverpool Plains. This will assist all levels of government with their development planning processes. It will enable businesses from all industry sectors to determine whether their proposed developments fit in with the overall planning requirements in a specific location.

As a result of more streamlined planning processes unnecessary delays, development costs and potential legal conflicts should be reduced for businesses, effected landholders, and other interested parties. This would have specific relevance to mining and agricultural industries, but also for property development.

The proposed Felton Coal Project is the furthest advanced of several coal mining projects planned for the Darling Downs and other areas of Australia.

Ambre Energy have identified significant coal deposits at Back Plains, near Clifton. Newmont Pacific Energy holds a Mineral Development Licence (MDL) over some 13,000ha at Felton. Tarong Energy holds an MDL over the Haystack Plain near Warra. New Hope Corporation have highlighted the potential of deposits near Pittsworth, Wyreema, Mount Russell, and Jimbour. Coalworks Ltd are conducting feasibility studies for a mine at Hodgson Vale. The Liverpool Plains in NSW is threatened by a number of mining companies. Development across the Darling Downs and other areas of Australia will surely follow, as other mining proposals will look clean in comparison.

Current and future generations of farmers depend on the Queensland Government’s refusal of Ambre Energy’s Mining Lease Application to put long term food security and environmental protection ahead of a short term “quick buck”.

Prime agricultural land makes up a very small proportion of Australia’s surface. The rivers, creeks, and underground aquifers that feed this land are priceless national assets. Properly managed, this land can produce food for the nation, and for export, for thousands of years. Mining this land in pursuit of royalties for cash-strapped Governments would be short-sighted in the extreme, and leave future generations of Australians to ponder the selfishness of our actions.

Scouts Australia

Senator JACINTA COLLINS (Victoria) (10.10 pm)—I would like to take some time tonight to discuss modern day scouting. After events revealed last week, parents will want to be assured that Scouts Australia have appropriate protocols to ensure child safety. I commend the response from Mr Alistair...
Horne, Executive Manager and General Secretary of Scouts Victoria, and note his offer of support. Mr Horne has also outlined to me Scouts Victoria’s practices to ensure children are not exposed to risk. Some of them I am familiar with with respect to my own children, but it is very important that this information be available to parents generally. Protecting children from risk is not just the responsibility of parents. It is also the responsibility of the community, governments and businesses. All children and young people have the right to protection from abuse and exploitation from people they come in contact with during their involvement in local community groups. Parents will want to be assured that voluntary organisations across Australia have taken all possible steps to ensure that programs are safe for children.

All parents are concerned about the well-being of their children, which is why Scouts Australia gives child safety the highest priority today. Scouts Australia must be satisfied that prospective leaders are suitable role models for young people and are not likely to expose them to any physical or emotional harm. Suitability is assessed through interviews, reference checks and background police checks. Approved adult leaders receive comprehensive and ongoing training in dealing with children and the various aspects of scouting. Scout masters are now subjected to police checks and justice department clearances before working with children.

In addition to Victoria’s legislative requirement that all staff and volunteers who are in contact with children need mandatory checking, Scouts Victoria also requires parents—who are exempt under state legislation in some circumstances—to also pass the same ‘working with children’ check. That is, Scouts Victoria applies a higher standard than that which is required by legislation. Adults in scouting must ensure that at least two adults are in attendance whilst supervising and/or accompanying youth members wherever possible. Also, one of the two adults must be a fully warranted leader—that is, one who has been fully trained through the processes. Leaders and other adults normally do not share tents or sleeping accommodation with youth members. Scouts Victoria has also adopted a zero tolerance for any notified allegations of a child safety matter. The adult in question is stood down and an investigation takes place with reference to the police if appropriate. These practices are in accordance with the organisation’s policy and rules.

Earlier this month, ACT Scouts introduced new guidelines on mandatory reporting of child abuse and police checks in a bid to reassure parents their children will be safe within the organisation. The ACT Scouts Chief Commissioner, Neville Tomkins, announced that all adult scouts would have to report actual or suspected child abuse, not just leaders as the previous guidelines had stated. In order to manage internal reporting and to support alleged victims, two new positions of male and female youth protection commissioners were created. Also, those people aged between 18 and 26 would require police checks and be issued with a working with children card confirming police clearance.

