INTERNET

The Journals for the Senate are available at

Proof and Official Hansards for the House of Representatives,
the Senate and committee hearings are available at

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SITTING DAYS—2010

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RADIO BROADCASTS

Broadcasts of proceedings of the Parliament can be heard on ABC NewsRadio in the capital cities on:

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For information regarding frequencies in other locations please visit
http://www.abc.net.au/newsradio/listen/frequencies.htm
FORTY-SECOND PARLIAMENT
FIRST SESSION—SEVENTH PERIOD

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

Senate Officeholders
President—Senator Hon. John Joseph Hogg
Temporary Chairs of Committees—Senators Guy Barnett, Suzanne Kay Boyce, Thomas Mark Bishop, Carol Louise Brown, Michaelia Clare Cash, Patricia Margaret Crossin, Michael George Forshaw, 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
Deputy Manager of Opposition Business in the Senate—Senator Mitchell Peter Fifield

Senate Party Leaders and Whips
Leader of the Australian Labor Party—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Hon. Stephen Michael Conroy
Leader of the Liberal Party of Australia—Senator Hon. Nicholas Hugh Minchin
Deputy Leader of the Liberal Party of Australia—Senator Hon. Eric Abetz
Leader of the Nationals—Senator Barnaby Thomas Gerard Joyce
Deputy Leader of the Nationals—Senator Fiona Nash
Leader of the Australian Greens—Senator Robert James Brown
Deputy Leader of the Australian Greens—Senator Christine Anne Milne
Leader of the Family First Party—Senator Steve Fielding
Chief Government Whip—Senator Kerry Williams Kelso O’Brien
Deputy Government Whips—Senators Donald Edward Farrell and Anne McEwen
Chief Opposition Whip—Senator Stephen Shane Parry
Deputy Opposition Whips—Senators Judith Anne Adams and David Christopher Bushby
The Nationals Whip—Senator John Reginald Williams
Australian Greens Whip—Senator Rachel Mary Siewert
Family First Party Whip—Senator Steve Fielding

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

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(1) Chosen by the Parliament of South Australia to fill a casual vacancy vice Amanda Eloise Vanstone, resigned.
(2) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Ian Campbell, resigned.
(3) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Christopher Martin Ellison, resigned.
(4) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

**PARTY ABBREVIATIONS**

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

**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing
Clerk of the House of Representatives—B Wright
Secretary, Department of Parliamentary Services—A Thompson
**Rudd Ministry**

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<tr>
<td>Prime Minister</td>
<td>Hon. Kevin Rudd, MP</td>
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<tr>
<td>Deputy Prime Minister, Minister for Education, Minister for</td>
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<tr>
<td>Employment and Workplace Relations and Minister for Social</td>
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<tr>
<td>Inclusion</td>
<td>Hon. Julia Gillard, MP</td>
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<tr>
<td>Treasurer</td>
<td>Hon. Wayne Swan MP</td>
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<tr>
<td>Minister for Immigration and Citizenship and Leader of the</td>
<td>Senator Hon. Chris Evans</td>
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<td>Government in the Senate</td>
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<td>Minister for Defence and Vice President of the Executive</td>
<td>Senator Hon. John Faulkner</td>
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<td>Council</td>
<td>Hon. Simon Crean MP</td>
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<td>Minister for Trade</td>
<td>Hon. Stephen Smith MP</td>
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<td>Minister for Foreign Affairs and Deputy Leader of the House</td>
<td>Hon. Nicola Roxon MP</td>
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<tr>
<td>Minister for Health and Ageing</td>
<td>Hon. Jenny Macklin MP</td>
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<td>Minister for Families, Housing, Community Services and</td>
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<td>Indigenous Affairs</td>
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<td>Minister for Finance and Deregulation</td>
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<td>Minister for Broadband, Communications and the Digital</td>
<td>Senator Hon. Stephen Conroy</td>
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<tr>
<td>Economy and Deputy Leader of the Government in the Senate</td>
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<tr>
<td>Minister for Innovation, Industry, Science and Research</td>
<td>Senator Hon. Kim Carr</td>
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<tr>
<td>Minister for Climate Change, Energy Efficiency and Water</td>
<td>Senator Hon. Penny Wong</td>
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<tr>
<td>Minister for the Environment Protection, Heritage and the</td>
<td>Hon. Peter Garrett AM, MP</td>
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<tr>
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<td>Senator Hon. Joe Ludwig</td>
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<tr>
<td>Minister for Resources and Energy and Minister for Tourism</td>
<td>Hon. Martin Ferguson AM, MP</td>
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<tr>
<td>Minister for Financial Services, Superannuation and Corporate</td>
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<tr>
<td>Law and Minister for Human Services</td>
<td>Hon. Chris Bowen, MP</td>
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*[The above ministers constitute the cabinet]*
RUDD MINISTRY—continued

Minister for Veterans’ Affairs
Minister for Housing and Minister for the Status of Women
Minister for Home Affairs
Minister for Indigenous Health, Rural and Regional Health and Regional Services Delivery
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
Assistant Treasurer
Minister for Ageing
Minister for Early Childhood Education, Childcare and Youth and Minister for Sport
Minister for Defence Personnel, Materiel and Science and Minister Assisting the Minister for Climate Change and Energy Efficiency
Minister for Employment Participation and Minister Assisting the Prime Minister for Government Service Delivery
Parliamentary Secretary for Infrastructure, Transport, Regional Development and Local Government
Parliamentary Secretary for Defence Support and Parliamentary Secretary for Water
Parliamentary Secretary for Western and Northern Australia and Parliamentary Secretary for Victorian Bushfire Reconstruction
Parliamentary Secretary for International Development Assistance
Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Trade
Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector
Parliamentary Secretary for Multicultural Affairs and Settlement Services
Parliamentary Secretary for Employment
Parliamentary Secretary for Health
Parliamentary Secretary for Innovation and Industry

Hon. Alan Griffin MP
Hon. Tanya Plibersek MP
Hon. Brendan O’Connor MP
Hon. Warren Snowdon MP
Hon. Dr Craig Emerson MP
Senator Hon. Nick Sherry
Hon. Justine Elliot MP
Hon. Kate Ellis MP
Hon. Greg Combet AM, MP
Senator Hon. Mark Arbib
Hon. Maxine McKew MP
Hon. Dr Mike Kelly AM, MP
Hon. Gary Gray AO, MP
Hon. Bill Shorten MP
Hon. Bob McMullan MP
Hon. Anthony Byrne MP
Senator Hon. Ursula Stephens
Hon. Laurie Ferguson MP
Hon. Jason Clare MP
Hon. Mark Butler MP
Hon. Richard Marles MP
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<tr>
<td>Leader of the Opposition</td>
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<td>Hon. Julie Bishop MP</td>
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<tr>
<td>Shadow Minister for Trade, Transport, Regional Development</td>
<td>Hon. Warren Truss MP</td>
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<tr>
<td>and Local Government and Leader of The Nationals</td>
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<td>Shadow Minister for Resources and Energy and Leader of the</td>
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<td>Hon. Joe Hockey MP</td>
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<td>Shadow Minister for Education, Apprenticeships and Training and</td>
<td>Hon. Christopher Pyne MP</td>
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<tr>
<td>Manager of Opposition Business in the House</td>
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<tr>
<td>Shadow Minister for Infrastructure and Water</td>
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Tuesday, 16 March 2010

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

HEALTH LEGISLATION AMENDMENT (MIDWIVES AND NURSE PRACTITIONERS) BILL 2009

MIDWIFE PROFESSIONAL INDEMNITY (COMMONWEALTH CONTRIBUTION) SCHEME BILL 2009

MIDWIFE PROFESSIONAL INDEMNITY (RUN-OFF COVER SUPPORT PAYMENT) BILL 2009

Second Reading

Debate resumed from 9 September 2009, on motion by Senator Ludwig:

That these bills be now read a second time.

upon which Senator Siewert moved by way of amendment:

At the end of the motion, add: “and the Senate calls on the Government:

(a) to ensure that midwives have access to a contract of insurance that provides midwife professional indemnity cover for a person irrespective of the location or venue of the births that they attend; and

(b) to undertake a thorough review, 12 months after the regulations under this legislation commence, to ensure that the collaborative arrangements as stipulated in the regulations are effective and have in no way obstructed independent midwifery practice”.

Senator XENOPHON (South Australia) (12.31 pm)—I commenced my contribution last night before the adjournment and I am pleased to continue today. Essentially, this is an important piece of legislation. There is an enormous amount of debate in the community about this in terms of what role midwives should have in our health system and in the delivery of children in this country. I think it is an issue that deserves ongoing debate and close scrutiny in terms of what the government is proposing to do.

As I said last night, over the past few months I have been contacted—as I am sure my colleagues have also—by many dozens of families who want to share their experience of their pregnancy and of delivering their baby at home with a midwife. In fact there have been hundreds of emails about the trust and bond they shared with their midwife throughout their pregnancy and how safe they felt during the delivery of their child. Some have also told me that they have had previous experience of such traumatic hospital deliveries that they would rather not have another child than be ‘forced’ to deliver their baby in a hospital situation. Indeed many wrote that ultimately it is their right to choose and removing that choice is fundamentally unfair.

There is no question that homebirth and/or midwives is not for everyone, but for those who choose it, it is fair to argue that that choice should be available to them. As I understand it, the statistics show that about one per cent of births are homebirths in this country compared to about 30 per cent in the Netherlands, and I will refer to that shortly.

Similarly and scarily, I have heard from women who had a ‘normal’ or textbook case low-risk pregnancy but because of an unexpected complication during labour they almost lost their child and, but for the intervention of the hospital’s doctors, would have lost their son or daughter. I have been advised by medical professionals about the risks of delivery without an obstetrician and how every second counts and that in some instances by the time the midwife realises there is a complication it might be too late to get the mother to a hospital. However, I emphasise that that contrary position has been put to me by those who argue that homebirths are something to be avoided.
I must stress that I do not believe any mother would knowingly make a decision that would risk her baby’s life. I have full confidence that the priority of midwives is to look after the mother and baby, as is the case with the medical profession. I would hope that a mother who is considering having her baby with a midwife would do all of the research and ask all the appropriate questions to ensure that it would be a safe decision for her to have her baby without an obstetrician present. Of course, these are the sorts of questions that need to be asked about a so-called conventional delivery through a hospital model and I am sure the same would go for a mother considering delivering her baby in a hospital.

Since the medical indemnity crisis of 2001, insurers have refused to give professional indemnity insurance to midwives who attend homebirths. But from 1 July 2010 the single National Registration and Accreditation Scheme for Health Professions will be introduced, which means that without indemnity insurance it will be illegal for privately practising midwives to provide antenatal care, labour and birth support, and postnatal care to women at home. I understand and I have heard the concerns of women who fear that this will result in homebirths being ‘forced underground’, and from a public policy and individual point of view this is in no way desirable. This should not be seen as an attempt to ban midwifery by stealth. One of the roles of parliament is to establish measures that ensure the safety of all Australian mothers and their babies. This legislation, although it may be seen to be punitive against midwives, does not need to be, and I believe it does not intend to be so.

The government’s amendments to the legislation include transitional arrangements for privately practising midwives through the provision of a two-year exemption until June 2012, and collaborative arrangements are an indication of this. Again, I acknowledge the fears of midwives who argue that this may in time undermine their role and the requests of intending mothers. Once again, it must all be balanced up against the safety of mother and child. Whatever decision is made in this place I hope that Australians and midwives know that it is to ensure that there are appropriate safeguards in place so that the health of a baby and the health of a mother are protected no matter where they give birth.

In Australia, demand for homebirths is about one per cent of all deliveries nationwide. Compare this to the Netherlands, where some one in three babies are born at home. Indeed, last year a review of 500,000 births in the Netherlands revealed no difference in survival rates between hospital births and homebirths, for low-risk pregnancies. In terms of adverse outcomes that is a very telling statistic. However, it is important to keep in mind that in the Netherlands they have in place a streamlined system that allows women to plan a homebirth and to access specialist emergency obstetric care in hospital should complications arise.

Under the scheme proposed in these bills, however, midwives will be unable to access Medicare unless they are sponsored by a doctor or obstetrician, by a medical practitioner, and therefore will be unable to admit a patient to a public hospital. It is for those occasional instances where an otherwise normal, safe and supposedly predictable low-risk pregnancy becomes, at the very last minute, for whatever reason, risky for the survival of the baby that I feel I have to support these bills. Having said that, I want to stress that I do believe midwives play a very important role in our health system. The services and support that they provide make a significant difference to women and families around Australia. It is important that we recognise that individual women and individual pregnancies have individual needs. Given
this, I believe an independent inquiry should be conducted into midwifery in Australia, with the key focus on safety but also addressing the demand, the cost benefits for the public hospital system and international best practice, such as the system that exists in the Netherlands. I do not think we have had a level of scrutiny of midwifery and homebirths in this country to that extent. I think there is a demand for it. I think more women would avail themselves of midwives if we had systems in place similar to those in the Netherlands and other countries.

It is interesting to note that a review of homebirths in Western Australia was undertaken for the Western Australian Department of Health in August 2008. The review team members and report authors were Professor Caroline Homer and Dr Michael Nicholl. That was a very positive report about homebirths in Western Australia. There is no reason why it would be any different anywhere else in the country. It indicated that homebirths, as practised in WA, compared very favourably with hospital births in the Western Australian hospital system. There were specific terms of reference. The first term of reference was to:

Investigate the clinical experiences and health outcomes of mothers and babies accepted for homebirth by the Community Midwifery Program or midwives acting independently in Western Australia between 2000 and 2007. As a minimum, the investigation is to include mortality of mothers and babies; and emergency transfer of mothers or babies to hospital care at any stage of pregnancy, including during the post-partum period.

I think that indicates the sort of thing that should be done at a federal level. The national health and hospitals review did not specifically look at this very important issue because the government had already undertaken a maternity services review, and that report was provided in February 2009. However, the concern that has been expressed to me by midwives and those who are advocates for homebirths is that there has not been an adequate and robust study of the benefits and risks of homebirths, integrating that into our health system and looking at international best practice, such as in the Netherlands.

Let us look further at the international experience. Midwifery became a regulated profession in Canada in the 1990s. Midwives are today the lead healthcare professionals attending the majority of births, albeit mostly in a hospital setting. There is a different attitude to the role of midwives at births in Canada. Under legal recognition, Canadian midwives have access to hospital privileges, the right to prescribe medications commonly needed during pregnancy, birth and postpartum, the right to order blood work and ultrasounds for their patients and full consultation access to their own physicians. That, to me, seems to be a sensible way forward. Many would say that the Canadian system is leaps and bounds ahead of the US health system just south of the border. In 1990 New Zealand restored the professional and legal separation of midwifery from nursing. About 78 per cent of women choose a midwife in New Zealand. That is a dramatically different statistic from here in Australia.

Midwifery is a long-held practice, going back centuries. Midwives are educated and trained providers who care for child-bearing women throughout their pregnancy, during the delivery process and in the post-partum period. I think we have not availed ourselves of the resource and professionalism that midwives can offer. The fact that so few women choose to go down the path of using a midwife says something about the structural imbalances in our health system. I do not think we have had a robust enough analysis of that, even with the report of the maternity services review. That is something that ought to be looked at.
This is not easy legislation to decide on. I am sure that I am not the only one in this chamber who has been deeply concerned about this issue. As I said at the start of my contribution, there are so many aspects and arguments to this debate. In so many ways it is not a black and white issue; there are shades of grey in relation to this. I need to support measures to ensure the safety of all Australian mothers and babies, and for that reason I give my support to this package of bills. However, I believe ultimately that the fair and right thing to do is to have an independent inquiry into this area of practice. I think it is crucial to ensure that all Australian child-bearing women have access to the best care and the most appropriate care for them, whether that is in a hospital or clinic with an obstetrician or in a hospital with a midwife or at home with a midwife. The fact that other nations, such as Canada, New Zealand and the Netherlands, and a number of states in the US, have a different approach I think indicates that we have a long way to go. I hope that the regulations that will be set up under this legislation will not prejudice midwives and will look fairly at the importance of their contribution to our health system. Until we have that robust, independent inquiry, I do not think we will get the best policy answers. So I urge the government to go through the process of an independent review, particularly during this transition period. I think that in the absence of that we will not make the best decisions for the mothers and babies of this nation. Families need to be able to make an informed choice as to what is best for them.

Senator CAROL BROWN (Tasmania) (12.45 pm)—I am very happy to contribute to the debate on the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009, which introduce significant changes for Australia’s nurses and midwives. These bills are an important component of the government’s maternity reform package. I would like to make a short contribution and put a number of issues on the record.

The purpose of the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 is to amend the Health Insurance Act 1973 and the National Health Act 1953 to support the inclusion of nurse practitioners and appropriately qualified and experienced midwives under the Medicare benefits schedule, MBS, and the Pharmaceutical Benefits Scheme, PBS, in line with the 2009-10 budget measures. The midwives and nurse practitioners bill will enable those health professionals to request appropriate diagnostic imaging and pathology services and to prescribe certain medicines under the PBS. The 2009-10 budget measure also provides for the creation of new Medicare items and referrals under the MBS from these health professionals to specialist consultant physicians. The Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and the Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009 will support the new MBS and PBS arrangements by enabling the establishment of a government supported professional indemnity scheme for eligible midwives. These bills will commence on 1 July 2010.

The bills before us expand support for midwives and nurse practitioners in our community, improving choice and extending funding for a range of midwife and nurse practitioner services for the first time ever. The bills will enable patients of appropriately qualified and experienced midwives and nurse practitioners to access benefits
under the Medical Benefits Schedule for improved access to maternity services and improved choice for women. The government was supported in their commitment to better services by witnesses to the Senate Standing Committee on Community Affairs inquiry into the bills, and I quote from the report:

The government’s commitment to increase women’s access to midwifery care by providing midwives with access to the MBS, PBS and affordable indemnity insurance was supported by witnesses. The Australian College of Midwives (ACM) stated:

Evidence confirms that women and babies benefit from continuity of care by a known midwife. We welcome the Minister’s recognition of this evidence and commitment to expanding women’s access to the choice of primary continuity of care by midwives in both hospital and the community.

It is fair to say that the two community affairs inquiries held into these bills, which recommended the passing of the bills, generated considerable interest. The committee received over 1,000 submissions.

It is important to note that these three bills do not take away any rights and that none of these bills make homebirth unlawful. The indemnity insurance issue as it relates to privately practising midwives—raised by community members and organisations with many members and senators—is dealt with.

I am pleased that the Minister for Health and Ageing, Nicola Roxon, announced back in September 2009 that she was able to achieve agreement from all state and territory health ministers to a transitional clause. The clause provides a two-year exemption, until June 2010, from holding indemnity insurance for privately practising midwives who are unable to obtain professional indemnity insurance for attending a homebirth. This issue was raised with me prior to the transitional arrangements being put in place, and after. I am pleased to say that the women I have spoken to have supported Ms Roxon’s approach.

At a recent meeting I had with representatives from the homebirth rally on their ‘national day of action’, they agreed that the exemption approach was a positive outcome. I spoke at the homebirth rally, which was held in Hobart on 18 February. It was attended by homebirth supporters, midwives and children. I had a meeting prior to the rally with rally representatives: Ms Jo Durdin, Director, Australian College of Midwives, Tasmania; Ms Lalita Holmes, one of the rally organisers; and an expectant mother, Ms Chernov. I also have had meetings with other individual midwives and interested individuals. The rally meeting was very constructive, and a number of issues were raised at the meeting which also have been raised by witnesses at the community affairs committee hearings.

An issue of concern was the impact of the requirement for midwives to have collaborative arrangements with medical practitioners. And, as the committee reported noted and has been repeated by interested parties that I have spoken to, the concept of collaboration to ensure appropriate care for women and their babies is supported. This was echoed by the Australian College of Midwives in their comment, ‘midwifery is a profession committed to the provision of collaborative care.’ They also stated that:

... there is no argument that women choosing the care of a private MBS funded midwife must have ready access to appropriate medical care if and when the need arises for themselves or their baby.

The ACM and others saw the issue as being how collaboration is ensured. The community affairs committee noted:

... effective collaborative arrangements amongst health professionals ensures the delivery of safe and high quality care. Collaborative arrangements are at the heart of the midwives and nurse practitioners reforms introduced by the Government.
and thus the Committee supports the principle of collaborative arrangements in legislation.

The details of the collaborative arrangements will be included in subordinate legislation and will continue to be the subject of consultations with health professionals. The majority report from the community affairs committee believes:

This consultation is critical to the effectiveness of the process and reflects the shared commitment and professional skills focused on safe birth practice.

These bills, as I have said, are a significant step towards improving access and services. I commend the bills to the Senate.

Senator EGGLESTON (Western Australia) (12.51 pm)—I would like to make a few remarks about these bills, the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009, the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and the Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009. I see the most important part as being the suggestion that there should be collaborative agreements between doctors and midwives, and I think that should occur. But I note that there has been some opposition to this from some midwives who feel professionally threatened by having to work in collaboration with a medical practitioner—one trained in obstetrics, one presumes.

It is interesting to look at the figures over the years. Since the beginning of last century we have had quite a dramatic drop in the infant mortality rate. In 1907 the infant mortality rate was about 8,945 a year, whereas today it is around 1,200. There has also been a dramatic drop in maternal mortality rates associated with deliveries. In both cases, that is largely due to the fact that most babies are born in hospitals now and children are in hospitals under medical care—that is, with medical doctors as well as midwives caring for the mothers and babies.

But the one thing that has gone up over that time is the incidence of litigation. Medical litigation in Australia has skyrocketed, and that, I would suggest, is why the idea of having a collaborative arrangement between doctors and midwives is very important and in fact essential. Litigation can occur for many reasons, often quite trivial reasons such as failure to do a test in an antenatal clinic or failure to manage complications during delivery. I think, for the benefit and protection of midwives, having a qualified obstetrician or at least a general practitioner with a diploma in obstetrics overseeing what is done will protect them from the risk of litigation which might otherwise occur. I know that many GP obstetricians have ceased practising obstetrics because of the fear of litigation and because the cost of the insurance premiums is so high that the income from the deliveries they do does not at all cover the cost of the insurance.

As I said, litigation can follow from quite trivial events, such as failing to do a blood sugar test on an Indigenous woman who might only come into a clinic once or twice before she delivers. Then she turns up at the hospital with gestational diabetes, causing a very large baby, and then has complications because it is often very difficult to deliver large babies without surgical or other intervention. If there was an adverse outcome there, the midwife might find that, because she failed to order a blood sugar test very early in the pregnancy, which might have indicated that the patient was in danger of developing gestational diabetes, she could be liable for that adverse outcome of the pregnancy.

In fact I know of a doctor who was in exactly that situation in the north-west. He saw a patient only twice during her antenatal pe-
period and did do a blood sugar test, but the patient never came back and disappeared into the unknown. But in due course she turned up in a hospital with diabetes in pregnancy and a very large baby, and there were some complications. The doctor found that his insurance had to pay out damages of nearly $1 million to that patient. So I think a formal collaborative arrangement is very wise in terms of protecting the interests of midwives so that they are not subject to unnecessary litigation, and also of course to protect mothers and babies.

I note that the AMA has supported the requirement for inclusion of collaborative arrangements in legislation. Dr Andrew Pesce, the president of the AMA, stated in the Senate committee inquiry:

If collaborative care is essential, then it must be enshrined in the legislation. It is simply too risky to say that health professionals can use their discretion as to when, where and in what circumstances they will collaborate—and that works both ways. It is essential that the primary legislation encapsulates a requirement for collaborative arrangements so that the most important goal, quality and safety of patient care, is achievable.

The midwives who have objected to the suggestion that there should be a legislative requirement for collaborative agreements have said that in some way this questions their competence. But, as the AMA President said, addressing the issue of a perceived power imbalance between midwives and obstetricians:

If there is an imbalance, I suspect that it emerges from the fact that midwives can care for a patient to a certain point and then, if something goes beyond that, they need to enlist the services of a collaborating obstetrician. But that obstetrician obviously is hesitant to just become a technician and say, ‘I will just step in when I am asked to.’ They would like to step in at the right time. So, if there is a power imbalance, it arises from the different competencies of the people who work in the team, and I do not think it is one which stems from a desire to deal with the competition.

In other words, I think most doctors are very happy to see midwives involved in delivering babies and ongoing obstetrics, but they do feel there is a point at which it may be necessary for people with a higher degree of competence, a greater degree of knowledge, to step in and manage the delivery. That requirement can be achieved and protected through having written collaborative agreements. So I very much agree with the need for these sorts of agreements.

Senator Xenophon talked about the fact that in the Netherlands there are a great number of home deliveries. That is also the case in the United Kingdom, but fewer than there used to be in that country. Of course, the difference is that in both the Netherlands and the UK the population is fairly concentrated and it is never very far from someone’s home to a major hospital where there is an obstetrics team. And in both of those countries they have flying squads to go out and pick up ladies who are having babies and get into trouble such as having an unexpected haemorrhage or obstructed labour. Unfortunately, in Australia, where the distances are so much greater, that kind of service is more difficult to set up. Again, I think it is very important in the case of rural obstetrics that these collaborative agreements with local doctors who do have diplomas in obstetrics should be set up. That would then protect the mothers and babies as well as the midwives from later allegations of incompetence and from damages being awarded for matters which could have been otherwise avoided. So I strongly support the conclusion that the Senate Community Affairs Legislation Committee reached in its report, which was that the committee ‘supports the principle of collaborative arrangements in legislation’ and:
The Committee considers that the collaborative arrangements as envisaged will enable a flexible approach to meet the different circumstances of practice across Australia, particularly in remote and rural areas.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (1.01 pm)—It seems that everyone has provided their contribution on the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and related bills. I thank the senators and I table a replacement explanatory memorandum relating to the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and the Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009. I am pleased today to have the opportunity to sum up debate on these bills because they do introduce landmark changes for Australian nurses and midwives.

Since the election the government has been working to boost our workforce piece by piece. This legislation is a key part of the puzzle which has already seen funding for over 1,000 additional undergraduate nursing and midwifery university places a year and funding to provide new nurse practitioner and midwifery scholarships to build the workforce for the future. And just yesterday the Prime Minister and the Minister for Health and Ageing announced a major investment to tackle the doctor shortage.

These bills deliver access to the Medicare Benefits Schedule, the MBS, and the Pharmaceutical Benefits Schedule, the PBS, for midwives and nurse practitioners for the first time in Australia. These bills will also provide Commonwealth support for indemnity insurance for midwives who, as we are aware, have been unable to access insurance since 2002. This opens the way forward for improving access to maternity services, improved choice for women in maternity services and improved access to services provided by nurse practitioners. Put simply, this recognises the skill and expertise of nurse practitioners and midwives, which is long overdue recognition, and provides better services to the community.

The government has always been clear about the fact that these arrangements will need to be provided collaboratively with other health professionals. The Minister for Health and Ageing circulated amendments that reflect this intention, and I can confirm that we will not be proceeding with the amendment on the insurance bill and I will formally withdraw that at the appropriate time. The arrangements that these bills bring in do not cover homebirths. However, they do not take away any current right and they do not make homebirths unlawful. Privately practising midwives who are unable to obtain professional indemnity insurance for attending a homebirth will benefit from an exemption from the requirement under the new national registration and accreditation scheme to hold indemnity insurance for a two-year period, until June 2012. The framework for accessing the exemption is being developed by the Victorian government and has just been the subject of consultation.

The government recognises the importance of these arrangements to midwives, women and their families around the country. It also recognises the significant time and effort put in by their representative stakeholders. The government is looking forward to continuing to develop the details of the collaborative arrangements with stakeholders and to implementing this exciting reform in the coming months. It is vital to emphasise a point which I think the opposition has now acknowledged: that to vote against this package of bills would prevent a major expansion of services to many hundreds of thousands of women and prevent the establishment of any type of indemnity insurance for midwives.
The government is committed to supporting Australia’s nurses and midwives who, quite frankly, are the backbone of our health workforce. The changes in these bills are significant and are a practical step in improving access and choice for Australians. We remain extremely proud that we are providing new and innovative options for thousands of women across the country.

In addition, I can provide some response to the second reading amendment moved by the Greens. The government do not accept that amendment. We have been clear about the coverage of these arrangements, as I have said in the summing-up, and we have been instrumental in gaining agreement to a transitional arrangement in the national registration and accreditation arrangements. This means that homebirth will not be outlawed or driven underground. We will continue to work with all stakeholders on these significant maternity services reforms and closely monitor the effectiveness of the new arrangements. With these closing remarks can I again thank all the senators for their contributions to the second reading debate. I commend the bills to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Hurley)—The question is that the second reading amendment moved by Senator Siewert be agreed to.

Question negatived.

Original question agreed to.

Bills read a second time.

In Committee

Bills—by leave—taken together and as a whole.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (1.07 pm)—I table two supplementary explanatory memoranda relating to the government amendments to the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009. The memoranda were circulated in the chamber on 16 November 2009. I seek leave to move government amendments (1) to (4) together on sheet CN232 to the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009.

Leave granted.

Senator LUDWIG—I move:

(1) Schedule 1, item 6, page 4 (line 10), omit paragraph (b) of the definition of participating midwife, substitute:

(b) otherwise—an eligible midwife;

so far as the eligible midwife renders a service in a collaborative arrangement or collaborative arrangements of a kind or kinds specified in the regulations, with one or more medical practitioners of a kind or kinds specified in the regulations, for the purposes of this definition.

(2) Schedule 1, item 6, page 4 (line 18), omit paragraph (b) of the definition of participating nurse practitioner, substitute:

(b) otherwise—an eligible nurse practitioner;

so far as the eligible nurse practitioner renders a service in a collaborative arrangement or collaborative arrangements of a kind or kinds specified in the regulations, with one or more medical practitioners of a kind or kinds specified in the regulations, for the purposes of this definition.

(3) Schedule 1, item 70, page 22 (line 2), at the end of the definition of authorised midwife, add “, so far as the eligible midwife provides midwifery treatment in a collaborative arrangement or collaborative arrangements of a kind or kinds specified in a legislative instrument made by the Minister for the purposes of this definition, with one or more medical practitioners of a kind or kinds specified in the legislative instrument”.

CHAMBER
Despite the government’s intent, these amendments essentially give doctors the right of veto over midwives. There are going to be very few doctors in Australia who will organise collaborative arrangements with midwives to provide homebirths. We discussed last night the government having to amend this legislation on a number of occasions. The first was to put in place the exemption on the NRAS so that midwives could provide homebirths without indemnity insurance. Those issues still have to be dealt with. We have two years now in which to resolve that issue. That essentially, as we discussed last night, made homebirths illegal. In fact, midwives could have been fined $30,000 for providing a homebirth. That sought to make them illegal and it was another way of stopping homebirths. These amendments could virtually have the same effect because, if a midwife cannot organise collaborative arrangements with a medical professional, they will not be able to provide services, support and homebirths.

I think this legislation will achieve to a certain extent what the government was previously trying to achieve and what a large number of medical professionals have been trying to achieve—that is, to stop homebirths. But you will not stop homebirths. A number of women will just free birth, and they have plainly said that to me. Does the government want to drive people into having unsupported homebirths, which are unsafe? Because that is what these amendments could achieve. That is why the Greens do not support these amendments.

I will move another amendment, which I will outline in more detail shortly. It will expand the organisations or places where midwives can seek to have collaborative practice arrangements rather than just with medical professionals. Essentially this legislation makes it all that more difficult for midwives to be able to arrange collaborative
practices in the long term because, as I said, medical professionals will not agree to enter into those sorts of arrangements with midwives providing homebirths.

During the Senate inquiry we discussed a number of scenarios, including insurance perhaps not being available to the doctor if the doctor did enter into collaborative arrangements with a midwife providing homebirths. The department says that the insurance industry is not saying that. I think at the moment that is an open question. I accept that the department has followed that issue up. I still do not think that that issue is resolved. We have very strong concerns about what this means for the provision of midwife services, particularly for the provision of midwife services for homebirths.

Senator FIERRAVANTI-WELLS (New South Wales) (1.13 pm)—For the record, the coalition do not oppose the amendments for collaborative arrangements. We understand the concerns of some stakeholders and will carefully consider the regulations once they become available.

Senator SIEWERT (Western Australia) (1.14 pm)—I move Greens amendment (1) on sheet 5965:

After “medical practitioners” (wherever occurring), insert “or one or more health services”.

This amendment seeks to amend the government’s amendment. It seeks to put in place the ability for midwives to seek collaborative arrangements with other medical services, not just with a medical practitioner. This will widen the scope for midwives—the people with whom midwives could seek to have collaborative arrangements. As I articulated earlier, we are very concerned that the government’s amendment, as it stands, simply puts a power of veto in the hands of the medical profession, despite what the government says. Our amendment seeks to address that by widening the scope.

We are not saying no to collaborate arrangements and, as I articulated very clearly last night, the Greens strongly support collaborative practice and collaborative arrangements. In fact, it is part of the requirements for a midwife. Those requirements are already in place. This is the government bowing to pressure from organisations such as the AMA who say, ‘You need to put a medical practitioner in charge.’ That, essentially, is what this does. The government is clearly bowing to pressure from a sustained campaign by the medical profession who say, ‘We want control over midwives and, in particular, we want to make it as hard as possible to have a homebirth.’

As I said, there is plenty of media out there to clearly show the medical profession’s agenda. This is about ideology. This is about whether you support a woman’s right to choose a homebirth and to choose the location of birth. The location should not make a difference to the provision of midwife services but, unfortunately, in this country it does. That is what this government amendment is about. The government is bowing to pressure from the AMA. It is not good enough. It is not what the women of Australia want. That is very clear from the number of emails, letters and phone calls we have received. The women of Australia and the families of Australia want the right to choose a homebirth and the right to choose the location of birth, whether that be in a totally clinical environment, in a birthing suite or at home. This legislation takes another step along the road to making it as difficult as possible to have a midwife and a homebirth.

The Greens amendment is modest. Ideally, we would like to have seen the indemnity insurance scheme extended to the provision of homebirths or to the provision of indemnity insurance to midwives regardless of the location of birth. That did not get up in the second reading debate. We did not want to
see the legislation go down because of it because overall the legislation is a step in the right direction, but the government’s amendment undermines that step in the right direction. So we have taken a step, but not the giant step which needs to be taken if we are properly to address the provision of maternity services in this country.

The Greens are moving this amendment to the government’s amendment to broaden the scope, enabling midwives to put in place collaborative arrangements. We, too, are disappointed that we have not seen the regulation on collaboration. We will be assessing it very clearly. We think that the regulations should have been available when we were discussing this legislation because, as per usual, so much of the legislation rides on the regulatory process. We think this is an important step, broadening out collaborative arrangements—who you can seek those collaborative arrangements with not being just limited to doctors.

We believe this is a very important amendment. If the government were truly supportive of choice for women, they would be supporting this important amendment. As I said, we will be watching the regulations. We will also be very carefully monitoring just what collaborative arrangements are put in place because the midwives and mothers will be on the phone straightaway when they are not able to access services for a homebirth. This issue is not resolved and, if the government think it is, they have another think coming because midwives and mothers of this country are deeply upset about the way homebirth services and support for homebirths have been undermined by this government.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (1.19 pm)—I understand the passion the Greens bring to this debate. I recognise and respect it. We do not agree with the Greens amendment to our amendment. We think our amendment provides a much better service. It provides for collaborative circumstances. It allows the work to be dealt with cooperatively with the professions. I do, though, acknowledge that all parties underpin the need for collaboration. However, the Greens position is not one the government can agree with. We have always been clear about the fact that these arrangements will need to be provided collaboratively with other health professionals, and our amendments do just that. Although I can say that I do recognise where the Greens are coming from in this debate, it is just a bit further than where the government currently thinks the balance properly sits.

Senator FIERRAVANTI-WELLS (New South Wales) (1.20 pm)—The opposition will not be supporting the Greens amendments. I reiterate the comments I made earlier. We will certainly deal with the regulations on collaboration when they become available.

The TEMPORARY CHAIRMAN (Senator Hurley)—The question is that Senator Siewert’s amendment (1) to government amendments (1) to (4) be agreed to.

The committee divided. [1.24 pm]

(The Temporary Chairman—Senator A Hurley)

Ayes............. 7
Noes.............. 30
Majority........... 23

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

NOES
Adams, J. * Bernardi, C.
Bilyk, C.L. Brown, C.L.
Tuesday, 16 March 2010

**SENA TE** 1881

**BUSINESS**

**Rearrangement**

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (1.29 pm)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 3, (Trade Practices Amendment (Australian Consumer Law) Bill 2009).

Question agreed to.

**TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2009**

**Second Reading**

Debate resumed from 26 October, on motion by Senator Wong:

That this bill be now read a second time.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.30 pm)—I

rise to speak on the Trade Practices Amendment (Australian Consumer Law) Bill 2009. This bill implements changes to create a national consumer law, provide protection against unfair terms in standard form contracts and increase the range of powers of the Australian Competition and Consumer Commission, the ACCC, and the Australian Securities and Investments Commission, ASIC, in enforcing the Consumer Law. The Trade Practices Act will be amended to establish a new schedule called the Australian Consumer Law. The states and territories will then implement the Australian Consumer Law by way of mirror legislation.

These changes are the result of a process started in 2006. In that year the then Treasurer, Peter Costello, asked the Productivity Commission to undertake a broad-ranging review of Australia’s consumer policy framework. The changes in this bill reflect the recommendations of that report and the subsequent discussions between the current government and state and territory govern-
ments. At the outset, I would like to recogn-
ise the contribution made by Minister Em-
erson—and you would rarely hear me say
that—in progressing these changes and the
open and cooperative way in which he and
his team have dealt with the coalition’s views
and concerns—and he should treasure those
comments as well.

The coalition broadly supports this bill but
it retains concerns in some specific areas. I
will go through the amendments that the coa-
lition proposes. Australia’s consumer laws
are generally sound and the vast majority of
consumer transactions in this country are
concluded satisfactorily, but significant
changes in consumer markets over the past
two decades necessitate the broad changes
proposed in this bill. Foremost among these
is the increasingly national nature of con-
sumer markets. Around 50 per cent of con-
sumer needs are now met by suppliers oper-
ating in multiple jurisdictions. Even small
suppliers can now sell over the internet to
people miles away. It therefore makes no
sense to persist with differences between
states in our consumer laws.

Secondly, the range of products that con-
sumers now choose from have become in-
creasingly complex. Standard form contracts
now proliferate for mobile phones, credit
cards, computer software and electricity and
telecommunications services. Most of these
products are recent inventions or, as in the
case of utility services, until recently con-
sumers could not choose between suppliers.
The other marked characteristic of these
types of products is their inherent complex-
ity. The average consumer no doubt struggles
to understand all of the clauses in these types
of contracts, let alone the wherewithal to
negotiate for a better deal. It is likely that
these changes to consumer markets will only
accelerate over time as consumer markets
become increasingly global in nature and the
variety of products available grows. Accord-
ingly, Australia can no longer afford a frag-
mented consumer policy framework divided
along state boundaries. For this reason the
coalition supports the creation of a national
consumer law. This bill replaces the differing
regimes currently operating in each state and
territory across the country. Businesses and
consumers bear the costs of these differing
regimes; they create unnecessary compliance
burdens for business, they can add to the
costs or they restrict growth. Consumers are
the ultimate losers in the resulting higher
prices or reduced amount of choice. A na-
tional consumer law will bring benefits by
reducing complexities, confusion and costs
and providing more clarity about rights and
obligations wherever goods and services are
bought or sold.

As noted earlier, consumers are increas-
ingly being offered non-negotiable, take-it-
or-leave-it standard form contracts. At times
these contracts include clauses that allow the
supplier to unilaterally vary terms and condi-
tions without the option for the consumer to
subsequently rescind the contract. Another
example is clauses that allow the supplier to
cancel the contract before its term, which the
consumer may find unreasonable. In any
case, standard form contracts are increas-
ingly lengthy and complex. No doubt con-
sumers often enter such contracts without a
full understanding of all the conditions.
Standard form contracts would be more often
signed than read.

Though it is clear that standard form con-
tracts are widespread, it is less clear that they
actually cause substantial amounts of con-
sumer detriment. Clearly, standard form con-
tracts can be beneficial to consumers. I cer-
tainly would not want to negotiate the terms
and conditions of a contract every time I
went out to buy a new mobile phone or hire a
car. The reason we can generally be confi-
dent of entering standard form contracts is
that there will always be a minority of con-
sumers who take a ‘buyer beware’ approach and shop around for a better deal or a less onerous contract.

In principle, we would instinctively wish to strengthen the hand of consumers to discipline those businesses which provide inferior terms and conditions. In practice, though, there is not always the ability for consumers to shop around. Many standard form contracts are the same across an industry. There is little point in the buyer being aware and shopping around if the consumer has no alternative. In this context, laws that provide protection against clearly unfair terms and conditions have the potential to increase consumer confidence in entering these contracts. Equally, though, a too onerous imposition of constraints on standard form contracts may increase costs and prices. Under this bill, a term will be unfair where there is significant imbalance between the parties’ rights and obligations and the term is not reasonably necessary to protect the legitimate interests of the supplier.

I will point out three crucial aspects of the detail of the law. First, this bill allows particular terms to be prohibited by regulation, though no prohibited terms have been declared at this time. This would seem to run counter to other elements of the bill, which require courts to take into account the transparency of a specific term and the context of the term in the contract as a whole.

Second, this bill reverses the normal onus of proof that would apply. It will be for the party advantaged by a term, usually a business, to rebut the presumption that the term is not reasonably necessary to protect its legitimate interests. The business must also rebut the presumption that the contract is in the standard form. The coalition is concerned that these provisions subject businesses to the possibility of frivolous and vexatious claims.

Third, some have expressed concerns that there is no requirement in this bill for a consumer to show that actual detriment would occur. The coalition is sympathetic to industry views that the bill’s reference to ‘a substantial likelihood of detriment’ creates an unacceptable degree of risk and uncertainty for businesses and consumers. As the bill is currently drafted, there is no requirement that the term actually create detriment for it to be unfair. It will be unclear to those entering a contract which terms may be judged to be likely to cause detriment. The coalition has proposed amendments in response to these issues, which I will go through later.

The original proposal for this bill extended the application of the unfair terms law to business-to-business contracts. This had been agreed to by cabinet and was in accord with the recommendations of the Productivity Commission, but then Minister Emerson gained responsibility for the portfolio and within days he exempted business-to-business contracts. The minister’s reason for this was that, in his view, including business-to-business contracts would create uncertainty in business dealings, would potentially increase costs and would possibly jeopardise small business funding. All of these arguments could equally apply to business-to-consumer contracts, so there is a paradox in his change of position. The minister’s reasons are unconvincing and he has referred the matter to reviews of the Trade Practices Act and the Franchising Code of Conduct.

The minister has now delivered an initial response to the Franchising Code of Conduct review and there is no mention of unfair terms provisions.

A broad section of the small business community was dismayed by the government’s change in direction. For example, the Australian Newsagents Federation has some 2,100 members, nearly all of whom employ fewer than 20 staff and most of whom em-
ploy five or fewer. They are subject to standard form contracts in their dealings with major companies such as News Limited, Fairfax and Hallmark Cards. In these contracts, the majority of key contractual terms are presented on a take-it-or-leave-it basis. For major items of their stock they can go to no other suppliers. In addition, they may be subject to a standard form contract covering the lease of their premises in a shopping centre. This example demonstrates that, in their dealings with larger businesses, small businesses face the same issues as individual consumers. Like individual consumers, they lack the resources to engage the legal and other expertise required to negotiate contracts. Even if they did, they lack the bargaining power to enforce their views. It is self-evident that there is an immense power discrepancy between small businesses and large businesses, which is similar to the discrepancy between consumers and businesses.

In summary, there is a compelling case for regarding small businesses in the same light as individual consumers when they are buying goods or services to consume themselves or to offer for resale. Small businesses have a dual role in consumer policy: not only do they supply goods and services, they are also consumers in their own right. Small businesses will be the losers in the government’s reversal. The coalition will therefore be taking an active interest in the outcomes of the reviews of the Trade Practices Act and the Franchising Code of Conduct and will wait for the government’s response to those reviews.