Parental education is an important aspect of ensuring child safety. To assist parents in understanding the duty of care and safe practices that organisations have responsibility for in relation to the protection of their child or children, I believe that there should be a best practice guide for all voluntary organisations. For example, we produce guides to assist parents to assess quality childcare centres and understand what appropriate guidelines are in that forum. Helping parents understand the types of practices that can help to manage the risk of child abuse within an...
A best practice guide would provide guidance on important child protection issues. The guide would provide information on best practice strategies and concepts, how these concepts could be implemented, the benefits to voluntary organisations in doing so and where to find out more information. Some of these concepts could involve promoting a safe environment for all children through employee and volunteer training, appropriate notification methods, a safety culture and strict recruitment and selection procedures. Further, the guidelines would emphasise the importance of ensuring that the safety, welfare and wellbeing of children be maintained at all times during their participation in activities while also supporting the rights and welfare of all staff and volunteers and encouraging their active participation in creating safe and respectful workplaces. I should note that a number of organisations do develop protocols in seeking to ensure child safety. Some examples of those organisations include Australian Volunteers International, Camp Quality, the Fred Hollows Foundation, St John Ambulance and, as I have already discussed, Scouts ACT. This should be encouraged and fostered amongst more community organisations that involve activities with children.

I would like to conclude these comments by looking at some of the broader areas that the federal government is currently working on to deal with issues associated with child abuse. The Australian government is providing $63.1 million over four years to help protect Australia’s vulnerable children from child abuse and neglect under the National Framework for Protecting Australia’s Children 2009-2020. This is a key element of the government’s child centred approach to family policy, which promotes children’s best interests. Protecting children at risk demands national leadership and a coordinated national response—all children deserve a safe, healthy and happy childhood. On 30 April this year, the Council of Australian Governments endorsed the national framework, an ambitious, long-term, national approach to ensuring the safety and wellbeing of Australian children. The national framework includes the development of ambitious national standards for out-of-home care to ensure that all children who cannot be cared for by their parents receive quality care to support their wellbeing now and into the future.

In addition, the Australian government measures include key national leadership projects, which involve $10.1 million over four years for improved information sharing and data consistency, a national research agenda and workforce development projects. For reporting, the nationally consistent data-sharing issue is absolutely critical in supporting those community organisations that do have in place appropriate protocols. Another measure is Communities for Children Plus, which involves $10 million over four years to establish up to eight innovative, integrated service-delivery sites across Australia to reduce child abuse and neglect in disadvantaged communities and provide intensive early intervention services to an additional 1,200 children and families over four years in their local communities. A third measure is enhanced access to quality child care for children at risk, which involves $37.7 million over four years to extend access to quality child care for Australia’s most vulnerable children through increased take-up of the special child care benefit. The special child care benefit covers the full cost of child care for children at serious risk of abuse or neglect. Finally, there is increased assistance for young people leaving care. From 1 July 2009, the government will increase the transition to independent living allowance for young people leaving care from $1,000 to
$1,500 at a cost of $5.3 million over four years.

This investment builds on the significant focus on early intervention and prevention programs through the Family Support Program, which currently provides $1.2 billion over four years to support vulnerable and disadvantaged families, and separated and separating parents and their children. The national framework is a Rudd government election commitment and was developed in consultation with states and territories and the Coalition of Organisations Committed to the Safety and Wellbeing of Australia’s Children. The program is aimed at developing the strength and resilience of children and families to prevent child abuse and neglect and providing additional support to those children who have suffered abuse and neglect.

My concluding point today is that we can also do some more for children who have not been identified as at risk or who have not already suffered abuse. We can help educate families, parents and community organisations to develop appropriate protocols to help them avoid the risk that individuals may conduct themselves in a fashion which will lead to child abuse amongst their community. I highlight that this could be an important measure for us in our support of Australian children into the future.

**Senate adjourned at 10.20 pm**

**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:

- [Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]
- Airspace Act—Airspace Regulations—Instrument No. CASA OAR 192/09—Determination of controlled aerodrome – Broome [F2009L04201]*.
- Civil Aviation Act—Civil Aviation Regulations—Instruments Nos CASA—EX92/09—Exemption – flight instructor (aeroplane) rating [F2009L04022]*.
- EX93/09—Exemption – flight instructor (aeroplane) rating [F2009L04023]*.
- Civil Aviation Safety Regulations—Airworthiness Directives—AD/ARRIEL/34—Module M05 – Lubrication Duct [F2009L04243]*.
- Customs Act—Tariff Concession Orders—0902741 [F2009L04184]*.
- 0904258 [F2009L04172]*.
- 0907328 [F2009L04179]*.
- 0908196 [F2009L04170]*.
- 0908209 [F2009L04171]*.
- 0908814 [F2009L04173]*.
- 0910929 [F2009L04181]*.
- 0910937 [F2009L04183]*.
- 0911155 [F2009L04180]*.
- 0911234 [F2009L04178]*.
- 0911257 [F2009L04174]*.
- 0911322 [F2009L04185]*.
- 0911326 [F2009L04186]*.
- 0911493 [F2009L04175]*.
- 0911985 [F2009L04176]*.
- Federal Magistrates Act—Select Legislative Instruments 2009 Nos—316—Federal Magistrates Court Amendment Rules 2009 (No. 3) [F2009L04279]*.
- 317—Federal Magistrates Court (Bankruptcy) Amendment Rules 2009 (No. 1) [F2009L04280]*.
- National Health Act—Instruments Nos PB—106 of 2009—Amendment declaration and determination – drugs and medicinal preparations [F2009L04287]*.