The bill will give the ACCC and ASIC broader powers to enforce the consumer law. Under this bill, the ACCC and ASIC will be able to seek civil pecuniary penalties for unconscionable conduct and participation in pyramid selling, and for breaches of product safety, product information and substantiation notices, as defined by the relevant provisions of the Trade Practices Act. The maximum penalty will be $1.1 million for corporations and $220,000 for individuals. The explanatory memorandum to this bill states that this will fill a significant gap in the range of enforcement options available to the ACCC and ASIC. Current consumer protection provisions are enforced through civil remedies such as injunctions and other orders and, in certain circumstances, criminal sanctions. Civil pecuniary penalties currently apply for breaches of the restrictive trade practices provisions of the Trade Practices Act.

The ACCC and ASIC will also be able to seek disqualification orders or issue substantiation, infringement and public warning notices. Where circumstances warrant it, disqualification orders will ban people who disregard the consumer protection laws from being a director of a company. When issued, substantiation notices will require a person to provide the relevant information and documents capable of substantiating claims or representations made by that person. Infringement notices will allow the ACCC and ASIC to deal with minor breaches of the law through the payment of an amount that avoids costly legal proceedings. Public warning notices will allow the ACCC and ASIC to warn the public about actual or likely harm that may result from suspected breaches of the consumer laws. The ACCC and ASIC will not have immunity from defamation actions in relation to these notices.

Finally, under this bill, a court will be able to order the payment of refunds and similar forms of redress without the need for all consumers affected to be named as parties to the regulator’s court proceedings. The enforcement provisions of this bill greatly increase the powers of the ACCC and ASIC to act not just as a cop on the beat but also as a judge and jury. The coalition has concerns about the way the ACCC may apply these powers in a quasi-judicial role. Its application last
year of anti-cartel measures continues to cause some concern.

I note that, despite giving the ACCC and ASIC significant additional powers, the government has not trusted individual consumers with similar extensions. Under this bill, consumers will not be able to take action on unfair terms directly to the courts. Instead, they must first complain to the ACCC or ASIC, who will then decide whether to take the matters further. So they are once more precluded from taking a direct path to progress their case. This is a strange decision to disenfranchise individual consumers. Consumers and small businesses can already take action directly under the unconscionable conduct provisions and other parts of the Trade Practices Act. It is unclear why they have not been trusted with a similar scope in this instance. Further, in their submissions to the Productivity Commission’s inquiry, the ACCC was sceptical of introducing unfair terms legislation. How committed will they be then to taking further action under these provisions? The coalition favours measures that result in appropriate and timely redress, but will watch very carefully the operation of these new enforcement powers. We will also closely examine the appetites of the ACCC and ASIC for taking appropriate action against unfair terms in standard form contracts.

I turn now to the specific amendments that the coalition proposes. The coalition wants three amendments. Two of these have been agreed with Minister Emerson, working with my colleagues in the lower house, and we thank him for the open and cooperative manner in which he approached the negotiations. First, we propose to delete clause 6, which relates to the prohibition of prescribed terms. Second, we propose to change the wording of clause 6(2)(a), which asks the court to consider the detriment that a contract would cause. However, we also asked for one amendment not agreed to by Minister Emerson and we will be moving this amendment to the legislation. We propose to delete clauses 3(4) and 7(1), which reverse the onus of proof in establishing that the term is in the legitimate interests of the supplier and that the contract is in standard form. As I mentioned earlier, the coalition is concerned about the reversal of the onus of proof. We consider that reversing the onus will allow litigation from consumers in circumstances where they merely do not like the terms of the contract and no longer wish to be bound by them. Forcing a party to prove the fairness of a contract against frivolous claims will open Australian businesses up to costly litigation. The costs of this litigation might flow on to the costs of goods and services. As such, the coalition thinks that reversing the onus will have unintended consequences on the Australian economy. Our amendments will improve the legislation to get a better outcome for consumers and business across Australia.

As I stated at the beginning of my speech, in general we support the bill, both in its general aim of creating a national Australian consumer law and its specific aim of strengthening the hand of the consumer, where the ability to choose is limited by the use of standard form contracts. With the coalition’s amendments, this bill promises to increase protection for consumers without jeopardising the lower compliance costs for businesses that will result from establishing a national consumer law.

In closing, I would like to also acknowledge the assistance given by those members in the other place and the continued support of the Senate Economics Committee—no doubt the most powerful and substantial committee in the Senate.

Senator BUSHBY (Tasmania) (1.46 pm)—I rise to also speak to the Trade Prac-
tices Amendment (Australian Consumer Law) Bill 2009 and note that I have been waiting to do so since at least November—it has been in the red every week since November. It is good to see that the government has finally got its priorities in order to enable a bill to be debated which may have some chance of being passed.

There are clearly circumstances where two parties to a standard form contract have unequal bargaining power and the party with the greater bargaining power includes terms which may prove to be unfair to the party holding less power. There is no doubt that at times this imbalance of bargaining power has been employed, and it continues to be employed, by unscrupulous businesses to the unfair detriment of consumers and, at times, small businesses. In my view, the consequences of such action by an unscrupulous party justify intervention by legislators to protect the unfairly impacted party from the consequences of having to comply with unfair terms.

In an overall sense, I am persuaded by the arguments of the Law Council of Tasmania and others at the Senate Economics Committee inquiry into this bill that the circumstances as to what constitutes ‘unequal bargaining power’ and ‘unfair’ will vary depending on the circumstances relating to each of the parties, their reasons for entering the contract and their level of understanding and ability to consider and accept the consequences of the terms to which they are agreeing. As such, I am of the view that the principles-based approach to addressing the very real mischief that needs to be addressed may prove to be unsophisticated in practice, may lead to the creation of unnecessary uncertainty for both business and consumers, may actually preclude many terms in contracts that are, in the circumstances, fair, and may even allow the inclusion as fair of some terms that, were the particular circumstances to be examined, could be considered unfair.

I welcome the move to nationalise the approach to consumer protection in the area of consumer trade law and recognise that the rationalisation of jurisdictions dealing with this issue will result in some savings for businesses that operate across state borders. However, I am also of the opinion that the problems in compliance and certainty introduced as part of this legislation will add to the costs of many of the goods and services provided under the standard form contracts affected. Ultimately, this cost will be passed on to all consumers of such goods and services as a cost of addressing actual detriment to a subset of such consumers, and, more pointedly in the context of the legislation as written, as a cost of addressing the possibility of detriment arising from the mere presence of an unfair term in such a contract.

A number of specific matters were put forward by submitters to the economics inquiry that raise issues in my mind with respect to the effect of the proposed legislation. The primary issue raised by all business submitters was that of uncertainty. On the basis of the evidence received, it is arguable that anyone who signs up to a standard form contract—as alluded to by Senator Joyce—will be able to allege that its terms were unfair if they find later that they do not like the contract, they do not like the product, a new product comes out and they want to get that, their circumstances have changed, or for any other reason they no longer wish to remain a party to that contract. Under this bill, once they have alleged that such a contract contains unfair terms, the onus of proof shifts entirely to the business to prove otherwise. This is clearly a recipe for anyone not wanting to meet their obligations under a standard term contract to make an unfair allegation and thereby shift the onus of proving the contract is fair onto the other party. The clear
impact of this will be the removal of any
degree of certainty a business might assume
would apply upon such a contract being en-
tered. Let’s face it: that is the reason parties
enter standard form contracts, or any contract
really—to set out, for certainty’s sake, the
basis on which two or more parties will con-
duct a transaction. If that degree of certainty
is removed, it will render many, if not all,
forms of standard form contracts unenforce-
able.

If the legislation turns out to have this im-
 pact, the primary advantage of standard form
contracts—that being the removal of the
costs and the time involved in negotiating the
respective rights of parties for common
goods and services, which coincidentally
reduces transaction costs and, hence,
prices—would evaporate. The only possible
outcome then would be a revision of the
manner and terms on which parties to such
transactions contract or higher prices for
those goods and services.

Uncertainty resulting from this legislation
is exacerbated by the lack of a clear defini-
tion for the terms ‘standard form contract’
and ‘company’s legitimate interests’. This
lack of certainty also increases the personal
risk to directors of companies, who will no
longer be able to rely on the enforceability or
even legality of standard form contracts
drafted by their employees.

Issues were also raised during the inquiry
regarding the start dates of the obligations
under the proposed legislation. If business as
a whole is to ensure that its standard form
contracts are fully reviewed and brought into
line with what they understand to be re-
quired, longer lead times will be required
than have been provided—particularly given
the uncertainty surrounding definitions and
what needs to be included to ensure that such
contracts comply with the legislation. It
seems to me that a longer transition period,
maybe 12 months, would be more workable.
In this regard it is worth noting evidence that
it took some 12 months for the disruption
caused by the introduction of equivalent pro-
visions in both the UK and Victorian legisla-
tion to work through the consequent confu-
sion caused by the lack of clarity in the defi-
nition of what constituted an unfair term. It is
also worth noting that, as also noted by Sena-
tor Joyce, the government’s reasoning for
removal of business-to-business contracts
from the effect of this legislation was that it
was too vague and likely to lead to uncer-
tainty. Surely, if this is the case between
businesses, it could be said to also apply to
standard form contracts between businesses
and consumers.

Many industry sectors are already very
heavily regulated, including, but not limited
to, the insurance industry, which has long
been regulated in reflection of the potential
for insureds to be treated unfairly as a con-
sequence of differing levels of bargaining
power, and more recently the financial ser-
vices sector has also come under heavy regu-
lation. In recognition of the specific protec-
tions already built into the insurance legisla-
tion, the insurance sector has been exempted
from the effect of this legislation. This is a
controversial decision but in my opinion the
correct one. Although I acknowledge there
remain many issues of unfairness in the way
some insurance contracts are applied, I do
not consider this proposed legislation to be
the best way of addressing those issues. In
many cases it is the application of insurance
terms that is unfair, not necessarily the terms
themselves, and it is this that needs to be
better addressed in the context of the regula-
tion of the insurance industry. In that context
it is worth noting evidence from the Insurance
Council of Australia that over 98 per cent of
insurance claims are paid out without
question and only 0.065 per cent of claims
go to the Insurance Ombudsman. In terms of
the financial services industry, it seems to me that there is a strong case that their current and very recent regulation requires them already, through their fiduciary and common law obligations, to treat their clients fairly and, indeed, to prefer the rights of investors over those of their shareholders. It may be that extending this legislation to cover their industry will not add to existing consumer protection but will add to the cost of the services they provide to consumers, costs that will again ultimately have to be paid by consumers.

These two examples highlight my preferred approach to addressing the issue of unscrupulous exploitation of unequal bargaining power in standard form contracts. That is, in those industries that are already regulated, I am persuaded that it would be preferable to use that regulation to ensure that consumers are treated fairly. If the current legislation is not up to scratch then tweak it so that it is. Where industries are not regulated, it would be appropriate to apply such a law as proposed as a ‘catch-all’ to ensure all remaining consumers are protected from unfair provisions, subject, of course, to fixing the issues highlighted by Senator Joyce and me today.

Professor Zumbo at the hearing suggested that one way to improve certainty is to provide what he described as ‘safe harbours’. As the legislation currently stands, there is scope for grey lists to be compiled with terms that may or may not be unfair. This fails to provide any certainty, and in fact the identification of terms that might be considered unfair will probably add to uncertainty. As I understand it, Professor Zumbo suggests that if a business were able to get their standard form contract signed off as compliant with the Australian Consumer Law by an appropriate regulator, with such a sign-off providing them with protection against an unfair term allegation, it would vastly improve business certainty. Despite my view that what is actually unfair depends on the specific circumstances of a case, I am attracted to Professor Zumbo’s suggestion as it would significantly improve certainty of the enforceability of contracts if a general test of unfairness could be applied to standard form contracts prior to their being entered into.

Evidence was also received at the inquiry that there is a need for the Australian Consumer Law to cover business to business transactions. It is clear to me that there are also situations where small businesses lack bargaining power, are effectively ‘consumers’, and are just as subject as individuals to unscrupulous activities when entering into standard form contracts. Indeed, in many circumstances, busy small business operators can be easier prey for the unscrupulous than well-informed consumers. As such, there is clearly a need for a legislative framework that provides equivalent relief for small business from inappropriate and unfair contract terms in situations where there is clearly unequal bargaining power. The Australian Consumer Law as proposed, however, may not deliver that relief in a way that will be of net benefit to either of the parties involved, for the reasons already discussed, whether in respect of individual consumers or business, and in that sense the removal of business-to-business contracts from the scope of the proposed legislation was probably, in my view, the correct decision.

At the hearings Treasury was asked about the extent to which existing remedies contained in the Trade Practices Act already provided protection against unscrupulous conduct of the sort the proposed legislation is intended to curb, such as that provided under section 51AB. Treasury’s view was that the proposed unfair contracts aspect of the Australian Consumer Law would provide additional avenues of redress for consumers. Other witnesses stated that the section 51AB
remedies were rarely used, in part because of cost, and also because they possibly are not fully tested in terms of their ability to offer remedies for matters such as unscrupulous behaviour by a party with unequal bargaining power in a standard form contract. Of interest is the evidence by Treasury that all remedies available to be pursued under the Australian Consumer Law can be pursued in state based forums. As such, one of the major benefits that I see in this legislation is that it has the potential to reduce to a significant extent one of the major barriers to justice, that being the cost and ease of access to it. Because those with unscrupulous intentions often fail to pay the degree of attention to legal requirements than those of more pure intentions, I consider that in many ways this is a more important development, as it would vitally improve the ability of consumers, individuals and small businesses, who are the victims of unscrupulous dealings to have access to remedies. If state jurisdictions ensure there are appropriate low-cost dispute resolution forums in place that offer consumers access to all remedies available under the Australian Consumer Law, it may well be the case that remedies such as those already contained in section 51AB may prove far more effective than they have so far proven to be.

The proposed Australian Consumer Law is in itself a significant step forward in terms of consumer protection. However, with respect to the unfair contracts section of the proposed Australian Consumer Law, it is my view that the specifics of that proposal do not provide the best way to address the very real and serious issues that do occur between parties of unequal bargaining power, as the uncertainty and other consequences appear likely to be to the benefit of neither party. Many industry sectors are already regulated. To the extent that the regulation fails to fully address unfair contract issues within each of those sectors, consideration should be given to amendments to those regulations to provide a fair balance.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Asylum Seekers

Senator HUMPHRIES (2.00 pm)—My question is to the Minister for Immigration and Citizenship, Senator Evans. Can the minister confirm the following report in today’s Herald Sun:
Darwin’s immigration detention centre has been on alert for the arrival of several hundred asylum seekers from Christmas Island, which is close to overflowing.
Will the minister take this opportunity now to rule out absolutely the use of Darwin or any other mainland facility for housing asylum seekers?

Senator CHRIS EVANS—I thank Senator Humphries for the question, although I am sure he is not serious about the second part of it. There was some reporting in the News Ltd newspapers today, some of which was accurate based on my public statements over many months, some of which was based on alleged intelligence information—which, obviously, I would not comment on, but the journalists claimed to have been briefed on intelligence information—but a lot of it was based on what was already on the record. What is on the record, as Senator Humphries well knows, is that for months and months now the government has made it clear that if we need extra capacity beyond that which is on Christmas Island we would use the detention immigration centre in Darwin—the one built by the Howard government for that purpose. We would use that centre for the purpose of meeting any extra demand beyond our capacity on Christmas Island. I also made it clear that we would transfer people from Christmas Island for the final stages of processing if we would need to use that ca-
capacity. This is all on the public record. It has been on the public record for months.

I take the opportunity too to correct the misinformation that Mr Morrison, the opposition’s spokesman on immigration, continues to peddle. That is, those persons who are transferred from Christmas Island will be treated legally as offshore entry persons— that is the legal status under the Howard government’s legislation. So persons who have been processed initially on Christmas Island, which is our plan, will remain offshore entry persons and have the legal regime attached to that definition. I can confirm to Senator Humphries and the Senate what I have said publicly now for at least six months.

Senator HUMPHRIES—Mr President, I ask a supplementary question. I take it from Senator Evans that that is a no. Will the minister guarantee, then, that health and security checks on Christmas Island will not be compromised by the current huge influx of asylum seekers as a result of Labor’s border protection policy failure? How much more will this policy failure cost Australian taxpayers?

Senator CHRIS EVANS—I can certainly assure the Senate that there will be no compromising of health and security checks. The health and security checks and the identity checks conducted by this government on Christmas Island are the same processes that were adopted by the previous government. They are long-established immigration practices. We are currently using the Howard government purpose-built detention centre on Christmas Island, a centre that the Howard government built to meet this very need.

Senator HUMPHRIES—Mr President, I ask a further supplementary question. I thank the minister for his praise of the Howard government’s border protection policies. It is a pity we could not have had that six or seven years ago. I ask the minister: if six boats a week is not enough to convince him that the Labor Party’s border protection policy has been an abysmal failure, how many more boats do we need?

Senator CHRIS EVANS—I would interested in Senator Ruddock’s—Senator Humphries’s—

Honourable senators interjecting—

Senator CHRIS EVANS—Well, he has been channelling him lately and we know who is writing the Liberal Party policy, if we ever get one. I note that Mr Ruddock’s chief of staff is now the chief of staff to Mr Morrison. We know who is the puppeteer and who is the puppet. I remind the senator that the record of arrivals was 2,245 people on 29 boats in less than 12 weeks. When was that record set? That was in 1999-2000 under the Howard government. If you want to ask me about numbers, I am happy to debate numbers and I am happy to tell you who the record holders are, and that is your side of politics.

Medical Workforce

Senator CROSSIN (2.06 pm)—My question is to the Minister representing the Minister for Health and Ageing, Senator Ludwig. Can the minister outline for the Senate how the government plans to boost and support Australia’s health workforce and, in particular, how will the government tackle the critical issue of a doctors’ shortage, and how
does this differ to past policies that we have seen in Australia?

Senator LUDWIG—I thank Senator Crossin for her question regarding the lifeblood of our health system, the people who look after us when we are unwell. The Rudd government is working to build a strong, skilled and sustainable health workforce after years of neglect by those opposite and their health minister who ripped $1 billion out of funding during their tenure.

Opposition senators interjecting—

Senator LUDWIG—That is what the opposition did, and they do not like to be reminded of that. An urgent problem we are addressing is Australia’s serious doctor shortage. We inherited a situation where workforce shortages are impacting on 59 per cent of Australians, where one in six working families are struggling to get to see a GP, where some towns require and rely on locum support and where often the only alternative for care is the local hospital. It was the Liberals who got us into this mess—and it was they who recklessly ignored it and did nothing to remedy it after 12 long years of neglect. The Rudd government’s health reforms will tackle the doctor shortage, expand capacity and deliver better health and hospital services. Our $632 million investment will train a record number of doctors. In total the Rudd government’s investment will deliver an additional 5,500 new training GPs, 680 medical specialists and 5,400 prevocational general practice program training places over this decade. Our package, combined with earlier workforce investments, will deliver around five million extra services to the community by 2013. These major investments will meet projected shortfalls. They will target communities that are underserviced and address specialties where shortages are most acute. They will also help reduce pressure on hospitals by improving access and availability of GP and specialist services. (Time expired)

Senator CROSSIN—Mr President, I ask a supplementary question. Can the minister explain to the Senate how the government’s health reform plans will promote equality in Australia by improving access to health care in regional and rural areas?

Opposition senators interjecting—

Senator LUDWIG—I note those opposite who interject do not like the idea of improving our health system. I thank Senator Crossin for her question and would like to note at the outset the Rudd government’s commitment to ensuring that Australians everywhere can access the health care they need. That is why we are tackling the chronic shortage of doctors in rural and regional Australia. This shortage was aggravated by the previous government’s decision to cap GP places at 600. That was the decision made by those opposite, a breathtaking, irresponsible move from one of their former health ministers—the opposition leader today. Our $632 million investment, which will train a record number of doctors, will more than double the number of places for medical specialists to do their training where the community actually needs them. What is more, last year’s budget provided $134 million to address the shortages of doctors in rural and regional Australia and on 1 July almost 500 communities around Australia will become eligible for rural incentives. (Time expired)

Senator CROSSIN—I ask a further supplementary question. I thank the minister for outlining those plans and so now I am interested to know if the minister could inform the Senate of the community’s reaction to the government’s plan to train a record number of doctors. In particular, how does this plan differ from past approaches?

Senator LUDWIG—I thank Senator Crossin for her supplementary question
about our plans to ensure Australians can access the health care they need. The response to our plan from people at the front line of medical care in Australia has been very positive. Dr Andrew Pesce from the AMA said ‘this is a good move forward’. He said:

This is one of the parts of the jigsaw puzzle that we need to move forward with with the help of the reform agenda.

I have another quote, from Dr Chris Mitchell from the Royal Australian College of GPs:

This is a very important investment by the government into general practice …

Contrast this with the ongoing insistence by the Leader of the Opposition that ‘the federally run parts of our health system were working pretty well under the Howard government’. I think most Australians would dispute that having 59 per cent of Australians suffering from a doctor shortage was a sign that something was in fact working well. *(Time expired)*

### Asylum Seekers

**Senator JOHNSTON (2.11 pm)**—My question is to the Minister for Defence, Senator Faulkner. In respect of the SIEV36 incident, it has been contended by the government:

… the fire was deliberately lit by one or more persons who had travelled to Australia on SIEV36 and that the fire took hold and led to an almost immediate explosion because petrol had been deliberately poured into the bilge by one or more of the persons who had travelled to Australia on SIEV36.

Further evidence presented to the coronial inquiry by the government clearly shows the ADF personnel treated the SIEV36 passengers with respect, courtesy and dignity. In light of these contentions by the government, why has the minister not defended the integrity and honour of the ADF personnel who had to contend with a series of horrific events aboard the SIEV36?

**Senator FAULKNER**—I think that I have had a very good record of always defending the very good work of our Australian Defence Force personnel.

**Senator Abetz**—You are the only person to say so.

**Senator FAULKNER**—Senator, I do not think that is right, and I think any fair-minded person would acknowledge that the ADF knows that, as do ADF personnel. But there is an issue here that I think senators should take account of. That is of course that on 25 January this year the coroner for the Northern Territory, Mr Cavanagh, commenced a coronial inquest into the deaths of the five people that occurred near Ashmore Reef. That inquest was adjourned on 18 February this year. The facts of the matter are that the coroner is expected to bring down his findings tomorrow. I have been constrained in what I can say. I did not follow the advice of the opposition earlier, suggesting I should table a range of material, and if I had I would have been roundly criticised because not a matter of days later the coroner came out and requested that that not take place. I suggest to Senator Johnston in these circumstances that we all ought to contain ourselves. We all ought to do what is right in these circumstances, understanding that the coroner is expected to bring down his findings on this very serious incident and then there will be a capacity without those constraints that apply to all members of parliament, whether in government or in opposition— *(Time expired)*

**Senator JOHNSTON**—Mr President, I ask a supplementary question. I ask the minister what were the injuries sustained by the naval personnel aboard the SIEV36 when it was ignited. What is the current state of health of those ADF personnel who were
very unfortunately injured when this vessel was set alight?

Senator FAULKNER—I have been asked before about the state of health of those defence personnel who boarded the SIEV36. There were injuries sustained, as you know. Five ADF personnel received first aid for injuries sustained in the explosion. All personnel on board the vessel participated in critical mental health screening following their involvement in the incident. A total of 54 personnel were involved in some capacity in the Ashmore Reef incident on 16 April. Of those involved, all have had immediate post-deployment psychological testing. (Time expired)

Senator JOHNSTON—Mr President, I ask a further supplementary question. How is it that the asylum seekers on board the SIEV36 had the private mobile phone numbers of ADF personnel when they were apprehended? What inquiry has been held and undertaken by the minister? How is it that these asylum seekers came into possession of these private mobile phone numbers?

Senator FAULKNER—I cannot say and I certainly do not intend to speculate on such matters before the coroner brings down his findings tomorrow. I would be surprised if any senator would expect me to speculate on such matters. I am happy, however, to provide more information to Senator Johnston in relation to the health of those ADF personnel who were injured as a result of the explosion aboard SIEV36.

At the time of the follow-up critical incident mental health screenings, 11 members required referral for ongoing psychological treatment. Of those who required ongoing psychological treatment, four have been diagnosed with post-traumatic stress disorder and two have been diagnosed with a stress reaction. I can assure you the normal support mechanisms are in place for those ADF personnel. (Time expired)

Emissions Trading Scheme

Senator McEWEN (2.17 pm)—My question is to the Minister for Climate Change, Energy Efficiency and Water, Senator Wong. Can the minister advise the Senate on the latest advice on the best way to achieve emissions reductions in Australia and is the minister aware of alternative views?

Senator WONG—I thank Senator McEwen for the question. Today we have seen further evidence of the need for a carbon price in Australia so that polluters are forced to pay for their carbon pollution—the carbon pollution that is causing climate change. A report that will be formally launched on Friday by ClimateWorks Australia makes it very clear that a carbon price as well as targeted practical measures are critical to achieving the reductions in carbon pollution in this country.

We know that the only policy being put forward by a major party in this country that involves a price on carbon is the Carbon Pollution Reduction Scheme. The report released today shows that a carbon price—that is, making polluters pay—is essential to driving an emissions reduction across the economy. I refer to what the ClimateWorks Executive Director, Anna Skarbek, told the ABC this morning when she spoke about a five per cent target. She said:

Without a carbon price, our analysis shows by 2020 emissions would continue to rise under that scenario.

That is precisely Tony Abbott’s policy: a policy on climate change that does not do anything about climate change, a policy on climate change that ensures that emissions will rise, policy on climate change that ignores the need for making sure that polluters pay and a policy on climate change that ignores the advice that was finally taken even by
former Prime Minister, John Howard. The reality is any policy that claims—

Honourable senators interjecting—

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

Senator WONG—Any policy that claims you can even meet a five per cent target without a carbon price is simply a con and that is what the opposition’s policy is, nothing more than a climate change con job. (Time expired)

Honourable senators interjecting—

The PRESIDENT—When there is silence, Senator McEwen, I will call you.

Senator McEwen—Mr President, I ask a supplementary question. Can the minister advise the Senate on whether there are any alternative proposals to reduce greenhouse emissions?

Senator WONG—We know there used to be bipartisan agreement on the need for a price on pollution—a price on carbon—to tackle climate change. Let us remind ourselves who was a part of that: John Howard, Peter Costello, Malcolm Turnbull and, remember, even Tony Abbott. Even Tony Abbott agreed. But as Mr Abbott made clear to Mr Turnbull last year on this issue, he is ‘a weather vane’. That is a good position for somebody who is aspiring to be the Prime Minister of this nation, ‘Hello, I am a weather vane.’

Senator Chris Evans—In budgie smugglers.

Senator WONG—in budgie smugglers. It does not bear thinking about. Mr Turnbull told Four Corners last night: Tony shifted his ground a number of times. Mr Abbott now believes that climate change is ‘absolute crap’. He is advocating a position which will ensure that Australia’s emissions keep rising. What Mr Abbott is confirming is that you just cannot trust what he says. (Time expired)

Honourable senators interjecting—

The PRESIDENT—Order! I remind senators that the time for debating this issue, if you wish to debate it, is at the end of question time.

Senator McEwen—Mr President, I ask a further supplementary question. Can the minister advise the Senate on the effect of these alternative proposals on greenhouse emissions?

Senator WONG—We know from departmental analyses and we also know from the analyses of independent bodies such as ClimateWorks that the sorts of policies that are being proposed by Mr Abbott simply cannot achieve a five per cent target. This is the lie at the core of the Liberals’ policy. Mr Abbott signed up to the bipartisan targets. Even Senator Joyce has signed up to a five per cent target, but Mr Abbott—

Honourable senators interjecting—

The PRESIDENT—Senator Wong, resume your seat until there is silence. Resume your answer, Senator Wong.

Senator WONG—We know from departmental analyses and we also know from the analyses of independent bodies such as ClimateWorks that the sorts of policies that are being proposed by Mr Abbott simply cannot achieve a five per cent target. This is the lie at the core of the Liberals’ policy. Mr Abbott signed up to the bipartisan targets. Even Senator Joyce has signed up to a five per cent target, but Mr Abbott—

Honourable senators interjecting—

The PRESIDENT—Senator Wong, resume your seat until there is silence. Resume your answer, Senator Wong.

Senator WONG—Thank you, Mr President. But Mr Abbott’s policy would actually see Australia’s emissions increase by 13 per cent by 2020. What is the point of a climate change policy that actually does nothing about climate change? That is Mr Abbott’s policy. The fact is that we know you have to put a price on pollution if you are going to tackle climate change.

Honourable senators interjecting—

The PRESIDENT—Order! When there is silence on both sides, Senator Bernardi, I will give you the call. Order! I call Senator Bernardi.
Mandatory Renewable Energy Targets

Senator BERNARDI (2.23 pm)—My question is to the Minister for Climate Change, Energy Efficiency and Water, Senator Wong. Given media reports that just one football club actually received 17 taxpayer funded hot-water systems and, incredibly, even received an offer for more for just four showerheads—and there are many other similar examples—will the minister advise the Australian people just how many millions of their taxpayer dollars have been wasted on Labor’s bungled energy efficiency scheme?

Senator WONG—I was thinking that this was a change from Senator Birmingham, but Senator Birmingham might actually have got his facts straight before asking the question. Senator Bernardi is asking me a question about a loophole in John Howard’s energy scheme.

Honourable senators interjecting—

The PRESIDENT—Senator Wong, resume your seat. The difficulty is on both sides of the chamber. When we have silence we will proceed. Senator Wong.

Senator WONG—This was an issue within the renewable energy target—the legislation originally introduced by your government, Senator Bernardi—and a loophole which this government fixed up. Under the renewable energy target, community organisations such as football clubs are eligible to receive renewable energy certificates for the installation of solar and heat pump hot-water systems, as they were under John Howard’s renewable energy policy.

We became aware late last year of the fact that some installers had been inappropriately claiming renewable energy certificates by installing multiple heat pumps, and this government moved to ensure that that problem was resolved. We moved to close the loophole and in September last year we introduced regulations to prevent the oversizing of heat pumps, which I think is what the senator is referring to. It would be useful, Senator, if perhaps rather than simply reading old articles from last week—is that how long it takes you to get something through the tactics committee?—you might want to look at the facts of the question you are asking.

Senator BERNARDI—Mr President, I ask a supplementary question. Once again I will ask the minister whether she will detail to the Australian people how many of their taxpayer dollars have been wasted through their 560 per cent blow-out in the solar power program and the $175 million Green Loans fiasco.

Honourable senators interjecting—

The PRESIDENT—Order! One moment, Senator Bernardi. You are entitled to be heard in silence. The clock has stopped; I will give you the call when there is silence. Order! Senator Bernardi, continue.

Senator BERNARDI—Thank you. Interjections are disorderly, Mr President.

The PRESIDENT—Senator Bernardi, you should know that!

Senator BERNARDI—I would like to know who in the Labor Party will take responsibility for this grotesque waste of taxpayer money.

Senator WONG—I think Senator Bernardi is trying to muscle his way through a credibility gap there. You have to do a little bit better, Senator. You asked me a question about something which occurred under the renewable energy target. That manifests not as an increase in terms of taxes but as a small increase in terms of electricity prices, which you also supported. I remind you that this was a policy you introduced. You supported our increases to the renewable energy target last year through the Senate and the govern-
ment moved to close the loophole that I have outlined. We will continue to respond to issues as they arise.

In terms of taking responsibility, Senator Bernardi, I have come in here and made a very clear ministerial statement on the Green Loans issue; Minister Combet has made a very clear statement on the Home Insulation Program—we have been upfront about those issues. But that was not the question you asked. You did not even bother to find out which program you were asking— (Time expired)

Senator BERNARDI—Mr President, I ask a further supplementary question. Given the failure of the minister to detail exactly how much taxpayer money has been wasted and squandered, the only question that remains is: why was this minister handpicked with Greg Combet to oversee a failed and bungled program given her disastrous track record revolving around the Carbon Pollution Reduction Scheme?

Honourable senators interjecting—

The PRESIDENT—Order! When there is silence on both sides we will proceed. Senator Wong.

Senator WONG—It is true I do not get a vote inside the Liberal Party room—guilty on that, Senator. That is true. Of course, we know that Senator Bernardi’s contribution to this important policy debate has been to ensure that he disrupted a leadership that actually wanted to do something about climate change—your views on this are well known. But I have to say I find it difficult to know which aspects of the question you in fact want me to answer. If the question is about the renewable energy target, I have answered that question—that was an issue inside your legislation which we fixed up. If the question is about the remainder of the energy efficiency programs, certainly in relation to those bits which are my responsibility I have given a ministerial statement on Green Loans to the Senate. The reality is that we on this side are determined to deal with the issues in the energy efficiency programs that have occurred. Minister Combet has made that clear and I have made that clear. (Time expired)

Asylum Seekers

Senator HANSON-YOUNG (2.29 pm)—My question is to the Minister for Immigration and Citizenship, Senator Evans. Given reports of overcrowding on Christmas Island, where more than 2,000 asylum seekers are currently detained, what is the current processing time for applicants? A number of asylum seekers, as we know, have been there for nine months or longer.

Senator CHRIS EVANS—I thank the senator for her question and her ongoing interest in this issue. I will get the Senate the exact figure, but the last time I looked the average processing time was around 115 days. It has crept up a little bit in recent times but been fairly steady around that mark for a while. The Senate would be aware that the statutory requirement of 90 days is not applicable on Christmas Island, but we attempt to meet the same target, as we think that is a reasonable target. It is true, though, that the average has been impacted by the delay in being able to successfully process the claims of a cohort of persons who arrived early in the second half of last year.

The senator would be aware that most of those arrivals were Sri Lankans of Tamil origin. There has been a delay in processing their security clearances because of the situation and the concern about LTTE connections. The relevant agencies have found that the processing times for their security clearances have taken longer than average, and some of them are still outstanding despite those people having spent quite a lengthy period in detention. We do not want to hold
people in detention for long periods, but it is equally true that we will not be making final decisions on people’s asylum claims until we have had those security issues dealt with by the relevant agencies and those persons cleared. So the average processing times are I think reasonable, but they are impacted by that cohort that has had security processing issues. (Time expired)

Senator HANSON-YOUNG—Mr President, I ask a supplementary question. I thank the minister for his detailed answer. If we could get the precise figures, that would be wonderful. I understand that, as you have mentioned here in the chamber, there are a number of people who have been on Christmas Island for several months. Nine months is the average time for the cohort that I believe you are referring to, which leads to the question of the state of their mental health. Has there been an increase in the number of mental health specialists on the island? (Time expired)

Senator CHRISS EVANS—I thank the senator for the supplementary question. I share her concern about the impact of long-term detention on people’s mental health. We have recently done some work with relevant universities. I think it was the University of Newcastle that did some excellent work on the impact of long-term detention on the mental health of detainees. During the Howard era, we did see a huge impact on the mental health of detainees who were held for long periods in detention. The evidence suggests that the impact of indefinite detention has a much worse impact on people’s mental health than even, say, being in prison, because at least people in prison have a time frame for when they will be released, whereas those who are in indefinite detention have all the doubts and uncertainties about that. We have mental health experts on my ministerial advisory group, we are very much focused on the issue and we think we have enough resources to ensure that adequate care—(Time expired)

Senator HANSON-YOUNG—Mr President, I ask a further supplementary question. I seek further clarification in relation to that question. Can the minister outline what the current waiting times are for referrals to mental health workers for detainees on the island including children?

Senator CHRISS EVANS—I cannot answer the question in that level of detail, but I am happy to take that on notice for the senator. As I say, we do provide comprehensive health services for detainees. I remind the Senate that we do not hold children in the immigration detention centre but in what is known as the construction camp, that we prioritise children and their families for assessments in order to try to limit the amount of time that those children are held on the island and that they remain a priority.

I know that the detail of their access to mental health services, potential waiting times and resources applied has been an issue in the past, and we have sought to address it. As I say, we have a number of people with mental health expertise on my ministerial advisory group who take a keen interest in these issues, but I will get the specific detail that the senator requested and report back to the Senate.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a delegation from the parliament of Tonga. On behalf of all senators, I wish them a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Menindee Lakes

Senator BIRMINGHAM (2.35 pm)—My question is to the Minister for Climate
Change, Energy Efficiency and Water, Senator Wong. I refer the minister to Mr Rudd’s 2007 water election policy that claimed he would ‘accelerate investment in all water saving infrastructure’ and had re-engineering of Menindee Lakes at the top of the list. Why, three years after the release of the policy, has not even a sod of soil been turned on the re-engineering of Menindee Lakes?

Senator WONG—I welcome the question from Senator Birmingham because it gives me an opportunity to remind him yet again of the lack of action under his government and of the furphy that he is seeking to put to the South Australian people.

The PRESIDENT—I draw your attention to the question, Senator Wong.

Senator WONG—He says to them, ‘I can deliver this great referendum that is going to help you out,’ but we know that all his referendum will do is to give more power to the National Party and the upstream Liberals.

Honourable senators interjecting

The PRESIDENT—Order! Debate across the chamber is disorderly. Senator Wong, you should address your comments to the chair.

Senator WONG—Through you, Mr President, the reality is that on Menindee Lakes nothing was done under the former government. We have to deal with a number of issues in Menindee, including safeguarding Broken Hill’s water supply. We have funded a range of measures—planning measures and research measures—in relation to the aquifer and the government remains committed, if it is possible, to ensure Broken Hill’s—

Honourable senators interjecting

The PRESIDENT—Both sides, it is very difficult for me to hear the answer when there is chatter going on across the chamber.

Senator WONG—The fact is that there have been a range of studies undertaken already into Menindee. I look forward to those reports being finalised. I would make the point that under John Howard nothing was done in relation to Menindee in over 12 years in government, so for Senator Birmingham to say ‘You haven’t done anything’ really smacks of enormous hypocrisy, particularly at a time when we know that members of the National Party are advocating for less water to go down the river.

Senator Joyce interjecting

Senator WONG—Please, Senator Joyce, I would invite you to share your views with the Senate, because we know that Senator Joyce and Senator Williams—

Honourable senators interjecting

The PRESIDENT—Order! Debate across the chamber is disorderly. Senator Wong, you should address your comments to the chair.

Senator WONG—The government remains committed to thoroughly investigating what needs to be done before we construct—

(Time expired)

Senator BIRMINGHAM—Mr President, I ask a supplementary question. Why did the now Prime Minister commit to action if all you are now committing to, Minister, is investigating action? With the New South Wales Office of Water having confirmed that all four lakes in the Menindee system are said to be filled with at least 1,100 billion litres of water, how much of this trillion-plus litres will be unnecessarily wasted through seepage or evaporation thanks to the Prime Minister’s failure to ‘accelerate investment’?

Senator WONG—I would remind the senator that we have in fact committed $400 million to Menindee Lakes. My recollection is that some $38 million has been committed to particular projects for investigating this
issue. I want to make a point about what the senator is suggesting. Senator Joyce and senators from New South Wales should hear this. If Senator Birmingham, as he outlined in his letter to me, is suggesting that no water be held at Menindee, what he is actually suggesting is that we do not reserve critical human needs—that New South Wales, Victorian and South Australian irrigators face the prospect of zero allocations next year. Is that the coalition’s policy? If it is, I suggest you had better chat to your colleagues, Senator Birmingham.

Senator Birmingham—Mr President, I rise on a point of order on the matter of relevance. The minister was asked very specifically about how much water will be lost to wastage through the lack of action on investing in infrastructure. She was not asked about flows in; she was asked about lack of action on investing in infrastructure and, specifically, how much water will be wasted.

The PRESIDENT—I believe the minister is answering the question. The minister has 14 seconds remaining.

Senator Wong—It is quite clear from his question that Senator Birmingham is suggesting that it is inappropriate to store water at Menindee Lakes. He might want to talk to some of his colleagues, because what that means is no allocation for irrigators in the coming year and no capacity to reserve for critical human needs for Adelaide. (Time expired)

Senator Forshaw interjecting—

The PRESIDENT—Senator Forshaw, we can do without the comment across the chamber.

Senator Birmingham—Mr President, I ask a further supplementary question. With all four of the Menindee Lakes now said to be filled with at least 1,100 billion litres of water, will this delay any of the planned infrastructure works even further, leading to even greater water losses because of the failure to progress these infrastructure works over the last three years?

Senator Wong—We have a $400 million commitment. I do not know how many more dollars than your commitment that is, Senator Birmingham—I would have to go back and check—but it is probably about $400 million. I just remind the senator that, if he wishes to continue with this ‘don’t fill Menindee Lakes’ argument, perhaps he should make sure he has the support of his party room. Honestly, Senator Birmingham is turning into the Greg Hunt of the Senate: putting forward things that simply do not have the support of his party room, not talking to his colleagues from other states and pretending he can deliver when he cannot. Senator, you had better find yourself a different mentor.

Internet Content

Senator Jacinta Collins (2.43 pm)—My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. What is the minister’s response to the recent criticism of the government’s cybersafety policy by activist group Reporters Without Borders?

Senator Conroy—I thank Senator Collins for her question. On 18 December, after the government announced its position on ISP filtering, Reporters Without Borders wrote an open letter to the Prime Minister to explain why they objected to it. It is fair to say they clearly had not read the government’s policy when they argued:

Filtering would be applied to all content considered “inappropriate”...

The government was very clear in its announcement that our policy is to require ISPs to block a defined list of URLs of content which has been classified as RC under Australia’s existing national classification scheme. Reporters Without Borders say they
do not know whether content will be blocked by keywords, URL or something else. As the government stated just three days before the letter was published, a defined list of URLs of specific web pages or images will be blocked—very specifically.

Reporters Without Borders suggests that under the government’s policy—and, again, I quote the letter:

... subjects such as abortion, anorexia, aborigines and legislation on the sale of marijuana would all risk being filtered, as would media reports on these subjects.

This either shows a distinct lack of understanding of the government’s policy, Australia’s existing classification scheme or both. What it does show is that Reporters Without Borders have not been well informed or have neglected to find out the facts in compiling their report. It is very disappointing that a normally reputable organisation has been so badly misled. (Time expired)

Senator JACINTA COLLINS—Mr President, I have a supplementary question, which is: can the minister explain to the Senate why Reporters Without Borders may have been so misinformed about the government’s cybersafety policy? Have other organisations being involved in misleading the public about the government’s policy?

Senator CONROY—Following the government’s announcement last year, civil libertarian group Electronic Frontiers Australia repeated the claims of Reporters Without Borders in an article written by its CEO, Colin Jacobs, in Crikey. While one could possibly excuse Reporters Without Borders for being ignorant of the government’s policy, the same cannot be said of the locally run EFA, who, through Colin Jacobs, chairman Nick Suzor and board member Geordie Guy, have run a campaign to deliberately mislead the Australian public. They have argued there is no child abuse material traded on the open internet, yet at the latest count there were 355 child abuse URLs on the ACMA black list and therefore the open internet. They have argued that filtering will slow the internet and will result in over-blocking, despite the independent live pilot trial showing that internet filtering can be done. (Time expired)

Senator JACINTA COLLINS—Mr President, I have a further supplementary question. Is the minister aware of an ABC poll that showed 80 per cent of people support the government’s policy on internet filtering? Is the minister aware of any alternative approaches on cybersafety?

Senator CONROY—I noted comments last week by the shadow treasurer, Mr Hockey, that internet filtering of refused classification content was a threat to freedom. He said he does not trust a democratically elected government in Australia to never introduce widespread censorship. I wonder if this view is shared by those opposite. I remind those opposite that in 1999 the previous government, including Mr Hockey, supported the bill to prevent RC content from being hosted on Australian websites. That is right: in 1999, those opposite who were here at the time voted to ban RC content on the internet here in Australia. That is what they actually did. I want to remind the Senate that RC content includes child sexual abuse content, bestiality, sexual violence including rape, detailed instruction in crime, drug use and terrorism. I would like to table a document outlining some of the Electronic Frontiers’ outrageous misleading— (Time expired)

Charter of Rights

Senator BRANDIS (2.49 pm)—My question is directed to Senator Wong representing the Attorney-General. Has the government made a decision about a charter of rights? What is that decision?
Senator WONG—My recollection is that there has been no announcement in relation to that issue. If I have further information that I can provide to the senator, I will do so. But that is my recollection. If I can provide anything further from the Attorney-General, I will make inquiries and do so.

Senator BRANDIS—Mr President, I ask a supplementary question. Given that the matter has now been to cabinet three times and the minister is not able to advise the Senate of a decision, when will a decision be announced?