*Note: Legal instruments are identified by an FRLI number.
107 of 2009—Amendment determination—pharmaceutical benefits [F2009L04284]*.
108 of 2009—Amendment determination—responsible persons [F2009L04286]*.
109 of 2009—Determination—drugs on F1 [F2009L04272]*.
110 of 2009—Amendment—price determinations and special patient contributions [F2009L04253]*.
111 of 2009—Amendment determination—prescription of pharmaceutical benefits by authorised optometrists [F2009L04285]*.
112 of 2009—Amendment determination—conditions [F2009L04263]*.
113 of 2009—Amendment Special Arrangements—Highly Specialised Drugs Program [F2009L04290]*.
2 of 2009 [F2009L04299]*.
3 of 2009 [F2009L04296]*.
* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Foreign Affairs and Trade: Printing
(Question Nos 2135 and 2136)

Senator Ronaldson asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 10 September 2009:

For the 2008-09 financial year:

(1) Did the Minister have any ministerial letterhead produced using the funds or resources of his or her home department; if so: (a) how many sheets of letterhead were produced; and (b) what was the cost of the production of the letterhead.

(2) What was the total postage cost of mailings conducted by the Minister and/or Parliamentary Secretary using their departmental-funded franking machine.

(3) (a) What was the total cost, including production and distribution, of all direct mail pieces produced by the department, including as part of a government communications campaign, where the Minister or Prime Minister was the nominal author of the piece; and (b) can an itemised list be provided of: (i) production costs, and (ii) distribution costs.

Senator Faulkner—the Minister for Foreign Affairs and the Minister for Trade have provided the following answer to the honourable senator’s question:

(1) The number of sheets of portfolio ministerial letterhead produced at departmental cost by the department’s contract printer during the 2008-09 financial year and the costs of production to the department are set out in the following table:

<table>
<thead>
<tr>
<th>Department</th>
<th>Sheets produced</th>
<th>Cost of production</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister for Foreign Affairs</td>
<td>10,500</td>
<td>$2,666.58</td>
</tr>
<tr>
<td>Minister for Trade</td>
<td>12,000</td>
<td>$2,854.09</td>
</tr>
</tbody>
</table>

(2) Franking machines funded by the department for use by Portfolio Ministers and Parliamentary Secretaries operate on a credit system. An advance is paid and the credit is downloaded onto the franking machine and used as required. Total cost of credit funded by the department for the 2008-09 financial year is set out in the following table:

<table>
<thead>
<tr>
<th>Department</th>
<th>Cost of credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister for Foreign Affairs</td>
<td>nil</td>
</tr>
<tr>
<td>Minister for Trade</td>
<td>$1,210.72</td>
</tr>
<tr>
<td>Parliamentary Secretary for International Developement Assistance</td>
<td>nil</td>
</tr>
<tr>
<td>Parliamentary Secretary for Pacific Island Affairs</td>
<td>nil</td>
</tr>
<tr>
<td>Parliamentary Secretary for Trade (Mr Byrne)</td>
<td>nil</td>
</tr>
<tr>
<td>Parliamentary Secretary for Trade (Mr Murphy)</td>
<td>nil</td>
</tr>
</tbody>
</table>

(3) The department regularly prepares correspondence for Portfolio Ministers’ signature on a range of issues within its portfolio responsibilities.

This includes responses to ministerial correspondence from members of the Australian public and other correspondents. This also includes correspondence which is initiated by Ministers or the department for the particular purpose of protecting, advocating and advancing the interests of Australia and Australians internationally, and much of which is for addressees in other countries.
The department reports on the total number of responses to ministerial correspondence from members of the Australian public and other correspondents, which it prepares for Portfolio Ministers’ signature. In the 2008-09 financial year, the department prepared 1,655 responses for Mr Smith’s signature and 522 responses for Mr Crean’s signature.

The department does not report on the total number of items of correspondence which it prepares for Portfolio Ministers’ signature and which have been initiated by Ministers or the department. To collect this information for the purpose of answering this question would be a major task and I am not prepared to authorise the expenditure and effort that would be required.