Senator WONG—I know you might not know what a cabinet meeting looks like, Senator. I am not in the habit, Senator—through you, Mr President—of discussing, confirming or not confirming what went to cabinet and the times when it did so. Nor am I in a habit of announcing things on behalf of representing ministers in Senate question time. I will make inquiries about whether there is anything further that I can add. My recollection is there has been no public announcement about the approach the government is taking. That is obviously a matter for Attorney-General.

Senator BRANDIS—Mr President, I ask a further supplementary question. Given that the Attorney-General announced as long ago as 5 December 2007 that the government intended to legislate for a charter of rights within three years, and that the government received the report of the National Human Rights Consultation committee on 30 September—

Honourable senators interjecting—

The PRESIDENT—Order! Senator Macdonald, Senator Collins, the exchange across the chamber is disorderly. I am seeking to listen to Senator Brandis. Senator Brandis, you have the call. You are entitled to be heard in silence.

Senator BRANDIS—Given that the government received the report of the National Human Rights Consultation committee as long ago as 30 September last year, is the government’s inability to make a decision about a charter of rights after no fewer than three cabinet discussions yet another example of the policy paralysis of the Rudd government? (Time expired)

Senator WONG—I think Senator Brandis had better get his lines right, because I was not aware ‘policy paralysis’ was one of the lines. I thought there was a whole range of lines. That was not among them. But I can say that if there is a criticism on the other side of there being discussions in cabinet, I can understand it, given that Mr Abbott announced the great big new tax on everything without talking to anybody.

The PRESIDENT—Senator Wong, I am going to take a point of order. You have 27 seconds remaining. You need to address the question that has been asked by Senator Brandis. Return to the question.

Senator WONG—Mr President, I was asked about cabinet discussions and I am making the point that the shadow cabinet clearly did not ever have the opportunity to discuss the great big new tax before it was announced. Certainly, Senator Joyce did not know anything about it, but he has not actually had a—

Senator Brandis—Mr President, I rise on a point of order. The minister is defying your ruling and treating you with disrespect. She should be brought to the question and asked to answer a direct question.

Senator Ludwig—On the point of order, this is outrageous behaviour by Senator Brandis. He has the ability to raise a point of order, but to use that phrase to call into question your ruling is quite inappropriate. The minister was answering the question directly
and I submit humbly, Mr President, that there is no point of order.

**Honourable senators interjecting—**

**The PRESIDENT**—Order! Shouting across the chamber is disorderly. It will not assist the conduct of the chamber and reflects poorly on those doing it.

**Senator Ludwig**—As I was saying on the point of order, Mr President, I humbly submit—unlike Senator Brandis, who seemed to demand—that there is no point of order and that the minister was answering the question directly.

**The PRESIDENT**—I had drawn the minister’s attention to the fact that she should return to the question. The minister has 12 seconds remaining to answer the question.

**Senator Wong**—Thank you, Mr President. As I said, I do not believe the government has made an announcement on the issue about which I was asked and I am not going to make an announcement in the context of question time. *(Time expired)*

**Climate Change**

**Senator Furner** *(2.54 pm)*—My question is to the Minister for Innovation, Industry, Science and Research, Senator Carr. Can the minister inform the Senate about public reaction to the *State of the Climate* snapshot released yesterday by the CSIRO and the Bureau of Meteorology? Has there been any rational attempt to challenge the facts reported in the publication—*with emphasis on the word ‘rational’*?

**Senator Carr**—I thank Senator Furner for his question. This morning, Senator McGauran issued one of the most extraordinary and lamentable media releases I have seen in this place. It is a vicious attack upon the CSIRO. This is not the first time the opposition has maligned our premier research institution.

**Senator Crossin interjecting—**

**Senator Carr**—Senator Crossin, you are quite right; Senator McGauran is in fact the runt of the litter, but he, unfortunately—

**Opposition senators interjecting—**

**The PRESIDENT**—Order! Senator Carr, you will withdraw that. It does not assist question time. Senator Carr, withdraw.

**Honourable senators interjecting—**

**Senator Carr**—I withdraw. There is no question that Senator McGauran represents an increasingly shrill group of senators on the other side of the chamber. However, Senator McGauran has, of course, ventured into new territory. This is more than an attack on a great Australian institution.

**Senator Brandis**—Because science is all about ideology for you!

**Honourable senators interjecting—**

**Senator Carr**—This is an attack not just on a great Australian institution, Senator Brandis, but on the 6,500 dedicated men and women who work for it.

**The PRESIDENT**—Order! Senator Carr, resume your seat. On both sides—when there is silence we will proceed. Senator Carr, proceed.

**Senator Carr**—This is an attack on science. It is an attack not just on science but on reason itself. As the Senate was told yesterday, the CSIRO and the Bureau of Meteorology have produced a new report that leaves us in no doubt that climate change is real.

**Honourable senators interjecting—**

**The PRESIDENT**—Order! Senator Carr, resume your seat. The time for debating these issues is at the end of question time. That is why we have the time set aside. If you disagree with the view being expressed, that is the time to express it. Senator Carr, continue.

**Senator Carr**—It is a pity those opposite do not seem to appreciate the fact that
evidence is now incontrovertible. Temperatures are rising—

Senator McGauran interjecting—

Senator CARR—Senator McGauran, do you deny this? Rainfall patterns are changing. Senator McGauran, do you deny that? Senator McGauran pretends to care about agriculture. (Time expired)

Honourable senators interjecting—

The PRESIDENT—Order! I am waiting to call Senator Furner. I cannot do it whilst there is disorder on both sides of the chamber. Senator Furner.

Senator FURNER—Mr President, I ask a supplementary question. Can the minister advise the Senate whether it is normal for the CSIRO to produce reports like the *State of the Climate* snapshot? Has anyone spoken in defence of the report? And, if the science is sound, what other basis is there for criticising the report?

Senator Brandis interjecting—

Senator CARR—The CSIRO has been providing objective, rigorous and well-informed reports like this one to the Australian public since 1926. Even a newspaper like the *Australian* understands this.

Senator Mason interjecting—

Senator CARR—Senator Mason, you would appreciate how rarely I quote the *Australian*. This morning’s editorial said—

Senator Brandis interjecting—

The PRESIDENT—Order! Senator Carr, resume your seat. Senator Brandis, constant interjecting is disorderly and you know that. Senator Carr, continue.

Senator CARR—Even the *Australian* editorialised this morning that scientific observation and hard data are:

... the hallmarks of this new report, which is based on some of the most accurate meteorology records in the world.

It concluded:

The report is a useful resource to inform sensible debate.

Unfortunately, Senator McGauran does not want to be part of sensible debate. Instead, he prefers senseless vilification of the CSIRO. (Time expired)

Senator FURNER—I have a further supplementary question. Can the minister explain to the Senate how such mistaken interpretation of the *State of the Climate* snapshot might have arisen? Why is the clear-cut evidence of the report being denied?

Senator CARR—Mr President, there may well be moderates still left in the Liberal Party but their voices have been silenced. It is now a party of extremists. It is a party that follows its leader in asserting, against the scientific evidence that even the *Australian* accepts—

Honourable senators interjecting—

The PRESIDENT—Order! Senator Carr resume your seat. When we have silence on both sides we will proceed with what is left of question time. Senator Carr, you have 38 seconds remaining.

Senator CARR—I wonder if Senator Mason accepts the view that climate change is crap. I trust he does not. What we have is a party that follows its leader in espousing the social attitudes and social values of the horse-and-buggy age. It is a party that follows its leader in making reckless promises and expecting that everyone else will be footing the bill. It is time that the extremists were hauled into line. Senator Minchin, I ask you: haul these extremists into line. You ought to fulfil your obligations to the Australian people and haul the extremists into line. (Time expired)

Senator Chris Evans—Mr President, I ask that further questions be placed on the *Notice Paper*. 
QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Asylum Seekers

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (3.00 pm)—Mr President, I would like to add to an answer I gave to Senator Hanson-Young when she asked me about average processing times for asylum claims on Christmas Island. The figure, I have been advised, is now 111 days as the average. I also want to correct the record when I had a crack about the University of Newcastle doing the research. It was actually the University of Wollongong. I apologise to the authors.

Menindee Lakes

Senator WONG (South Australia—Minister for Climate Change, Energy Efficiency and Water) (3.02 pm)—At question time today, Senator Birmingham asked me a question in relation to Menindee Lakes. I have some further information to add to that answer. The government is currently funding two major investigative projects at Menindee. This is to ensure that sound decision-making underpins the implementation of the election commitment. I indicated that already there is a $400 million budgeted commitment. The Australian and New South Wales governments are jointly funding the Darling River Water Savings Project, part B study. This is assessing options to reduce evaporation and achieve water savings at Menindee Lakes and secure Broken Hill’s water supply. In support of the part B study the Broken Hill Managed Aquifer Recharge Project is investigating the potential for groundwater extraction and managed aquifer recharge to secure Broken Hill’s water supply.

The Australian government has committed $16 million and we anticipate both of these reports in the first half of this year. The best figures I have to date in terms of commitments are around $17 million for these two investigations.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Asylum Seekers

Senator JOHNSTON (Western Australia) (3.03 pm)—I move:

That the Senate take note of the answers given by the Minister for Immigration and Citizenship (Senator Evans) and the Minister for Defence (Senator Faulkner) to questions without notice asked by Senators Humphries and Johnston today relating to asylum seekers.

Incompetence in public policy is often very difficult to see, in a walking, living, breathing sense. Incompetence and ignorance are the principal ingredients that Labor ministers have, of recent times, been bringing to public policy. The government’s border protection policy is a classic example of a policy effected by an enormous amount of incompetence. Can I say that ceiling insulation, the solar rebate and solar hot water system schemes, green loans, school halls, the Auditor-General’s report on the NBN mark 1 and, of course, the emissions trading scheme, are but a few examples of gross public policy incompetence.

Border protection is another example of the simple ignorance of dozy and lethargic ministers with a complete lack of capacity to put themselves across the detail of the portfolio. This year 24 boats and 1,200 people have arrived illegally in Australia, in the last 10 weeks. This is all because the Rudd government dismantled the previous scheme inaugurated by the Howard government. The situation has become so dire and so out of control that we will shortly be processing people in Darwin.

The costs have blown out. By July of this year the government will have spent in excess of $230 million, in Christmas Island, which was not budgeted for. The total extent
of this policy failure since August 2008 has been 92 vessels and 4,166 people. I pause to say that many of these people have traversed some 3,000 nautical miles from Sri Lanka. As of today, what is the government’s response to this matter? As of today, what is their policy initiative? Where is their movement to a solution to this policy? There is none. They sit there saying, ‘Mr Howard had the same problem more than eight years ago.’ That is simply an underlining of the level of incompetence and the level of disparagement of the problem and it shows a failure to perceive that there is a huge potential for a humanitarian disaster in the 3,000-mile air-sea gap between Sri Lanka and the north-west coast of Australia.

Just like in ceiling insulations where people’s lives have been put at risk through fire and electrified roofs, our Navy personnel have been exposed to extraordinary risks in dealing with these people. There is no better example than SIEV36. This is a risk they should not have had to bear. This is a risk that has put young Australian men and women in the Australian Defence Force at risk whilst they board illegal entry vessels and expose themselves to desperate people taking desperate measures. I was very disappointed that the minister did not know precisely, or have at his fingertips, the nature of the injuries sustained by those Navy people on board SIEV36 when it blew up and could not tell me their current state of health. I was extremely disappointed with that. Not only is this a policy failure; it is not a matter at the forefront of the consideration of this most incompetent and callous government.

Senator CROSSIN (Northern Territory) (3.08 pm)—I rise in response to the taking note of questions from senators opposite on asylum seekers. I am disappointed, Senator Johnston, you could not take up your whole five minutes on this most crucial and important matter that you believe is so central to your re-election at this coming federal election.

Senator Johnston—I ran out of time.

Senator CROSSIN—I take that interjection. You finished with at least 31 seconds to go. You could not stand up and give us five minutes of why you believe the position you have taken. Let me just reiterate for the record, as I understand we have done a number of times in this place, that this government still has a policy of excision. This policy has not been changed from the last government to this government—that is, we still excise islands and people who are seeking to arrive here and claim refugee status are taken to Christmas Island. That policy has not changed. We also have a policy of mandatory detention. Once they are taken to Christmas Island, they are mandatorily detained for health, security and identity checks. That policy has not changed. They are processed offshore at Christmas Island. That is also a policy that has not changed. We maintain a very strong anti-people-smuggling stance. People who are seeking to enter this country by refugee status, if they are coming here by boat, can expect to be detained on Christmas Island as part of our excision policy, our mandatory detention policy and our processing offshore policy.

All irregular maritime arrivals are transferred to Christmas Island and, as I said, they are subject to mandatory detention, simply because that is a way in which we can manage health, security and identity checks. We know there is a range of facilities on Christmas Island. The most amazing facility on Christmas Island was that constructed under the Howard government at a cost of over $440 million. It caters for diverse groups. I have been there myself and have had a tour of that centre a number of times now. Family groups and unaccompanied minors are also accommodated on Christmas Island, but we
have explicitly banned the detention of children from the immigration detention centre—something that is vehemently different from those who sit opposite who sought to still detain children in detention centres.

Let us have a look at the capacity of Christmas Island and the area to which the opposition would like us to go. On 14 March, there were 1,920 regular maritime arrivals and 23 crew accommodated on Christmas Island. Christmas Island can adequately accommodate this number of arrivals and, as part of the routine contingency planning, this government continues to increase the accommodation capacity on Christmas Island. The current overall capacity is over 2,040. Additional demountables were installed at the detention precinct in late 2009 to further expand the capacity by 212 beds. The capacity will be increased by 400 with the establishment of an additional contingency compound and these works are due to be completed fairly soon, in addition to the demountable accommodation currently used by staff at the Phosphate Hill facility that will be made available for detainees in the near future.

So what we are proving to the general public and to those opposite who refuse to accept, believe or listen is that there is capacity at Christmas Island and we are processing people on Christmas Island, developing the capacity we require. You heard Minister Evans say today that people on Christmas Island are being processed as quickly as possible, in around 115 days, to get their processing applications through. They are moved on, moved off or moved back. We have never shied away from the fact that if they are not genuine refugees they will be sent home. This is a much faster processing time than was ever experienced under the previous government.

We have always said that if there is a need to use the detention facility in Darwin it will be used. This is not news. I have heard Minister Evans repeatedly say that if the Darwin Immigration Detention Centre is needed it will be used to assist with the accommodation of refugees. (Time expired)

Senator SCULLION (Northern Territory) (3.13 pm)—I should not be surprised by the response from those opposite on the issue of asylum seekers. Can you imagine them in a boat where there is water coming in through the corking? All they will do is hand out life jackets. All they seem to do is try to deal with the consequence of their failed policies. Australia is dealing with this policy failure that is ensuring people put their lives and the lives of their families at risk. They are ensuring the livelihoods of those people whose primary business role is to traffic in human misery. They are doing all right out of it—there are no worries about that. They are reading the brochures that say, ‘Come to Australia because we now have changed our policies.’ These guys opposite say, ‘The only issue with our policy is that we don’t have enough places to put them.’ What they are focusing on is: ‘Can we make Darwin bigger? We always knew they were going to go to Darwin.’ The only issue we are going to see from the other side is where we open up more detention facilities, because those on the other side are completely incapable of understanding that this is about policy and not about detention.

When the Howard government was in government we acknowledge that we went through this process. We had an increase in boats and we changed our policies. We said, ‘We are going to introduce some tough policies that send a clear message that if you are a refugee then you can go into any of the embassies on the way to coming here and seek asylum.’ We put in place processes to assist them with that. We started with a very
large number of boats. I can recall that when I first came here, in 2001, we had 19 boats. The next year we had zero. The next year we had three. The next year we had zero. This is what happens.

So I would commend looking at a bit of history to the other side. Change your policies to make those policies disincentives and the people and the boats will stop coming. You have to put your eye on the right ball. You cannot just decide that your only policy response is to go and build bigger facilities. They talked about the Darwin detention facility. I had a little bit to do with that. There was a little bit of tension at the time that it was built. I was assured that this was a facility that was designed and built as a short-term processing facility for those people who came to Australian waters to engage in illegal fishing. That is was it was purposely built for. The level of security was up to exactly that stage.

I had someone ring me the other day who said, ‘When this opens up, Nigel, are those people who blew that SIEV up going to come here?’ I said, ‘Why are you concerned?’ He said, ‘Don’t you remember reading in the paper how they all walked out, went and had lunch or something, decided that it was all too hard and came back for supper?’ I said: ‘Oh, yeah. Well, I’m not really sure what they’ve done with the security.’ I said that I was sure that it would be all right.

This is complete and utter bungling. If they do not change their policy approach to this, we are going to see increasing numbers of vessels arriving in the future. I acknowledge that this is only a newspaper article, but this newspaper article from today and other media indicate that there may well be quite large numbers of people coming on a couple of boats. Darwin only has the capacity for 550, and that is if you include the surge capacity, which takes it up to 547. If any of these reports are correct—and they are going to be correct, because giving them a 30-day processing visa means that immediately they only have to wait 30 days to get to Australia, which is the outcome that they want and why they are coming—the process has to change. We are going to have more and more people and we are going to be wondering where to put them. But where to put them is not the problem. The sugar is the problem, as the Indonesians would tell us. We have policies that invite people to come to Australia.

It does not seem to matter what program we have—whether it is the ETS, the NBN, insulation, the tragedy of the SIHIP program in Indigenous housing, the Julia Gillard memorial halls program—all of them have been run with ineptitude. On every level, it is embarrassing internationally that every single program that those opposite have decided that they are going to put in place as one of their policies has failed miserably. They have not got the grunt to be able to manage these programs. Border protection, sadly, just grows on the line. We are now expecting another influx of people and all those in the Labor Party can do is flail around and say, ‘My God, I wonder where we’re going to put these poor souls.’ They had better find more and more accommodation, because without a change in policy the people and the boats will keep coming.

Senator FURNER (Queensland) (3.18 pm)—Today, we heard questions from those opposite directed to Senator Faulkner about concerns expressed about a coroner’s report that is due out tomorrow. I found that quite perplexing, given that surely we are patient enough to see what sort of findings the coroner might deliver about that unfortunate event. I am more concerned, however, about the debate that the opposition is prosecuting, which seems to be consistent with the view that they took in 2001. At that particular
election the then government used this as an election platform to run on. It certainly disturbed me when the placards of John Howard demanding that we say who will come to this country and on what terms were distributed during that election. I had friends going into the polling booths on that particular day disturbed by the type of position that the then government had taken. To this day, I take offence that the opposition is trying to prosecute that type of belief and scaremongering out among the public, regardless of the facts.

The facts are that, as indicated today by Senator Evans, the highest number of boat arrivals on record were under the John Howard Liberal government in 2001. Reflecting on those numbers, 5,516 people arrived in 43 boats. During the months of August and September in 2001, we saw more than 2,200 people arrive in 10 boats. All of us were present in the other place last week—in fact, a week ago today—where we heard from the President of Indonesia. In his speech, he gave a commitment to work with Australia in combating people smuggling. That is a true indication of the corroborative arrangements that the Rudd Labor government has with one of our closest neighbours to assist in combating this problem.

The problem is the people smugglers, not the poor unfortunates who in these boats trying to make it to our shores. No one can blame them for wanting to take the trip from countries like Afghanistan and Sri Lanka. We have taken a stance. The stance is that, although we take a firm stance on people smuggling, we are guided by what is expected of us as a nation under UNHCR rules. We will ensure that we conduct ourselves appropriately and use mechanisms that are suitable for humane acceptance and processing of these people.

I will go to some of the history of people-smuggling. In particular, I want to reflect back on what former Liberal immigration minister Philip Ruddock said in 1999:

It is timely to remember that the use of people smugglers to get around a country’s rules about who can come and who can stay is a worldwide problem. Australia is not alone. We are also seeing large numbers of people seeking asylum in developed countries—people from the same groups as we are seeing in Australia. For example, Iraqi asylum-seekers are registered in 77 countries and last year—which would have been 1998—there were over 34,000 applications for asylum lodged by Iraqis in 19 European countries.

So even back then there were problems associated with asylum seekers wanting to gain access to other countries throughout the world. It is not a problem that is going to go away overnight. It is a problem on which we need to work together and find a solution. The government is on the path to reaching a solution as to how we deal with it. In fact, if we look at the 2009-10 budget—and I recall that just yesterday Senator Evans spoke about the forthcoming budget, but if we look at 2009-10—an additional $654 million was dedicated to upholding the government’s strategy to combat people-smuggling as part of the Rudd government’s $1.3 billion strategy to strengthen national security and border protection overall. This government is serious about combating this problem, and we will continue to combat the problem to resolve this issue. (Time expired)

Senator EGGLESTON (Western Australia) (3.23 pm)—As both Senator Johnston and Senator Scullion said, the failure of the Rudd government’s border protection policy is just another one of the typical policy failures of this government—the pink batts story, where nothing was thought through or planned properly and which has turned into a disaster, and other policies of this government. It shows a lack of planning, a lack of
commitment and a lack of real determination to solve the problem.

The boats do not lie. They are a continuous reminder of the Rudd government’s policy failure and refusal to accept responsibility for a problem of their own making. The people smugglers have wasted no time in sending another message to the Rudd government. Ninety boats have now arrived in Australia since the Rudd government first started rolling back the strong border protection policies inherited from the coalition government led by John Howard. The boats are now arriving at a rate of more than two per week.

Senator Parry—Might as well put a tunnel in.

Senator EGGLESTON—As Senator Parry says, we might as well put a tunnel in. It would be so much easier than crossing the sea. Probably something like the Chunnel between England and France would do the trick, but it would be very difficult. Senator Parry, in making that statement, is pointing out that it is now very, very easy for refugees to make their way to Australia. There is no impediment at all; you just sail down to Christmas Island, you pull up at the wharf, you get put into accommodation, your claims are processed and in due course, it seems, you are allowed to stay in Australia.

Australia has a very good record of dealing with refugees. In the time after World War II Australia, along with Canada and the United States, took a lot of refugees from the displaced persons camps of Eastern Europe. We have a very fine and respectable record. But we have always had an orderly program of accepting refugees. We make sure that the refugees who come to this country have identity checks, checks of their police records to make sure that they are not kidnappers or murderers on the run and, of course, security and health checks. That is the way we should be conducting our refugee intake. But, unfortunately, rather than setting up an arrangement for the orderly processing of the people who want to come to this country as refugees, the Rudd government, it seems, has just opened the floodgates to people who are prepared to get in little boats and sail down from Indonesia and across from Sri Lanka.

I do not think that is good enough. The answer to this sort of problem is, surely, a regional solution. We need to be working with our regional neighbours: with Indonesia, with the government of Sri Lanka and with the governments of other countries in this region that the refugees are setting out from. We did have a fairly good arrangement with the Indonesians. They have always been willing and cooperative partners in combining with Australia to do their best to ensure that the number of refugees coming down here is minimised. But this program has failed. The Rudd government has unwound the fairly strict policies of the Howard government, and the people smugglers, on behalf of the refugees, see Australia as now having what amounts to an open door policy. They know that if they just put people in a boat and send them down to Christmas Island, those people will probably be given refugee status.

One must ask the cost of all this. What is the burden to the Australian taxpayer? We are told that there has already been a $132 million blow-out in the cost of processing illegal arrivals at Christmas Island and that it is going to cost a lot more to open up the Darwin detention centre. In fact, it is estimated that over the year 2009-10 the additional cost will be over $1 billion. That is quite outrageous. It is time the Rudd government got its act together to strengthen our borders and maintain the sort of security that the Howard government—(Time expired)

Question agreed to.
NOTICES

Presentation

Senator Cormann and Senator Birmingham to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the persistent and continuing refusal of
the Prime Minister and several other
ministers to clarify when they were
first told about inadequate training and
safety issues for workers involved in
the home insulation program,

(ii) reports that direct advice was provided
to the Prime Minister and other minis-
ters involved in Labor’s home insulation
fiasco about fraud, safety risks and
training inadequacies in relation to the
ill-fated program, and

(iii) reports that the home insulation pro-
gram implemented was redesigned
from that initially recommended by the
Department of the Environment, Water,
Heritage and the Arts so as to spend the
funds allocated faster as part of the
stimulus package;

(b) considers that public release of all infor-
mation about what the Government knew
about inadequate training and safety issues
for workers is in the public interest; and

(c) orders that there be laid on the table by
12 pm on Thursday, 18 March 2010, any
information, including, but not limited to,
letters, emails, spreadsheets, minutes of
meetings, reports, and briefing notes, held
by the Prime Minister, the Minister for the
Environment, Heritage and the Arts, the
Minister for Climate Change, the Minister
Assisting the Prime Minister for Govern-
ment Service Delivery, the Minister As-
sisting the Minister for Climate Change,
and their respective offices and depart-
ments, concerning:

(i) safety warnings in relation to the home
insulation program,

(ii) training issues in relation to the home
insulation program,

(iii) fraud in the home insulation program,

(iv) the design of the home insulation pro-
gram initially proposed by the Depart-
ment of the Environment, Water, Heri-
tage and the Arts, and

(v) changes made to the design of the
home insulation program initially pro-
posed by the Department of the Envi-
ronment, Water, Heritage and the Arts.

Senator Siewert to move on the next day
of sitting:

That the Senate calls on the Government to in-
vestigate, through the processes of the Interna-
tional Whaling Commission, the recent claims by
Greenpeace and the ‘Tokyo Two’ Junichi Sato
and Toru Suzuki of corruption and embezzlement
within the whaling industry.

Senator Ludlam to move on the next day
of sitting:

That the Senate notes that:

(a) the 5 March 2010 report of the United
Nations Special Rapporteur on the situa-
tion of human rights in Myanmar docu-
ments ‘a pattern of gross and systematic
violation of human rights which has been
in place for many years and still contin-
ues’;

(b) the Special Rapporteur states these viola-
tions ‘may entail categories of crimes
against humanity or war crimes under the
terms of the Statute of the International
Criminal Court’;

(c) the Special Rapporteur recommends that
‘UN institutions may consider the possi-
bility to establish a commission of inquiry
with a specific fact finding mandate to ad-
dress the question of international crimes’;

(d) on 9 March 2010 Burma announced the
election laws for the forthcoming election
based on the 2008 constitution that:

(i) excludes political activists who have
been arrested, Buddhist monks and
nuns and public servants from standing
for election,

(ii) prevents the National League for De-
mocracy (NLD), headed by Aung San
Suu Kyi, and winners of the country’s last election, from registering if Aung San Suu Kyi remains a party member, and

(iii) annuls the results of the 1990 election, which saw the NLD win more than 80 per cent of the vote; and

(e) on 10 March 2010 the United States of America (US) Assistant Secretary of State, Dr Philip Crowley, said that the US would not accept the results of the Burmese election ‘Given the tenor of the election laws that they’ve put forward, there’s no hope that this election will be credible’.

Senator Payne to move on the next day of sitting:

(1) That a select committee, to be known as the Select Committee on the Reform of the Australian Federation, be appointed on 13 May 2010, to:

(a) inquire into and report by 24 August 2010 on key issues and priorities for the reform of relations between the three levels of government within the Australian federation; and

(b) explore a possible agenda for national reform and to consider ways it can best be implemented in relation to, but not exclusively, the following matters:

(i) the distribution of constitutional powers and responsibilities between the Commonwealth and the states (including territories),

(ii) financial relations between federal, state and local governments,

(iii) possible constitutional amendment, including the recognition of local government,

(iv) processes, including the Council of Australian Governments, and the referral of powers and procedures for enhancing cooperation between the various levels of Australian government, and

(v) strategies for strengthening Australia’s regions and the delivery of services through regional development committees and regional grant programs.

(2) That the committee consist of 6 senators, 2 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate, and 1 nominated by any minority group or independent senator.

(3) That:

(a) participating members may be appointed to the committee on the nomination of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate and minority groups and independent senators;

(b) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee; and

(c) a participating member shall be taken to be a member of the committee for the purpose of forming a quorum of the committee if a majority of members of the committee is not present.

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

(5) That the committee elect as chair one of the members nominated by the Leader of the Opposition in the Senate.

(6) That the committee elect a Government member as its deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee, and at anytime when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(7) That, in the event of an equally divided vote, the chair, or the deputy chair when acting as chair, has a casting vote.
(8) That 3 members of the committee constitute a quorum of the committee.

(9) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(10) That 2 members of a subcommittee include a quorum of that subcommittee.

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

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

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

Senator Xenophon to move on 18 March 2010:

That the following bill be introduced: A Bill for an Act to enable the Murray-Darling Basin Authority to manage the water resources of the Basin as a single system during periods of extreme crisis, and for related purposes. Water (Crisis Powers and Floodwater Diversion) Bill 2010.

Senator Minchin to move on the next day of sitting:

That there be laid on the table by the Minister for Broadband, Communications and the Digital Economy, no later than 9.30 am on Thursday, 18 March 2010, the interim report of the National Broadband Network Implementation Study provided to the department in August 2009.

Senator Hanson-Young to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the National Human Rights Consultation delivered its report to the Attorney-General (Mr McClelland) on 30 September 2009, more than 6 months ago, and

(ii) the Attorney-General released a statement that the Government will provide a response in the coming months; and

(b) orders that there be laid on the table by the Minister representing the Attorney-General, no later than 4 pm on 11 May 2010, the Government’s response to the National Human Rights Consultation report which was delivered to the Attorney-General on 30 September 2009.

Senator Hanson-Young to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the first same-sex marriages were celebrated in Mexico City in the week beginning 7 March 2010, following the recent passage of legislation removing discrimination on the basis of sexual orientation, under that city’s Marriage Act, and

(ii) Mexico City joins Portugal, Canada, the Netherlands, Sweden, Belgium, Norway, Spain, South Africa and many states in the United States of America that already recognise same-sex marriage as a reality;

(b) recognises that all Australians deserve to be treated fairly and equally, regardless of their sexual orientation and that Australia is becoming increasingly isolated internationally, by refusing to remove discrimination on the basis of sexual orientation from the Marriage Act 1961 (the Act); and

(c) calls on the Australian Government to remove all discrimination from the Act on
the basis of sexuality and gender identity and extend the legal right to marry to all.

Senator Xenophon to move on 18 March 2010:

(1) That the following matters be referred to the Economics References Committee for inquiry and report by 24 June 2010:

(a) allegations of abuse, recently widely reported in the Australian media, against employees, volunteers and followers (including ex-employees, ex-volunteers and ex-followers) of the Church of Scientology and any associated entities, including:

(i) coerced abortions,
(ii) unsafe occupational health and safety practices,
(iii) unconscionable, misleading and deceptive conduct in the context of goods and services provided and charged for by the Church of Scientology and any associated entities, and
(iv) the harassment of followers and ex-followers of the Church of Scientology and any associated entities;

(b) the adequacy of the Model Criminal Code and its application in respect of the offence of psychological harm;

(c) the adequacy of current consumer protection laws in respect of goods and services provided by the Church of Scientology and any associated entities, and its fundraising practices generally;

(d) the adequacy of current occupational health and safety laws and workplace relations laws in respect of the allegations of conduct occurring within the Church of Scientology and any associated entities; and

(e) any related matters.

(2) That in undertaking this inquiry, the committee will not inquire into the validity or otherwise of the belief systems of the Church of Scientology and any associated entities.

Senator Bob Brown to move on the next day of sitting:

That the Senate—

(a) notes Labor’s advertising attacking Liberal opponents in South Australia and the Greens in Tasmania using inferences of support for criminality; and

(b) deplores this desperate tactic and calls on Labor to restore decency to its campaigning and to not mislead voters on the way to the elections on Saturday, 20 March 2010.

Withdrawal

Senator O’BRIEN (Tasmania) (3.30 pm)—I withdraw general business notice of motion No. 742.

BUSINESS

Rearrangement

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (3.30 pm)—by leave—I move:

That the consideration of government documents be not proceeded with today and tomorrow 17 March 2010 and that government business continue until 7.20 pm.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.30 pm)—I wonder whether we could have a quick explanation from the government as to that move, please.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (3.31 pm)—by leave—It seems, Senator Brown, that there may have been an oversight. I asked my staff to contact the various Independents, and obviously the Greens as well, to indicate that I sought from those opposite additional time to deal with government business in the program this week. It involved two 30-minutes slots for government documents. The opposition indicated that that was okay and, on that basis, I proceeded with the motion. I also seek your concurrence so that we can deal with some
of the legislative program this week and allow debate.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.31 pm)—by leave—I will agree to that move, but I must say here that this is effectively the government taking one hour of time when members can discuss government documents to give to government business. But there is no reciprocation from the government here on private members’ business so that the big backlog of bills—and some of them are very important pieces of legislation that are not the government’s—get a go. I say to the government that it is testing the Senate to be simply expanding government business in a year in which it sets sittings at an almost record low period of time without any quid pro quo for proper consideration of the pile-up of legislation that comes from members other than the government in this place.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (3.33 pm)—by leave—I have just been informed that we are doing it a day at a time. So I seek to amend my motion by striking out ‘and tomorrow’. It relates only to half an hour today. I will be thankful to the Senate for even agreeing to that much. I move the motion as amended:

That the consideration of government documents not be proceeded with today, and that government business continue till 7.20 pm.

Question agreed to.

NOTICES

Postponement

The following items of business were postponed:

Government business notice of motion no. 1 standing in the name of the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) for 17 March 2010, relating to the consideration of legislation, postponed till 15 June 2010.

General business notice of motion no. 694 standing in the name of the Leader of the Family First Party (Senator Fielding) for today, proposing the introduction of the Protection of Personal Information Bill 2010, postponed till 17 March 2010.

General business notice of motion no. 738 standing in the name of the Leader of the Family First Party (Senator Fielding) for today, proposing the introduction of the Responsible Takeaway Alcohol Hours Bill 2010, postponed till 17 March 2010.

COMMITTEES

Community Affairs Legislation Committee

Extension of Time

Senator O’BRIEN (Tasmania) (3.34 pm)—At the request of the Chair of the Community Affairs Legislation Committee, Senator Moore, I move:

That the time for the presentation of reports of the Community Affairs Legislation Committee be extended as follows:

(a) provisions of the Health Practitioner Regulation (Consequential Amendments) Bill 2010—to 11 May 2010; and

(b) Poker Machine (Reduced Losses—Interim Measures) Bill 2009 and a related bill—to 30 June 2010.

Question agreed to.
Environment, Communications and the Arts References Committee

Extension of Time

Senator PARRY (Tasmania—Manager of Opposition Business in the Senate) (3.35 pm)—At the request of the Chair of the Environment, Communications and the Arts References Committee, Senator Fisher, I move:

That the time for the presentation of reports of the Environment, Communications and the Arts References Committee be extended as follows:

(a) on Australia Post’s treatment of injured and ill workers—to 12 May 2010; and
(b) Energy Efficient Homes Package—to 6 May 2010.

Question agreed to.

Environment, Communications and the Arts References Committee

Meeting

Senator PARRY (Tasmania—Manager of Opposition Business in the Senate) (3.35 pm)—At the request of the Chair of the Environment, Communications and the Arts References Committee, Senator Fisher, I move:

That the Environment, Communications and the Arts References Committee be authorised to hold an in camera hearing during the sitting of the Senate on Wednesday, 17 March 2010.

Question agreed to.

RENEWABLE ENERGY TARGET LEGISLATION

Senator BARNETT (Tasmania) (3.35 pm)—I seek leave to amend general business notice of motion No. 740 by deleting in paragraph (b)(iii) the words after the word ‘result’ and replacing them with ‘in additional costs to end users significantly greater than the $3 to $4 per annum increases anticipated by the government’.

Leave granted.

Senator BARNETT—I, and also on behalf of Senator Fisher, move the motion as amended:

That the Senate—

(a) notes that:

(i) major flaws in the design of the Federal Government’s renewable energy target legislation have led to a dramatic drop in the price of renewable energy certificates and stalled investment in the renewable energy sector,

(ii) the Federal Government has now acknowledged these concerns and foresees legislation to remedy these flaws and advised that the bill will be introduced mid-2010 with a start date of 1 January 2011,

(iii) delays have already caused a loss of jobs, including at the Musselroe Bay Wind Farm development in north-east Tasmania and have threatened the proposed expansion of the Hallett Wind Farm in South Australia, and

(iv) any further delay will cause a further loss of jobs; and

(b) calls on the Government to:

(i) work cooperatively with industry, the community and the opposition parties to ensure the bill is properly designed and introduced without delay,

(ii) without delay, release any modelling or other analysis on which this proposal is based, and

(iii) provide assurances that the legislation will not result in additional costs to end users significantly greater than the $3 to $4 per annum increases anticipated by the Government.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (3.37 pm)—Mr Deputy President, I seek leave to make a short statement.

The DEPUTY PRESIDENT—Leave is granted for two minutes.
Senator LUDWIG—I thank the Senate. The Rudd government’s Renewable Energy Target Scheme will be enhanced to provide greater certainty for households, employees and businesses within the renewable energy industry as we build the low-pollution economy of the future. From 1 January 2011 the renewable energy target, which guarantees that 20 per cent of Australia’s energy in 2020 will come from renewable resources, will include two parts: the small-scale renewable energy scheme and the large-scale renewable energy target. These changes are expected to deliver more renewable energy than the original 20 per cent target and will ensure we build the clean energy future Australia needs. Importantly, the government’s revamped RET will support new jobs and investment in both large- and small-scale renewable energy projects. While these changes address some uncertainty in the current market, uncertainty around the Carbon Pollution Reduction Scheme is also harming market sentiment. This illustrates why it is critical to have a market based, long-term response to reducing emissions to drive investment in the renewable industry. Renewables of course went back under the Howard government ABARE 2006 renewables contribution. They contributed 10.5 per cent of our electricity supply in 1997 compared to 9.5 per cent in 2007. In 2003 the Howard government’s own review of the then MRET recommended increasing the target, advice rejected by the Howard government time and time again.

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

Senator O’BRIEN (Tasmania) (3.38 pm)—Mr Deputy President, I understand that the Greens support the motion. On that basis, the government recognises that, with the support of the Greens, Senator Barnett’s and Senator Fisher’s motion has a majority in the Senate. We will not call a division.

Question agreed to.

INDIAN PARLIAMENT

Senator HANSON-YOUNG (South Australia) (3.39 pm)—I seek leave to amend general business notice of motion No. 741 standing in my name, relating to the representation of women in the Indian parliament.

Leave granted.

Senator HANSON-YOUNG—I move the motion as amended:

That the Senate
(a) recognises that only 10 per cent of seats in India’s Lok Sabha (the lower house of India’s Parliament) are held by women;
(b) congratulates India’s Rajya Sabha on passing the first stage of the historic legislation seeking to impose a 33 per cent quota for women in the nation’s federal and state assemblies; and
(c) notes that Prime Minister Singh has stated that the legislation is ‘a giant step towards empowering women’.

Question agreed to.

MATTERS OF URGENCY

Paid Parental Leave

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 16 March 2010, from Senator Hanson-Young:

Dear Mr President,
Pursuant to standing order 75, I give notice that today I propose to move:

“That, in the opinion of the Senate, the following is a matter of urgency:
The failure of the Rudd Government’s paid parental leave scheme to support parents for the World Health Organisation’s recommended minimum of 6 months, and to address the great inequity between male and female retirement incomes.”

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

The 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 HANSON-YOUNG (South Australia) (3.40 pm)—I move:

“That, in the opinion of the Senate, the following is a matter of urgency:

The failure of the Rudd Government’s paid parental leave scheme to support parents for the World Health Organisation’s recommended minimum of 6 months, and to address the great inequity between male and female retirement incomes.”

I rise today to speak on an important issue. The reason I have moved this motion is that it is clear that Australia is in the midst of a debate, not about whether we should have paid parental leave in order to support working families in Australia but about what type of paid parental leave that should be and what that form of support should look like. The only piece of current legislation before the Australian parliament is the bill that I introduced in this very same place almost a year ago. While we have not been able to debate that bill, because it was moved as a private senator’s bill, that bill outlined a plan forward for paid parental leave. It was offering six months plus superannuation at the minimum wage. When I introduced this bill, we were yet to see any commitment from the government or the opposition as to this issue. Haven’t we come far! We now have a commitment from the Rudd Labor government for an 18-week scheme and of course we now have a commitment from the opposition, the coalition, for a scheme of 26 weeks with superannuation at replacement income paid for by big business. While we are still waiting to see the legislation for either the government’s scheme or the opposition’s scheme, what we do know is that by the end of this year parents need to know what type of support they will get and what type of scheme they should be looking forward to. Hopefully, Australia can again hold its head high among our OECD brothers and sisters in being able to say, ‘Yes, Australia too believes that paid parental leave is an important aspect of any workforce participation action plan and of course support for working families.’

Australia lags far behind the rest of the OECD countries in relation to paid parental leave. It is often said that Australia is one of only two countries that do not offer a paid parental leave scheme, Australia and the United States. But of course even in the United States 50 per cent of women have access to some type of government funded system through various US states that offer a government funded scheme. It is just not universal across the federation. Of course here in Australia we have nothing. There is no government funded paid parental leave scheme unless of course you work in the public service. Federally we offer 14 weeks for mothers to be able to take time off with their babies. It is a really important step for Australia to take when we know that we have one of the lowest female participation rates in the OECD. Where does that drop in female participation come in, despite the fact that over 63 per cent of our graduates are women? It is during the child-bearing years. It is during that time when women are forced out of the workforce to have their child and that attachment to the workplace is lost because we do not have a properly funded scheme. In other countries around the world which have had schemes in place for quite some time, that female workplace participation rate is brought up and correlates with
that level of support that they are given by their federal governments.

It is time for Australian mums and dads to have the best possible paid parental leave scheme. While I welcome the commitment from the government to putting something on the table, 18 weeks is pathetic. Eighteen weeks at the minimum wage without superannuation is really nothing more than a rebadged baby bonus. Not just that but the fact that it seems as though it will not even be an amendment to the Fair Work Act but rather an amendment to the Social Security Act means that it really is nothing more than a rebadging of the baby bonus. If we honestly believe that Australian working families—mums and dads, and women in particular—deserve the workplace entitlement of paid parental leave then, of course, it needs to be in the Fair Work Act. That is where all the unpaid maternity leave provisions are. It would make sense to have it in the Fair Work Act.

I look forward to seeing that legislation. We called the government on it yesterday. Let us see it. Let us see that legislation so we can get on and debate it because until now the only piece of legislation sitting in this chamber is that put forward by the Greens—six months plus super at the minimum wage. I would also like to see the detail from the coalition’s policy. It sounds good on face value but we need to see the detail. Where, in reality, are we going to be in 12 months time? I hope that we are able to, in this place, once we see the government legislation, agree on a six-month paid parental leave scheme with superannuation included. The compromise between the government and the opposition’s proposal would be for that to be at the minimum wage.

That seems like a pretty fair compromise to me. If you asked families right around the country if that would be a good way forward, most of them would say ‘yes’. Why should we accept the argument from the government that we should start with a paltry 18-week scheme that we will build on, even though it is only going to be in the Social Security Act? Why should we accept the argument from the government that is where we should start and we should not be asking for any more?

Let us not forget that it has been more than 30 years since we had the last amendment to legislation to provide unpaid parental leave. It has taken over 30 years to get to the point of talking about paid parental leave. I am not prepared to wait another 30 years to increase it to six months. The World Health Organisation, various women’s and children’s associations and unions—not just in Australia but globally—recognise that the minimum must be six months. It needs to be recognised as part of workplace attachment and, therefore, a workplace entitlement. It needs to include superannuation.

Let us touch on the issue of why superannuation is important. It is because we know already that we have generations of people worried about their superannuation to date and about whether they can actually retire. My mum and dad are worried about whether they can retire on their superannuation. I can tell you, the gap between the superannuation levels that men are going to retire on and the levels of superannuation that women are going to retire on are vastly different. Why? It is because of that gap during those childbearing years. It is absolutely fundamental that any government that is committed to the rights of women in the workplace, to workplace participation and to the rights of people to have a secure retirement through their superannuation, must include, in any type of workplace entitlement, superannuation. That has to be in any type of paid parental leave scheme.
It is a scam by the government to try and convince Australians that 18 weeks without superannuation is anything more than a rebadged, glorified welfare provision otherwise known as the baby bonus. We need to move on from that. We need a paid parental leave scheme that has the guts to deliver the real action and support for parents. It has to be six months; it has to include superannuation. The compromise, I do believe, between the government and the opposition proposals, is that minimum wage component. Let us move forward from there. Let us not settle for something less simply because it does not taste politically nice to the government of the time. Let us strive for something that is worth supporting and worth building on, and that has to be that six-month time frame. Let us not wait another 30 years to have the debate just to make things better.

Senator PRATT (Western Australia) (3.49 pm)—I sincerely hope today that we are not witness to the spectacle of the Greens combining with conservative parties in this country to sabotage the implementation of this much needed, important and progressive policy. Having hooked up with those opposite to defeat the CPRS, I hope they are not, on this issue, seeking to combine with a man who believes climate change is ‘absolute crap’ or to defeat a scheme like they did when they lined up and defeated a scheme that would have, for the first time, put a price on carbon. I hope today they are not lining up with the opposition to sabotage a scheme that will, for the first time, give all working women on low-to-middle incomes access to paid parental leave.

I know the Greens do not think the scheme goes far enough but I hope they are not gearing up to stop the parliament from introducing a paid parental leave scheme from 1 January next year. Just because they believe this scheme does not go far enough, I hope they are not preparing to sabotage it. Playing politics on this scheme could leave Australian women with no ability to plan for pregnancy secure in the knowledge that they will be eligible for leave next year.

I remind senators in this chamber, the Greens and those opposite, that the government’s scheme is based extensively on research and analysis conducted by the Productivity Commission. It has widespread support in the community, amongst business, unions and women’s advocates. Some of these groups would like our scheme to go further and I certainly hope that, in the future, it can. But none of them—unlike the Greens—are stupid enough to believe that nothing is better than something. None of them are reckless enough to sabotage the government’s ready-to-be-implemented scheme for the sake of some flight of fancy concocted by the likes of Abbott—a man who said paid parental leave would be introduced over his dead body.

The DEPUTY PRESIDENT—Order! You must refer to the Leader of the Opposition by his proper name.

Senator PRATT—Mr Abbott?

The DEPUTY PRESIDENT—Yes.

Senator PRATT—Thank you, Mr Deputy President, I do believe I said Mr Abbott. This is a man who was a cabinet minister in a government that did nothing about paid parental leave for 12 years. The seasoned campaigners for paid parental leave in our community are not crazy enough to believe that Mr Abbott is going to deliver on this issue. Apparently today that honour is reserved for the Greens, the party that on this issue does not seem to be able to tell left from right and cannot distinguish a practical, progressive policy from an archconservative’s thought bubble. We cannot lose our way on this debate for the sake of big statements such as those embodied in this spurious motion. The government scheme is fully costed and
budgeted and has a starting date of 1 January next year.

I urge the Greens not to be led astray again—not on this matter. Let us not miss a historic opportunity to make a real difference. Right now, by far the most important thing about paid parental leave is that we should not let this chamber stand in the way of working mothers in this country receiving paid parental leave as of 1 January next year. Sharan Burrow knows this, Elizabeth Broderick knows this, Heather Ridout knows this, the press gallery knows this, working mothers know it and the Rudd government certainly knows it. This chamber, and indeed the Greens, will be held to account if, spurred on by Tony Abbott’s latest thought bubble, it sabotages the government’s—

The DEPUTY PRESIDENT—Order! Senator Pratt, you must refer to the Leader of the Opposition by his proper title.

Senator PRATT—I beg your pardon. Thank you, Mr Deputy President. The Greens will be held to account if, spurred on by Mr Abbott’s latest thought bubble, they sabotage the government’s scheme for the sake of another opportunity to use this chamber as a soapbox. There is no other fully developed paid parental leave scheme on offer; there is only the government’s—there is only the government scheme or Mr Abbott’s thought bubble, which has not been developed. No real thought has been given by the opposition as to how the scheme will interact with other family payments. This thought bubble is not fully costed, let alone budgeted, and will be paid for by a new tax on larger businesses, although the opposition promised not to fund election promises with new taxes. Presumably, this is why the opposition says this proposed tax on larger business is not a tax; it is a levy—or perhaps an ‘investment in human capital’. It is no wonder that Mr Abbott’s own party room is confused and business in this country is up in arms.

It is not clear which businesses are going to be liable or who is going to pay for the shortfall if the new tax is insufficient to fund Mr Abbott’s promises. It is no wonder that unions, the Sex Discrimination Commissioner and women’s advocates are sceptical when the funding mechanism for this scheme is so unclear. Mr Abbott’s thought bubble gives the most support to those who earn the most and gives the least to the many women on low wages and part-time wages—those who currently have the least entitlement to paid parental leave.

Senator Abetz interjecting—

Senator Jacinta Collins—Yes, that was the most recent adjustment, Eric.

Senator PRATT—There has been a recent adjustment of policy on the run? I stand corrected. Thank you.

The government’s scheme, unlike the opposition’s scheme, will provide paid parental leave at a minimum wage for all those eligible mothers and deliver the greatest gains to women on low incomes. Again, it is no wonder that unions, women’s advocates and the business community have concluded that Mr Abbott’s scheme is more concerned with buying votes, whatever the price tag, than with actually getting down to implementing a workable paid parental leave scheme.

Mr Abbott’s thought bubble has no specific starting date, unlike the government’s scheme. The allegedly forthright Mr Abbott cannot seem to get his spin straight when it comes to the start date for his scheme. He cannot make up his mind about whether it will be within a few months, within a couple of years or sometime in his first term. If it is the latter, working women could be waiting more than three years for paid parental leave. Everyone knows that Mr Abbott will not be able to get a scheme up and running in
months, not when so many details are unclear. Contrast that with the way the government has put its scheme together, with the great deal of consultation that has taken place. There is no way that Mr Abbott’s thought bubble is going to give working mothers paid parental leave on 1 January. Senators in this chamber all know in their heart of hearts that only the government’s scheme can do that, and I hope this chamber will not stand in the way.

Senator ABETZ (Tasmania) (3.57 pm)—Paid parental leave is an issue that we need to address as a nation. As is becoming the hallmark of the leadership of the Hon. Tony Abbott MP, he has developed a direct, practical, workable action plan to deal with this issue—an action plan that deals simultaneously with the social and economic imperatives facing our nation. Sixty-two per cent of women about to give birth are in the paid workforce. Therefore, two-thirds of women having children forgo income. Sure, this is a decision of choice, but the evidence is suggesting that many women defer or have fewer or no children because of the financial impact of making such a choice or decision. I pose the question: is it good social policy to limit the number of Australian born children because of financial considerations? Of course not. I also ask: given the Intergenerational report and the need for more young Australians to be engaged in the workforce, does it make good sense to show society’s support with a relatively modest paid parental leave scheme to ease the financial burden on families having children? Of course it does. Finally, given the need for greater participation rates in the workforce, does it make good sense to encourage women to combine paid work with child rearing? The answer again is a resounding: of course it does.

So the coalition’s policy, bold and dynamic as it is, ticks all the boxes for social equity, planning for our nation’s future and economic wellbeing. It is recognised that many Australians make the choice to be full-time homemakers—one of the greatest, most challenging and most rewarding career moves that can be made. I, for one, salute them. I was the beneficiary of such a home. It was a great privilege, and I will always be indebted to my parents for that. We as a coalition will shortly be announcing a specific policy for them. They will not be forgotten. They are often the parents who help build community by helping on school trips, in the tuckshop, in school and community sports clubs or with the elderly in the local community. These homemakers and community builders will not be forgotten under coalition policy.

Some people ask the question: ‘Why does the coalition plan provide six months worth of income to a threshold of $75,000? Does that make some babies worth more than others?’ The answer, of course, is a resounding no. The paid parental leave proposal would reflect the income actually forgone by the parent and bulk up to the minimum wage the incomes of those who work part time. Above the threshold of $75,000, it is less likely that family decisions on having a child or the number of children to have would be so heavily based on forgone income. As I said, this direct, practical action plan is about genuine action dealing with the genuine needs of our fellow Australians. On top of the income support there would be the superannuation support to protect retirement savings.

The simple fact is that a paid parental leave scheme would be an economic stimulus and help future proof the needs of the Australian workforce in terms of both participation and numbers available. It is affordable, but we have seen Labor from Mr Rudd to Ms Gillard squander not millions but billions of dollars on disastrous pink batt
schemes employing backpackers installing formaldehyde-ridden pink batts from overseas.

Remember the cash splash, when tens of millions of dollars went overseas? How quickly we forget. We now think of that $78 million having been splashed overseas as just petty cash, but Labor, flushed with the success of that debacle, turned their minds to doing even better. Instead of wasting just $78 million here and there, they lifted the high bar to solar panels, with hundreds of millions of dollars wasted to now billions of dollars wasted on the so-called Building the Education Revolution, pink batts and the interest payable on all the moneys that have been borrowed—and all this from such self-described ‘economic conservatives’ as Mr Rudd. The waste and the reckless spending are reminiscent of that of Messrs Whitlam and Cairns about a generation ago, albeit without all the fun that was attached to the then Whitlam government. However, the waste, the recklessness and the incompetence are all there, as is the party in power—Labor. Without this waste, a paid parental leave scheme, as proposed by the coalition, would be easily affordable and a great investment in our families, workplaces and economic wellbeing.

Senator Jacinta Collins—Why didn’t you do it, Eric?

Senator ABETZ—Senator Collins interjects and asks why we didn’t do it when we were in government. We did not do it for one simple reason: we had to pay back $193 billion worth of Labor debt. The Australian Labor Party always want to forget the debt. They always want to forget the debt that they incurred for this nation without introducing paid parental leave. They racked up the debt without even introducing paid parental leave. Given Labor’s recklessness, we have proposed a source of funding on which we are consulting. But seeking the support of Australia’s large companies is based not only on their capacity to pay but also on the fact that they will be the major beneficiaries through increased workforce participation.

What is Labor’s response to all this, having been left flat-footed and wallowing in the wake of Mr Abbott’s announcement? It is to bring in Senator Pratt to claim that Elizabeth Broderick does not support our scheme. I suggest that in the time available Senator Pratt ring the commissioner to find out what the actual position is, and she might like to come back into the chamber to make a clarifying statement.

Mr Shorten, the brains trust of the Labor Party, was on Q&A last night. To Mr Peter Dutton, who accidentally said ‘paid maternity leave’ instead of ‘paid parental leave’, Mr Shorten said:

Yeah, but Peter, just Liberals use the language of the women have got to stay—it’s women’s responsibility…

He tried to make a big point of it. Unfortunately, Mr Shorten forgot that Mr McClelland, the former shadow Attorney-General who is now the Attorney-General, when in opposition and announcing Labor policy said:

The Labor Party is committed to introducing paid maternity leave…

‘Paid maternity leave’ were the words Labor used. Mr Shorten’s response to Mr Dutton was intended as a cutting riposte—there is no other way to attack the coalition’s policy but to seize on an accidental slip of the tongue and say that using the phrase ‘paid maternity leave’ is a heinous crime. But what do we find in Labor’s own documentation? They refer to ‘paid maternity leave’. I dare say that Mr McClelland will now be taken out to re-education classes courtesy of Mr Bill Shorten. Really, the Labor Party are scrambling all over the place on this issue. They
have been left wallowing in the wake of Mr Abbott’s bold announcement. It is a bold announcement for the 21st century and something that will assist individual families, society at large and also our economy.

I am very proud to be associated with this forward-looking policy. Never have I seen a government and a leader after only 2½ years in government run out of puff and run out of words. This government is all about words and never about action. We have shown, whether on climate change or on parental leave, that we have the answers. We are ready to step up to the plate in the event that the Australian people support us at the next election. We are ready to take over from Labor.

Senator CORMANN (Western Australia) (4.07 pm)—When it comes to paid parental leave, as on so many other issues, Labor is all talk and no action. We commend the Greens and Senator Hanson-Young, who, along with former Democrat senator Natasha Stott Despoja, have had a long commitment to paid parental leave. If the Rudd Labor government were serious about paid parental leave, we would have seen legislation by now. It is nearly 12 months since they announced their mickey mouse scheme at the last budget. This is yet another example that this government is all talk and no action.

Of course, last week we had a conga line of failed Labor ministers attacking us for blocking legislation and attacking the Senate for obstructing the government from getting its many broken promises and other policy failures through this chamber. You know what, Mr Acting Deputy President Barnett: among them was Minister Jenny Macklin. She was accusing us of blocking Labor’s paid parental leave scheme, except that there is no legislation. Minister, where is the legislation that we are allegedly blocking? If the Rudd government were serious about paid parental leave, they would join us and support the coalition’s proposal for a serious paid parental leave scheme. The coalition’s plan for a national paid parental leave scheme would be good for women, good for families and children and good for our economy moving forward. Our plan for a paid parental leave scheme would help us lift our employment participation rates and it would help us lift our productivity moving forward. These are some of the issues that the Prime Minister himself has pointed out as having been identified in the Intergenerational report.

Tony Abbott’s plan, the coalition’s plan, for a national paid parental leave scheme provides for six months leave at the actual salary level up to a certain threshold. As is pointed out in the motion put forward by Senator Hanson-Young, the World Health Organisation’s recommended minimum for paid parental leave schemes is six months, because that is the recommended minimum period for exclusive breastfeeding and it gives parents and babies time to bond. The coalition’s scheme, put forward by Tony Abbott, is very clearly a superior scheme. Labor’s scheme is a mickey mouse scheme— the sort of scheme that you put forward if you want to tick a box, like a bureaucrat does, and say, ‘We’ve delivered. We promised we would deliver,’ but you do not really. It is a pretend scheme. It is the sort of scheme that you put forward so that you can go out into the community and say, ‘We promised you a paid parental leave scheme. Here it is,’ even though it does not actually properly address the needs of families, children and our economy moving forward.

Have there been any comments supporting our scheme? Have there been any comments out there in the community? I will read just a few: one, two, three, four, five, six, seven, eight, nine, 10—I have about 10 for you.
Senator Jacinta Collins interjecting—

Senator Cormann—I will run through them, and some of the people might surprise you, Senator Collins. Prominent feminist, Eva Cox, cautiously welcomed the plan. I quote from the Age on 9 March 2010:

I think it’s a game-changer. Whether it comes off or not it’s radical and ambitious and sets a benchmark of 26 weeks instead of the 18 that was originally proposed by Labor.

... ... ...

If you’re a woman (or man) of baby-making age, it’s a difficult scheme to fault from a personal point of view.

I applaud the time-frame of 6 months and I applaud the idea of the payment being at full wage.

That was in an article by Mia Freedman, in MamaMia, on 10 March 2010.

The national chairwoman of the Women’s Electorate Lobby, Eva Cox, again—

Senator Jacinta Collins—That’s the same person, now!

Senator Cormann—I will give you a further comment:

“The thing I would agree with ... is that the government’s plan is Mickey Mouse,” Ms Cox said.

John Sutton from the CFMEU, in the Australian Financial Review, said: ‘I like the fact it asks the corporate sector rather than taxpayers to foot the bill. What I don’t like about Labor’s is it lets employers off scot-free.’ These are your people, Minister. We have allegations from that side attacking us for introducing a supposedly great, big new tax. This is from a government that, long before the global financial crisis, rediscovered spending, taxing and borrowing like drunken sailors. Well before the global financial crisis, the government increased taxes in their first budget by $20 billion. They increased spending in their first budget by $15 billion. They whacked on a $2½ billion additional tax on the North West Shelf Gas project in Western Australia.

Senator Sterle interjecting—

Senator Cormann—Senator Sterle should be very embarrassed about the eastern-states-centric performance of this very eastern-states-centric government. The reality is that we would much rather introduce this scheme and fund it out of a surplus, but this reckless-spending government has put the budget in serious deficit. It has lumbered future generations of Australians with serious debt. The responsible way for us to introduce Tony Abbott’s and the coalition’s responsible plan for a paid parental scheme is through a temporary levy on big business. As I said in the introduction, this is an important proposal. It is a positive proposal which would be good news for women, good news for families and children and good news for the Australian economy moving forward.

Senator Jacinta Collins (Victoria) (4.15 pm)—From the debate today, we could all enjoy Tony Abbott’s wonderful social policy adventure. The Greens are obviously on board. If it were not such a serious matter then perhaps we could have such a light debate today. The problem is that this is a very serious matter. As I indicated in the adjournment debate last night—and I probably will not have sufficient time now to go through all of the detail here; I will follow through later this evening—the serious issues at stake here should not be of the nature of the banter that we have just been enjoying. When we go back and look at the history of this matter—and perhaps Senator Hanson-Young might absorb some of the aspects here—we can see that, yes, it is definitely about time we acted. But suggesting that there has been no action in Australia for 30 years is a bit rich.

I remember the very first thing I did in this chamber when I entered in 1995. I was six months pregnant at the time. Personally, I would not have been entitled, but that was...
when a Labor government introduced a maternity allowance in Australia. That maternity allowance, as Senator Hanson-Young will acknowledge, was based on welfare related payments, although they were not to be means tested against a spouse’s income, and they introduced for the first time as an entitlement for women in the immediate period before and after childbirth. That was back in 1995. There were some enhancements to that program when the previous government adjusted it and turned it into what they then characterised as the baby bonus—a cheap and light tag that I do not think an entitlement of this character should ever have been called, but there were some improvements for women. However, as even Senator Abetz characterised today, there are a lot of gaps in this debate that Tony Abbott has introduced, and I will cover some of them. Before I do that I want to also comment on this procedural farce—or fraud, as I would call it.

The Greens say that they have introduced a bill. Well, how many bills have the Greens introduced? How many bills have ever made legislation? For them to portray this procedural fraud in such a serious policy issue is an outrage. For them also to join with Mr Abbott in sticking his chin out on this particular issue is a joke. All of us could have predicted that in Tony Abbott’s leadership of the opposition he would fairly soon stick his chin out somewhere. He has probably chosen a poor area from my point of view in terms of the issues of policy that I value, but I think he has made a poor judgment on the views of Australian women about these issues also. This is partly why we have various iterations of the policy. Let us run through a few of them and then, if I have time, we will get to the gaps.

How will it be funded? First up, Sharman Stone was working on one which would be funded by taxpayers. But the announcement by Tony Abbott was that it would be funded by a big new tax on big business, which of course Australians all understand will translate to increases in costs and other charges that they themselves will feel very quickly, let alone the technical issues about how you separate these different businesses and the problems that will be created by businesses avoiding getting into those categories to avoid this big, new tax. Apparently now, in the next iteration, if you listen to Julie Bishop, this big new tax will only be temporary. I am a bit confused over exactly who has authority in the Liberal Party. I remember when the shadow minister said there was going to be a $30 increase in pensions and very quickly afterwards she was shut down and that was not going to be the case. So is this going to happen here? Must we wait to see a notice on a Liberal senator’s board—as I did as I walked down the corridor—which is apparently now on their website, before we get further details of the next iteration?

I am very pleased that, as Senator Abetz seemed to indicate, the opposition is now talking to Liz Broderick, because perhaps that explains the next iteration I saw. We are now giving some assurance to part-time working women that they will not miss out on at least the minimum-income level of support, which was the most obvious, glaring gap in this scheme on the first day. Most of the newspaper reports picked it up straightaway. If you are a low-income, part-time working woman—which, let us face it, are most of them—then you are not going to get very much out of this scheme. You are probably going to get less than the minimum wage, if anything, and you will lose out from the Tony Abbott scheme. So, if the opposition has repaired that aspect of their original proposal, that is great. That is very assuring. But of course what is not assuring to the Australian public at large is the credibility factor. Talk about policy on the run: we announce a policy on International Women’s
Day, we have not consulted cabinet, we have not consulted business and indeed we probably have not even read the Productivity Commission report that investigated these issues in considerable detail.

The Labor Party has the ambition of 26 weeks leave too. That was part of the Productivity Commission’s brief. But what it also dealt with was a whole myriad of aspects in a fairly complex policy area that needed to be taken into account. I wait to see the next iteration of the opposition’s policy in this respect, because there is still one area that is missing. They are suggesting that their new public funded schema will absorb people’s current entitlements. Why should low-income, part-time working women in retail pay in their taxes dollars to help fund women working in full-time, high-paid, high-level jobs, with reasonable levels of income, through public spending?

I wonder what the next area Tony Abbott is going to come up with that we should introduce full income replacement for. Will there be other areas, apart from parental leave, that he believes should now attract full income replacement? Not only are we going to have middle class welfare; now, according to Tony Abbott, we are going to have higher class welfare. We are going to start funding schemes and absorbing existing entitlements into public spending. Our scheme aims for 26 weeks too. I think the figure was that 90 per cent of women would combine existing entitlements with our 18 weeks and achieve that goal, and certainly we have objectives for the longer term on superannuation and additional support. (Time expired)

Senator ADAMS (Western Australia) (4.22 pm)—I rise today to speak on the urgency motion, which reads:

The failure of the Rudd Government’s paid parental leave scheme to support parents for the World Health Organisation’s recommended minimum of 6 months, and to address the great inequity between male and female retirement incomes.

I really do welcome the opportunity to speak on this very important issue. The Rudd government’s paid parental leave scheme falls well short of the six months recommended by the World Health Organisation and what has been proposed by the coalition. Labor’s scheme quite simply does not meet the financial or maternal needs of families. It falls well short of the real-time, real wages support that a coalition government would deliver. The coalition has proposed a national paid parental leave scheme which would give the principal carer of a newborn baby six months leave at her or his actual salary, capped at an annual salary of $150,000. This is six months of real-time support and real wages.

A paid parental leave scheme should be set at six months because that is the recommended minimum period for exclusive breastfeeding—as a midwife I certainly recommend that to all the mums out there—and it gives parents and babies time to bond. While I am talking about parents and time to bond, I will quote from the transcript of last evening’s Q&A. On that program, Mr Shorten said:

First of all, I was listening to what Peter said—Peter is Peter Dutton—and Peter said “paid maternity leave” and this is the first issue I want to get out. Why did Liberals always think that it’s paid maternity leave. He continued, ‘Men should have the opportunity if they want to take

Peter Dutton responded:

And they do. Under this scheme they do.

Mr Shorten then said:

Yeah, but Peter, just Liberals use the language of the women have got to stay - it’s women’s responsibility. The first issue is blokes want to take
time off. Certainly, I’ve taken five and a half weeks off at the beginning of this year. It’s a good thing.

I would like to remind those opposite that the Labor scheme does not provide any paternity leave, whereas the coalition scheme provides two weeks of paternity leave. I think that is very, very important.

The funding of the coalition proposal will affect only 3,200 big companies out of an estimated 750,000 companies in Australia—that is, less than one per cent of Australian companies will be levied. There would also be potential offset savings for those large businesses that are already paying some parental leave. Small businesses will not pay the levy and they will not administer it but their employees will benefit. The coalition’s scheme will also be administered by the government. This is unlike Labor’s scheme, which places an administrative burden on small business.

Unfortunately, Labor has spent the surplus that was left by the Howard government. That is why a levy on big business is proposed for the time being—it can be removed later. There have been a number of occasions where a levy was applied and removed later. The paid parental leave scheme should ideally be paid for from a surplus. But because Labor has spent everything that was left in the bank and then run up a huge debt a levy is necessary to fund this program. Examples of previous levies include, in 1996, a 15 per cent superannuation surcharge levy that was applied to high-income earners to fix Mr Beazley’s black hole in the budget. It was then abolished in 2005 after Labor’s debt had been almost paid off. In 1996, a 0.2 per cent levy was placed on the Medicare surcharge for the gun buyback scheme. This levy was abolished after 12 months. In 2001, a $10 levy was placed on airline tickets to cover Ansett employee entitlements. This levy was abolished in 2003. The coalition wants to meet paid parental leave out of a budget surplus, but, unfortunately, there isn’t one. Labor has spent it all with its excessive stimulus spending. So, as we have done in the past, a temporary levy will be used until such time as government can pay for the scheme.

Labor is also doing nothing to address the great inequity between male and female retirement incomes. An issue that disturbs me greatly is the level of financial difficulties for many retired Australian women. Seventy three per cent of single age pensioners are women, and half of all women aged between 45 and 59 have $8,000 or less in their superannuation funds, compared to $31,000 for men. The average super balance in 2004 was $56,400 for men and $23,900 for women. The average retirement payouts in 2004 were $110,000 for men and only $37,000 for women. Quite simply, women in Australia are worse off in retirement. This can quite probably be put down to the fact that older women in our society have had their careers interrupted or did not have the flexibility in work arrangements to be able to meet their family responsibilities. So with this initiative we are going to make sure that women who have had to give up their careers to have a family, which is a very worthwhile exercise, will not end up in later years in the same very sad position that some women of my age have. We cannot go on with this situation and I would like to see more done in that respect. The shadow minister for seniors, Bronwyn Bishop MP, held two very successful seniors forums in the electorates of Canning—(Time expired)

Senator STERLE (Western Australia) (4.29 pm)—I am privileged to rise today to speak on this matter of urgency. I would like to speak not only as a responsible government senator but as a former trade unionist who represented a number of women in the airline industry, particularly in Qantas Flight Catering, and also as a parent. I am proud to
say that my wife and I have brought up two fantastic kids who are off doing their own thing in the world, now. My wife would have loved to have had the opportunity to have paid maternity leave. We made the decision that we wanted kids and for that there were a lot of sacrifices. This is a wonderful initiative from the government to take the massive step forward to introduce paid maternity leave.

God bless the Greens. I certainly think sometimes they have the best interests of Australia at heart. They are opportunistic at times—one can understand that, because they do not have the numbers—but I will give them the benefit of the doubt when I need to. But they excuse the coalition, who stand up in this chamber when Tony Abbott, the Leader of the Opposition, has a thought bubble. He witnessed the latest polling. I do not know how the Liberals do their polling—through their focus groups or whatever—but all of a sudden, wowie, a party officer has found out that the Leader of the Opposition does not connect with young women! Having been photographed in budgie smugglers, which he could not even fill, no wonder he does not connect with the public!

This is a darn disgrace. They had 12 years when they had control of the tills. What did they do? It was very quiet over there. They did not talk about paid maternity leave. Sorry, I have misled the Senate; there was a statement on paid parental leave. It was the now Leader of the Opposition who uttered words something along the lines of ‘over my dead body’. Well, whoopee! They got the latest polls, saw Mr Abbott does not connect with women and thought, ‘My goodness, how can we fool the Australian public into thinking that we’—them over there—‘care for young families, mothers and working women?’ What an absolute farce!

The biggest farce—I was in this chamber last year witnessing it—was the swords-at-dawn caper of the extremist anti emissions trading and climate change mob, who decided to take the swords to their leader at the time, Mr Turnbull, after Mr Turnbull had got it through their caucus that he was going to send off Mr Macfarlane to negotiate with the government to get through an emissions trading scheme. Whoppee! It was great for five or six weeks. I have got to tell you, I was frightened walking through the staff canteen: every time a National or Liberal got near a knife I shuddered! There were knives flying. They could not wait to take out their leader. They took out their leader because of this ‘great big tax’ they were talking about. What do we have here? If $2.7 billion is not a great big tax—strike me down!—what is?

This is absolutely incredible. It is bad for them but it is worse for Australians. But Australian voters will not be fooled. Australian voters can see through the nonsense. The Leader of the Opposition, who took out Mr Turnbull because Mr Turnbull would not consult—he allegedly was not inclusive—has come out, after reading the polling, to make an announcement, but not through his caucus. Mind you, I would not like to take anything to that rabble, anyway.

The Leader of the Opposition did not even consult with big business. I am not in the pocket of big business. I am the last one, as a trade unionist, to ever be accused of being in the pocket of big business. But, my god, what planet are the opposition on? They think that they can impose a 1.7 per cent tax—this monstrous financial slug—on businesses. I will tell you some of the businesses. It is important that people understand what businesses we may be talking about. We are talking about ANZ—wowie, the banks! And the banks will not pass it on, will they? No, no, no!

Then there is Ramsay Health Care. Will the health funds pass the tax on? No, out of
the goodness of their hearts they will just wear the 1.7 per cent slug! Then there is McDonald’s. This is getting worse. I mean no disrespect to these companies; they are major employers in this country, and I love major employers because they employ Australian workers. When Australian workers are employed they spend money—and it goes around and around and it is a wonderful situation. Medibank Private is another company that will probably cop the 1.7 per cent monstrous tax slug from that lot over there! Optus will not put the price of phone calls up! How could I be so silly? Look, here is another one that has jumped out at me—Shell Australia. Perish the thought that the big oil companies would pass the tax on! They will wear it; there’s no worries!

But here are the scary parts—these are really scary parts. Myers will be affected. Shopping will be affected and there are a lot of women employed there. Coles has predominantly female employees. There is Woolworths, but it gets worse—Bunnings and David Jones. We hear the nonsense that the cost will be absorbed and that it will not be passed on. Those who say that are in cuckoo land. I cannot believe it. What planet are they on to believe this?

That mob on the other side of the chamber slagged off at us for our stimulus program to save 200,000 jobs—two MCGs full of workers whose jobs were saved because we initiated the stimulus program. What the heck do they think their policy would do to shoppers and purchasers? Your grog would go up. Consider Tabcorp. Crikey, I’m even going to cop it on my $10 bet on a Saturday. Oh me, oh my! But it gets worse. I will show you how united this lot on the other side of the chamber are! Only three or four hours ago we had the serial pest for breaking ranks, Senator Joyce—I think he holds a front bench spot now; he was gagged last time I heard and he is still gagged but here he is putting out a press release—with the headline ‘Joyce breaks ranks on parental leave’. ABC News reported:

Senator Joyce has agreed the extra tax will feed into the price of goods such as bread and milk ‘in a fashion’.

What the heck does ‘in a fashion’ mean? He clearly says that the tax is going to influence the price of bread, milk, fuel, clothing and everything that we purchase from those top 3,200 employers.

But it was not just Senator Joyce; we have a couple of different people on the other side of politics. I am allowed to call them ‘different’ because their own party calls them different. There is the ‘mad uncle’. We know who that is: the member for O’Connor. He has come out and recognised that it would be a massive big slug. They call him the mad uncle: it is Mr Tuckey. Mind you, it does not matter because all he does is bag everyone. The other is the member for Tangney—this is an interesting one. If Mr Tuckey is the mad uncle—

Senator Humphries—Mr Acting Deputy President, on a point of order: I think for Senator Sterle to refer to members of the other place by titles such as ‘mad uncle’ is clearly outside the standing orders and he should withdraw those expressions.

The ACTING DEPUTY PRESIDENT (Senator Barnett)—Senator Sterle, I will ask you to consider your language. I have given you a fair amount of latitude in the last many minutes and I would ask you to withdraw the comment that referred to members in the other place.

Senator STERLE—I will withdraw it, but it was not me that tagged him the ‘mad uncle’ but his mate the member for North Sydney. Do you feel better? Dry your eyes, you lot over there, because the truth will not stop. We have another one in the member for Tangney. He has come out and made a fan-
tastic statement in relation to Mr Abbott’s wild thought bubble that translated into: ‘Oh my God, we’re going down in the polls. Women can’t stand me. I’ve got to resurrect this.’ The member for Tangney warned the leader that if he does pre-emptively produce a policy again—without consulting his caucus, I suppose that means—there will be quite a few people lining up to give him a smack. There you go. If the member for O’Connor and the member for Tangney get it and Senator Joyce, our esteemed colleague from Queensland gets it, of the 41 people who did not vote for Mr Abbott as leader, what are your thoughts?

Senator HANSON-YOUNG (South Australia) (4.39 pm)—I rise to conclude the debate on the urgency motion today. Wow! Obviously, the Labor Party have their knickers in a knot over this one. They know that their 18 weeks paid parental leave scheme is a sham and is paltry and they have spent the entire debate not defending it. What we heard from the members of the Labor Party, representing the government, is that they want 26 weeks or six months. Their aspiration is for 26 weeks. Come on guys, let’s get it together. Let us deliver 26 weeks, six months, with superannuation. We can do this—we do not have to wait another 30 years. We can do this now. Let us move beyond the aspiration and move to action; otherwise, it is just going to be one of those other promises without delivery from Mr Rudd, like so many other things. It is all talk, no action—no delivery. It is all talk, all promise—no action.

It is absolutely clear that the government have no intention of defending their 18-week scheme. They want 26 weeks. Let us bite the bullet. Let us debate it properly. Let us see the legislation and bring it on. Let us ensure they get the support of all the groups that they need, including the ACTU, which knows well and truly that its associate unions all want 26 weeks. Let us get them in the room with the government and admit that 26 weeks, six months, is what we should be delivering. We should not be delivering anything less. Let us move beyond the aspiration and into the action.

Question agreed to.

MINISTERIAL STATEMENTS

Asia-Pacific Ministerial Conference on Aviation Security

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (4.41 pm)—I table a ministerial statement on the Asia-Pacific Ministerial Conference on Aviation Security in Tokyo, Japan.

Senator IAN MACDONALD (Queensland) (4.42 pm)—by leave—I move:

That the Senate take note of the document.

The ministerial statement is on the important issue of aviation security. It is important because so much of the terrorism in the skies these days is international in its context and so countries must get together from time to time to talk about the way in which they can cooperate to address this menace. The statement by the Minister for Infrastructure, Transport, Regional Development and Local Government relates to the conference in Japan, led by the Japanese who have shown real leadership on aviation security. Since 11 September 2001, there have been significant changes in Australia’s approach to issues of aviation security. Initiatives of the previous government—like strengthening cockpit doors on all aircraft, a lot of work on tightening passenger carry-on baggage screening at all airports with jet operations, introducing explosive tracer detection at domestic and international screening airports and providing an additional Australian protective services officer at airports around Australia—have been embarked upon. Indeed, we also
initiated the use of armed air security officers on domestic flights and on certain international flights.

Well ahead of the organisation’s international civil aviation deadline, we introduced 100 per cent checked bag screening on all international services. Between 2001 and 2007, we spent something like $500 million on aviation security, with $82 million specifically going towards regional aviation. While that was the taxpayers’ contribution, the airlines themselves made a significant financial investment in that. The travelling public had to wear the annoyance at times associated with that increased security.

In his statement, the minister made reference to a number of new initiatives that the incoming Labor government have taken, such as expanding the cooperative inspections and security assessments at last ports of call. Work that Australia has done in helping to improve security systems in other countries is perhaps one of the most important ways in which Australia can help keep our skies safe. I welcome the fact that the government intends to do that work and indeed intends to place Office of Transport Security people at overseas ports.

It is intended that there will be increased policing and the strengthening of security procedures at airports. Body scanners will be introduced progressively at screening points servicing international passengers by next year. The issue of body securities has caused to be raised significant privacy issues, but we have all accepted that some compromise to our privacy must be made in the interests of security. Most of us live with that.

The minister also referred to an extension to screening measures to approximately 20 airports in regional Australia that have flights by Q400 aircraft. This is a significant step forward, and raises some quite important issues. The huge cost of the installation of security at those 20 airports in regional Australia is going to be very difficult for many of those regional airports to cover. I welcome the fact that the government intends to provide $32 million to assist with the purchase of the necessary equipment. But there is no way in the world that that funding is going to meet anything like the full cost for the airports.

Many of the airports are very basic. Some of them will have to be completely rebuilt because there is no capacity at most of these regional airports. The ones that are going to come under these new arrangements will need to separate and screen passengers from other passengers and to provide secure areas to deal with baggage. In many of these airports, you simply collect your baggage under a tree outside what we would call the airport building. So there is going to be very substantial cost. Some of these airports only have two or three services a week, and they sometimes carry only 50 passengers a week. You simply cannot justify a multimillion terminal building for 50 passengers a week.

Even if the government gives them a free terminal building, they still will have operational costs, such as six to eight people to run the X-ray equipment and explosive detection equipment and to check baggage that is going on board the aircraft. So you need six to eight people every time the flight arrives. Under the government’s new industrial relations scheme, of course, it will take four hours at a time for all of these people to load 10 to 12 passengers at the various airports, because you cannot just employ them for the hour or hour and a half; you have to employ them for four hours, thus adding to the cost for these airports—many of which are run by local government.

My concern is that many of these places that currently have a service in remote Australia will simply say, ‘We can’t afford to
keep it going,’ and they will shut down the air service. That will mean that the people who are the ones who most need air transport and air services are not going to have them, because the airports will not be able to remain operational. This is a real concern that the government must address.

At the same time as these new arrangements are coming in, the government is making significant cuts in areas of aviation security. There was an AFP report at the same conference that the minister went to and which he reported on today which said that there were calls at the conference for more to be done on sky marshals or air security officers. The minister did not mention that in his statement, but news reports of the conference did refer to that. The government has provided no money in the future for the sky marshal program. There has been no commitment by the government to the sky marshal program, so it would seem that that is going to phase out.

Furthermore, the government has cut $58 million out of the Customs program, which means that 4.7 million fewer consignments arriving in Australia by air are being inspected by Customs officer than was the case previously. And 125 quarantine officers have been sacked. All these sorts of things demonstrate that on one hand the government is talking about tougher security, which is essential in this day and age, but on the other hand they are cutting back on some of the more important initiatives, such as inspecting air cargo and the issues relating to sky marshals. If those things are not addressed, it is going to make our skies less safe. If the government wants to be taken seriously on aviation security, it really needs to address some of the issues that I have mentioned.

Question agreed to.
is not optimal (eg during a Presidential election year).

The most recent bilateral visit to the United States took place from 26 September to 11 October 2009, so the next visit would not be due until 2011.

The 2010 outgoing delegations program was developed over several months from June to September 2009, and included consultation with the Presiding Officers, the Department of Foreign Affairs and Trade, and Australian embassies and high commissions. The Presiding Officers wrote to the Prime Minister and Minister for Foreign Affairs seeking approval for the 2010 program on 16 September 2009, a day prior to the tabling of the Treaties Committee report. The 2010 program proposed by the Presiding Officers did not include a bilateral visit to the United States as one was taking place in 2009 and the next was not due until 2011.

**Recommendation 20**

The Committee recommends that the delegation to the 121st Inter-Parliamentary Union Conference in October 2009 takes this report to that conference to promote further discussion of nuclear non-proliferation and disarmament issues.

As the 121st IPU Assembly was in October 2009, this recommendation relates to a past event. The Treaties Committee report was tabled on 17 September 2009 and Australia’s IPU delegation departed for the assembly on 6 October 2009. It is not known whether the Treaties Committee report was drawn to the attention of the delegation prior to its departure.

Nevertheless it should be noted that a special session on nuclear disarmament and non-proliferation is scheduled to take place at the 122nd IPU Assembly to be held in Bangkok in March 2010. Australia is expected to have a leading role in presentations at that session, as a result of Australia playing a lead role in having a resolution on nuclear disarmament and nonproliferation adopted at the 120th IPU Assembly in Addis Ababa in April 2009.

**Recommendation 21**

The Committee recommends that the Parliament adopt a resolution on the Parliament’s commitment to the abolition of nuclear weapons.

This is a matter for the Parliament as a whole rather than the Presiding Officers and would require a resolution to be prepared and then put to the Parliament by a parliamentarian or group of parliamentarians.

**Recommendation 22**

The Committee calls on parliaments around the world to support similar actions to those contained in recommendations 18, 19, 20 and 21.

This is a matter for parliaments around the world to consider individually.

The special session on nuclear disarmament and non-proliferation scheduled to take place at the 122nd IPU Assembly to be held in Bangkok in March 2010 will bring the issue of nuclear disarmament and non-proliferation to the attention of parliaments from around the world.

March 2010

Senator LUDLAM (Western Australia) (4.51 pm)—I seek leave to make a short statement on the 106th report of the Joint Standing Committee on Treaties—Nuclear non-proliferation and disarmament.

Leave granted.

Senator LUDLAM—I move:

That the Senate take note of the document.

I will speak briefly on the recommendations of the 106th report of the Joint Standing Committee on Treaties—Nuclear non-proliferation and disarmament. We had a response from the government short while ago—a matter of only a couple of weeks—that addressed the recommendations of the report. I spent nearly a year working with the Joint Standing Committee on Treaties on this report. It is a very good document. It canvasses the issues very well, including some very difficult issues that this parliament has struggled to get cross-party or cross-partisan agreement on for years, if not decades. I put
to the chamber that it is quite a step forward to have all the major representation in the parliament come out with a unanimous report on an issue as divisive as nuclear weapons has been. It addresses not simply non-proliferation and the very real concerns that people have about nuclear states or nuclear threshold states like Iran, North Korea and Burma, which obviously pose grave security threats, but also disarmament. Disarmament is the sometimes forgotten article of the Nuclear Non-Proliferation Treaty, which proposed that the five permanent nuclear weapons states—I should not say ‘permanent’—and the other states that have obtained nuclear weapons in the past 60 years should put those weapons aside, dismantle them and remove them from strategic doctrines permanently. It is a very good study, and it addresses many of the issues that Australia is going to find itself having to contend with, including the obvious hypocrisy of being one of the largest suppliers of uranium in the world to many of the world’s nuclear weapon states. The fact that the report was able to come to such a set of recommendations is, I think, a credit not only to the chair and to the secretariat but to all members of the committee.

I want to address in particular recommendation 21 of the report. In the government response, for some reason recommendation 21 was that the parliament adopt a resolution on the parliament’s commitment to the abolition of nuclear weapons. That is quite an important way for this parliament to send a sign to the rest of the world as delegations from around the planet convene in New York at the end of next month for nearly a full month of talks on the five-yearly Nuclear Non-Proliferation Treaty Review Conference, an absolutely crucial conference. In the past, Australia has played, in fits and starts, quite a productive role in these negotiations through the work of the former Canberra Commission on the Elimination of Nuclear Weapons and, more recently, through Prime Minister Rudd’s announcement of the Australian co-chaired International Commission on Nuclear Non-Proliferation and Disarmament. We have played quite a powerful enabling role in recent times. We have 12 ‘lost years’, I would say, under the Howard government when we simply did more or less whatever the Bush Administration told us to. Thankfully, we have moved to a more nuanced position. We are looking after Australia’s strategic interests in a better way, even though we have not been as outspoken on the issues of nuclear weapons in Australia’s security policy, as we have seen a much bolder statement more recently from our ally in this matter, Japan.

Recommendation 21 was quite sensible: it just said that there should be a parliamentary resolution. We are not seeing such a thing at the moment. It is quite clearly not on the government’s radar. For some reason the government, in their response to JSCOT report 106, bounced that to the presiding officers. So, quite rightly in my view, the statement that has been tabled by the President this afternoon says that this is a matter for the parliament as a whole rather than for the presiding officers. It would require a resolution to be prepared and then put to the parliament by a parliamentarian or group of parliamentarians. In the absence of such a move by the executive—and perhaps we could see a contribution from the Minister for Defence, if he has any information that would enlighten the chamber that this view is incorrect—the Parliamentary Cross-Party Group on Nuclear Non-Proliferation and Disarmament, of which I am one of the co-chairs, will forward such a resolution for consideration by the Senate. This coming Thursday is the last sitting day of the Senate before that very important Nuclear Non-Proliferation Treaty Review Conference. I
think it is entirely appropriate that the Parliament of Australia forward an extremely strong resolution that will give our delegation to New York in a matter of only a few weeks—and my understanding is that it will be a large delegation—the knowledge that they have the support of all the parties in the parliament to rid the world of these weapons once and for all.

By some mystery or miracle of self-preservation and sanity, these weapons have not been used since late August 1945. In conflict they have been used many times and caused great harm to civilian populations and military personnel in testing, including here in Australia, but they have not been used actively in warfare since the end of the Second World War. That is something that three generations of people can be profoundly grateful for, but it is not something that we can assume will remain in perpetuity. We have a very brief moment in time in which I can stand here in this chamber and say that these weapons have not been used since the attacks on Hiroshima and Nagasaki. Every single day that passes, we simply cannot take that as it for granted.

I have read the reports of security analysts who have said that they do not understand why nuclear weapons have not been used in some fashion or other by the terrorist networks that are receiving this material in unknown quantities through the very porous borders of the world’s black markets in nuclear materials. They do not know why such large quantities of these materials are still loose and circulating on the world’s black markets. They know we simply cannot take it for granted. The most common thing we hear is people saying that that is a Cold War issue: the risk of nuclear attack has simply abated since the United States and the former Soviet Union stood off with Western Europe as the potential battleground; those days have passed, and this is not an issue we need to worry about anymore. I strongly disagree with that. The authors of this report strongly disagree with that. It is absolutely time that Australia played its part, as we have played a productive part in times past, to abolish these weapons once and for all so that we never again face the spectre of the atomic bomb victims, which the Japanese called hibakusha. For many of them, their entire life’s work since those attacks has revolved around peace education and around the abolition of these weapons so that there are never, ever more hibakusha.