Furthermore, the department does not report separately in its financial management information system on the production and distribution costs of all correspondence which it prepares for Portfolio Ministers’ signature. To collect this information for the purpose of answering this question would be a major task and I am not prepared to authorise the expenditure and effort that would be required.

Defence: Websites

(Question Nos 2222 and 2251)

Senator Abetz asked the Minister for Defence, upon notice, on 16 September 2009:

(1) Does the Minister and/or Parliamentary Secretary have a departmentally maintained website or websites; if so, can a list of these websites be provided.

(2) Can a list be provided of all redevelopments (including re-skins) of these websites since 24 November 2007, including: (a) the total cost for each redevelopment; (b) who undertook each redevelopment; and (c) whether the website, or draft versions thereof, were market-tested before going live; if so, by whom and what was the total cost of the market testing.

(3) Does the department: (a) post all of the Minister’s and/or Parliamentary Secretary’s press releases, speeches and transcripts on these websites; and (b) have any guidelines for the posting of political material on these websites.

(4) Has the department ever refused to post material on these websites due to their political nature; if so, on how many occasions.

Senator Faulkner—The answer to the honourable senator’s question is as follows:


(2) Yes one re-skin and one Cascading Style Sheet (CSS) upgrade to improve the accessibility of the site.

(a) Costs for management, refresh and upkeep of these specific sites can not be apportioned as funds are allocated and expended against the entirety of the Defence presence on the World Wide Web.

(b) All work is managed and conducted in-house by Defence staff and permanently contracted IT professionals.

(c) No.

(3) (a) Yes. Those provided by Ministers or Parliamentary Secretary for that purpose are posted on the respective web sites.

(b) Defence publishes material to Ministerial sites in accordance with Web Publishing Guidelines for Ministerial and Departmental Websites issued by the Australian Government Information Management Office (AGIMO).

(4) No.
Infrastructure, Transport, Regional Development and Local Government: Website
(Question No. 2228)

Senator Abetz asked the Minister representing the Minister for Infrastructure, Transport, Regional Development and Local Government, upon notice, on 16 September 2009:

(1) Does the Minister and/or Parliamentary Secretary have a departmentally maintained website or websites; if so, can a list of these websites be provided.

(2) Can a list be provided of all redevelopments (including re-skins) of these websites since 24 November 2007, including: (a) the total cost for each redevelopment; (b) who undertook each redevelopment; and (c) whether the website, or draft versions thereof, were market-tested before going live; if so, by whom and what was the total cost of the market testing.

(3) Does the department: (a) post all of the Minister’s and/or Parliamentary Secretary’s press releases, speeches and transcripts on these websites; and (b) have any guidelines for the posting of political material on these websites.

(4) Has the department ever refused to post material on these websites due to their political nature; if so, on how many occasions.

Senator Conroy—The Minister for Infrastructure, Transport, Regional Development and Local Government has provided the following answer to the honourable senator’s question:


(2) The website has been amended as part of routine maintenance to reflect the changes in Ministers and Parliamentary Secretaries but this activity did not incur an additional cost.

(3) (a) Yes. As a general rule all press releases, speeches and transcripts made in their capacity as Minister/Parliamentary Secretaries are posted on the website. (b) The guidelines are at: <http://webpublishing.agimo.gov.au/Guidelines_for_Ministerial_and_Departmental_Websites>.

(4) No.

Special Purpose Aircraft Flights
(Question Nos 2290 and 2319)

Senator Barnett asked the Minister for Defence, upon notice, on 17 September 2009:

(1) What is the number, cost and routes of all Prime Ministerial and ministerial jet services since November 2007.

(2) Have ministerial staff, other political staff or anyone else other than jet service personnel, travelled on such jet services unaccompanied by the Prime Minister or Minister; if so, can details of these occurrences be provided.

(3) What are the rules or protocols applicable to the use of ministerial travel, including travel by the Prime Minister.

Senator Faulkner—The answer to the honourable senator’s question is as follows:

(1) and (2) The number, cost and routes of all Prime Ministerial and Ministerial Special Purpose Aircraft Flights are listed in the Schedule of Special Purpose Flights, tabled in Parliament every six months. The last Schedule of Special Purpose Flights was tabled in Parliament 25 June 2009 and included details of travel for the period 1 June to 31 December 2008. The next Schedule of Special Purpose Flights is planned to be tabled in Parliament on 26 November 2009 and will include details of travel for the period 1 January 2009 to 30 June 2009.

(3) The rules and protocols which dictate the use of Special Purpose Aircraft are outlined in the “Revised Principles for the Use of Special Purpose Aircraft” that was issued by the Special Minister of
State on 23 September 2002. These are currently being reviewed by the Office of the Minister for Defence in conjunction with Air Force.