The cross-party group on nuclear weapons in this chamber will produce a resolution which we will put to the Senate and which we believe should be very strong. It should be unambiguous that these weapons must be abolished for all time. They must be taken out of Australia’s security policy, to the extent that they still remain there. Australia can play a productive role diplomatically, politically and in its defence capabilities in ridding the planet of these weapons once and for all.

Question agreed to.

PARLIAMENTARY ZONE
Proposal for Works

The ACTING DEPUTY PRESIDENT (Senator Barnett) (4.59 pm)—In accordance with the provisions of the Parliament Act 1974, I present a proposal by the Department of Parliamentary Services for works within the Parliamentary Zone, to construct a vehicle storage facility near the Parliament House loading dock.

Senator FAULKNER (New South Wales—Minister for Defence) (4.59 pm)—I seek leave to give notice of a motion in relation to the approval of the works proposal in the Parliamentary Zone.

Leave granted.

Senator FAULKNER—I give notice that on Thursday, 18 March 2010 I shall move:
That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the Department of Parliamentary Services to construct a vehicle storage facility near the Parliament House loading dock.

COMMITTEES

Community Affairs Legislation Committee

Additional Information

Senator FARRELL (South Australia) (5.00 pm)—On behalf of the Chair of the Community Affairs Legislation Committee, Senator Moore, I present additional information received by the committee on the inquiry into the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and other bills. I also present a correction to the report of the committee on the same matter.

Ordered that the report be printed.

Treaties Committee

Report

Senator McGAUrán (Victoria) (5.01 pm)—I present the 110th report of the Joint Standing Committee on Treaties on treaties tabled in November 2009 and February 2010. I seek leave to move a motion in relation to the report.

Leave granted.

Senator McGAUrán—I move:

That the Senate take note of the report.

Senator McGAUrán—I seek leave to have the tabling of the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

Mr President, I present Report 110 of the Joint Standing Committee on Treaties. The report reviews the following significant treaty actions:

- amendments to Australia’s existing agreement with Singapore on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income;
- an agreement with the Republic of Poland on Social Security;
- a treaty with the Republic of India on Mutual Legal Assistance in Criminal Matters;
- an extradition treaty between Australia and India;
- the amendment and extension of the existing agreement with the United States of America concerning Space Vehicle Tracking and Communications Facilities; and

The Report also deals with two minor treaty actions.

Mr President, the Committee supports all the treaties examined in this report.

Mr President, the Treaty to which I wish to direct my remarks is the Amendment and extension of the Agreement between the Government of Australia and the Government of the United States of America concerning Space Vehicle Tracking and Communications Facilities.

This treaty marks the 50th anniversary of treaty-level cooperation between the United States of America and Australia in space vehicle tracking, and extends the life of the Agreement between the Government of Australia and the Government of the United States of America concerning Space Vehicle Tracking and Communications Facilities.

Mr President, while the Exchange of Notes will provide significant benefits to Australian science, the Committee has some concerns about how the process for seeking Committee approval was administered.

The Exchange of Notes was tabled in Parliament on 2 February 2010, only twenty four days before the Exchange of Notes needed to take effect.

Because of the importance of the relationship between the CSIRO and NASA to Australian scientists, the Committee agreed to meet the requested time frame, and Report 109, supporting the Exchange of Notes and recommending bind-
ing treaty action be taken, was tabled in the Senate on 22 February 2010.

Mr President, this is one of a spate of recent requests by the Government for the Committee to expedite consideration of a treaty.

There were, in each case, grounds for expeditious consideration by the Committee, and in each case, the Committee was prepared to accede to the request. Nevertheless, in all of these cases, it would not have been necessary to make such a request if the treaty making process had been planned in a more timely way by the sponsoring agencies concerned.

Mr President, the Committee’s inquiries provide an important contribution to treaty making by subjecting treaties to parliamentary and public scrutiny, thereby lending legitimacy to the treaties. The value of the Committee’s work is undermined when there is insufficient time to properly consider a treaty or allow public input to the Committee’s inquiries.

The Committee needs to point out that a request for expeditious treatment is an unsatisfactory solution to poor planning on the part of some departments.

In an effort to remedy this problem, the Committee has recommended that the Minister for Foreign Affairs should remind other ministers of the need to include time for proper consideration by the Committee when planning to enter into a treaty.

Mr President, the Committee considered and supported a number of other treaties in this Report, which I will briefly touch on.

The Agreement between Australia and the Republic of Lebanon regarding Cooperation on Protecting the Welfare of Children establishes formal procedures to assist Australian and Lebanese nationals whose children have been abducted by a parent to either Lebanon or Australia, or where difficulties with contact between a parent and child have arisen.

The Agreement establishes a cooperative regime where one did not exist before, as Lebanon is not party to the Hague Convention on the Civil Aspects of International Child Abduction.


The Agreement between Australia and the Republic of Poland on Social Security is one of a number of international social security agreements negotiated by Australia. These bilateral treaties address gaps in the coverage of certain social security payments to immigrants in Australia who are entitled to receive payments from another country.

The bilateral treaties between Australia and India on extradition and mutual legal assistance in criminal matters will simplify the extradition process and improve the quality and timeliness of cooperation on criminal matters between Australia and India.

Finally, Mr President, the Measure 16 (2009) Amendment of Annex II to the Protocol on Environmental Protection to the Antarctic Treaty is intended to enhance protection of the Antarctic environment in a number of ways, including through improving processes for listing Specially Protected Species, introducing permit requirements for the taking of native invertebrates, and strengthening controls on unintended introduction of non-native species and diseases.

I thank the numerous agencies, individuals and organisations who assisted in the Committee’s inquiries.

I commend the report to the Senate.

Question agreed to.

Membership

The ACTING DEPUTY PRESIDENT (Senator Hurley)—Mr President has received a letter from a party leader requesting changes in the membership of committees.

Senator FAULKNER (New South Wales—Minister for Defence) (5.02 pm)—by leave—I move:
That senators be discharged from and appointed to committees as follows:

Environment, Communications and the Arts Legislation Committee—

Appointed—

Substitute member: Senator Barnett to replace Senator Troeth from 26 March to 12 April 2010

Participating member: Senator Troeth

Environment, Communications and the Arts References Committee—

Appointed—

Substitute member: Senator Barnett to replace Senator Troeth from 26 March to 12 April 2010

Participating member: Senator Troeth

Rural and Regional Affairs and Transport References Committee—

Appointed—

Substitute member: Senator Adams to replace Senator Heffernan for the committee's inquiry into the management of aircraft noise by Airservices Australia

Participating member: Senator Heffernan.

Question agreed to.

**TAXATION LAWS AMENDMENT (POLITICAL CONTRIBUTIONS AND GIFTS) BILL 2010**

Assent

Message from the Governor-General reported informing the Senate of assent to the bill.

**ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (RECREATIONAL FISHING FOR MAKO AND PORBEAGLE SHARKS) BILL 2010**

**HIGHER EDUCATION SUPPORT AMENDMENT (FEE-HELP LOAN FEE) BILL 2010**

**TRANS-TASMAN PROCEEDINGS (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2009**

First Reading

Bills received from the House of Representatives.

Senator Faulkner (New South Wales—Minister for Defence) (5.03 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 Faulkner (New South Wales—Minister for Defence) (5.03 pm)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

**ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (RECREATIONAL FISHING FOR MAKO AND PORBEAGLE SHARKS) BILL 2010**

On 25 January this year the Government announced it would be acting to address the disproportionate impacts on recreational fishers that have resulted from the inflexible relationship between our national environmental law – the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act) – and the Convention on the Conservation of Migratory Species of Wild Animals. This Bill specifically addresses...
those impacts. The Government takes its international obligations seriously, however, it is important that our domestic legislation appropriately reflects and implements our international obligations, while also providing the flexibility to properly take into account our particular domestic circumstances.

The Convention on the Conservation of Migratory Species of Wild Animals is an intergovernmental treaty that is concerned with the conservation of wildlife and habitats on a global scale. Australia has been a Party to the Convention since 1991 and contributes actively and constructively to international conservation efforts under its auspices.

The Convention includes two appendices, which list migratory species identified as requiring conservation action. Appendix I includes migratory species which are in danger of extinction throughout all or a significant proportion of their range. Parties must provide immediate protection for migratory species included in Appendix I. While animals listed on Appendix I should receive a very high level of protection under our national environmental law, commensurate with the significant threats that they face, animals listed on Appendix II do not require the same level of protection. Appendix II lists migratory species that are not endangered but have an “unfavourable conservation status”, and which require international agreements for their management, as well as species with a conservation status that would benefit from international cooperation. Parties are required to endeavour to conclude Agreements covering the conservation and management of migratory species included in Appendix II.

On 8 December 2008, at the 9th Conference of the Parties to the Convention, a number of species were added to these Appendices. This included the addition to Appendix II of three species of migratory sharks that occur in Australian waters: longfin mako; shortfin mako; and porbeagle sharks.

The Australian Government is committed to, and is actively implementing, its international obligations under the Convention that stem from these listings. The Government recognises that, by virtue of their inclusion in Appendix II, these species require collaborative international efforts to aid their conservation.

Earlier this month the Government sent a delegation to negotiations in Manila, the Philippines, to pursue a global Memorandum of Understanding on the Conservation of Migratory Sharks. The Government successfully argued that this global MOU should cover all species of sharks currently included in the convention Appendices – including makos and porbeagles. This MOU is one example of Australia’s commitment to shark conservation, and is a welcome step towards enhanced international cooperation and collaboration on the conservation of these species, in keeping with our obligations under the Convention.

The EPBC Act does not distinguish between Appendix I and Appendix II species. Any species that occurs in Australia and is included in either of the Convention Appendices must be included in the list of migratory species established under the EPBC Act. Once a species is listed, it becomes prohibited to kill, injure, take, trade, keep or move a listed migratory species in Commonwealth areas; and to trade, keep or move a listed migratory species that has been taken in a Commonwealth area.

As required by the legislation as it currently stands, Mr Peter Garrett MP, the Minister for Environment Protection, Heritage and the Arts, listed shortfin mako, longfin mako and porbeagle sharks as migratory species under the EPBC Act. This listing became effective on 29 January 2010.

The Government is aware that the domestic listing of mako and porbeagle sharks has significant implications for recreational fishers in Australia. Makos are a highly prized sport fish, and in some parts of Australia, are a primary target species for game fishers. The porbeagle is also taken by recreational fishers in southern Australian waters. The Government recognises the social and cultural importance of recreational fishing to many Australians, and its economic benefit to some coastal communities. The Government also appreciates that much recreational fishing activity is carried out in a sustainable manner, for example using catch and release methods.

The EPBC Act currently does not allow for any flexibility on either the question of listing, or on the subsequent offence provisions related to mi-
gratory species. As the legislation stands, recreational fishers stand to be disproportionately and unfairly impacted by the listing. These implications cannot be addressed effectively either administratively or by regulation.

The recently completed Independent Review of the EPBC Act, which was commissioned by the Government, examined the provisions of the EPBC Act relating to migratory species. It found that the clear intention of the Convention is to differentiate between Appendix I and Appendix II species and the level of protection required. The Review reported that the automatic listing of Appendix II species as migratory species under the EPBC Act “goes beyond the extent of Australia’s international obligations, affording a higher level of protection to Appendix II species than is otherwise required”. It found that in some cases this may give rise to unnecessarily restrictive measures in relation to species that do not have an unfavourable conservation status. The Review recommends changes to the provisions in Part 13 of the EPBC Act to address these issues.

The Government believes that the current situation is one where the current provisions of the EPBC Act do give rise to unnecessarily restrictive measures. The Government is currently considering the findings of the Independent Review. The Government will provide a comprehensive response in due course. In the interim, the Government has decided to act as a priority to address the disproportionate impacts on recreational fishers that stem from the mandatory listing of mako and porbeagle sharks.

In this regard, the Minister for Environment Protection, Heritage and the Arts has acknowledged the work of the Member for Corangamite, Darren Cheeseman, and the Member for Braddon, Sid Sidebottom, both of whom have large numbers of recreational fishers in their electorates and who worked with those groups and Minister Garrett’s office to bring this legislative change forward on behalf of their constituents.

The listing of mako and porbeagle sharks on Appendix II of the Convention was driven primarily by concerns for northern hemisphere populations of these species, where the plight of the species due to over-fishing is well-understood. There is no evidence to suggest that mako or porbeagle populations in Australian waters are similarly threatened.

The Government takes its international responsibilities seriously. However, the Government also believes that our own legislation should fully implement our international responsibilities while providing flexibility to properly take into account our domestic circumstances.

This Bill will address those disproportionate impacts on recreational fishers by providing a narrow exception for recreational fishing of longfin mako, shortfin mako and porbeagle sharks to the offence provisions of Part 13, Division 2 of the EPBC Act. That means it will not be an offence to kill, injure, take, trade, keep or move mako or porbeagle sharks in or from Commonwealth waters, where that action is taken in the course of recreational fishing. This Bill will not affect state regulation of recreational fishing of these species.

The Bill will not apply to commercial fisheries, which will continue to be subject to the ongoing accreditation processes under Part 13 of the EPBC Act. The Bill will not affect the offences under Part 3 of the EPBC Act, which prohibit actions that have, will have or are likely to have a significant impact on listed migratory species, nor will it affect prohibitions under Division 1 of Part 13 of the EPBC Act relating to listed threatened species, should mako or porbeagle sharks be listed as a threatened species at any time in the future.

The changes to the EPBC Act proposed by this Bill will ensure that international changes to the status of mako and porbeagle sharks and the consequent listing of these species under the Act will not affect recreational fishing activities in Australia. These changes reflect the fact that as the EPBC Act currently stands, the requirement to list mako and porbeagle sharks as migratory species will have a disproportionate and unfair impact on recreational fishers – impacts that extend beyond what the Government currently considers is warranted for the protection of mako and porbeagle sharks in Commonwealth waters. This Bill is consistent with our international obligations in relation to these species. The Government remains committed to shark conservation measures both domestically and internationally, and will continue its active engagement in efforts under
the Convention on Migratory Species and in other fora.

The Higher Education Support Amendment (FEE-HELP Loan Fee) Bill 2010 amends the Higher Education Support Act 2003 (the Act) to implement the Government’s decision to increase the loan fee from 20 percent to 25 percent for undergraduate courses.

The amendment will give effect to the recommendation of the Review of Australian Higher Education to increase the loan fee for FEE-HELP for fee paying undergraduate students to 25 per cent.

The Bradley ‘Review of Australian Higher Education: Final Report’ noted that the implied subsidy offered through a HELP loan increases significantly with the level of debt. This means the Government subsidy varies considerably by course.

Tuition fees for undergraduate fee paying courses can be substantially higher than Commonwealth supported places. When the level of HELP debt rises significantly, the taxpayer-funded subsidies for the loans also substantially increase.

The Government initially did not take up the recommendation to increase the loan fee at a time when the effects of the economic downturn were not clear and the focus was on increasing investment in access and equity measures.

An increase in the loan fee will enable the Government to recover more of the taxpayer subsidised cost of providing FEE-HELP loans.

Even with a five per cent increase in the loan fee the conditions of the Government’s FEE-HELP scheme continue to provide an extremely favourable income contingent loan for students. If students do not repay their loan, the Government meets the cost.

The FEE-HELP loan fee applies only to fee paying domestic students enrolled in an undergraduate course. Undergraduate courses are longer in duration and the loan incurred may be substantially higher, taking longer to repay based on the income-contingent nature of HELP loans.

Students do not have to start repaying their HELP loan until their income reaches the minimum repayment threshold of $43,152.

The increase in the FEE-HELP loan fee will apply to FEE-HELP debts incurred on or after 1 July 2010 in relation to units of study whose census dates are on or after 1 July 2010.

The majority of students will not be affected by the change which will impact only on undergraduate students who choose to use FEE-HELP for their tuition fees in a fee paying place.

I commend the Bill to the Senate.

The Australia New Zealand Closer Economic Relations Trade Agreement cemented these links, and the trans-Tasman economic and trade relationship has prospered since its inception in 1983.

This is clearly something that must change. We need structures that reflect our close relationship,
our shared common law heritage and our strikingly similar legal systems.

With the introduction of the Trans-Tasman Proceedings Bill 2009, this is now set to change. The Bill will operate alongside its companion New Zealand legislation introduced into the New Zealand Parliament yesterday.

Together, both Bills will significantly enhance current arrangements and improve access to justice by establishing a cooperative scheme to make trans Tasman litigation simpler, cheaper and more efficient.

**Trans-Tasman Agreement**

Most significantly, the Bill implements into Australian law the Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement, which I had the pleasure of signing in Christchurch on 24 July 2008.

The Agreement draws on the commonalities between the legal values and institutions in Australia and New Zealand, and enshrines a range of innovative reforms which will benefit litigants in both countries.

**Reforms in the Bill**

The Bill sets up a ‘trans-Tasman regime’ for the conduct of court proceedings between Australia and New Zealand. The regime is modelled on the cooperative scheme established by the Commonwealth Service and Execution of Process Act 1992, which regulates legal proceedings between Australian States and Territories.

This Bill includes a range of measures to improve the procedure for conducting trans Tasman litigation.

For example, the Bill allows a plaintiff to serve Australian civil initiating process on a defendant in New Zealand without having to seek leave, or prove that a particular connection exists between the proceeding and the Australian court.

Importantly, the Bill, along with its New Zealand equivalent, broadens the range of judgments able to be recognised and enforced, and simplifies the process for this.

Currently only money judgments can be enforced between the two countries – but this can often leave a party without an effective remedy to which they are entitled. The regime addresses this problem by allowing non money judgments, like injunctions, to be enforced. Eligible judgments will also be subject to a more streamlined process of registration.

The Bill also allows the greater use of technology in trans-Tasman proceedings. In many cases, parties will be able to participate in proceedings in the other country without having to leave their home jurisdiction.

**Regulatory enforcement**

The Bill also enhances the effectiveness of regulatory institutions in both countries. It allows for certain civil pecuniary penalties and criminal fines in regulatory matters to be registered between the two countries. For example, penalties imposed for serious breaches of the Australian Trade Practices Act or New Zealand Commerce Act.

These reforms are recognition of the mutual interest our two countries have in the effective operation and integrity of trans-Tasman markets and the enforcement of judgments imposed for breaches of such regimes.

**Incorporation of existing legislative provisions**

Along with implementing the Agreement, this legislation rolls in existing provisions dealing with Trans-Tasman proceedings, to create a ‘one-stop shop’ for laws governing the conduct of trans Tasman disputes. This will make proceedings simpler for litigants.

The Evidence and Procedure (New Zealand) Act 1994 currently sets up a cooperative regime for the taking of evidence and service and enforcement of subpoenas between Australia and New Zealand. That Act is moved into the Bill with minor amendments and subsequently repealed.

The Federal Court Act 1976 currently has special rules for the conduct of proceedings regarding damage to competition in trans-Tasman markets. These rules have been moved into the Bill, with minor amendments, and will continue to operate to facilitate effective resolution of market proceedings.

**Stakeholder support**

This project has benefited from consistent support from stakeholders in both countries.
In particular, I would like to acknowledge the engagement of the States and Territories in developing the framework for the regime and the collaborative way in which the Agreement has been implemented in corresponding legislation in both countries.”

And of course I again recognise the support of the New Zealand Government, driven by Simon Power.

**Conclusion**

The regime established by this Bill, and its New Zealand equivalent, demonstrates the strong shared respect for, and confidence in, each others justice systems and regulatory institutions.

The legislation underpins an unprecedented level of legal cooperation between out two countries. It is also consistent with the Government’s Strategic Framework for Access to Justice.

The Trans-Tasman Proceedings Bill, and its New Zealand equivalent, stand as an example of what can be achieved when two countries commit to finding more efficient and cost effective ways to resolve cross-border disputes.

I commend the Bill.

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**TRANS-TASMAN PROCEEDINGS (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2009**

**Introduction**

The Trans-Tasman Proceedings (Transitional and Consequential Provisions) Bill 2009 contains a range of transitional measures and consequential amendments to support a smooth transition to the new arrangements established by the Trans-Tasman Proceedings Bill 2009.

The Bill makes clear how various aspects of the regime will apply to the conduct of trans-Tasman legal proceedings commenced before the Trans Tasman Proceedings Bill comes into operation.

It also makes consequential amendments to existing legislation. The primary Bill is designed to be a single point of reference for people on how to conduct trans-Tasman legal proceedings. This Bill repeals the Evidence and Procedure (New Zealand) Act 1994, and the trans Tasman market proceedings provisions of the Federal Court Act 1976. These provisions have been moved into the primary Bill with minor amendments.

This Bill is necessary to ensure the Trans Tasman Proceedings Bill 2009 can operate as intended.

I commend the Bill.

Ordered that further consideration of the second reading of these bills be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

Ordered that the Trans-Tasman Proceedings Bill 2009 and the Trans-Tasman Proceedings (Transitional and Consequential Provisions) Bill 2009 be listed on the Notice Paper as one order of the day and the remaining bills be listed as separate orders of the day.

**FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE) BILL 2010**

**First Reading**

Bill received from the House of Representatives.

**Senator Faulkner** (New South Wales—Minister for Defence) (5.06 pm)—I move:

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

Question agreed to.

Bill read a first time.

**Second Reading**

**Senator Faulkner** (New South Wales—Minister for Defence) (5.06 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

Rudd Government was elected with a strong vision for child care – for an affordable, accessible and high quality sector, so that parents can par-
ticipate confidently in the workforce and our children have positive, learning experiences.

We are delivering on raising the quality of early childhood education and child care. In a historic agreement in December last year COAG announced that there will be one national quality framework.

This will include improved staff to child ratios, so each child in care gets more individual time and attention; new qualification requirements, so staff can better lead activities that help children learn and develop; and a new ratings system so parents will know the quality of care on offer and will be able to make informed choices for their families.

The new system will also mean that services only have to deal with one regulator, which will mean less paperwork and more time to spend focussing on children.

Transparency and providing up-to-date information for parents and the sector has also been high on our agenda. We have established the mychild website which provides important information for parents and service providers through a searchable database of over 8,000 child care services which includes information on fees, vacancies and services provided.

We are backing our commitment to child care with an investment of over $16 billion over four years. This is more than twice that provided in the last four years of the Howard Government.

Through this bill we are continuing to make practical changes to support both child care services and Australian families.

Throughout 2008 and 2009 all approved child care services moved to a new system – the Child Care Management System – where services submit online reports before receiving Child Care Benefit payments.

In the instance where child care services cannot submit their online report through circumstances outside their control, such as a natural disaster or emergency, the passage of this legislation will mean we can continue to pay centres Child Care Benefit so they continue to have cash flow in times of need.

We are also making improvements to the way in which services are required to provide families with statements that set out their fees and the Child Care Benefit that they have received. This will provide services with greater flexibility around how they issue statements, making it easier for services to meet their obligations and provide more accessible information to families on their child care benefit.

This Bill will also take further steps to protect families from disruption when operators decide to cease operating. Services that either transfer operation or close, will now be required to provide at least 42 days notice to the Department, rather than the current requirement of at least 30 days. This change will help families make alternative arrangements in the unfortunate incidence where a child care centre ceases to operate.

We are also tidying up some areas of the legislation. In 2007 the previous Government passed legislation to introduce the new Child Care Management System. As I touched on before this System has been progressively introduced throughout the course of 2008 and 2009.

Unfortunately, the legislation introduced in 2007 did not clarify legislative authority to recover over-advances of Child Care Benefit acquitted by some services before they transitioned from a three-monthly ‘payment in advance’ system to the new ‘payment in arrears’ system.

These amendments will confirm the original intent of the previous Government’s legislation and provide for acquittals of advances and recovery of over-advance amounts.

The Bill also makes it clear that where services are owed money from acquittals prior to transition that the Commonwealth has the authority to pay this money to centres.

A further amendment will make discretionary the current mandatory suspension of a service’s Child Care Benefit approval when a service has been issued with 10 infringement notices in a 12 month period. This is in line with other suspension provisions for Child Care Benefit and takes into account the nature of the infringements and the impact on families of the withdrawal of their service’s Child Care Benefit approval.

These are all practical and welcome steps to help strengthen our child care arrangements.

CHAMBER
And they are another step by the Government to improve the quality of child care and better support Australian families.

Debate (on motion by Senator Faulkner) adjourned.

COMMITTEES
Parliamentary Library Committee
Membership
The ACTING DEPUTY PRESIDENT (Senator Hurley)—A message has been received from the House of Representatives informing the Senate of the appointment of Mr Melham to the Joint Standing Committee on the Parliamentary Library.

Cyber-Safety Committee
Establishment
The ACTING DEPUTY PRESIDENT—A message has been received from the House of Representatives agreeing to the amendment made by the Senate relating to the appointment of the Joint Select Committee on Cyber-Safety.

Cyber-Safety Committee
Membership
The ACTING DEPUTY PRESIDENT (5.07 pm)—The President has received letters from party leaders seeking appointment to the Joint Select Committee on Cyber-Safety. There are two nominations for one position on the committee, the position to be nominated by any minority group or independent senators. In accordance with standing orders, a ballot will be held to determine which one of the two senators who have nominated is to be appointed. I will first call the minister to seek leave to move a motion for the uncontested vacancies and then I understand that it is the wish of the Senate that the ballot for a position be held immediately.

Senator FAULKNER (New South Wales—Minister for Defence) (5.08 pm)—by leave—I move:

That Senators Lundy and Wortley be appointed to the Joint Select Committee on Cyber-Safety.

Question agreed to.

The ACTING DEPUTY PRESIDENT—The Senate will now proceed to ballot to appoint a senator to the position to be nominated by a minority group or independent senators. The candidates are Senators Fielding and Ludlam. Before proceeding to a ballot, the bells will be rung for four minutes.

The bells having been rung—

The PRESIDENT—Order! The Senate will now proceed to a ballot. Ballot papers will be distributed to honourable senators, who are requested to write on the ballot paper the name of the candidate they wish to vote for. The candidates are Senator Fielding and Senator Ludlam. Before the ballot proceeds people should be seated in their normal allocated seat. The Clerks will now distribute ballot papers to honourable senators. I invite Senator Fielding and Senator Siewert to act as scrutineers.

A ballot having been taken—

The PRESIDENT—The result of the ballot is as follows: Senator Fielding, 34 votes, and Senator Ludlam, 32 votes. Senator Fielding is therefore elected as a member of the Joint Select Committee on Cyber-Safety in the position nominated by any minority group or independent senators.

Finance and Public Administration Legislation Committee
Report
Senator FARRELL (South Australia) (5.24 pm)—On behalf of the Chair of the Finance and Public Administration Legislation Committee, Senator Polley, I present the report of the committee on the provisions of the Freedom of Information Amendment (Reform) Bill 2009 and the Information Commissioner Bill 2009, together with the
Ordered that the report be printed.

TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2009
Second Reading

Debate resumed.

Senator BUSHBY (Tasmania) (5.25 pm)—Prior to question time I was making a few comments regarding the Trade Practices Amendment (Australian Consumer Law) Bill 2009 and I will continue those comments. Where no industry specific regulation exists, consideration of general protection such as that contained in this proposed legislation should be considered. However the potential costs, uncertainty and other consequences highlighted by the submission to the inquiry should be addressed. Consideration should be given to the introduction of safe harbour provisions along the lines suggested by Professor Zumbo. Sitting above issues surrounding the specific application of the proposed unfair contract provisions is the benefit that will flow from other aspects of the introduction of the Australian Consumer Law, notably including the greater access to remedies that can flow from low-cost, state based dispute resolution forums along the lines suggested by Professor Zumbo. Sitting above issues surrounding the specific application of the proposed unfair contract provisions is the benefit that will flow from other aspects of the introduction of the Australian Consumer Law, notably including the greater access to remedies that can flow from low-cost, state based dispute resolution forums that will be able to hear cases based on remedies previously only able to be used in expensive court based actions. To some extent, this may offset the need for specific action on unfair contracts, as remedies previously not utilised for this purpose may become available through greater use and judicial development.

The coalition will move a number of amendments, foreshadowed by my colleague Senator Joyce, that will go a long way towards addressing many of the concerns I hold in respect of this bill. In particular, I welcome the move to delete the provisions providing for the reversal of the onus of proof and the strengthening of the threshold from ‘likely to cause detriment’ to ‘likely to cause significant disadvantage’. I commend the amendments to the Senate and look forward to the passage of an amendment bill that will deliver all the benefits of the proposed Australian Consumer Law regime without many of the costs and problems that can rightly be avoided. (Quorum formed)

Senator HURLEY (South Australia) (5.28 pm)—We have all heard examples of where consumers have found themselves on the receiving end of a contract that they believe is completely unfair yet find themselves with no access to redress. A common example is the mobile phone contract with a term allowing the supplier to unilaterally vary the rates or charges imposed at any time without any notice to the consumer. There are many similar examples for consumers where they have not properly scrutinised the very fine print of a contract or find that they misunderstood the terms of a contract. On the other hand, businesses that operate across various state jurisdictions also complain that rights and responsibilities are duplicated across a wide range of legislative instruments and are incompatible across state borders, causing unnecessary complexity and expense. The Trade Practices Amendment (Australian Consumer Law) Bill 2009 aims to address these concerns.

The purpose of the bill is to establish a national consumer law framework and to ban unfair terms in standard form business-to-consumer contacts. The bill has three distinct elements: (1) the creation of a new national consumer law and the implementation of new penalties for breaches of consumer law, (2) the implementation of national unfair contract law terms and (3) increased powers for ASIC and the ACCC to enforce these laws.
This is the first in a series of two bills which will introduce the Australian consumer law—ACL. These are complex bills and they interact with each other. The bill we are considering amends the Trade Practices Act to establish the ACL as a schedule to the act and inserts the unfair contract term provisions. It also inserts corresponding provisions for financial products and services into the Australian Securities and Investments Commission Act. The second bill, to be introduced shortly, will implement COAG reforms in this area, including the transfer of the existing consumer law and related provisions of the act into the ACL.

Standard form contracts are those contracts that are entered into without any individual negotiation taking place. They are essentially take-it-or-leave-it arrangements for the consumer. These types of contracts are used widely for banking, financial services, utility services, internet and telephone contracts and gym memberships. Standard form contracts are not in themselves inherently unfair but in fact facilitate day-to-day transactions between businesses and consumers in an economically efficient manner. However, the take-it-or-leave-it nature of such contracts means that consumers can be left with clearly inequitable arrangements that they would not willingly enter into had they the ability to negotiate terms. It might be argued that, even if the consumer baulks at a contract, they are often in a position, as with gym contracts, where it is very difficult to negotiate exceptions to the contract. There is obviously, therefore, a need for consumers to be able to seek redress over unfair contract terms. Under this bill, a term is considered unfair if a supplier can vary any of the terms without consent or if the supplier can cancel the contract without the consumer having the same right to do so. If a contract term is found to be unfair, the term itself will become void; however, the contract as a whole will remain in effect.

This bill has been the product of a lengthy and exhaustive consultation process. In December 2006, the then Treasurer, Peter Costello, commissioned the Productivity Commission to investigate Australia’s consumer policy framework, including its administration. In April 2008, the Productivity Commission released the findings of its review of Australia’s consumer policy framework and called for an overhaul of the system. They particularly drew attention to the messy duplication and division of responsibilities among the state governments and the federal government, which increase the costs for businesses and lead to variable outcomes and inconsistent redress mechanisms for consumers as well as gaps and inconsistencies in policy enforcement.

The Productivity Commission advocated the introduction of a national consumer law and unfair contract terms. In March 2008, COAG agreed that its Business Regulation and Competition Working Group would develop an enhanced consumer policy framework in consultation with the Ministerial Council on Consumer Affairs. Based on the recommendations of the council, the working group recommended that COAG agree to a single national consumer law.

At a meeting in October 2008, COAG agreed to establish a new single national consumer law including a provision regulating unfair contract terms. ACL will provide consumers with a uniform and higher level of protection and see reduced compliance costs for business and improvements in consumer law enforcement powers. This was part of the broader COAG work towards the creation of a seamless national economy, which is clearly very important for productivity.
In February 2009, the Standing Committee of Officials of Consumer Affairs released an information and consultation paper entitled *An Australian consumer law—fair markets, confident consumers* which aimed to outline the process for the development of the ACL and encourage submissions seeking views on policy options and alternatives. Treasury received 102 submissions to the consultation paper. A further paper entitled *The Australian consumer law: consultation on draft provisions on unfair contract terms* was released in May 2009, providing an opportunity for feedback. This attracted a further 96 submissions.

On 24 June 2009, the Trade Practices Amendment (Australian Consumer Law) Bill 2009 was introduced into the House of Representatives and referred to the Senate Economics Legislation Committee, which I chair, for inquiry. The committee received 58 submissions in the course of its inquiry and found that many concerns raised regarding the bill had been addressed through the consultation process which began with the Productivity Commission investigation in 2006.

One submission, from the Consumer Action Law Centre, to the Senate inquiry said:

Regardless of one’s views on the content of the bill, it cannot be said that consultation on national UCT—unfair contract terms—regulation for Australia has not occurred. There is broad support for the harmonisation of consumer law. There are currently 13 generic consumer law frameworks operating in Australia. Throughout the consultation process, every inquiry has found that the system is costly for business and inequitable for consumers, that major reform is required and that measures directed against unfair contract terms should be a part of the new regime. The Law Council of Australia Trade Practices Committee, the Association of Building Societies and Credit Unions, the Business Council of Australia, the Consumer Action Law Centre and the Motor Trades Association of Australia all support the concept of a single national uniform consumer law. The coalition have raised some issues with this bill and have foreshadowed some amendments. I have not had an opportunity to look at them in detail, but I reiterate that there has been extensive consultation and extensive agreement between the states on this bill.

I now wish to address the target of some of the opposition’s objections: unfair contract terms. Subsection 3(1) of the bill provides that a term in a consumer contract is unfair if the term would (a) cause a significant imbalance in the party’s rights and obligations under the standard form contract; and (b) is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term. Terms that define the subject matter of the contract establish the up-front price payable under the contract or are required or permitted by the Commonwealth, state or territory are exempt from the unfair provisions. Although no contract terms are currently prohibited, the bill does give provision for the minister to prohibit certain contract terms and also exempt certain terms if necessary.

A number of examples of terms which might be considered unfair are listed in the bill. For example, any term that limits the right of one party and not the other to terminate or vary a contract may be considered unfair. These examples are often referred to as a ‘grey list’ and they only provide an indication of the terms that might be considered unfair. The Consumer Action Law Centre noted that this is consistent with best practice internationally and that a ‘general-plus-specific’ model allows for flexibility through the use of a general definition but also incorporates clarity and certainty in relation to known current problems as well as guidance...
in the interpretation of the general provision. The suggestion from the opposition that every contract could be submitted to the regulator for approval might enhance flexibility but would make an unwieldy process, although I will look at the specific amendment.

The bill also excludes certain contracts from the unfair contract term provisions. These are certain shipping contracts, which are already subject to a comprehensive legal framework under maritime law; and contracts which are constitutions of companies or managed investment schemes. However, insurance contracts are also currently exempt from the bill’s application, although not through any provision of the bill itself. Currently the Insurance Contracts Act prevents an insurance contract from being the subject of judicial review on the grounds that it is harsh, oppressive, unconscionable, unjust, unfair or inequitable. The effect of this section of the insurance act means that the unfair contract provisions of either the ACL or the ASIC Act do not apply to insurance contracts, as Senator Bushby canvassed.

During the Senate inquiry the committee received considerable evidence that opposed the exclusion of insurance contracts from the unfair contracts provisions. The Senate inquiry into this bill found that, currently, consumers are not provided with adequate protection from unfair terms in insurance contracts. However, since a review of the Insurance Contracts Act in 2004 significant work has been undertaken, including a draft bill released in 2007 to address unfair contract terms in insurance contracts. The minister assures me that that work is still continuing, that there will be some close review of what happens in relation to insurance contracts and that this will be released shortly.

The scope of the bill’s unfair contract term provisions is restricted to business-to-consumer transactions. The bill applies only to consumer contracts in which at least one of the parties is an individual. Contracts between businesses are therefore excluded from the provisions, except in respect of sole traders.

The government is currently reviewing both the unconscionable conduct provisions of the Trade Practices Act and the Franchising Code of Conduct with a view to providing more effective regulation around unfair terms in business-to-business contracts. The franchising arrangements—for example, for newsagents, which Senator Joyce raised—are clearly, in my view, currently better dealt with under those two separate initiatives than under this particular bill.

During the inquiry, the Senate Economics Legislation Committee received some evidence, mainly from the banking and finance sector, that legislation preventing unfair contract terms should not be introduced. The argument was that a lack of a hard and fast definition regarding what constitutes an unfair contract term would lead to business uncertainty and potentially higher costs for the consumer. The claim is that the legislation will force businesses to reconsider all their standard form contracts and operate in an environment where they cannot be sure which terms the courts and the minister would declare ‘unfair’. I think this is Senator Bushby’s argument. This view was challenged by a number of witnesses who claimed that this ‘Chicken Little’ view of the world is taken by the banking and finance sector when any significant reform to the Trade Practices Act is considered. It was also noted that similar reform has been undertaken in the UK with similar claims of economic costs and business uncertainty being foreshadowed that have not eventuated. The requirement for the term to cause a ‘significant imbalance’ in rights and obligations between parties, as well as the opportunity to
allow a term where it can be demonstrated to be necessary to protect the legitimate interests of the advantaged party, should provide adequate protection against vexatious litigation.

In conclusion, the introduction of a single national consumer law has been a work in progress since 2006. There is little or no doubt that the Australian Consumer Law will provide substantial benefits to Australian consumers and will result in cost benefits for business operation standard form contracts across jurisdictions. It is a substantial piece of legislation that has involved extremely extensive consultation and has incorporated a number of changes along the way to ensure it will operate as a simple yet effective piece of legislation.

Given the long lead time over which this legislation has been developed and the substantial consultation process that has been undertaken, it is difficult to see merit in any arguments surrounding business uncertainty. Consumers have been faced for many years with far greater uncertainty, given the lack of protection from unfair contract terms, and the negative economic impact on consumer confidence that has arisen as a result should not be discounted.

In summary, the social and economic benefits of this legislation cannot be underestimated. The bill has evolved through a broad, ongoing and rigorous consultation process where stakeholders have been given ample opportunity to be involved in the development of the terms of this legislation. It is part of a broader movement through COAG to a seamless national economy in which business and consumers alike will benefit from a simpler, transparent and more efficient system. It is an enormously positive step for the Australian economy, for Australian consumers and Australian businesses. I commend this bill to the Senate and commend the ministers involved for taking the bill through to this stage. Labor governments have traditionally been very concerned about consumer rights and have been very active in developing consumer rights legislation. I certainly hope this and the forthcoming bill will be accepted by the Senate.

Senator XENOPHON (South Australia) (5.45 pm)—May I begin by saying that I applaud the government for its intent in introducing the Trade Practices Amendment (Australian Consumer Law) Bill 2009. There is no question that reform is needed in the area of consumer law and that a national approach is needed, as Senator Hurley has outlined in her very thoughtful contribution. But I believe that this bill should go further. I believe that this is an opportunity lost.

Whether it is a mobile phone contract, a washing machine purchased under a 12-month interest free loan, a subscription program or a gym membership, standard form consumer contracts—that is, contracts that are not individually negotiated—are often complicated, confusing and in many cases give greater power to the business or the larger party, the more powerful party, than to the individual consumer. In addition, consumer laws currently vary between states and territories, making it confusing not only for consumers but also for businesses.

This bill will create uniform consumer law legislation, and that is a good thing. However, I am concerned that there has been a significant weakening, a watering down, of existing state consumer protections primarily in the area of unfair contract terms. Victoria has been at the forefront of effective laws against unfair contract terms, so it beggars belief that the Victorian laws will be watered down under this bill. That is not a good thing for consumers, because I think the Victorian law was a template of good law in protecting consumers.
While this bill is designed to address unfair contract terms and includes penalties, enforcement powers and consumer redress options, I believe this bill in its current form does not truly meet its intent. Accordingly, I will be introducing a number of amendments which I believe will strengthen this legislation so that it is truly in the best interests of Australian consumers and provides assurances to business.

There is no doubt that questionable consumer contracts exist and all too often consumers are either left with no option for recourse or find that the process to seek reimbursement for losses is too costly to be worth while. It is too costly and time consuming because of the hassles involved in trying to seek redress where clearly the wrong thing has been done to the consumer. It is a messy process. Some of the unfair contract terms which exist, whether intentional or unintentional, are often mind-boggling loopholes that most consumers never see coming. For example, in July last year, Telstra announced that it would be introducing a range of fees that would, it said, ‘reduce face-to-face customer service and drive more customers towards online bill payments’. From September, a $2.20 charge was applied to anyone who opted to pay their bill in person, with cash. That is something that many constituents have approached me about. They thought it was inherently unfair, particularly senior citizens, those that do not have online access and those that like the idea of the human contact of going to their local post office to pay the bill in cash because they do not have a credit card, they do not have online access or they just want to deal in cash. They were prejudiced.

I raised this matter with Telstra’s CEO, David Thodey. I passed on those consumer complaints directly to him in the course of discussions about another piece of legislation. Can I say that Mr Thodey was quite receptive. Whatever views one may have of what is before the parliament in terms of Telstra, I think Mr Thodey has been a breath of fresh air in terms of accessibility compared to the previous regime in Telstra. I am very pleased that, as a result of the public outcry, Telstra scrapped this fee. I think it was the right thing to do for consumers and the smart thing for Telstra to do from a public relations point of view as well. But I do know that similar charges continue to exist with other companies and I think that is inherently unfair. To charge a person for choosing to pay their bill in person with legal tender is not fair. When I raised this issue, and I am sure others of my colleagues have, there were many calls to my office and I received a lot of correspondence expressing concern about that. These are the sorts of unfair contract terms that should never have been allowed to creep into contracts. I will be moving an amendment to address this during the committee stage.

Also concerning are the number of contracts that allow the larger party, the business, to modify or cancel contracts without notice; yet the same flexibility is not afforded to the consumer, resulting in an imbalance of power between the two parties, which is fundamentally unfair. Here we have an opportunity to have a national approach, one that is not only good for consumers but good for businesses. It removes that uncertainty and provides uniformity. There are unnecessary costs for businesses, big and small. This national approach is long overdue. Internationally, the European Union adopted its directive on unfair terms in consumer contracts in 1993 and was followed by the United Kingdom the following year. These overseas laws are tried and tested and have been positive for consumers and could be similarly positive for Australian consumers. I do not think we have gone as far as the
United Kingdom and Europe have in terms of unfair contract terms.

I think a way forward in making it easier for consumers, better for consumers, but also fairer for companies, is to have a ‘safe harbour’ approach. If that was adopted for consumer contracts, we would find these sorts of unfair terms could be avoided from the beginning. Under the safe harbour approach, which I acknowledge is an idea that comes from Associate Professor Frank Zumbo from the Australian School of Business at the University of New South Wales and who is a tireless advocate for consumers in the trade practices field, businesses would be able to approach the ACCC to seek approval or authorisation of particular contracts or contract terms. In doing so they would be ensuring that their contract is fair and reasonably necessary to protect the interests of the larger party and the consumer. Further, it could lead to industry-wide contract terms so that all relevant businesses could adopt these clearly defined and approved contract provisions. It would be similar to a template—a template of good practice which can be ticked off once it has been signed off by the ACCC. It is not unreasonable for the ACCC to take that approach. While some may suggest that this would be too onerous for the ACCC, I would argue that this would prevent unfair contract terms at the outset rather than having to address the issue once a possibly unfair contract is in place across the country. It is preventative in its approach. The ACCC has considerable experience in reviewing contractual arrangements and could readily use that experience to review contract terms under a safe harbour process for the benefit of both businesses and consumers. Furthermore, it would be a voluntary option for businesses, which would be seeking approval of their contract to ensure best practice. I believe that many businesses would appreciate this opportunity.

This bill, in its current form, also fails to include amongst its protections small businesses, which are just as vulnerable to unfair contract terms as individuals. A sole trader or a family business is as vulnerable in many cases as an individual when dealing with large businesses. My understanding is that business-to-business contracts under $2 million were originally included in the first draft of this legislation, when Minister Bowen was the responsible minister. However, it was subsequently removed. I would be grateful if the minister could advise, when we get to the committee stage, the basis of that change in policy. There were changes from when Minister Bowen had this portfolio to now when Minister Emerson has the portfolio, and it seems to me that there has been an appreciable weakening of the consumer protection provisions. I believe that small businesses are subjected to many of the same unfair contract terms as individual consumers and should be entitled to the same protections under this legislation.

I have a number of concerns with this bill and will outline them in more detail when I introduce my amendments. While this bill is intended to protect consumers and give them greater opportunities for redress in instances where they have been unfairly treated, there are significant gaps in the bill. While it is intended to ensure the balance between the two parties to a contract is fair and does not favour one over the other, there are ways in which this bill can be improved. I applaud the government for recognising that reform is needed in the area of consumer law, which organisations and entities such as the Consumer Action Law Centre and Choice have been calling for for many years—as has Associate Professor Zumbo. But for this bill to meet its intent it needs to be strengthened; otherwise, we have laudable intentions without the follow-through to give it more substance, to give it more teeth. That is why I
will move amendments during the committee stage. I will not delay the second reading stage unnecessarily by outlining those amendments.

I will give an example: it is crucial that consumers—both individuals and small businesses with contracts less than $2 million—are able to fairly and easily seek injunctions and damages wherever and whenever unfair terms of contract with larger parties exist against them. Not only will this cause larger parties who issue unfair contract terms to think twice before doing so but also it will serve as a deterrent and, I believe, will add a level of protection to individual consumers. Furthermore, the current inclusion of the terms ‘detriment’ and ‘transparency’ which courts must consider add unnecessary tests upon the consumer and the ACCC when the courts already have a discretion to make these determinations. Those additional hurdles for consumers are a real weakening of the legislation. They go against the intent of the bill, which is to make it easier for the consumer to seek redress. After all, this legislation aims to make it fairer for consumers—not harder. My concern is that the bill in its current form is an opportunity lost to do the right thing by consumers and small businesses in this country. I support the second reading motion, but I do believe that there is scope to improve this legislation so that we can give the protections that individuals and small businesses deserve.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (5.57 pm)—I take this opportunity to thank senators who have participated in the debate today on the Trade Practices Amendment (Australian Consumer Law) Bill 2009. On 2 October 2008, the Council of Australian Governments reached a historic agreement to create a single national generic consumer protection law to be called the Australian Consumer Law. This bill is the first legislative step to give effect to COAG’s agreement. It will implement key elements of the Australian Consumer Law, including a new national unfair contract terms law and new penalties, enforcement powers and options for consumer redress for the ACCC and ASIC. Attempts to create a single consumer law have been made in the past. Notably, in the early 1980s the Australian, state and territory governments agreed to create harmonised consumer protection laws. This initiative succeeded in creating harmonised laws for a time, but consistency was all too soon lost as individual jurisdictions amended and augmented their laws over time. COAG’s decision of 2008 differs from previous attempts at harmonisation in that it established an applications legislation regime. Amendments to the Commonwealth’s consumer protection law will automatically apply in all states and territories. In addition, all jurisdictions have agreed to be bound by the Intergovernmental Agreement for the Australian Consumer Law, which sets out the manner in which changes to the consumer law will be made in the future. COAG made this intergovernmental agreement at its meeting on 2 July 2009.

Consideration of this legislation is significant because we are asking not only that the Australian parliament legislate its content but, ultimately, that all states and territory parliaments adopt this legislation.

On 25 June 2009 this bill was referred to the Senate Standing Committee on Economics for inquiry and report. In the course of its inquiry the committee received 58 public submissions and held public hearings in Canberra and Sydney reflecting a wide range of interests in this legislation from business and consumers. This follows an extensive consultation process undertaken by the Productivity Commission in 2008 as well as by the government in February and May of 2009. The committee tabled its report on the
provisions of the bill on 7 September 2009. The committee expressed its strong support for the bill and recommended that the bill be passed. I note that the coalition members of the committee have also recorded their broad support for the bill. I thank senators for their participation in the committee’s inquiry as well as the wider debate on this legislation.

This bill represents a significant milestone in achieving a lasting national consumer protection law. That said, the creation of a national unfair contract terms law, and the strengthening of the enforcement regime for the consumer protection provisions of the Trade Practices Act, are also worthy objectives in their own right. I am aware of the concerns that the proposed amendments to the unfair test and the unfair contract terms law could effectively turn the detrimental requirements into a separate test, and in a manner that negatively impacts on the consumer, by requiring that actual detriment must be proved. Contrary to these concerns the proposed amendment requires the court to consider whether application of or reliance on the terms would cause detriment to the parties disadvantaged by the term. This would involve a determination of whether such detriment does exist or would exist if the term was relied upon.

The ACL reforms will be completed via a second bill to be introduced in early 2010. The second bill will include a national consumer product and safety regulatory regime as well as enhancement to the existing consumer protection regime based on the best practice amongst state and territory laws.

We are about to have another minister take on the detailed consideration of these amendments, which I trust will be canvassed in great detail. I look forward to that occurring. I commend the bill to the chamber.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.03 pm)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill, and corrections to the explanatory memorandum. The memorandum was circulated in the chamber on 27 October 2009.

Senator XENOPHON (South Australia) (6.04 pm)—Before we get to the amendments I have some preliminary questions, as is the practice, to put to the minister.

Senator Chris Evans—Best of luck!

Senator XENOPHON—You are an expert on this, aren’t you?

Senator Chris Evans—I’m just reading the title of the bill, but ask me anything you like!

Senator XENOPHON—I thank Senator Evans for his indication of full cooperation in terms of the questions I will be asking.

Senator Chris Evans—I’ll tell you everything I know.

Senator XENOPHON—I am very pleased to hear that, Senator Evans. These are preliminary matters. Firstly, is it correct that under the proposals only the ACCC will be able to seek a declaration that a term is unfair under section 87AC?

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.04 pm)—Yes, Senator.

Senator Joyce interjecting—

Senator XENOPHON (South Australia) (6.05 pm)—Senator Joyce seems surprised. If you ask nicely, Senator Joyce, you can actually get direct answers. I thank the minister for his answer. That means that consumers will not be able to seek a declaration. Is this not completely against the longstand-
ing underlying policy of the Trade Practices Act, that consumers have a private right of action?

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.05 pm)—I am advised, Senator Xenophon, that government amendment (38) seeks to address the concerns you raise, and will clarify those matters. So we might have that discussion when we get to that amendment and we will see whether or not you are satisfied with the proposed government amendment. I am advised that it may not be exactly what you are after but it seeks to deal with some of that issue.

Senator XENOPHON (South Australia) (6.06 pm)—I thank the minister for his answer. Perhaps we can have a broader discussion about that under government amendment (38). I appreciate that. I will just go to the next issue. As I understand it, currently an order for damages may be made under section 82 of the Trade Practices Act for contraventions of the Australian consumer law. Can the government clarify the status of item 44 in part 7 of the bill, as the government’s amendments to the bill are to remove this term. I am not sure whether I have misunderstood that but my understanding is that it actually takes away rights that consumers have with respect to this.

Senator XENOPHON (South Australia—Minister for Immigration and Citizenship) (6.07 pm)—I understand that the exposure draft legislation included business-to-business contracts, but the government took a policy decision to exclude those contracts based on the potential adverse impact they would have on small business. For businesses and their commercial dealings, a general notion of unfairness that is subject to interpretation by the courts may have the effect of increasing risks and costs faced by business, particularly by small business. It was felt that this would undermine the position of small business. The government believes that specific instances of unfairness in business-to-business contracts is best dealt with by the unconscionable conduct provisions of the Trade Practices Act, which we have agreed to strengthen. So I think your confusion is that in the exposure draft they were included and in the final legislation they were not.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.07 pm)—I am advised, Senator Xenophon, that consumers will be able to access compensatory orders for loss or damage suffered as a result of a business relying on an unfair contract term. Schedule 2 item 59 in the bill provides that section 87 of the Trade Practices Act applies to a business’s use of an unfair contract term. Schedule 3 item 42 provides the same for section 12 GM of the Australian Securities and Investments Commission Act 2001. Compensatory orders made under section 87 of the TPA allow compensation for actual loss or damage as well as for likely loss or damage. Damages under section 82 only apply to actual loss or damage.

Senator XENOPHON (South Australia) (6.08 pm)—I thank the minister for his answer. I have one more preliminary question before we deal with this. I understand that when Minister Bowen had carriage of this legislation in the middle part of last year, the unfair contract term provisions of the Australian Consumer Law applied to both consumers and small businesses. Is that correct?

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.08 pm)—I think your confusion is that in the exposure draft they were included and in the final legislation they were not.
ister advise whether that policy change from the exposure draft to what is now before us was made as a result of representations by small business groups? It is my understanding that small business groups were keen to have protection for some of these contracts—or was it made by representations from larger business groups?

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.10 pm)—Senator Xenophon, I did not mean to insult you by presuming you were confused. I am the last one to throw stones in that respect, as I come to this bill! I understand Mr Emerson was conducting consultations in relation to the government response into the Senate inquiry into unconscionable conduct. I think it is a view that was best picked up in that context rather than in the context of this bill, so I think it is part of that process of Mr Emerson’s consultations that that policy decision was taken by government.

Senator XENOPHON (South Australia) (6.11 pm)— Without labouring the point, those consultations presumably would have included representations from peak bodies representing big businesses in this country.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.11 pm)—As I understand it, Mr Emerson’s consultations were very broad and I am sure they included lots of small businesses as part of that process. I think it is fair to say that Mr Emerson is very much engaged with the sector, but if you are really asking me who influenced the policy decision—and, I suspect, trying to make some case in that regard—I think it was fair to say it was a policy decision by government. There were those consultations conducted by Mr Emerson and it was determined by government to deal with it in that other way. I would argue that Mr Emerson and the government consulted widely, but I think you are almost asking me to tell you which was the submission that had the most impact on the government’s thinking. I have described the process and the decision for you.

Senator XENOPHON (South Australia) (6.12 pm)—It is not a fishing expedition. It is a genuine thirst for knowledge, because there is a real concern that an opportunity has been lost in giving protection to small businesses. I cannot take it any further than this but am grateful for the minister’s answers today.

The TEMPORARY CHAIRMAN (Senator Barnett)—That being the case, we could move to the first amendment, which is in the name of Senator Xenophon.

Senator XENOPHON (South Australia) (6.13 pm)—by leave—I move amendments (1) and (6) in my name together.

(1) Schedule 1, item 1, page 5 (lines 17 to 22), omit subsection 2(3), substitute:

(3) A consumer contract is a contract for:

(a) the supply of goods or services; or

(b) a sale or grant of an interest in land;

where:

(c) if the contract is for supply, sale or grant to an individual—acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption; or

(d) in any other case—the upfront price payable for the goods, services or interest supplied under the contract does not exceed $2 million.

(6) Schedule 3, item 7, page 52 (lines 17 to 20), omit subsection 12BF(3), substitute:

(3) A consumer contract is a contract where:

(a) if at least one of the parties to the contract is an individual—the acquisition of what is supplied under the contract is wholly or predominantly
This relates to the definition of consumer contracts and the inclusion of low value business-to-business contracts. These amendments are designed to include business-to-business contracts involving transactions less than $2 million, to also be subject to the unfair contract term provisions of the legislation. This provision was included in the first drafting of the legislation but was removed before the bill was introduced, as the minister pointed out in the exposure draft. Like consumers, small businesses are increasingly victims of unfair contract terms and should have access to these unfair contract terms and options for redress. This amendment will enable small businesses to be covered by the unfair contract terms provision of the legislation.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.14 pm)—I indicate on behalf of the government that we will not be supporting these two amendments from Senator Xenophon. As I indicated earlier, the government consulted on the exposure draft of the unfair contract terms provisions during May 2009. The original draft provisions were expressed to apply to business-to-business contracts. The inclusion of business-to-business contracts gave rise to considerable business concern about the ambit of the proposed provisions and the potential effects on business activity in Australia. The government considered the approach suggested by Senator Xenophon—that is, to apply a monetary limit to the contracts that the provisions would apply to. After further consideration, the government responded to these concerns by removing the application of the unfair contract terms provisions from all business-to-business transactions.

Upon the introduction of this bill into the parliament, the Minister for Competition Policy and Consumer Affairs announced that provisions relating to the relationship between businesses would best be dealt in the context of the government’s responses to the Senate Economics References Committee’s review of the statutory definition of ‘unconscionable conduct’ and the review by the Parliamentary Joint Committee on Corporations and Financial Services of the franchising code of conduct. On 5 November 2009, the Minister for Competition Policy and Consumer Affairs announced the government’s responses to these reviews. Those responses include legislative amendments to the unconscionable conduct provisions of the TPA. In the context of business-to-business contracts, a general notion of unfairness that is subject to interpretation by the courts may have the effect of increasing risk and costs faced by business and by small business in particular. In the government’s view, this would undermine the position of small businesses. So, as I said, the government will not be supporting Senator Xenophon’s amendments.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (6.16 pm)—The coalition are very sympathetic to the arguments that have been put forward in regards to business-to-business contracts. We have been also assured by the minister that these issues will be ventilated further in the franchising code of conduct and the unconscionable conduct provisions of the TPA. So at this point in time we give the government the benefit of the doubt. We will wait for that review to come to a conclusion. However, we state on the record that, should there be no further movement in that area, we would be very supportive of changes. But at this point in time, we do not support this amend-
ment—not because we do not agree with the sentiment of it, but because the process of dealing with this issue is, we are assured, in train. We will wait for the conclusion of that process.

Senator XENOPHON (South Australia) (6.17 pm)—I am grateful to both Senator Joyce and Senator Evans for their responses. I note that they are not supporting these amendments. I indicate that I will not be seeking to divide on these amendments. Regarding the process that Senator Joyce, on behalf of the coalition, has been assured about, what time frame is there to look at the issue of business-to-business contracts for small businesses to give them that added layer of protection, Senator Evans? Further, can the minister advise what level of protection there is for small businesses in other jurisdictions, such as Europe? I understand that this concept of giving small businesses a similar level of protection to that which is provided to consumers is not unique.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.18 pm)—I understand, Senator Xenophon, that there will be amendments in relation to the unconscionable conduct provisions within the next few months, so it is intended that we proceed with those—

Senator Xenophon—Before or after the election?

Senator CHRIS EVANS—One thing that I am certain of, Senator Xenophon, is that you and I will both be held in suspense about such things for a while. But it is the intention of the government to proceed with those amendments. As to providing some research for you on European provisions, I will undertake to apply my mind to that over the break before we come back for the budget. If I can help you in that regard, I will.

Senator XENOPHON (South Australia) (6.19 pm)—I might have to Google that, Minister.

Question negatived.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (6.19 pm)—The opposition opposes schedule 1 in the following terms:

(1) Schedule 1, item 1, page 6 (lines 15 to 18), subsection 3(4) to be opposed.
(2) Schedule 1, item 1, page 8 (lines 21 to 23), subsection 7(1) to be opposed.

These amendments provide for the removal of the reversal of the onus of proof. We feel that currently there is the capacity for the exploitation of the current provisions regarding the onus of proof. As discussed in my speech on the second reading, those who wish to remove themselves from a contract that might not necessarily be onerous—they have just decided to move on—can foist their position back on to the business that provided the services under that standard contract. These amendments deal with that. It amends two sections of the bill: schedule 1, item 1, page 6, lines 5 to 18 and schedule 1, item 1, page 8, lines 21 to 23.

Senator XENOPHON (South Australia) (6.21 pm)—Senator Joyce, what will the effect of this be? My understanding is that the reversal of the onus of proof in the bill would put the onus on the business party to establish that the term is reasonably necessary to protect the business’ legitimate interest. As I see it, these amendments would make it more difficult for consumers in the context of this bill. As I see it, these amendments would make it more difficult for consumers in the context of the framework of this bill. I may be mistaken. I would be grateful if Senator Joyce could outline what it will do in practical terms in a dispute between a consumer and a small business in terms of the evidentiary burden. We here all know that one of the great problems we have in this country in terms of access to justice is that when you
have a legal dispute between a party with shallow pockets and a party with very deep pockets, the party with a lack of resources generally misses out, because they cannot afford to have their case, however legitimate or meritorious it may be, heard to a conclusion in the courts because of the costs involved.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (6.22 pm)—It is the juxtaposition of the convenience of the consumer and the convenience of the business that offered the standard form contract. The coalition believes that if the onus of proof lies with the business then there is a capacity for that to be used as an out clause. That is, people under such things as phone contracts and rental car contracts can use onus of proof as a mechanism to avoid their obligations under the contract rather than avoid them on unfair terms—that they have just decided that they want to get out of it. We believe this threatens the capacity of business to operate in a fluid form. They will always be looking over their shoulder on this contractual term, wondering whether the consumer, once they get sick of a contract, can just back their way out by saying, ‘You have to prove that I have not been slighted.’ At the moment, with standard form contracts, the general presumption is that if the terms are fair you stick to them.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.24 pm)—The government shares the concerns raised by Senator Xenophon and will be opposing Senator Joyce’s amendments. We think that removing these two important provisions would really undermine the bill. We think these unfair contract and provisions work to the benefit of consumers. The rebuttal presumptions at subsection 3(4) and subsection 7(1) of the bill are essential for the practical operation of the unfair contract provisions. The rebuttal presumptions reverse the onus of proof in two specific circumstances: (1) when requiring the business to show that the contract in dispute is not a standard form contract and (2) when requiring the business to show that the term in question is required by a legitimate business interest. It would be highly unlikely that the consumer would be able to prove that a contract is standard form if they have access only to their own contract. Similarly, it would be impossible for an individual consumer to prove that something is not in a business’s legitimate interests. The removal of these rebuttal presumptions would totally undermine the ability of consumers to use the unfair contract terms law at all. We think it fundamentally undermines the ability of consumers to advance their case. On that basis, we will not be supporting the amendments.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (6.25 pm)—Obviously the government fundamentally believes it would not and we fundamentally believe that it would. We do not have the numbers. We will not be dividing on it.

Senator XENOPHON (South Australia) (6.26 pm)—There are many, many things that I agree with Senator Joyce on—and on some things we do not agree—but this is not one of them. My concern is that removing this reversal would require the consumer or the ACCC to prove that the term is not reasonably necessary to protect the reasonable legitimate interests of the business. This adds considerably to the evidence burden on the consumer or the ACCC and makes it much harder to show that the term is unfair. I believe it also adds unnecessarily to the costs to consumers and the ACCC in bringing actions for unfair contract terms. So I agree entirely with Senator Evans: I think it is desirable that we keep this amendment in there, because the practical consequences for con-
sumers in enforcement will be very detrimental to their rights being enforced.

The TEMPORARY CHAIRMAN—The question is that subsection 3(4) and subsection 7(1) in item 1 of schedule 1 stand as printed.

Question agreed to.

Senator XENOPHON (South Australia) (6.27 pm)—I move amendment (1) on sheet 5891:

(1) Schedule 1, item 1, page 7 (after line 21), after section 4, insert:

4A Unfair term—payments in person, in cash

(1) Without limiting section 3, a term that enables, or has the effect of enabling, a party to charge a fee for receiving a payment in person or in cash is taken to be an unfair term of a consumer contract.

(2) In this section:

fee means an amount additional to the upfront price payable under a consumer contract;

Under this amendment it will be considered an unfair contract term if businesses charge customers additional fees for paying bills in person or with cash—with legal tender. In July 2009, Telstra announced that it would be introducing a range of fees that would 'reduce face-to-face customer service and drive more customers towards online bill payments'. This is something that Telstra eventually reversed. I congratulate Telstra for reversing it, but it did so because it made a judgment call, as a corporation, that that was not the right thing to do for consumers. However, there are other corporations that continue to charge this fee. I believe that it is particularly unfair to our senior citizens and to those citizens who do not have online access, who do not have credit cards and who want the comfort of being able to pay with cash for their transactions. Telstra has done the right thing by abolishing this revenue-generating fee, and I encourage other companies that currently have this fee—other phone companies, I understand—to follow its lead. This amendment will make it an unfair contract term to charge customers who cannot or choose not to use the internet to pay their bills with any company in the future. I think it is a straightforward amendment. I think a legal tender is legal tender; you should not be charged for the privilege of paying in cash.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.29 pm)—I have two observations of a personal nature to make on this amendment of Senator Xenophon’s. I remember the fight about demanding that people pay wages in cash and losing that argument as time moved on. At the time, we lost a lot of security guards, who used to escort the payrolls. There were other issues for people, but I will not go into those issues.

The other thing—and I have to declare my interest—is that I have been encouraging my department to give discounts for people who apply for visas online, a discount for immigration department charges as a means of encouraging people to apply over the internet for visas and reduce some of the traffic in some of our offices. But I digress.

The bill as drafted would allow for such terms to be challenged as being unfair. The government does not support Senator Xenophon’s proposal on the basis that it does not take into account the full implications of the suggested prohibited term and imposes potentially significant cost implications for businesses, which we think need to be understood. Indeed, in some circumstances such a clause would not be considered unfair on the basis that it would be impractical or uneconomic to ban the practice of differential pricing in certain circumstances.
The government has amended the bill to remove the regulatory power to prohibit terms. However, this will not preclude the prohibition of particular terms on the face of the legislation at a later time subject to two key issues being addressed: firstly, the existence of a robust regulatory impact assessment of the proposed prohibition which explores the full implications of such a step; and, secondly, the agreement of the states and territories as required by the Intergovernmental Agreement for the Australian Consumer Law. The prohibition of terms is not to be undertaken lightly and the full implications of such a step must be undertaken with appropriate care and consideration for any wider implications. So on that basis, because of those concerns, the government will not be supporting Senator Xenophon’s amendment.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (6.31 pm)—It is great to see the minister hitting his straps. We have got an area which he is completely across, which is the use of cash, so we both welcome this amendment. However the coalition, although very sympathetic to the views put forward by Senator Xenophon, will not be supporting this, especially in the regulation of cash from point-to-point transfers or point-to-point sales. At this juncture we doubt the capacity for this regulation. We also have concerns about the relevance to this legislation and, as such, we will not be supporting it.

Senator XENOPHON (South Australia) (6.32 pm)—I am disappointed that both the government and the opposition do not see fit to support this. I would have thought that in relation to Senator Joyce’s comments, this is directly relevant to the legislation, in that it is unfair to be charged an additional amount for cash in terms of whatever the standard fee for the goods or services is—if you pay in cash you get charged an additional amount. I note Senator Evans’s comments that in his department he has encouraged the practice of giving a discount if you pay online. That to me is quite different from what is at stake here. If you give a discount for whatever the standard fee is to encourage people to pay online, that is still legally quite distinct from charging an additional amount for paying in cash. If it is a genuine discount—in other words, it is not an artifice, an artificial way of trying to add an additional fee by paying in cash because it may save some administrative costs—if the price for a good or service is a particular amount, why should you as a consumer be charged an additional amount to pay in cash? That is, I think, as simple as the argument is.

I have worked with Senator Joyce on a number of issues for the benefit of consumers and I would have thought that especially in regional Australia there is a real issue about to people wanting to be able to go to their local post office, their local newsagent or wherever bills can be paid, and have that human contact, pay in cash, and not be charged an additional amount because, for whatever reason, they choose to pay in cash or they are unable to pay online because they do not have access to that facility. Particularly in some remote parts of this country where there is a real issue in terms of online access or reliability, I thought that would have been reasonable.

I indicate that I seek to divide on this amendment and my subsequent amendment, if that assists the committee and you, Mr Temporary Chair. The minister said that it might be unfair or impractical to have differential pricing. I appreciate his response, but can the minister give us some examples of where it is unfair or impractical? I think that it is a sad day when cash carries with it a penalty in terms of paying some basic household bills.
Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.35 pm)—As I think I made clear, I am not expert on this legislation. I am filling in for Senator Sherry, who is away on sick leave. I think that the nub of it is that you are effectively providing a blanket provision, and the government’s view is that that should not occur, that there ought to be some testing of the merits and, if there are problems, the consumer ought to be able to challenge that. I think we accept that principle, and that is why I talked about a robust regulatory impact assessment of the proposed prohibition, which explores the full implications of such a step with the agreement of states and territories. I think our objection is to the blanket nature of your approach and I think we are fundamentally in disagreement about that. If I understand it, that is the nub of the disagreement.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (6.36 pm)—Just very briefly, we see that the issue pertaining to the payment of cash is external to the contract terms for which the provision of the service or the good was provided, and using the example of payment at the post office is a good one. Your contract with the telephone company is not necessarily your contract with the person who collects the cash at the post office. So if the person in the post office wants to charge you a fee, then that is external to the contract that you hold and that is why I do not feel that in this instance it is applicable to this piece of legislation.

Senator XENOPHON (South Australia) (6.37 pm)—I will deal firstly with Senator Joyce’s comments. It is not external. If you are charged a fee for paying cash, my clear understanding is that it has to be part of your contract term with the phone company, or whatever, to entitle that to occur. I would have thought that, because it is not external, the fee charged would be between the post office and the company, for instance. So it is not external.

I would like to take the issue to Senator Evans, to clarify the government’s position. I think the government’s position is that there has not been a robust regulatory impact assessment in relation to this. We are talking about being charged a fee for paying in cash. I do not want to misrepresent the government’s position, but, as I understand it, there is a concern about the blanket nature of this amendment. Does this mean that the government will be looking at the reasonableness or otherwise of charging a fee for cash in relation to the next round of amendments to consumer legislation? Will there be a robust regulatory impact assessment and also a general principle as to the circumstances in which it is reasonable to charge an additional amount for paying cash? I cannot think of any. That is my view, but will the government be looking at both the circumstances in which a fee is charged and the extent of that fee? They are two distinct issues, but they are tied into the same principle.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.39 pm)—Senator Xenophon, I understand that the ACCC are going to be developing guidance to deal with concerns raised by those who might be impacted, under this legislation, by the sort of situation that you raise. It is something that the government has been aware of. The guidance from the ACCC will be about how consumers can challenge concerns in that regard. So it is something that has been thought about. The ACCC are giving attention to it now, in anticipation of the legislation. I think the answer is that we intend to deal with it that way rather than through the blanket provision that you propose via the amendment.

Senator XENOPHON (South Australia) (6.39 pm)—Before we vote on this, can the
minister give an indication as to the time frame for such an assessment? Will it be in the context of the amendments to consumer law that are coming up later this year or will it be at some other time?

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.40 pm)—Senator Xenophon, with regard to the timing, I am going to take that one on notice. If I can get back with more details before the end of the debate, I will. If not, I will get the minister to drop you a note. I do not have that information available. As I said, it has been anticipated and the ACCC have started looking at the issues, but I will have to take the question about the time frame on notice. I will make sure that the minister drops you a note if I do not have an answer to your question before the end of the debate.

Question put:

That the amendment (Senator Xenophon’s) be agreed to.

The committee divided. [6.45 pm]

(The Temporary Chairman—Senator G Barnett)

Ayes………….. 7
Noes………….. 36
Majority……….. 29

AYES

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

NOES

Back, C.J. Barnett, G.
Bernardi, C. Bilyk, C.L.
Birmingham, S. Bishop, T.M.
Boswell, R.L.D. Brown, C.L.
Cameron, D.N. Cash, M.C.
Colbeck, R. 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. Joyce, B.
Ludwig, J.W. Marshall, G.
McEwen, A. McGauran, J.J.J.
McLucas, J.E. Moore, C.
O’Brien, K.W.K. Parry, S.
Polley, H. Pratt, L.C.
Stephens, U. Sterle, G.
Troeth, J.M. Williams, J.R. *

* denotes teller

Question negatived.

Senator XENOPHON (South Australia) (6.48 pm)—I move amendment (2) on sheet 5891:

(2) Schedule 1, item 1, page 7 (after line 21), after section 4, insert:

4B Unfair term—personal information

(1) Without limiting section 3, a term that enables, or has the effect of enabling, one party to transfer personal information about another party to a person outside Australia without that other party’s written, informed consent is taken to be an unfair term of a consumer contract.

(2) In this section:

personal information has the meaning given by section 6 of the Privacy Act 1988.

transfer, in relation to personal information, means communicate, send, trade or republish that information by any means to any person.

This amendment is quite simple. It will require banking institutions to obtain written, informed consent from customers before their personal information can be transferred to a person outside Australia. Currently, data, including credit card numbers, passport details, PINs, licence numbers, marital status, home address and employment details can be, and are, sent to offshore locations without a customer’s consent. This is a breach of privacy; it should be prohibited. I see this, as do many others, as a pretty fundamental contract term. It is inherently unfair for that in-
formation to be sent overseas in the absence of written consent.

Last October I jointly, along with the Finance Sector Union Australia, commissioned a survey which showed that 91 per cent of Australians say they would choose a bank that would not send their personal information overseas for processing. It was a nationwide survey. This survey also revealed that 83 per cent of people believe banks should be required to get written permission from a customer before sending their personal details overseas. The FSU is clearly right about this. More than 5,500 finance jobs have already been lost to cheaper overseas labour and with them have gone all these personal details. I think it is important for Australians to have the right to control who has access to their personal information. Banks should not be allowed to try and save a few bucks by jeopardising the privacy of millions of Australians. I applaud the FSU and the work that it has done in relation to this. This goes to an issue of the unfairness of not giving consumers the right to consent, or otherwise, to their information going overseas. I acknowledge that Senator Fielding has put up legislation in similar terms, and I applaud him for that. This is another way of trying to achieve the same thing. It is about consumers having that right. Not giving it to them is inherently unfair.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.51 pm)—I think Senator Xenophon understands that the government will be opposing this amendment. Although we all consider the issue to be an important one, it is a question of how you respond to this particular concern. I know it is a matter of community concern and it is an important issue. Consumer credit protection and the privacy of personal and financial information exercise the minds of us all. That is why the government has moved to strengthen the consumer protections surrounding consumer credit contracts. Protections for consumers’ privacy are provided through APRA’s prudential standards and by privacy laws which regulate the way in which information may be handled when transferred overseas.

The Senate would be aware that Senator Ludwig recently announced a range of reforms to the Privacy Act in response to the Australian Law Reform Commission’s privacy report, including stronger protections for cross-border data flows. Under the proposed reforms, agencies and businesses will remain accountable for personal information which is transferred overseas where certain protections cannot be guaranteed. So the government’s view is that the concerns are best addressed in these ways and we do not think it is appropriate to support Senator Xenophon’s amendment.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (6.52 pm)—In regards to Senator Xenophon’s further amendment, although we have sympathy once more about the issue of material going overseas, we believe that it would be more appropriate to place this information under the Privacy Act. There are a range of conditions under the Privacy Act that deal with this issue. Therefore, we will not be supporting this amendment. We would be more inclined to follow the provisions that are already laid down in the Privacy Act.

Senator XENOPHON (South Australia) (6.53 pm)—Senator Joyce has given me a lot of sympathy this evening! I do not want his sympathy; I want his vote! And it looks as though I am not getting it. This is an important issue, and I know that my colleagues the Greens are supportive of this—and I appreciate their support, along with that of Senator Fielding, as I understand it. The government and the opposition have stated their position. Can I just ask Senator Evans: does the gov-
ernment have concerns about the lack of any requirement for consent for information to go overseas? Is it something that the government is looking at? Is there some light at the end of the tunnel in terms of the process of information going overseas?

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (6.54 pm)—Senator Xenophon, I think I acknowledged the legitimacy of your concerns and the community’s concerns, and I share those. But—and this is the point that Senator Joyce made in his response—the government sees these issues as being best dealt with under the Privacy Act. As I said, Senator Ludwig recently announced a range of reforms in response to the Australian Law Reform Commission’s privacy report, including stronger protections for cross-border data flows, and that is the way the government intends to deal with the legitimate concerns you raise.

Question put:
That the amendment (Senator Xenophon’s) be agreed to.

The committee divided. [6.59 pm]
(The Temporary Chairman—Senator G Barnett)
Ayes…………….. 7
Noes…………….. 24
Majority……….. 17

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

NOES
Adams, J. Barnett, G.
Bilyk, C.L. Birmingham, S.
Bowswell, R.L.D. Brown, C.L.
Colbeck, R. Crossin, P.M.
Evans, C.V. Feeney, D.
Fierravanti-Wells, C. Furner, M.L.
Hurley, A. Joyce, B.
Ludwig, J.W. Marshall, G.
McEwen, A. McLucas, J.E.
Moore, C. Parry, S.
Polley, H. Pratt, L.C.
Stephens, U. Williams, J.R. *

* denotes teller

Question negatived.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (7.01 pm)—by leave—I move government amendments (2) and (3), (4) to (7), (14), (20), (28) and (29), (31), (33) and (34), (37), (40), (43), (50), (56), (59), (61), (64) and (65), (2) and (3) on sheet BJ236:
(2) Clause 2, page 2 (table item 4, 1st column), omit “39”, substitute “32”.
(3) Clause 2, page 2 (table item 7, 1st column), omit “75”, substitute “74”.
(4) Schedule 1, heading to Part 1, page 4 (line 2), omit “and prohibited”.
(5) Schedule 1, item 1, page 4 (line 22), omit the definition of prohibited term in section 1.
(6) Schedule 1, item 1, page 5 (line 9), omit the heading to Part 2, substitute:
Part 2—Unfair contract terms
(7) Schedule 1, item 1, page 5 (line 10), omit the heading to Division 1.
(14) Schedule 1, item 1, page 8 (line 19), omit the heading to Division 3.
(20) Schedule 1, item 5, page 12 (lines 3 and 4), omit “or 6(1)”.
(28) Schedule 2, item 40, page 46 (line 2), omit “38”, substitute “32”.
(29) Schedule 2, item 43, page 46 (line 20), omit “or a prohibited term”.
(31) Schedule 2, item 47, page 46 (line 30), omit “or 6(1)”.
(33) Schedule 2, item 59, page 48 (line 9), omit “or a prohibited term”.
(34) Schedule 2, item 60, page 48 (lines 15 and 16), omit “of Part VC or of the Australian Consumer Law”, substitute “or of Part VC”.
We also oppose schedules 1, 2 and 3 in the following terms:

-(13) Schedule 1, item 1, page 8 (lines 1 to 18), Division 2 to be opposed.
-(25) Schedule 2, item 28, page 44 (lines 8 to 11), to be opposed.
-(26) Schedule 2, item 30, page 44 (lines 23 to 26), to be opposed.
-(27) Schedule 2, items 33 to 39, page 45 (lines 5 to 22), to be opposed.
-(30) Schedule 2, items 44 and 45, page 46 (lines 21 to 25), to be opposed.
-(32) Schedule 2, items 51 to 55, page 47 (lines 9 to 22), to be opposed.
-(35) Schedule 2, item 71, page 49 (lines 25 and 26), to be opposed.
-(39) Schedule 2, item 75, page 50 (lines 15 to 17), to be opposed.
-(42) Schedule 3, item 2, page 51 (lines 8 to 10), to be opposed.
-(49) Schedule 3, item 7, page 55 (lines 6 to 25), section 12BJ to be opposed.
-(57) Schedule 3, item 33, page 79 (lines 4 to 6), to be opposed.
-(58) Schedule 3, items 35 and 36, page 79 (lines 18 to 21), to be opposed.

(37) Schedule 2, item 73, page 50 (line 6), omit “or a prohibited term”.
(40) Schedule 3, heading to Part 1, page 51 (line 3), omit “and prohibited”.
(43) Schedule 3, item 7, page 52 (line 6), omit “and prohibited”.
(50) Schedule 3, item 7, page 56 (line 25), omit “or 12BJ(1)”.
(56) Schedule 3, heading to Part 8, page 79 (line 2), omit “and prohibited”.
(59) Schedule 3, item 37, page 79 (line 28), omit “or a prohibited term”.
(61) Schedule 3, item 42, page 80 (line 19), omit “or a prohibited term”.
(64) Schedule 3, item 44, page 80 (line 29), omit “or a prohibited term”.
(65) Schedule 3, item 45, page 81 (line 3), omit “BA.”.

The group of amendments is to do with prohibited terms. The bill currently provides a regulation-making power whereby the minister may prescribe certain contract terms as unfair in all circumstances. It would then be a contravention for a business to rely on or purport to rely on a prohibited term in any standard form consumer contract. These amendments would remove the regulation-making power from the bill. A number of consequential amendments to the enforcement provisions of the bill will also need to be made to remove references to the prohibited terms. A similar regulation-making power has existed in section 32Y of the Victorian Fair Trading Act 1999 since 2003. However, it has never been used. No terms were proposed to be prohibited upon enactment of the bill. The removal of the regulation-making power to prescribe terms will not have any impact on an individual’s or regulators’ ability to seek a court declaration that a term is unfair. These amendments and all the consequential amendments relate to prohibited terms or the black list, so it is the one issue picked up in all the amendments.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (7.03 pm)—Without going through them ad nauseam, or we will be here till tomorrow night, the coalition are supporting the government on these amendments on prohibited terms. We would also like to express thanks for the support given in the negotiation on a lot of these amendments that was provided in detail in my speech on the second reading debate. Without any further ado, we will be supporting the government on these amendments.
The TEMPORARY CHAIRMAN (Senator Boyce)—The question is that the government amendments (2) and (3), (4) to (7), (14), (20). (28) and (29), (31), (33) and (34), (37), (40), (43), (50), (56), (59), (61), (64) and (65) on sheet BJ236 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that division 2 of part 1 in item 1 of schedule 1 as amended, items 28, 30, 35 to 39, 44 and 45, 51 to 55, 71 and 75 of schedule 2 and items 2, 7, 33, 35 and 36, 38 to 41, 45 to 56 of schedule 3 stand as printed.

Question negatived.

Senator XENOPHON (South Australia) (7.05 pm)—by leave—I move amendments (2) and (7) on sheet 5898:

(2) Schedule 1, item 1, page 6 (lines 1 to 14), omit subsections 3(2) and (3), substitute:

(2) In determining whether a term of a consumer contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the contract as a whole.

(7) Schedule 3, item 7, page 52 (line 29) to page 53 (line 11), omit subsections 12BG(2) and (3), substitute:

(2) In determining whether a term of a consumer contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the contract as a whole.

These amendments delete references to the terms ‘transparency’ and ‘detriment’ from the bill. Courts currently have the discretion to consider all aspects of cases before them and should not be constrained to focus on transparency and detriment specifically when it comes to determining whether or not a contract term is unfair. The term ‘unfair’ is expressly and separately defined, and the subsequent specific references in the bill to transparency and detriment are therefore unnecessary.

These are very important amendments in the context of the effectiveness of this legislation. These are additional hurdles for consumers to seek redress, and I am very concerned about this. Rather, the mandatory requirement for the court to focus on transparency and detriment will require the court to address these specific questions and will effectively turn these mandatory requirements into tests in themselves and in a manner that will negatively impact on the consumer. Therefore, this set of amendments will remove this additional and unnecessary test and will give greater opportunity for redress for consumers against unfair contract terms.

I am grateful for the advice I have received from Associate Professor Zumbo on this. I will briefly refer to the Senate Economics Legislation Committee inquiry. National Legal Aid argued that the concept of transparency implies that consumers are able to make informed choices about contract terms. However, they stated in their submission that their casework suggests the opposite. National Legal Aid said:

... because:

- most consumers do not read contracts—most rely on a notion that traders will act in a fair and reasonable way when it comes to enforcing their rights;
- even when they read contracts, consumers do not often understand how a particular clause will operate in practice; and
- even where a contract is read and understood, standard clause contracts are non-negotiable—it is a falsity to think that consumers can somehow bargain their way through amending or deleting a clause in a contract that is unfair but transparent.

Associate Professor Zumbo also argued in his submission that:
… a term can be “transparent” but still be unfair on the simple, but objective basis that the larger party’s bargaining power allows the larger party to draft and impose a contract term in such a way as to (i) represent a significant imbalance in the contractual rights and obligations in larger party’s favour; and (ii) in a manner that that goes beyond what is reasonably necessary in order to protect the legitimate interests of the larger party.

I believe this legislation has been weakened significantly for the benefit of consumers by having the terms ‘transparency’ and ‘detriment’ in it.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (7.08 pm)—Senator Xenophon, I think it is best summed up like this: we agree with you on one out of two. As I understand it, the government amendments will pick up removing ‘detriment’ from the bill. It will remove ‘detriment’ as something the court deals with. That is picked up by our amendments (8) to (10) and (44) to (46), which I think come up next. The unfairness test in the bill will be amended, hopefully, by those government amendments. That requires the court to consider the balance of the relative positions, the legitimate interests of the party advantaged by the term—usually the business—and whether application of, or reliance on, the term would cause detriment to the party disadvantaged by the term if it were to be applied or relied upon.

In determining whether a term is unfair under this test, the court may have regard to any relevant matter. However, the bill makes it clear that, in undertaking this assessment, the court must have regard to the transparency of a term and the contract as a whole. The concept of detriment, financial or otherwise, is relevant to the determination of whether a remedy could be applied under the unfair contract terms law. However, while the extent to which a term is disclosed clearly to a consumer is an important consideration to which the court should be directed, the existence of transparency in relation to a particular term is not a determinant of its unfairness.

Senator XENOPHON (South Australia) (7.10 pm)—I thank the minister for his response. I am grateful. It is good that one part of it will be dealt with. This whole legislation is about unfair contract terms, but you can have something that is transparently unfair—it is transparent but it is unfair. Just because it is out there and unfair does not take into account the disparity in bargaining power between the two. It is in the fine print, as National Legal Aid pointed out in their arguments about the concept of transparency and about consumers being able to make informed choices about contract terms because of what happens in the real world and the way these terms are drafted. My question to the minister is: was ‘transparency’ included in the exposure draft of this bill or has the concept of transparency been added since the exposure draft?

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (7.11 pm)—I am advised that the concept of transparency was in the exposure draft. I think the key point of difference for us is that, while we think transparency is an important issue, it does not prevent the court from making a decision about the fairness. We do not see that the court cannot still deal with the fairness. We think it is important that transparency of a term is something that the court ought to have regard to. Your point that somehow this provision undermines any assessment of fairness is not one we share.

Senator XENOPHON (South Australia) (7.12 pm)—I have received advice that, by adding the concept of transparency, it is another hurdle and another factor that may be taken into account when the core issue is whether the contract term is fair or unfair. I
will not take it any further. We will agree to disagree in terms of my position, the government’s position and, indeed, the opposition’s position on this. If I were a betting man, which I am not, I would say that there will be litigation where large corporations will use transparency to argue that consumers should not seek redress when in fact we should be focusing on whether the contract term is fair or unfair.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (7.13 pm)—The coalition is sympathetic to the views once more—

Senator Xenophon—I want your vote, not your sympathy.

Senator JOYCE—A lot of sympathy today. We are very sympathetic to the views of many in the industry who argued that the bill’s reference to a substantial likelihood of detriment creates an unacceptable degree of risk and uncertainty for businesses and consumers. As the bill is currently drafted, there is no requirement that the term actually create detriment for it to be unfair. It will be unclear to those entering into a contract which terms will be judged to be likely to cause detriment. In addition, a party may be placed in detriment when the contractual terms remain fair to both parties when each is on equal footing. By substituting the words ‘significant disadvantage’, the bill will only find a term unfair where a party is genuinely placed at a disadvantage. The court will then need to weigh up the relative positions of each party, whether they are unequal and whether one party is at a significant disadvantage.

Likewise the provisions of transparency are superfluous. The explanatory memorandum states that:

Transparency in the terms of a consumer contract may be a strong indication of the existence of a significant imbalance in the rights and obligations of the parties under the contract …

the extent to which a term is not transparent is not, of itself, determinative of the unfairness of a term in a consumer contract and the nature and effect of the term will continue to be relevant.

Given that the government wishes to encourage transparency in contracts and that the existence of this term will provide parties with an incentive to provide transparency, there is no strong reason to insist on its removal. On these issues we will not be supporting this amendment.

Senator XENOPHON (South Australia) (7.15 pm)—Finally, in answer to Senator Joyce can I say that, with the amount of sympathy he is expressing for me tonight, he should be working for Hallmark! Will the government review this if there are court cases where transparency is seen to be a hurdle for consumers to seek redress? Is that something that will be monitored by the government in terms of the practical enforcement or the application of these laws?

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (7.16 pm)—Clearly, if the government thought a problem had emerged in terms of court interpretation, we would have a look at that and whether or not a response is required. That is very much a hypothetical but we are always alert to court decisions on important matters and whether or not they have implications for legislative intent. Obviously in this case the normal approach would apply. I am still recovering from the fact that Senator Xenophon is a Greek who does not bet. I am a bit shocked. He is the first Greek I have met who does not have a bet! It is a point well made. As I said, I think it is a hypothetical but obviously the government would monitor any court decisions which impact on the legislation.

Question negatived.
Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (7.17 pm)—by leave—I move government amendments (8) to (10) and (44) to (46):

(8) Schedule 1, item 1, page 5 (line 29), omit “term.”; substitute “term; and”.

(9) Schedule 1, item 1, page 5 (after line 29), at the end of subsection 3(1), add:
   (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

(10) Schedule 1, item 1, page 6 (lines 4 to 7), omit paragraph 3(2)(a).

(44) Schedule 3, item 7, page 52 (line 28), omit “term.”; substitute “term; and”.

(45) Schedule 3, item 7, page 52 (after line 28), at the end of subsection 12BG(1), add:
   (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

(46) Schedule 3, item 7, page 53 (lines 1 to 4), omit paragraph 12BG(2)(a).

At present, the bill requires that, when considering whether a term is unfair a court must take into account the extent to which a term would cause or there is a substantial likelihood that it would cause detriment, whether financial or otherwise, to a party it relied on. Although this is a factor the court must take into account, detriment is not part of the test for unfairness.

The current test for unfairness in the bill has two limbs, both of which must be satisfied. A term will be found to be unfair where there is a significant imbalance in the parties’ rights and obligations arising under the contract and the term is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term. The bill would be amended to remove consideration of detriment from the factors the court must take into account and instead include detriment, whether financial or non-financial, as part of the test for an unfair term. This would make detriment a necessary condition for a term to be found unfair.

Specifically the amendments would add a third limb to the test to require that, in order to be unfair, a term would cause detriment, whether financial or otherwise, to a party that would be applied or relied upon. Consequently, the reference to substantial likelihood of detriment is a factor the court must take into account. In considering whether a term is unfair, it would be removed as it would be redundant. This amendment would more closely align the operation of the bill to the definition of ‘unfairness’ in the current Victorian Fair Trading Act on which the unfair contract and provisions are based.

The concept of detriment, financial or otherwise, is relevant to the determination of whether a remedy could be applied under the unfair contract terms law. Contrary to concerns expressed that a term could only be found to be unfair if actual consumer detriment is established, the amended unfairness test requires the court to consider whether application or reliance on the term were to cause detriment to the party disadvantaged by the term if the term were to be relied upon.

Progress reported.

ADJOURNMENT

Senator Boyce—Order! It being 7.21 pm, I propose the question:

That the Senate do now adjourn.

Australian Capital Territory

Senator McEWEN (South Australia) (7.20 pm)—I seek leave to incorporate a speech on behalf of Senator Lundy.

Leave granted.

Senator LUNDY (Australian Capital Territory) (7.20 pm)—The incorporated speech read as follows—
There is no doubt that it has been a very big week for my home city of Canberra.

First, it was the satisfaction and delight of yet another premiership (after some nail-biting final minutes) for Lauren Jackson, National Hirst, coach Carrie Graf and the mighty Canberra Transact Capitals—now officially, fittingly, the most successful team ever in the WNBL.

And then, over the last few days, the whole town has been abuzz with 97th birthday celebration excitement. While the Grand Event, on 12 March 2013, is still 3 years away, this has not stopped the ACT Government of Jon Stanhope, in close collaboration with the Rudd Government, ensuring that we all enjoy the subtle symphonies of the build-up. Anticipation is growing.

Last Friday, at a VIP breakfast, the Chief Minister formally announced the name of the Centenary’s native plant, a superb Correa cultivar, of impeccable breeding fines, to be known as the ‘Canberra Bells’.

At the same function, the Centenary of Canberra’s remarkable Creative Director, Robyn Archer, introduced us to the new and striking Centenary logo (the result of a creative collaboration between young designers across Australia and His Excellency, Mr Michael Bryce), and she also drew our attention to the bulging 2010 Canberra Festival program of recent weeks, as well as a selection of the innovative commemoration events to be rolled out in the coming 12 months—consciousness raising events to ensure we maximise the number of Canberrans getting actively involved.

The challenge, of course, for the ACT and the Commonwealth Governments is to pique the interest of as many Australians as possible throughout the country—to alert them to both the importance and the genuine relevance of the celebrations. The national significance of the events, and personalities, and history being celebrated.

I am confident that this will happen, but only if all of us, in the parliament and in Canberra, are motivated to play a part in building a deeper understanding of Canberra as the nation’s capital—primarily through its rich and utterly compelling history.

Fortunately, we have the luxury of a suite of Centenary years, 2008 to 2013, to make this happen. Time enough to get to know some of our most significant Federation founders, and their more momentous decisions—a number of which continue to profoundly affect us to this day.

Our over-riding goal should be to link the best of our best to the present and future.

I am sure that most of my fellow Senators have an inkling of, say, King O’Malley’s controversial profile as iconoclastic Minister for Home Affairs in Andrew Fisher’s second, impressively over-achieving Labor Government a century ago.

Perhaps you are also passingly familiar with the classic footage of Lady Denman, the Governor-General’s wife, atop the Foundation Stones podium, during that dusty autumn of 1913, pronouncing Canberra’s name, with the accent on the ‘Can’. Last Friday’s ACTTV Stateline program, catering explicitly to keen local-community interest, ran a few snippets of Raymond Longford’s historic footage of the Naming Ceremony.

But the brute fact, the shaming fact perhaps, is that, until recently, very few of us have been able to go much beyond a few isolated titbits of national capital history.

The Centenary years are thankfully changing all that. Many of us have been plugging more deeply into the history. We now have a working understanding of the protracted yet highly entertaining ‘Battle of the Sites’ saga when, 100 years ago, a host of Australian towns and cities aspired to be what one writer called ‘the treasure house of a nation’s heart’.

We now know that it was the option called ‘Yass-Canberra’ that won out in late 1908, and that it was Charles Scrivener, by all accounts the most brilliant surveyor of his generation, who was tasked with finding the specific location for the federal city within the ‘Yass-Canberra’ region.

Scrivener and his talented team got the job done with consummate professionalism during 1909, but the intended Federal Capital Territory—from 1938, the Australian Capital Territory—now needed its precise boundaries. It required, first, a gift of land from the NSW State Government to the national government. And it needed an appropriate mechanism to enable the gifted land to be
governed by the Commonwealth—an Administration Act—which ultimately became legislation in late 1910.

The year 1910 in fact assumes a noble place in the larger national capital story, for it was almost exactly 100 years ago that the ultra-challenging border survey, to delineate the FCT borders, was commenced. In country that required he and his team to be crawling on all fours on occasion, up and down cliff faces, Percy Lempriere Sheaffe commenced the survey at Mt Coree, in the nearby Brindabellas, in late May 1910.

The survey evolved into an epic, 5-year adventure, yet even a cursory read of the original manuscript material underscores an issue for our Federation founders that is as relevant today as then: the crucial importance of water. Water dominated inter-government deliberations on the capital throughout 1909 and for most of 1910.

When Mr Surveyor Scrivener, as he was rather stuffily called, sent his Report to the Minister for Home Affairs in May 1909, the first sub-heading in the milestone document is simply entitled: ‘Water Supply’. Scrivener proceeds to go into the topic in near-encyclopaedic fashion, armed with every imaginable statistic related to the catchments of the Molonglo, Murrumbidgee, Queanbeyan and Cotter Rivers.

Scrivener’s Report soon became the catalyst for a busy exchange between the NSW Premier and the Prime Minister, as both men strove for advantage to ensure acceptable water supply for their respective constituencies.

It is hardly surprising that when the Fisher Government published the ‘Information, Conditions and Particulars’ for Canberra’s international design competition in 1911 that potential applicants were advised that ‘water supply must be of sufficient magnitude to place the question of volume at all seasons and purity beyond doubt’.

It is not hard to empathise with, and learn from, our forebears. Both the Rudd and Stanhope Governments, fully engaged with the substance of the irrefutable science in the 2007 Report of the Intergovernmental Panel on Climate Change, continue to ensure that water is a fundamental priority in the thinking for our inland national capital.

Accordingly, in the last few months there has been a succession of important announcements to progress the water agenda.

In November 2009, ACTEW and the Stanhope Government started construction of the Cotter Dam extension on the western outskirts of Canberra, easily the biggest building project in the ACT since the construction of the new Parliament House. The Cotter extension, a vital project for the ACT and surrounding regions, will make certain that residents of the ACT have adequate and safe drinking supplies—‘purity beyond doubt’, as the founders so memorably put it—even if climate change leads to longer and more severe droughts.

In December 2009, the Environment Minister Peter Garrett and I announced a $2.9 million project for the Australian National Botanic Garden;—honouring a carefully considered election commitment of the Rudd Government to construct a pipeline from Lake Burley Griffin that will deliver 170 million litres of non-potable water to the Gardens each year. It should be operational sometime next summer.

As Senators are aware, this is a project very dear to my heart both as a resident of the ACT and as a firm supporter of the seminal cultural role of the national ‘treasure house’ institutions in the education of our nation.

The beautiful Botanic Gardens, the living collection of which represents an extraordinary one third of Australia’s plant diversity, is a key part of the umbrella of national institutions in Canberra—an umbrella which was seriously under-emphasised, even undermined during the Howard Government years. Some were let run down, but none so seriously as the Australian National Botanic Gardens.

Fortunately, the winds of change are blowing for the better. It has been my privilege to host two forums over the last 12 months which have drawn government and public attention to the neglect. The new Director of the Gardens, Dr Judy West, has welcomed what she has called a ‘fantastic start’ to a new future.

One might use these same words to describe the situation at yet another cultural treasure of the national capital, the Albert Hall, which only last
week celebrated its 82nd birthday amidst a gratifying surge of historically savvy community support. It has been well-documented that the Albert Hall endured a crisis period during the dying days of the Howard Government, when the National Capital Authority’s potentially disastrous Draft Amendment 53 proposed significant built development within the Albert Hall’s quality heritage precinct.

Community fury—direct, purposeful action—led to the eventual withdrawal of the ill-considered Amendment. It is one of life’s pleasures for me, driving to work down Commonwealth Avenue, to witness the elegant refurbishment work now going on at Albert Hall, courtesy of some $2.73 million in heritage funding from the ACT Government, topped up with an additional $500,000 in federal funding.

When King O’Malley, as Minister for Home Affairs, addressed the House of Representatives chamber on 9 November 1910, he had become an outspoken advocate of the Canberra option. He called it ‘a new Eden’, and recalled the first time he viewed the Limestone Plains from the vantage point of Mt Pleasant, the hill behind Duntroon.

With characteristic flourish, O’Malley said that ‘... Moses, thousands of years ago, as he gazed down on the promised land, saw no more beautiful panoramic view than I did ... the site of the Federal city, like that of Rome, is located on seven hills, and must remind travellers of that ancient Italian city which was the capital of the world’s civilisation. I shall not say that such will be the case with the Federal city’, O’Malley went on, ‘but I believe it will be the capital for many centuries of civilisation in this southern hemisphere’.

Phew. In the build-up to Canberra’s Centenary birthday, while Senators might not be prepared to go the full distance of O’Malley’s euphoric vision of the future, we have been entrusted as the latest generation of custodians to look after this city, the finest capital city-in-the-landscape in the world. Canberra’s Centenary birthday are a timely reminder of the obligations of that custodianship—one that I hope all federal parliamentarians will relish. We all have a story to tell.

Paid Parental Leave

Senator JACINTA COLLINS (Victoria) (7.20 pm)—Despite some requests after last night’s adjournment to go down the path again of household hints and after the urgency debate in the Senate, today I will focus on Tony Abbott’s wonderful social policy adventure. I certainly have no intention to become a regular commentator on household matters but this is a very important policy issue. It is important not only because of the issue itself but because this is the issue with which Tony Abbott has chosen to lead with his chin over and above all other serious national policy issues. He has chosen what I characterise as this wonderful social policy adventure because, when you look at the detail of it, as indeed did Senator Barnaby Joyce, it is very difficult to take seriously.

I thought Tony Abbott was keen to characterise himself as a deep social thinker, but I seriously doubt he has made any detailed examination of the Productivity Commission report in this matter because his position since his attempt to launch a policy position on International Women’s Day has flip-flopped all over the place. He seems not to comprehend the seriousness of this as a policy issue and the angst being generated by the public at large. Indeed, because of a couple of headlines today, I suspect the Greens also do not have a full sense of the concern being generated by the public at large.

Why has paid parental leave become the issue of the day? We were told by Julie Bishop that it was poll driven and that the Liberal Party had concerns about the results they were getting from women under the age of 45 about their support for the Liberal Party or their support for its leader. I was surprised when I heard that from Julie Bishop because the Liberal Party had been very keen to suggest that it was a Labor Party myth, that women were quite fond of
Tony Abbott and that it was a myth to suggest that there were any concerns with polling support for the Liberal Party. Apart from the polls which seem to concern the Liberal Party, I thought it might be interesting to look at the polls about the support for the different paid parental leave schemes. One report from Essential Media, which was part of today’s clips, had the concerning headline that came out of, I suspect, some Green backgrounding, ‘Parental leave needs to be six months to pass’ and the article said:

An Essential Media poll released yesterday found 40 per cent of voters backed the government’s scheme and 24 per cent backed Mr Abbott’s. Another 27 per cent liked neither.

So, despite the high-profile attention that Mr Abbott has carried on this issue and the very, very bold scheme, he is attracting only 24 per cent support.

Opposition senator—That’s not bad.

Senator JACINTA COLLINS—The senator suggests, ‘That’s not bad.’ The question is: who might that 24 per cent be and what might really be the secret agenda here? We have heard from many areas and in many reports about Tony Abbott that he usually carries that secret agenda. In thinking about this today, I think I have found the answer. The public reticence in responding to this policy has hit the nail on the head. The public concern has highlighted this particular issue and their concerns about the equity of the scheme being proposed.

We heard from Senator Abetz today when he said that the tax should be on big business because they will be the ones who will ultimately see the benefits. As I walked past Senator Coonan’s office today I got a look for the first time at some information on this and the detail on her window did not say that it is going to be a temporary tax. I suspect that the real agenda is that the opposition will introduce this as a temporary levy. They will then allow big business, who generally have been the ones to start improving parental leave entitlements, to absorb what they are already paying so that they no longer pay that, and then they will translate it into a taxpayer funded scheme. This seems to be the real agenda.

When I thought about this further, I thought: could I possibly ever imagine Tony Abbott providing these policy principles into some other areas of social policy? So I thought of another example; personal leave, I think, was the best one. Could Tony Abbott ever propose in the future to shift employers’ costs of funding personal leave entitlements onto the taxpayer? If it is going to save employers and particularly big business, perhaps that is what he might propose. Certainly under the previous government they sought, in some instances, to allow businesses to shift their sick leave responsibilities onto the government. They sought to allow businesses to trade-off workers’ sick leave entitlements in their negotiations so that when they did actually fall sick and needed income support they had to fall back on social security.

When Tony Abbott talks to big business and says, ‘I really do think you’ve got to cop this tax,’ what is he going to say? Is he going to say, ‘Look you’ve just got to take it on the chin for me. You’ve got to support the Liberal Party because of all of these other issues,’ or is there really a secret agenda? Are the low-income, part-time working women whom I have dealt with through my career going to be funding those on significantly higher incomes through their tax? That is why 40 per cent of voters automatically know which scheme they support. They do not believe that the taxpayer should be funding these types of benefits for very-high-income earning people. One mother does not feel she should be getting only the minimum wage from the government as opposed to another mother who would be able to get
$75,000 for her period of care. I am sorry, but that is a very hard argument to convince anyone of.

The other reason, of course, why most people do not accept this charade is the experience they have had with Work Choices and the opposition leader’s more recent proposals about what they do with unfair dismissal and with penalty rates. Let us use that as an example. Is Mr Abbott proposing that these new payments will incorporate shift allowances and penalty rates? Will the taxpayer fund those payments? We just do not know because there has been no detailed consideration of any of these issues. Even the opposition’s current material does not report the recent backflips.

I am going to be very interested to see what the most recent backflip will be in relation to workers’ existing entitlements. If workers had negotiated 12 weeks of paid parental leave in their enterprise agreements and made other offsets on a productivity basis and were then told, ‘No, taxpayers are going to pay that now and we don’t have to do it anymore,’ are workers going to have an opportunity to reclaim the hard-lost benefits they traded for these conditions? I do not think so. I do not think the opposition have thought about any of these matters. I think a very naive, ill-informed view about how you can progress on some of these social and industrial policy issues has been part of Tony Abbott’s wonderful social policy adventure.

The disquieting thing is that the Greens have gotten on board. We had, along with many other concerned women’s groups, gotten the opposition to the position of conceding that at the end of the day they would not leave ‘nothing’ and that on 1 January we would at least have the scheme that the government proposed. But, no, that is not good enough. Today, we have a different backflip. We have these headlines concerning people that parental leave needs to be six months or it will not pass. This is just completely irresponsible. I hope that the opposition has not joined with the Greens in this message. I hope that the Leader of the Opposition—indeed, also the spokesperson on the status of women—will reaffirm the comment he made late last week that at the end of the day we will have a scheme up and ready to operate from 1 July this year.

**Education: Future Footprints**

**Senator BACK** (Western Australia) (7.30 pm)—I actually hope to make a contribution on something that is positive and is happening in Australia, and that is a program known as Future Footprints, being conducted in secondary boarding schools in Western Australia. It is targeted at attracting and retaining young Indigenous students through to the end of year 12 and onto tertiary studies. I want to report to the Senate how successful that program is. I thoroughly recommend it and I will be requesting that in the forthcoming budget continued funding is there for it. It is an initiative of the Association of Independent Schools in WA and its aim is to support Indigenous students from remote areas of Western Australia and the Northern Territory attending boarding schools in Perth.

The program has been running since 2005 and I want to give the Senate some statistics on it. Its aim is, firstly, to increase the number of Indigenous students in independent schools; secondly, to increase the retention rate right through to year 12; and, thirdly, to increase the number who successfully complete year 12 and therefore go on to higher studies and, of course, to develop that partnership between schools and places of higher learning and trade training providers. The program started in 2004 with 76 Indigenous students equal in number between boys and girls. This year, 181 are participating. They are drawn, as I said, from every region of
WA but also the Northern Territory—Jabiru and Groote Eylandt. But most important is the fact that the completion rate of these young people in the schools has gone from a very successful 79 per cent in 2005 to hit 100 per cent in 2008 and 96 per cent last year.

Regrettably, so many of the programs that we see and fund and learn about in estimates and at other times in this place only ever tell us about failure. They tell us about truancy, about nonattendance at schools and about problems associated with children and adults in the Indigenous communities. The interesting thing about this program is that from its inception it has been outstandingly successful. There would not be a thinking person in this community who does not want to see a radical narrowing of the gap between the Indigenous community and the wider community, and we all accept that this starts with the key form of education.

There are some 16 independent schools in Perth that participate in the program each year and they provide very significant funding. It costs about $30,000 a year to have a child in boarding school and the best that the parents can get is support of about $12,000. So each of the schools is supporting each of these students to the tune of at least $15,000 and that is to be commended. The government and the wider community should applaud that.

I know there are programs around Australia where Indigenous students are in schools in the cities. This one is a little different in the sense that it has, as part of its exercise, the involvement of some Aboriginal liaison officers. The Commonwealth government contributes $400,000 per annum to this program and that $400,000 is then allocated to the employment of two Indigenous liaison officers. For those of us who have been in boarding schools, the best way to describe these officers would be to say that they are the students’ Perth based aunt or uncle. They provide the sort of support that we would hope an extended family would supply.

We all know that boarding school is stressful, but you can imagine just how stressful it is for students from remote areas of WA and the Northern Territory. Very often they are the first in their family to have ever participated in secondary school and it is a tremendous cultural change for them to come from the north of Australia down to Perth. This is the role that the liaison officers have. They arrange orientation programs at the beginning of each year, and it was my pleasure three or four weeks ago to attend their Welcome to Country ceremony. They mentor the students in schools, they act as liaison between the school liaison officer and the children themselves, they visit the students on a weekly basis just to make sure that everything is under way, and they also provide to the staff and students in the schools some sort of professional development and understanding of the cultural differences between the Indigenous children and the wider community of students. They regularly communicate with the parents and parent representatives but, more importantly, they form partnerships with higher education institutions and trade training providers so that as these children move towards year 12 and graduation they are already aware of some of the options available to them.

One very important feature of the Future Footprints program is the liaison between the Indigenous and the non-Indigenous children in the boarding schools, but equally so many of these schools now attract overseas students and these would be the only opportunities that overseas students, from the Asian region in particular, have to meet and mingle with the Indigenous kids. Therefore, we have a circumstance in which the Indigenous young people, the non-Indigenous and the overseas students form friendships, visit each
other’s homes and start lifelong friendships. It would be unlikely that we would ever see such encounters occurring. I am aware of many instances where the Indigenous young people are invited home to their classmates’ homes, both in metropolitan and rural and regional areas. Of course, this is of critical importance.

Madam Acting Deputy President, let me give you some of the tremendous statistics that this program is attracting. In 2008 there were 19 students who started year 12 and 19 students graduated. In this last year, 2009, that 19 increased to 28 students, all of whom except one successfully completed year 12 and graduated. But what is very exciting about this program is that of the 28 who graduated last year 11 have already gone into university courses—in Perth and, in a couple of cases, in Melbourne—five have commenced apprenticeships and two of them are already fully employed. Of the 2008 graduates, several of them are at university, many of them are in training or apprenticeships, one young fellow won a Rotary exchange to study during 2009 in Europe and others have gone interstate or have remained in WA in internships or are in employment. What an outstanding achievement for a group of young people from rural and remote areas of WA and the Northern Territory. They make the break, come down to these schools—the cultural shock for them must be tremendous—remain in school, graduate and start a career in university or in trade training or in other higher education, something which they would otherwise have never had the opportunity to do.

This program has been recognised by the Department of Education, Employment and Workplace Relations in 2008 as being best practice. In that same year Future Footprints received the Woodside Petroleum Award for its contribution to Indigenous education and, fortuitously for them, it was one of the projects selected for presentation at the Ministers of Education first biennial forum held in Melbourne in December 2008. Whilst I do not have the quote with me, it was absolutely tremendous on that occasion to see a young lass in year 12 from Broome stand up in front of that august body and say to her friends and colleagues and to the audience generally, ‘You know it’s painful, you know you’re lonely and you know you want to be home but at the same time you know you have an opportunity and you must grasp it.’ In fact, that young lady did graduate in 2008 and I believe she was one of those who went to Melbourne and into university last year.

Future Footprints plays a significant role in the engagement of young Indigenous people in education. It has already proved successful in their development at a critical time of their education and, importantly, their school-to-work transition. The success of the program is evident across a range of indicators, the two most important ones being retention and completion. Together with the strong growth in Indigenous student enrolments in independent residential schools, the program’s commitment to social inclusion and to reduce disadvantage is to be applauded. Last year in Senate estimates, I urged the minister and the department to continue to expand funding at a time when it was at risk. I must congratulate Senator McLucas. I understand she picked up that mantle and, as a result of our pleading, that program was funded. My plea is that in the forthcoming budget round that $400,000 will continue.

**World Tuberculosis Day**

**Senator MOORE** (Queensland) (7.40 pm)—As we move closer this week to World Tuberculosis Day, I want to speak again in this place about the scourge of this disease across the world. We know that tuberculosis is a contagious disease. Indeed, tuberculosis
is one of the most infectious diseases on the planet. When infectious people sneeze or cough or talk or spit, they actually spread TB germs known as bacilli into the air. We have talked before in this place about how widespread this can be and how easily people can become infected. Left untreated, each person with active TB disease can in fact infect on average between 10 and 15 people a year. That indicates just how quickly this spreads and how people living in communities that live close together, perhaps in poverty, are most vulnerable to becoming extraordinarily ill. One of the things about TB is that many people can have the disease for a long time and not know that they are infected. The disease stays with them if it is untreated and at any time can come forward.

We know that when someone’s immune system is weakened the chances of becoming sick from TB are greater. This has been identified across the world and, in particular, that the disease is a scourge of people who are in poverty. Someone in the world is newly infected with TB bacilli every second. Overall, one third of the world’s population is currently infected with the TB virus and five to 10 per cent of people who are infected with the TB bacilli but who are not infected with HIV become sick or infectious at some time during their life. We do know, and this is something that has been pointed out consistently by the World Health Organisation, that people with HIV and TB infection are much more likely to develop full-blown TB. The World Health Organisation estimates that the largest number of new TB cases in 2005 occurred in the South-East Asia region, which accounted for 34 per cent of incident cases globally. However, we also know that the estimated incidence rate in sub-Saharan Africa is nearly twice that of the South-East Asian region, at nearly 350 cases per 100,000 population.

TB can be fatal. TB can be cured. The easiest way for TB to be treated is by having early immunisation. Certainly one of the things that we talk about on our globe is our international response to ensure that children are immunised early. That is something that is done in most countries and it is certainly something that Australia achieves but the real demand upon all of us is to look at what is happening in our own region, South-East Asia, and also in sub-Saharan Africa. There is an urgent need for appropriate drug treatment to be available to people who live in these areas. We know that in 2005 the estimated per capita TB incidence was stable or falling in all six WHO regions. However, this slow decline, and it is very slow, is offset by a very large population growth. Consequently, the number of new cases arising each year is still increasing globally. This is particularly so in the WHO regions of Africa, the Eastern Mediterranean and South-East Asia.

In 2006 WHO launched the Stop TB Strategy. The core of this strategy is DOTS, which is the TB control approach launched by WHO in 1995. Since its launch, more than 22 million patients have been treated under the DOTS based system. The new six-point strategy builds on this success while recognising the key challenges of TB/HIV co-morbidity and also the development of drug-resistant TB, which is becoming more persistent in some parts of the globe. Not only do we have the existing strains, which medical research has proved can be treated, but strains are now developing that seek greater research and demand consideration of a new eradication system.

The six components of the Stop TB Strategy are quite simple and straightforward: (1) pursuing high-quality DOTS expansion and enhancement, making high-quality services widely available and accessible to those who need them, including the poorest and most
vulnerable; (2) addressing TB/HIV and other challenges and making sure that there is greater action and input, which is particularly important when we see that under the UN Millennium Development Goal 6, target 8, we are looking particularly at ensuring that we reduce the targets of TB by 2015, which is so close to us now; (3) contributing to health system strengthening, which means we have to look at strategies to help individual governments have stronger health systems and supply systems of innovative service delivery across the regions; (4) engaging all care providers so that TB patients seek care from a wide range of public, private, corporate and voluntary healthcare providers. We need to reach all patients particularly those who live in far reaching areas and, as we continually state, in poverty. Goal (5) is the core goal in so many of the WHO projects. It is empowering people with TB and their communities because community TB care projects have shown how people and communities can undertake essential TB control tasks. The networks created can mobilise civil societies and ensure genuine political support and the long-term sustainability for TB control programs at all levels; And goal (6) is another one we hear about so often: ensuring that there is enabling and promoting research because there must be continuing research to find better drug treatments and also to treat the drug-resistant strains of the disease that are coming forward.

The strategy is to be implemented over the next 10 years and is described in the Global Plan to Stop TB. The global plan is a comprehensive assessment of the action and resources needed to implement the Stop TB Strategy and to achieve the following targets: we have to, under the Millennium Development Goal (MDG) 6, target 8, halt and begin to reverse the incidence of TB by 2015. There are clear targets linked to the MDGs and endorsed by the partnership: by 2015, reduce TB prevalence and death rates by 50 per cent and by 2050 the goal—and the goal we must all share—is to eliminate TB as a public health problem.

Certainly one of the key ways that funding has been achieved for TB research and eradication has been through the Global Fund. The Global Fund is the unique private-public partnership dedicated to attracting and dispersing additional resources to prevent and treat HIV-AIDS, tuberculosis and malaria, which are the three major diseases on the march and killing people across our world. This partnership between government, civil society, the private sector and affected communities represents a new—it was awarded and celebrated at the time—and innovative approach to international health financing.

The Global Fund works in close collaboration with other bilateral and multilateral organisations to supplement the existing ways of working on these three diseases. Since 2002—when the Global Fund was created—it has become the main source of finance for programs to fight these diseases with approved funding of US$19.3 billion for more than 572 programs in 144 countries. The Global Fund alone provides a quarter of all international financing for AIDS globally, two-thirds of that for tuberculosis and three-quarters for malaria.

The Global Fund is financing and enabling countries to strengthen health systems and to make improvements to infrastructure and providing training to those who deliver services. We were lucky enough a couple of weeks ago in this place to have the current head of the Global Fund visiting and talking with many of us about the need to continue the work that the fund does and also to maintain its strong governance model to ensure that people are not just handed money. They
have to prove they are working effectively to address the goals that they have determined.

The Australian government has been a strong contributor to the Global Fund. Our government has made that commitment. We are seeking greater commitment into the future because further money always needs to be put into this battle of which we are all a part.

Again, I think it is very important that we acknowledge that this disease of tuberculosis is not a part of history. In the Western world we think of it as something of a disease that belonged to the 19th and early 20th centuries. It is very real in our neighbours. We need to continue to be part of the fight against it.

Tasmanian Election

Senator BUSHBY (Tasmania) (7.50 pm)—This Saturday, Tasmanians will have the opportunity to exercise their democratic rights. They have a real ability to deliver real change. Labor, and its Premier, David Bartlett, are offering the same scandals, the same secrecy, the same lack of leadership and the same poor decisions that its predecessors under Paul Lennon and Jim Bacon delivered.

Make no mistake, Labor’s tried-and-true three-card trick of changing the leader has not changed the nature of this government, which is rotten to the core. The fact is that when Labor changes leaders and says to you, ‘You don’t have to change the government because we’ve already done it,’ it is a sham, a front and a deception no better than a spray job on a car that is a lemon. It may look shiny and new, but, underneath, it is still an old lemon.

The Tasmanian Liberals, on the other hand, offer real change. It is change that will deliver integrity and real action intended to deliver positive outcomes for all Tasmanians—rather than line the pockets of special mates—action that will address in a practical and common sense manner Tasmania’s education and health challenges and real change that will restore public faith in the parliament and government of Tasmania.

The demise of two deputy premiers in as many years, both in scandalous circumstances, along with the scandals involving others senior members of the government points to an inability by members of this Labor government to make decisions rationally and in the best interests of Tasmania, a total lack of moral compass on these issues and an inability by successive premiers, including the current one, to control Labor MPs and deliver appropriate ethical standards.

This Saturday, as they turn up to polling booths right across my beautiful home state of Tasmania, Tasmanians will meet to decide whether they want four more years from the same party that has consistently delivered scandals, corruption and broken promises.

Senator Wong—Madam Acting Deputy President, I rise on a point of order. He knows precisely what he is doing. I would ask him to withdraw that aspect of the allegation.

Senator BUSHBY—I withdraw the comment about corruption. Tasmanians have a choice between more of the same and voting for a government that will work towards rebuilding public faith in our democratic institutions. Sure, in the lead-up to an election Labor are adept at promising that they have changed. They are doing it now—promising to do better and saying that they are sorry for all the mistakes and everything that has gone wrong over the last four years—but they promised the same thing before the last election, in 2006. You only have to look at what has happened since then to make a rational decision on whether they are likely to deliver this time.

Examples where the current government and its integrity and management have failed
are numerous, but let me remind you of a few, Madam Acting Deputy President. First was the bungled plan by the Minister for Health, Lara Giddings, to build a new Royal Hobart Hospital on a totally inappropriate site at a hugely inflated cost with tens of billions of dollars spent pursuing the proposal, before abandoning it under pressure from the Liberals, the medical profession and Tassies in general. Next was the poorly planned and poorly executed forced takeover of water and sewerage services, ripping these functions off local councils, the majority of which delivered them well and at realistic cost to their ratepayers. The result of the government's bungled approach imposed massively more expensive water bills and created a new, centralised bureaucracy which in some cases cannot even deliver clean, safe drinking water. Of course, one of the highest profile scandals surrounded Labor mate Richard Butler, a long-time Kevin Rudd associate and diplomatic mate, who got a gratuitous $650,000 go-away incentive from Tasmanian Labor to end what was turning into a very embarrassing situation for the government.

One of the worst scandals Tasmanian Labor has faced involved a former Deputy Premier and then Attorney-General—the so-called ‘Shreddergate’ affair, regarding the appointment of a new magistrate. Mr Kons initially denied in parliament that he had approved the appointment of lawyer Simon Cooper, but he was caught out when a document that he had signed as Attorney-General confirming that selection was found shredded in a rubbish bin outside his Burnie office, leading to his forced resignation as Deputy Premier and Attorney-General. The allegation is that he was told to change the appointment because Mr Cooper had expressed dissent regarding government decisions on the pulp mill approval process and therefore was not deserving of reward.

This followed another Labor mate scandal involving yet another Deputy Premier, this time long-time Labor insider and union official Bryan Green. Just days before the 2006 election, Mr Green signed off on a secret and exclusive contract with Tasmanian Compliance Corporation, a company in which ex-Labor minister John White was heavily involved, delivering a guaranteed multimillion dollar income stream—a decision that led to criminal charges being pursued against him and to two criminal trials, both of which delivered hung juries, meaning, of course, that he was never actually acquitted. Mr Green’s actions were again called into question regarding his knowledge of and blatant denial of financial problems with the Spirit of Tasmania III, prior to the 2006 election. After the election, it became clear he knew all about them, as the government proceeded to close down the service because it was losing money hand over fist. Then there was former Premier Lennon’s acceptance of free hospitality from a company associated with Betfair on the eve of signing the lucrative Betfair gambling deal.

You might ask: what about David Bartlett, the current Premier? Most of the scandals that I have referred to so far occurred under his predecessors; what about the current Premier of my home state? When he was installed as Premier by the Labor backroom operators, he promised change, which sounded good. He promised ‘new government within government’; he promised to ‘fix the mess’; he promised to ‘tell the truth at all times’. But Mr Bartlett has failed and Tasmanians have got more of the same. David Bartlett has proved to be too weak to change the culture of this Labor government, and in fact is representative of that culture. Examples of his leadership in ‘fixing the mess and delivering new government’ include keeping the former chief of staff to the then Premier, Mr Lennon, on his massive
salary package for more than a year at taxpayers’ expense after he was replaced by Mr Bartlett’s preferred candidate but had no actual job to do. There was the Premier’s failed Tasmania Together education reforms, which have left the secondary school system in chaos and the education unions campaigning Tasmanians to vote for a party that will ditch these reforms—that is, the unions are out there saying, ‘Vote for anyone but Labor.’ There has been a massive blow-out in Labor minders and spin doctors under Labor generally, but it has occurred exponentially under Mr Bartlett in the past two years.

Another scandal that dragged Tasmania’s reputation through the mud as it made the pages of tabloid magazines involved then Minister Paula Wriedt, who admitted to an affair with her ministerial driver. In itself that should have been a private matter for those involved, but the problem with Ms Wriedt’s affair was the cost under David Bartlett’s government to Tasmanian taxpayers, which was a payout of $55,000 to the driver with whom she was having an affair, because he was harassed. In the middle of last year we had another resignation of another senior Labor minister, Allison Ritchie, when it was found she was employing two of her sisters and her mother in her own office. Ms Ritchie made an apparent admission that she had not informed the Legislative Council, which directly employed her staff, that a candidate for a job in her office was her mother, Christine McIntyre.

Then there was the bungling over the police commissioner. Over 12 months ago, Jack Johnson temporarily stepped down facing charges revolving around advice that he had provided to former Premier Lennon. While the case was taking place, the current Premier approached the former police commissioner, Richard McCreadie, and announced publicly that he was going to appoint him, before withdrawing that appointment less than 24 hours later. The bungling continued after Mr Johnson was cleared when the government refused to reappoint him. In what became a long drawn out comedy of errors, Mr Johnson has now resigned, Mr McCreadie was never reappointed and Tasmania still does not have a police commissioner.

Then there was the case of a senior departmental head and Labor mate having his contract renewed only days before his entire department was abolished. Only days before hundreds of employees in the Department of Environment, Parks, Heritage and the Arts were told their jobs no longer existed and their department was abolished, a Labor mate and ex-chief of staff to Jim Bacon, Scott Gadd, signed a $750,000 contract of reappointment as the secretary of that department. That is right: a Labor mate and former chief of staff to a Labor Premier renewed his lucrative SES employment contract under David Bartlett only days before the public announcement that the department he ran was to be abolished by the government.

With each new headline, more details emerge of this Labor government’s lack of respect for process, for the principles on which responsible government is founded and, indeed, for the people of Tasmania. Given the ongoing series of scandals in Tasmania in recent years, almost all related to allegations of cronyism, it is entirely clear that this government is simply not capable of delivering the high standards of accountability and transparency that Tasmanians expect and deserve. On Saturday, the Tasmanian people face the prospect of taking the first steps towards reforming their failed government at the ballot box. They should remember the difference between what Labor says and what Labor does. After 12 long years of hard Labor, what they do is clear, and Tasmanians should stand up and say that they do
not want it any more. If they want to change the government in Tasmania, the only way is to vote Liberal. A vote for Labor or the Greens will only deliver four more years of hard Labor.

Philippines

Senator MARSHALL (Victoria) (8.00 pm)—Before I go to the issue that I intend to speak on, I will comment on the last contribution by Senator Bushby. It is very interesting that in the lead-up to a Tasmanian state election next Saturday all Senator Bushby can do is to smear and attack the existing Labor government. You would think that as a leading Liberal he would be able to offer one visionary position for the Tasmanian Liberal Party, yet he offers not one policy position, not one visionary position and not one ‘Vote for us because of this’. All he offers are smears and negativity. I think that probably says a lot about what the Liberal Party stands for in Tasmania, and it is not very much. I do not know why you waste our time, Senator Bushby, coming up here with that sort of contribution.

Honourable senators interjecting—

Senator MARSHALL—But I rise tonight to talk about a serious matter—

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Order! It was peaceful two minutes ago before I came to the chair.

Senator Humphries interjecting—

The ACTING DEPUTY PRESIDENT—Order! Excuse me, I am speaking, Senator Humphries. There is far too much in the way of interjections and conversation across the chamber.

Senator MARSHALL—I speak tonight about something I have raised on a number of occasions in this chamber and an issue which interests me greatly: human rights in the Philippines. I was visited early in March by Bishop Jessie Suarez, who was here as a guest of the Justice and International Mission Unit of the Uniting Church Synod of Victoria and Tasmania. Bishop Suarez is bishop of the southern Luzon jurisdictional area of the United Church of Christ in the Philippines, UCCP, which is a partner church of the Uniting Church in Australia.

Bishop Suarez explained that the UCCP is deeply concerned about the levels of violence and human rights abuses in the Philippines under the current government and very fearful that it will continue to escalate in the lead-up to the country’s national elections in May this year. Currently, three of the UCCP’s ministers are receiving death threats by text. Two of those were previously abducted by the security forces. Pastor Berlin Guerrero was abducted by security forces in May 2007 and subjected to torture before being held in detention for a further 15 months. He was released after a Philippines court threw out the charges against him for lack of evidence linking him to the crimes with which he was charged. The latest death threats he has received are directly linked to his speaking out about the torture and abduction that he was subjected to.

Bishop Suarez also spoke to me about the issue of disbanding the paramilitary forces in the Philippines. Incidents of election related violence have already occurred across the country, with 57 people massacred in a single incident in Mindanao in November 2009. Thirty of the victims were journalists, two of the women victims were pregnant and the perpetrators were members of a legalised private army of the local Ampatuan family. The Ampatuans, who occupy many local positions in the province of Maguindanao, made use of their power to maintain militias which the government used in its counterinsurgency programs for many years. Their private army of over 2,000 armed men includes dozens of police officers. The International Crisis Group has stated that the massa-
cre was a result of the central government deliberately nurturing a warlord, Andal Ampatuan Sr, who was allowed to indulge his greed and ambition in exchange for political loyalty.

The 2006 Executive Order 546 of the Philippines legalised paramilitary forces to multiply the counterinsurgency forces of the military and police. Although Executive Order 546 places the supervision and control of these civilian volunteer organisations under the police, local government officials through peace and order councils have a huge say, especially since they are tasked with sourcing the funds needed to sustain the CVOs. In addition to ensuring that those responsible for planning, organising and carrying out the massacre in November are brought to justice, there is a need to end all private and local funding of police and military auxiliaries and ban civilian militias. The government of the Philippines should revoke Executive Order 546.

Bishop Suarez mentioned the issue of election monitoring for the upcoming elections. There is a great fear about the security and effectiveness of the upcoming elections. Bishop Suarez encouraged partner churches and governments, including the Australian government, to do anything they can to promote independent monitoring of the elections, and I will be taking that up with the Minister for Foreign Affairs, Mr Stephen Smith. Australia should look at all possible avenues through which it can help to facilitate and participate in independent election monitoring.

Bishop Suarez also raised the general issue of ongoing human rights concerns. He told me that, while the number of murders related to members of the security forces has steadily declined since 2006, harassment of human rights activists, anticorruption campaigners and critics of the government has continued. For example, 43 health workers were arrested by the military on 6 February as they were attending a community health forum in the municipality of Morong in the province of Rizal. They have been accused of participating in bomb-making activities. Among the detainees is Dr Alexis Mones, a UCCP lay member and previous UCCP community health ministries worker who is a highly esteemed member of their church.

Dr Melecia Velmonte, who owns the retreat centre where the training was being conducted, asserted that the military had no witnesses to their search operations and could easily have planted the ammunitions. This, of course, unfortunately is commonplace in the Philippines. Also, Dr Velmonte gave a lecture on infectious diseases at the training but was not arrested with the other participants. She and her son, Bob, demanded to see a search warrant when the military and police began their raid but they were merely brushed aside. It was only after the participants of the training were already handcuffed that Police Superintendent Marion P Balonglong showed Bob a search warrant. The detainees have been charged with illegal possession of explosives.

The Chair of the Commission on Human Rights of the Philippines, the CHRP, visited the detainees and stated: ‘They are continuously handcuffed and blindfolded. They are not allowed to sleep. They are not allowed to feed themselves.’ Of course, this is what we know as torture. The commission has questioned why those arrested remain in military custody when it was a civilian court that issued the search warrant. The commission has called on the Philippine authorities to ensure that the detainees have access to their lawyers, relatives and medical personnel in compliance with Philippine law. The UCCP has called for the respect of the human rights of Dr Montes and the 42 other detained health workers, including their rights to legal
counsel, access to visitors and due process. The UCCP has stated that Dr Montes is a respected leader in the healing ministry of the UCCP and have called for his release. The World Council of Churches has also called for the detainees’ immediate release.

Bishop Suarez also raised the issue of support for striking workers at the Nestle factory in the Philippines. There is an ongoing dispute with Nestle Philippines at the Cabuyao factory where the workers have been on strike for over 10 years. The workers who have not found new jobs live in a make-shift slum and many have been forced to withdraw their children from school due to not having the income to support them. The workers and the church have argued that Nestle in the Philippines has refused to comply with the decision of the Supreme Court of the Philippines in March 2008 to allow a decent retirement plan to be included in the collective bargaining agreement for the factory. They are asking that Nestle Philippines reinstates the striking workers at the Cabuyao plant and negotiates in good faith on the collective bargaining agreement. They argue that employees and former employees from the Nestle Cabuyao plant must receive full retirement benefits.

Unfortunately, I will not have enough time to say all I wanted to say about that particular dispute, but it is unfortunate that such a wealthy company such as Nestle would engage in a strike—which I will talk about in the future—which has involved the murder of union officials around that strike action, and that they have engaged in that action over the mere issue of including retirement benefits in the enterprise agreement that is being negotiated. It is a shame that that is a standard they would not apply here or in Europe but they seem willing to apply it in the Third World. I will speak on that issue further at another time.

Social Housing

Senator HUMPHRIES (Australian Capital Territory) (8.10 pm)—I rise tonight in the adjournment debate to talk about an area of government policy which is emerging as a significant problem for communities around Australia. I am referring to the government’s program for providing social housing developments in areas of Australia where there are concerns about the planning implications of these developments. The government has a program to roll out something like 19,300 new dwellings under its stimulus package spending in areas where social housing is required. By negotiating with state and territory governments, including for the provision of contributions of land and leveraging from community housing organisations, the government hopes to be able to maximise the amount of housing purchased under this program which costs in total something like $4.5 billion. Also, part of that program is dedicated towards the provision of funds to maintain and upgrade existing social housing stock around Australia.

That much is very laudable. We would all identify a very significant need for additional housing to be made available in all categories and all sectors where housing is required. The federal government is attempting to deal with that. The quibble that I have with the government tonight and which increasingly communities around Australia are having with the federal government’s program is the way in which it is being rushed. One of the common features about stimulus spending generally by the government has been that it is rushed, that it is executed in haste and that it is executed with a very large amount of spin. What is most important, it appears, is that a photo opportunity with a hard hat at the beginning of a project has to be paramount. Sometimes the Is are dotted and the Ts are crossed some way down the track—sometimes when it is too late to deal...
with the problems involved. I want to make reference to the areas where those sorts of problems might occur.

We have had some very disturbing cases brought to our attention recently. In Coburg, in Victoria, for example, there is a redevelopment of the former tramway depot on the corner of Nicholson and Moore streets which has given great concern to many residents of that area. Residents only two weeks ago discovered that bulldozers were tearing through the site preparing the way for a development with up to nine levels, including 200 public and private apartments as well as retail and offices. The project had been signed off and started without a word of notice to the local community. I do not know what the situation is in some states represented around the Senate, but I know that if people in the ACT discovered that a nine-storey development were to go up with 200 dwellings, plus retail, plus offices, in any urban part of Canberra there would be very serious implications for the authorities responsible for delivering those sorts of results. I have no doubt that that is what is going on all over Australia at the moment.

So serious is the community reaction in Coburg that we even have Labor Party figures coming out against the way in which the development is proceeding. The member for Wills, Kelvin Thomson, and the Labor candidate for the state seat of Brunswick, Jane Garrett, have both attacked the approach being taken for this development. Mr Thomson said:

I support social housing. But it is important to make sure local people are consulted and their views are respected.

Ms Garrett said:

I think it is a matter of striking the right balance between making sure appropriate projects, and especially those including social housing, are delivered, while not railroading the community.

That is exactly what seems to be happening here. Communities are being railroaded because there is a time line being imposed by the federal government which broaches no challenge. These communities are being told: ‘You will get these social housing projects. You need social housing. Therefore you do not have to worry about the planning implications of the decisions that are made to locate those particular projects in your midst.’

Under the social housing project in Victoria, 75 per cent of 4,500 homes have to be completed by the end of this year. That is an extraordinarily large number of homes to deliver in a very short period of time in parts of Melbourne, where, much like other parts of Australia, there are great sensitivities about planning decisions and where sometimes planning processes can take very long times to deliver. I do not defend or argue that planning processes should take as long as they often do, but I certainly do not argue that communities should be cut out of any consultation whatsoever.

Another whistleblower in this respect is the Mayor of Frankston, Christine Richards, who was faced with an 80-unit social housing project catering to homeless people with drug and alcohol problems which was to be located 200 metres from a drug-dealing hot-spot and four local hotels. The council there created a very large stink about this and appears to have prevented it from going ahead. Mayor Richards makes the point:

… the problem is the rollout is so quick that you have to circumvent public consultation to get it done in time.

The risk with that is in fixing short-term needs, there is the potential to create longer-term problems if they don’t listen to what communities are saying.

She went on to say:

We strongly questioned the appropriateness of location, but really we didn’t have control in the end over whether it would proceed.
That is the kind of outcome which the haste the federal government is demanding in this program is delivering to local communities.

It is not just in Victoria there are problems. In the seat of Bennelong, held by Maxine McKew, there have reportedly been crowds of up to 200 people protesting against new social housing projects, mostly two-storey buildings containing up to 20 units each. A local protest group has been formed, Residents Against Inappropriate Development, which has accused Ms McKew of failing to take residents’ concerns seriously. Ms McKew has responded by attacking this group and accusing it of being unrepresentative. She says that it is more important to have affordable housing in place than it is to consult with local communities. I really wonder whether a person holding a seat with the margin that Ms McKew does really should be saying something as foolish as that.

This has led to an understandable reaction on the part of many people. The Brumby government in Victoria has now called for more consultation with residents and said that its time lines seem to be too tight. The Minister for Housing, Tanya Plibersek, has responded by saying that she believed the states had had adequate time to carry out such consultation and ruled out greater flexibility in the funding deadlines. But Premier Brumby has responded by saying that Canberra’s time lines made consultation difficult, and you could understand why he would say that. In relation to this rollout, on 11 March the President of the Australian Local Government Association, Geoff Lake, said:

… we agreed in good faith to put aside the normal processes because we knew the government wanted to get money out … We expected our good faith to be returned …

He also criticises the process which has been used.

I ask members of this place to consider, when they see this kind of rushed program, what it reminds them of in public policy delivery in recent days. Of course, it reminds me of the botched Home Insulation Program, which was delivered at such speed, with such haste, that the important details about safety and preparation and checking those who were undertaking these projects were not done. Yet we have here something much more permanent than insulation. Insulation can be taken out—as long as the house has not burnt down. In this case you have whole projects going ahead with minimal or no supervision by local government authorities used to making decisions about these kinds of developments. There is no involvement by local communities, because they are not even told about these developments happening. The potential lies in these projects for great harm to be done to the fabric of local communities around Australia. Here is another example. Again, this is a government that talks about consultation; it says that it wants to bring communities on board with it, that it wants to involve them in its decisions, but it is not delivering that kind of outcome. The consequences of that kind of haste can be very severe indeed.

I call on the government to rethink the approach that it is taking. The projects we are talking about are largely yet to be rolled out, but the worst of the global financial crisis, particularly in Australia, is over. There is no need for these corners to be cut anymore. There is no need for the control-freaking in Canberra to be delivered on these projects in local areas. We need to rethink this approach.

(Time expired)

Internet Content

Senator BILYK (Tasmania) (8.21 pm)—Before I start my speech I would like to refer to the speech made earlier tonight by Senator Bushby. I think that speech resorted to the
complete depths of grubbiness that one would expect from the opposition in an election time. He was referring to the election in Tasmania on Saturday. Bringing up the personal life of a previous member of the Tasmanian government just shows what lack of moral fortitude those on the other side have. I will not give his disgusting comments any more oxygen. I will now speak on something that is of great importance to our community—that is, cybersafety.

No-one can dispute that the emergence of the internet has been one of the great developments of our time. The opportunities it provides for communication on a global scale, the provision of information and entertainment and the delivery of services to the community are incredible. In recent times, the internet has undergone a rapid shift from being a relatively passive environment, where information is provided, to an interactive user experience. The gaming environment was one of the first examples of this trend but has in many ways been surpassed by the emergence of the social networking phenomenon. What do the statistics tell us about the interaction of young Australians with the internet? Firstly, over 90 per cent of teens and young adults use the internet, 74 per cent of them use instant messaging, 62 per cent use chat rooms and 64 per cent have a social network site such as Facebook or MySpace.

There are, of course, many benefits for our children arising from their internet use. These include increased opportunities for the development of communication and socialisation skills in addition to the more traditional advantages such as access to information and learning opportunities. However, the point has been reached where the interaction between our kids and the internet can be seen to have resulted in the development of negative outcomes. These outcomes clearly require intervention by government in cooperation with the broader community. Both adults and children use the internet, and although recent suggestions of a digital divide have been disputed it is the case that they utilise the online environment for different purposes. Studies by the Australian Communications and Media Authority, ACMA, have shown that those aged 35 and older tend to have a relationship with the internet which could be described as transactions based—that is, the internet is used as an object or device which provides the opportunity to undertake specific actions. Online banking, travel and entertainment bookings and the utilisation of the internet as a source of information about the news and weather are illustrations of these types of activities. These studies also reveal that younger users are more likely to use the internet as a means of communication and connection.

Social networking is the most pervasive example of this feature, with interactive gaming providing another illustration. For young people, cyberspace is a real place where self-identity and relationships are formed. Social networking, or social media as it is also called, is characterised by its high level of accessibility. There are usually minimal financial costs and it is possible for an individual who has a relatively low level of skills to participate in the information and communications environment. It is this ease of access which potentially increases the vulnerability of younger users of the internet. As the third annual report of ACMA to the Minister for Broadband, Communications and the Digital Economy, Stephen Conroy, makes clear, the disclosure of personal information is fundamental to the social networking business model.

I draw the attention of the Senate tonight to two of the negative practices which have arisen in cyberspace. I refer specifically to cyberbullying and online grooming. Cyberbullying involves the use of information and
communication technologies to support deliberate repeated and hostile behaviour by an individual or group that is intended to harm others. It can be committed using the internet, digital, gaming or mobile technologies. This kind of bullying can cause great distress and have an adverse impact on a child’s self-esteem and confidence. It also reaches beyond the traditional safe barriers of the home and classroom environments creating even greater stress and anxiety for victims. Cyberbullying can take many forms including what is called flaming, online fights using electronic messages with angry and vulgar messages; harassment, repeatedly sending offensive, rude and insulting messages by text, instant messaging or email; cyberstalking, repeatedly sending messages that are threatening or intimidatory; impersonation, pretending to be someone else and sending or posting material online that damages that person’s reputation or friendships; outing and trickery, sharing someone’s secret or embarrassing information online; and exclusion, intentionally excluding someone from an online group such as a buddy list. Cyberbullying is insidious. It crosses over traditional protective boundaries such as the home and school environments. It can occur at any time of the day or night and the perpetrators most often remain anonymous. One of the most frightening features of these activities is that the bully does not always see the effect upon their target, which may cause the intensity of the activity to be even higher as any opportunity for empathy or compassion is removed.

The practice of online grooming refers to the deliberate actions taken by an adult to form a trusting relationship with a child with the intention of facilitating sexual contact. A truly frightening statistic which has been widely reported suggests that up to 20 per cent of all children who interact in the online environment will be targeted by an online predator or paedophile each year. It is clear that these disturbed individuals view the internet as providing a perfect vehicle for grooming children and young adults. Grooming can take place via chat rooms, instant messaging, social networking sites and emails and the anonymity of the internet makes it easier for child sex offenders to pretend to be someone else, often another young person.

In addition to these practices, a major area of concern is online content that may be inappropriate or harmful to children. Examples include child abuse images, pornography, nudity, violence and illegal activity. The government has proposed internet filtering legislation as one response to the growth and accessibility of these materials online. Proposals have been developed recently to counter the negative features of the online experience and its potential effect upon our children. It is pleasing to note that the Rudd Labor government has recently delivered on its 2007 election commitment to establish a joint parliamentary committee on cyber-safety. This bipartisan committee will commence its work shortly with a report due by February 2011. This is an extremely significant development that will clearly raise awareness of the issue. It affords the issue of cybersafety the status it requires for any policy proposals to carry weight. As a bipartisan joint parliamentary committee, it sends a strong signal to the Australian community that these issues are considered to be above the normal political fray. The establishment of the joint parliamentary committee joins other Labor 2007 election commitments, including the establishment of youth advisory and consultative working groups to provide advice to government on policies to protect children from the negative impacts of the online environment. In particular, the establishment of a youth advisory group illustrates the importance that the Rudd Labor
government places upon directly engaging with young people to address cybersafety related issues. The YAG will also be involved in a major cybersafety pilot.

As co-convenor of Parliamentarians Against Childhood Abuse and Neglect, or PACAN, I was privileged recently to host a meeting that was addressed by the chairman of the Alannah and Madeline Foundation, John Bertrand AM. The Alannah and Madeline Foundation was, as senators will be aware, established to undertake and support work which seeks to protect children from all forms of violence—including abuse—and the impact it has upon their lives. The name honours the memory of Alannah and Madeline Mikac, who, at the age of six and three respectively, were among those who lost their lives to violence on the day of the Port Arthur massacre in my home state of Tasmania in 1996.

The Alannah and Madeline Foundation has developed a cybersafety and wellbeing initiative named eSmart, which has as its clear objective the creation of a generation of children and young people who are smart, safe and responsible users and consumers of communications technology. The eSmart campaign is modelled on the highly successful SunSmart campaign, which has fundamentally changed not only public awareness regarding the danger of exposure to the sun but social behaviour.—(Time expired)

World Down Syndrome Day

Senator BOYCE (Queensland) (8.31 pm)—I am delighted to rise tonight to advise the Senate that the fourth World Down Syndrome Day will be held this Sunday, 21 March. World Down Syndrome Day has very deliberately been held on the 21st day of the third month of the year, because Down syndrome is caused by a triplication of chromosome 21. It is otherwise, in its most common form, known as trisomy 21. It was in 1866 that Dr Langdon Down first identified the list of characteristics, of which most people with Down syndrome have some, but it was only 50 years ago last year that the cause of Down syndrome was discovered—that is was caused by a triplication of chromosome 21. Before this, people had thought that it was caused by a lack of a chromosome.

I would like very briefly to outline for the Senate the attributes of people with Down syndrome, that is caused by this triplication of chromosome 21. Having Down syndrome does not define who people are. It is still possible, sometimes, to hear people refer to ‘downsies’. People with Down syndrome are people first. Down syndrome is not a deficit; it is an attribute. People with Down syndrome have unique personalities, abilities, skills and interests. They are not all happy all the time. Every child with Down syndrome I have ever met loves music, but then again every child I have ever met loves music. Although Down syndrome is associated with developmental delays and learning difficulties, how disabling these are depends as much on community attitudes and support as on an individual’s level of ability.

One other myth about Down syndrome that I would like to talk about now, because it is becoming more and more important for the parents and carers of people with disability, is that people with Down syndrome no longer die young. It was common, 50 years ago, before antibiotics and before the ability to undergo heart surgery, for the vast majority of people with Down syndrome to die before they got to 30, but this is no longer the case. And it is no longer the case that people with Down syndrome primarily live in institutions. I was delighted to have, as a family guest to our house recently, a woman with Down syndrome who is 64. She lives in supported accommodation. She continues to work part time, three days a week, and she has a busy social life. It certainly does not
look, in any way, as if she is going to stop doing any of that at any time soon.

I would like to tell the Senate tonight that I consider—and so do many people in the disability community—that there are still threats to people with Down syndrome. One of the greatest threats at the present time is evidenced by a case that was recently heard in the Brisbane Family Court by Justice Cronin. Justice Cronin agreed to a request by the parents of an 11-year-old girl for her to have a hysterectomy. The primary reason given for this hysterectomy was that this young woman was more susceptible to epileptic episodes when she was menstruating. This young woman has a profound disability. She has Rett syndrome and evidence was given that despite the fact that she is 11 her abilities in many areas might be those of a six-month-old.

I would like to contrast that situation with the agreement that Australia signed up to. It was signed by the Howard government and ratified by the Rudd government under the Convention on the Rights of Persons with Disabilities. I particularly want to draw the Senate’s attention to section 23(c), which states:

States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that ... persons with disabilities, including children, retain their fertility on an equal basis with others.

I would ask the Senate to consider what our view would be if parents of an 11-year-old girl without a disability were given the right to have a hysterectomy performed on her because of menstrual issues. We would all be appalled, as would every Australian.

To treat an 11-year-old girl with a disability differently, in my view, is to discriminate against her on the basis of that disability. I find it particularly ironic that whilst we are allowing this sort of discrimination to occur against people—young women in particular—with disabilities, we are encouraging the abortion and termination of pregnancies of many people who are carrying a foetus with Down syndrome. Some years ago, I was involved in the development of a position statement on this topic. Our view was that Down syndrome in itself is not a reason to terminate a pregnancy. How ironic then that we consider it okay to sterilise women with disabilities yet at the same time we are preventing the existence of many of these women.

It is not all doom and gloom though, and on Saturday I hope there will be celebrations—real celebrations of the many advances—on World Down Syndrome Day. There are two events which I think will assist. One is the Productivity Commission’s inquiry, to be launched in April, into long-term planning and the development of a system which would allow for long-term essential care and support of people with severe or profound disabilities, no matter how they are acquired. The inquiry will examine a range of options for long-term care and support, including the consideration of a no-fault social insurance approach to disability and whether that would be appropriate for Australia. We would need to look not just at its feasibility but also at its cost. The Productivity Commission will do this at the beginning in April and will report in June 2011. Given that the inquiry was announced in November last year, one might have hoped for a slightly quicker development of this. Nevertheless, the result will be useful for people with disabilities and for their families for generations to come.

The other event is the Community Affairs References Committee inquiry, one with which I am personally involved and am a member of. We will be looking into the access of planning options and services for
people with a disability to ensure their continued quality of life 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 to their carers.

This links directly to my earlier point that people with Down syndrome and those with other disabilities are now living longer—and are often outliving their parents. It would be wonderful to have a scheme which provides good, paid services and accommodation for these people but, unless we have people who care around people with disabilities, they still remain vulnerable. They can live in the biggest and best house in the street, with all the best services, but still be open to exploitation and abuse if there are not people who care around them. This is the point of the community affairs inquiry, which is open to receiving submissions until 28 May and will report back to the Senate by 2 September. I would encourage all of you to get involved in activities this Saturday for World Down Syndrome. (Time expired)

National School Chaplaincy Program

Senator BARNETT (Tasmania) (8.42 pm)—I stand tonight to speak in support of the National School Chaplaincy Program and in so doing seek leave to table a non-conforming petition and a related letter in a similar form.

Senator Faulkner—I understand from Senator Barnett that what he has indicated to the Senate is that at, an earlier stage, he has provided the normal courtesies and explained this to the relevant government chamber management. I take Senator Barnett at his word and on that basis I am happy to grant leave.

Leave granted.

Senator BARNETT—I note the response from Senator Faulkner and the government. The National School Chaplaincy Program is a tremendous program; it is a great success. The petition that has circulated widely in Tasmania—and indeed in other places—has been very successful. There were 1,515 non-conforming petitions from Dr Sharman Stone’s office, which were forwarded for presentation here in the Senate. There were 1,223 from my own office from supporters in Tasmania, and I note there were 558 copied signatures and 18 letters in a similar format in support of the National School Chaplaincy Program.

The chaplaincy program has been built on the excellent history of school chaplaincy in Australia. It was introduced by the former coalition government under Mr Howard in 2007-08, with a commitment of $165 million for its first three years. It was endorsed by Prime Minister Rudd, who said, ‘They’—the chaplains—‘are actually providing the glue which keeps school communities rolling.’ The program offers pastoral care and spiritual guidance to all. Chaplains necessarily have religious beliefs that underpin their work. These beliefs are representative of the school communities that the chaplains work in and do not hinder chaplains from working with those of other beliefs or none. At the time of the petition, the program was operating in 1,915 schools, but now it is in 2,700 schools or thereabouts—in that vicinity. In the state of Tasmania, it is currently operating over 100 schools. It enjoys strong support among principals and schools and in the community generally.

Unfortunately, the Rudd Labor government extended the funding for the program at a reduced level until the end of 2011, after which time there may be no more funding, despite the program’s social benefits, its sound administration and strong community support. The coalition has announced that if elected it will continue funding the national school chaplaincy program in its current form at its current level of $165 million over
three years. That is to be commended and is excellent news. I thank our leader, Mr Abbott, who I know is a strong supporter of the program, and Mr Pyne for his advocacy of this program and support for it over many years.

I moved a motion in the Senate, together with Brett Mason, the shadow parliamentary secretary for education, on 25 November last year. That motion was passed by 33 votes to 31. But the Rudd Labor government voted against it. That motion called for support of the national school chaplaincy support and continued funding in the terms that I have expressed. It was very disappointing that the Labor Party voted to oppose that motion, which would have ensured ongoing funding for that program into the future. That was a disappointment, because it is such a successful program.

I indicated that it started in the year 2007-08, with a commitment of $165 million for its first three years. It offers pastoral care, spiritual guidance and counselling in a range of areas, such as bullying, mental health, family relationships, drug and alcohol abuse and other related matters. It deals with relationships and it ensures that those relationships can operate to the best degree possible. I am proud to be part of the group, which was named the gang of five at the time, that lobbied former Prime Minister John Howard to establish the program for that initial three-year period. I want to commend the other members of that group, who were the Hon. Greg Hunt MP; Andrew Laming, MP; and the shadow minister for veterans’ affairs, Louise Markus MP; and former MP David Fawcett. We were very pleased and privileged to have had the opportunity to promote such a worthwhile and fantastic program.

The program seems to be going better and better in Tasmania. I want to commend the Scripture Union of Tasmania. They employ 95 per cent or more of the school chaplains in Tasmania. They are a wonderful organisation. They have been around for many decades and do a great job. I want to commend Ruth Pinkerton, who is the executive director of the Scripture Union and who is a feisty young Scottish lass who is living in Tasmania and leading the Scripture Union in regards this particular program and its other programs. My wife, Kate Barnett, is on the Scripture Union council, together with many other hardworking volunteers.

I understand that the federal department is currently undertaking a review of the program. That review includes consultation with stakeholders. I want to indicate that in Tasmania there are some new chaplaincies operating. Three schools have recently been granted chaplains through local funding—this is without federal funding. That is fantastic. That means that the local community is responding and saying, ‘Yes, this is a good program.’ I want to congratulate those schools for doing this and undertaking that effort. They are the Table Cape Primary School, the Hillcrest Primary School in Devonport and the Mowbray Heights Primary School in Launceston. Congratulations and well done to all those schools and those involved in establishing those school chaplaincy programs in those schools.

Two more schools have secured or are working hard to secure funding local and are looking for a suitable chaplain. They are the Dunalley Primary School and the Triabunna District High School. So there is a lot of growth in Tasmania. It is working well. This proves that this program is a great success.

I was also advised by Ruth Pinkerton earlier today that across the state chaplains are setting up groups to partake in programs dealing with self esteem and decision-making issues. They are also helping many school staff and parents with their issues.
Apparently, after a chaplain wrote in a school newsletter about anger and anger management in relationships, some of the fathers of the kids in the community have come to that particular chaplain for help in dealing with this. That is wonderful. The community is pulling together. The chaplains are the glue that holds this program together. They have the support of the principals, the school community and the mums and dads—the parents. I hope that this program will continue well into the future.

I note that the Prime Minister made an announcement on 21 November last year at the Australian Christian Lobby national conference. That particular announcement was to continue funding through to the end of 2011. In my view, that is simply not good enough. That is why the coalition responded and said, ‘No, it deserves better and more should be done.’

One of the reasons we on the coalition side are convinced of the worth of the chaplaincy program is that research was conducted into the program early last year or thereabouts, and it showed that 97 per cent of principals think the program is a good thing and want it to continue. That is a very high percentage. That means that the schools are getting behind the program, and that is fantastic. The school communities are very, very supportive of it. Mr Rudd seems to be using a smoke and mirrors approach suggesting that supporters of the program should not be so quick to rejoice.

Senator Williams—That’s unusual!

Senator BARNETT—That is correct, in a way, Senator Williams, but I know it is a tongue-in-cheek comment from you. We have reaffirmed our commitment. We are right behind it. I commend all those who support it. I commend those in the community who know about it and I encourage them all to be involved, get behind it and get behind your local chaplain, because it can deliver only positive benefits. I commend this program to the Senate and to anybody who is listening.

### Health

**Senator O’BRIEN** (Tasmania) (8.53 pm)—It is a pleasure to follow Senator Barnett on the issue of chaplaincy and to be able to say that although the program, which was initiated under the Howard government, was scheduled to end, this government has agreed to continue it. I would have expected bouquets, not brickbats, from Senator Barnett, recognising that Labor has done something that has bipartisan support, placing it above politics. But, apparently, you cannot have a contribution in here this week from the coalition that does not descend into a little bit of political gamesmanship.

**Senator Barnett interjecting—**

**Senator Bushby interjecting—**

**Senator O’BRIEN**—I will take the cue from contributions by Senator Bushby and Senator Barnett about politics, because, as everyone knows, there is an election in the state Tasmania this week. Everyone knows that one of the key issues in the election is health. The people of Tasmania know that if Labor are re-elected then they will cooperate with the Rudd Labor government to see the federal government take majority funding responsibility for the hospital system. But if the Liberal opposition governs with the assistance of the Greens, there will be resistance by Mr Hodgman, if he manages to scrape across the line, because the favours will be called in by the federal Liberal party. The federal Liberal party, under this leader, Mr Abbott, has said that their role is to oppose. Their role is to make things difficult—not to deliver what the country needs; not to deliver improvements in the health system that everyone wants; not to, as Mr Abbott did when he was the Minister for Health Ageing,
rip a billion dollars out of the hospital system; and not to freeze the number of training places for medical practitioners, as he did. This is in contrast to the announcement that Labor made this week that we will dramatically improve the number of training places for doctors and for specialists, something that in 12 years the Howard government never did.

When a government is prepared to tackle the issues that were too hard for the coalition government for over a decade, the job of the opposition, according to Mr Abbott, is to oppose. Mr Hodgman in Tasmania will be told that it is his job to oppose, too. So the choices for Tasmanian people on the weekend and, I expect, in South Australia, will be simple: if you actually want to improve the health system, if you want the Commonwealth to take substantial responsibility for the hospitals, if you want more doctors trained, if you want more specialists trained, if you want more placements in rural and regional Australia—and I would have thought the National Party did—then you will see the re-election of those state governments and cooperative federalism through COAG delivering more money and substantial Commonwealth commitment and responsibility to the hospital system and to the system of training medical petitioners. That system will be much more responsible for delivering outcomes compared with the negativity that we are seeing from this opposition and from those state oppositions that are trying to skate through on the basis of negative personal campaigns.

It was interesting reading the press clippings today. For those who are listening, senators all receive in their offices each day a copy of press clippings prepared by media monitors. I was taken by an article from the Courier Mail entitled ‘The best conversation’ and written by Paul Syvret. He starts with:

Australia has a new super hero. It’s Captain Chameleon!

Now, I wonder who that could be—Captain Chameleon. He goes on:

There he stands on the edge of the rooftop of public debate in Australia, the Speedos on the outside of a skin-tight action-man body suit and a billowing cape able to change from the deepest, darkest conservative blue to, with just a dainty little flick over the left shoulder, a shimmering shade of pink at a moment’s notice.

A shimmering shade of pink—I thought that was Mr Hockey! I thought Mr Hockey was the one who had the shimmering shade of pink, but, according to Mr Syvret, it is the Leader of the Opposition, in what is obviously a tongue-in-cheek article. I encourage those who have the opportunity to read it, because he does go on to talk about some of the things that the coalition are doing. He says:

Right now he and the Coalition are not so much a policy vacuum but rather a food processor set on high, with random ingredients being thrown into the blades.

“Barnaby! No! Another teaspoon of net gross debt will make the economists curdle. Go and play with your farm set for a while.”

This article, I think, warrants the attention of the public. If Mr Syvret is going to leave journalism, he probably has a career in comedy. The Melbourne International Comedy Festival could do with some of these very amusing quotes.

He finishes the article with a multiple choice quiz. He begins it with:

So here, as part of a regular series of insightful questions for our political leaders ahead of the looming election, is a five-minute quiz for the Leader of the Opposition.

And he starts with a question:

You suddenly believe in a generous paid maternity leave scheme because:

a) it helps keep women in the home where they belong
b) Barnaby says it won’t add to our net gross private public debt stuff if we put the bite on big business
c) the ironing will get done
d) we should have one for Mum, one for Dad, one for the country and one for middle-class welfare
e) mine’s bigger than Kevin’s.

I do not know how long he took to write this, but everyone that I know who has read it has had a very good chuckle. Going back to the reality of politics, because sometimes you need to lighten up these debates with some of the droning on of senators, particularly when they are arguing about state elections, as we heard from the other side today, we really do have a moment in time in this country when the Australian people at the next election will have a choice to make. We have a government which has a very strong set of actions that it is initiating to improve the health system in this country.

Senator Cormann—All talk and no action.

The ACTING DEPUTY PRESIDENT (Senator Troeth)—Order!

Senator O’BRIEN—I will take that interjection because if anyone is all talk and no action it is the opposition and Senator Cormann in particular. All he does is come in here when there are matters before this chamber and say, ‘I oppose it; I oppose it.’ That is all he does.

Senator Cormann interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator Cormann, I have called you to order and I would ask that you refrain from interjecting.

Senator O’BRIEN—Yes, I suppose it is even less orderly when you are not in your own seat, but I would not have taken that point. The reality is that those in the opposition have been mouthing the statement ‘Blah, blah, blah’ about everything that the government does. It is a nice line, but the fact of the matter is that when you come down to it the only ‘Blah, blah, blah’ we are hearing is a filibuster on every debate we put up when the opposition is intent on (a) blocking government legislation and (b) using as much of the government’s legislation time to prevent the government from dealing with the backlog of legislation that is before this chamber.

It will be interesting when the debate comes, as it is coming, about the role of this opposition when the opposition is faced with the reality that it is going to have to either let some legislation go through this place, or at least deal with it expeditiously, or answer the public on its abuse of the process in this chamber of rejecting bills and using as much of the government’s legislation time as it can in debating matters which it knows it will be voting against, despite the fact that the opposition is putting 20, 25 or 30 speakers on the speakers list. I think the public will have to judge that, unless this opposition becomes responsible in the way that it deals with the processes of government legislation in this chamber.

Roads: Princes Highway Duplication

Senator MARSHALL (Victoria) (9.03 pm)—I make a brief statement on the vital project Labor is funding in south-west Victoria, which is the duplication of the Princes Highway between Waurn Ponds and Winchelsea. This is one of the most significant projects lobbied for, and won, by Mr Darren Cheeseman as part of his historic election victory in 2007 when he won the seat of Corangamite. Labor has committed $110 million to this project. Most Australians know this project now, as it is the project where the new Leader of the Opposition was very nearly killed when he tried to conduct a cheap and foolish political stunt a couple of weeks back. Mr Abbott made this project...
national headlines and, in doing so, showed up the appalling track record of the Liberals on road building and, in particular, on this project and other related road projects in regional Victoria. Members of the Senate may not know just how shabby the record of the Liberal coalition is on this project when they were in government and now in opposition. It is important to put it on the record.

Here are the facts. For a period of 76 years the Liberals held the seat of Corangamite, including 11 years under the most recent government under the former Prime Minister, John Howard. In all of that time the coalition refused to fund the duplication of the Princes Highway. Despite every business group, every local council, transport unions and every interest group in the region saying that this was the No. 1 project in the region, the Liberals point blank refused to fund it. Everyone knows the Princes Highway duplication project is vital to the economic development of towns such as Winchelsea and Colac and to the whole of the south-western part of Victoria. It seems everyone but the Liberals knows this. It is just the opposite; they do not get it.

The issue of commuter safety is also important on this project. People die on this road every year—year in, year out. That was one of the major motivations for Labor’s commitment to this project: commuter safety. But the Liberals watched this happen year after year and did nothing. They refused to fund the duplication. It was not just the Liberals’ 76-year-old record of refusing to commit to this project that needs to be put on the record. Their track record goes on. When Darren Cheeseman won a commitment to duplicate the highway in the lead-up to the 2007 poll, the Liberal Party again refused to match the commitment. They said, ‘No, we don’t care, we will not fund the duplication of the Princes Highway.’

This was of course on top of the fact that the Liberals also refused to commit to the funding of the later stages of the Geelong Ring Road, stages 4A and 4B. Importantly, these stages connect the Princes Highway duplication project. In fact, the Liberals and their National Party colleagues refused to commit to the ring road route that every interest group, including VicRoads, agreed was the best route for the completion of the Geelong Ring Road. That is probably because the Liberal Party never expected to lose the seat of Corangamite. They had held it for 76 years and had simply taken it for granted. Why should they do major road projects that were absolutely fundamental and necessary in a seat which they always thought they would simply own and would never have to work hard in? But of course they did lose the seat after 76 years of taking it for granted.

On top of this we have now had 2½ years of the Rudd government during which the Liberals have had every opportunity to come to their senses on any of these projects; 2½ years since the election and they have still refused to match our commitments on either the Princes Highway duplication or the Geelong Ring Road. They would not budge, with absolutely no commitments on anything. So that is the record of the Liberals on roads in this area: for 76 years nothing done, 11 years of the previous government and nothing done, they refused to fund the duplication of the Princes Highway, refused to fund the completion of the Geelong Ring Road and could not even agree on a route for the Geelong Ring Road.

Now, with trumpets sounding, here comes the Leader of the Opposition on his white charger to do a stunt: having a crack at Labor for not committing to the Princes Highway section between Winchelsea and Colac. What absolute gall. Darren Cheeseman has won the funding for stage 1 from Waurn Ponds to Colac. Darren Cheeseman has got the federal
roads minister to now list the whole of the Waurn Ponds to Colac road as a national highway. Darren Cheeseman has worked his butt off to get all the planning done and the graders will be out there within just a couple of years of Labor coming to power. And here comes Mr Tony Abbott wanting to have a crack. What gall. Do you know the funny thing? You could either laugh or cry. Tony Abbott comes out to the Princes Highway. He holds a media conference in a 100 kilometre an hour zone, a notorious black spot. What an absolute goose. He nearly gets himself killed, and what did he say? He did not actually go there to give a commitment for any funding for the road; he went there to have a look, to do a political stunt with no commitments. His car turns right in a 100 kilometre an hour notorious black flat spot and he nearly gets himself and potentially everyone else killed. What a goose, but still no funding commitment—none at all. What a disgrace. What does he take the people of Corangamite for?

He was on every news bulletin in the country saying how important the issue was, but still would not commit a cent. It took him a whole week before any commitment was made. Maybe he had to go back and consult Senator Joyce on that. But that would be another first, wouldn’t it: Senator Joyce making any sense in relation to the funding of any issue. Well, they have now finally said they will match Labor’s commitment. Hallelujah! That is the Princes Highway, but they forgot about any commitments as to the ring road. Again the people of Corangamite have been shortchanged by the Liberal Party. Mr Tony Abbott has no credibility and the opposition as a whole have no credibility on this issue. They had no credibility in government and they have no credibility now.

I would like to finish my contribution on this issue by passing on my congratulations to Darren Cheeseman, the Labor member for Corangamite, the first Labor member for Corangamite for 76 years, who has now delivered to the people of Corangamite something for which they have been calling for over 40 years and 11 years of the previous Liberal government, which did absolutely nothing but a political stunt. It was not until Mr Abbott nearly got everyone killed that he had a think about it. He had a think about it for a week and then worked out that with all the publicity he would have to go back. So what does he do? He only matches the Labor commitment in part and forgets about the ring road. What a disgraceful performance it was by the opposition leader, Mr Abbott. That is the way he deals with all things: it is all stunts but no substance and he only matches what he barely has to do with no consideration for the genuine needs of the constituents of Corangamite. Darren Cheeseman, the member for Corangamite, is doing a wonderful job. He is doing a fantastic job for that region.

Legislative Policy

Senator PARRY (Tasmania) (9.11 pm)—I am going to contribute to the adjournment debate tonight by firstly starting with a quote from what Senator Marshall said a short while ago. He said, ‘All stunts and no substance.’ I think that is how you would describe your cabinet at the moment, Senator Marshall, through you, Madam Acting Deputy President. The cabinet appears to be all stunts and no substance and the mantra coming out of the Rudd Labor government is: ‘We’ve made a hell of a lot of stuff-ups so let’s blame the Senate.’ This seems to be the theme that is coming through. The most recent example was from Minister Roxon, who recently issued a media release saying that the problem with trying to get her legislation through the Senate has been the opposition. Yet she would not accept responsibility for the fact that it was introduced in September last year and on occasion after occasion after
occasion the legislation was never listed in a priority position in the Senate, so it was never debated. In fact, there were some occasions when the legislation did not even make the list. It was not even thought to be a high enough priority. I think one day someone in Minister Roxon’s office must have said, ‘Minister, what about this legislation we are trying to get through the Senate?’ and she must have said: ‘Oh my gosh, I’ve forgotten about that. Let’s try it again.’

Of course they try to bring it on but it does not happen because the government control the order of legislation in this place and they have never given it enough priority. They have got competing interests with all ministers who do not understand what they are doing in relation to getting legislation through this place. So what does she do to cover her own tracks? She blames the Senate, in particular the opposition in the Senate. This seems to be the issue with the Labor government today. They are all talk and absolutely no action. I do not have time to list the litany of events that have happened in relation to broken promises. In fact, take some promises that my colleague Senator Cormann has highlighted—

and he is here with me this afternoon—particularly in relation to private health insurance. He actually had to rescue the government by not allowing their broken promise on this to go through. So we had to stop them, to help save them from themselves. This is an issue we are finding more and more with the Labor government. I think it is all catching up with them, because you cannot run the country on spin, you cannot run the country on broken promises and you certainly cannot run the country in a chaotic manner, not even understanding where your legislation ends up when it leaves the House of Representatives, as is the case with Minister Roxon. It has been some seven-odd months and Minister Roxon has finally realised her legislation has not gone through the Senate. She has panicked and is blaming the opposition in the Senate.

We know, and the public need to understand, that we cannot do anything on our own. Put simply, we can oppose, we can suggest, we can do anything we like but the Senate needs the opposition plus two other senators to effect anything or one other senator to negate something. We cannot do it on our own. We need the public of Australia to understand that the Senate is acting in a true democratic fashion, as it should.

I have read countless letters to the editor in recent weeks after Prime Minister Rudd wheeled out five ministers. He wheeled them out and said, ‘Quick go and blame the Senate for everything because things are not going too well for us.’ He wheeled them out, one after the other. They all stood together and all spoke about how bad things were in the Senate. Someone must have forgotten to tell the Prime Minister that you really need to negotiate things through the Senate. The Senate has been a strong house of review for many decades—

Senator Cormann—one bill had not even been introduced yet.

Senator PARRY—that is right, Senator Cormann. I accept that interjection. He said, ‘One bill had not even been introduced,’ yet they were complaining about it.’ This is the lack of depth in the ministry. They really are incompetent. That is a worry for Australia, if for no other reason. He wheeled them out to say that the Senate is holding things up.

The Prime Minister has not bothered to negotiate, to talk to or to even have the decency to invite the crossbenchers, let alone us, to have a discussion. He just does not do that. He does not want to negotiate, he does not want to speak; he just expects things to happen and that is why he has got the result he has got. He will not work with the Senate.
Former Prime Minister Howard had a period of a couple of years where the numbers in the Senate were favourable to the government of the day, which we were at the time. However, for the remaining eight or so years negotiation was the key to getting legislation through the Senate and putting forward the merits of the legislation the government wanted. That is the way you negotiate through this chamber. Then the Senate has the benefit of listening to the arguments put forward by the government privately and through the chamber and then it deliberates on those particular arguments.

But, no, not with Prime Minister Rudd: he is used to his bureaucratic style of—bang!—‘Put in the Senate, let the Senate sort it out, I am not going to negotiate and I am not going to lower myself to talk to the Senate in relation to these matters; let them work it out.’ And then he wonders why he does not get his legislation through. He does not even have the courtesy to talk to the crossbenchers in this place because he does not have to worry about that in the House of Representatives. He does not understand that the Senate is a totally different area. The dynamics of the Senate are totally different and always have been. If he actually started to negotiate, listen, be constructive and be consultative, he might get somewhere. But, no, his style is: wheel out five ministers and blame everything on the Senate. It is not good enough, Mr Rudd. You have got to start to work with the Senate.

Defence

Senator MARK BISHOP (Western Australia) (9.18 pm)—I seek leave to speak for up to 20 minutes.

Leave granted.

Senator MARK BISHOP—For almost my entire time in the Senate but more particularly as a result of my long-term interest in defence matters, I have been concerned with the matter of accountability within the Department of Defence and the ADF. It persists with a constant procession of media reports, particularly about financial waste. Last week we had another report concerning a large number of payments for services allegedly never provided. Again, in the weekend press we saw another report on the financial practices of both DMO and defence.

We all thought this had been remedied in more recent years. If these allegations are correct, it seems that the cosy relationship with industry remains. It seems prepayments for the purpose of concealing underspends and protecting forward estimates remain within the defence culture. If it is true, the taxpayers of Australia and the government are being treated as mugs. Frankly, I am appalled but also disappointed.

Before that we also saw the stories of overpayment of allowances, not to mention the long saga of procurement mishaps with helicopters, ships, aircraft and land transport—the whole shooting match. These are not trivial matters. They symbolise a long-standing malaise within defence about sound administration and accountability. It also makes good copy for the media. Taxpayers quite rightly resent their taxes being misused or squandered. That is why we here in this place always react, particularly at Senate estimates, and try to get the answers and explanations. We, as part of the parliament, vote to support appropriations. We are duty-bound therefore to ensure that it is spent as was intended. That is how accountability in a democracy should work.

However, there are two aspects to accountability. First, there is transparency and accountability for appropriated money, as I have mentioned. Second, however, there is also accountability and transparency of decision making in determining what the money is to be spent on: the first is the bread-and-
butter of government; the second is arguably more important but much overlooked. The recent debacle over the purchase of Seasprite helicopters is a perfect example. So we ask ourselves, ‘How could this happen?’ Further, ‘What could be done to mitigate the process which does produce such catastrophes?’

From my perspective as a senator and Chair of the Foreign Affairs, Defence and Trade Legislation Committee, it is a matter of great concern that the parliament’s attention to these matters is sporadic and ad hoc. It is often too narrowly focused and lacks continuity. However, it must be said that defence is the most regularly scrutinised agency of the Commonwealth. Most of that scrutiny is focused on financial management failures—that is, the symptom of failures and not the causes. It is not sufficiently focused on the policy matters, which, by their nature, extend far beyond the political lives of any elected member of senator.

At present, we have a wealth of accountability measures. At the departmental level, there are highly regulated budget and financial management processes. These include detailed audits against allocations not just of cash management but also of the processes. We receive portfolio budget statements prior to each of the three estimates hearings per year. We receive regular reports on the progress of the top 30 projects. We receive annual reports with financial statements signed off by management and by the auditors. Indeed, in these committees—and I mention the Joint Committee of Public Accounts and Audit in particular—we are actively engaged with the Australian National Audit Office and the Defence Materiel Organisation on the reporting and accountability framework for major projects. We are indebted to that committee and to the ANAO for their persistence. We are also indebted to the DMO for its engagement in achieving higher levels of transparency for current expenditure. The recent report by ANAO on major projects is illustrative of current progress.

I do accept that there is a limit on the disclosure of information—not everything can be released. Having said that, it does not mean that descriptors like ‘national security’ or ‘commercial-in-confidence’ are acceptable reasons for nondisclosure of relevant information. We do not need extensive technical, capability or scientific information; we do need to be alerted early in annual reports and in the PBS to the existence of significant problems. This, however, only relates to the major projects list; it does not cover general financial management and practices and it does not cover the capability development process—this remains opaque, to say the least.

Putting aside the singular attention of the public accounts and audit committee work, I think it is fair to say that the remaining parliamentary scrutiny of defence is patchy, to say the least. A range of parliamentary committees, at least six, look at different aspects of the defence portfolio. The only external review or scrutiny of defence is that of the ANAO. ANAO’s charter is limited and a lot of its work is necessarily limited. Whilst parliamentary committees, especially the FADT committee and the public accounts and audit committee, are effective in obtaining compliance with specific requests, they are limited in their scope, commensurate with their capacity.

I have no doubt that defence gets a little testy about the onerous nature of some of this oversight, not because of the disciplines and demands of the oversight per se but because it is haphazard, sometimes ad hoc and inconsistent in its focus. No doubt defence also resents the criticism from outside experts such as the various think tanks, which are too often disregarded as background
static. Without wanting to downplay the virtues of the estimates process, it is still imperfect. For example, in FADT we have a clear structure where policy and operational matters are examined at a high level. Where those senators are genuinely interested and prepared, this is an effective process—but in itself, of course, this is also ad hoc. The estimates process is only as effective as senators, especially those in opposition, want to make it.

However, should it be more comprehensive, more regular, better organised and more focused? Or should it be left to chance and the threat it poses through its potential to get very serious from time to time? Noting the track record of the parliament in achieving better levels of accountability, especially on financial management, there remains the issue of policy scrutiny. I suggest we have proven through the military justice inquiry that this can be a very important role for the parliament in some policy areas which are ongoing. Typically these issues such as military justice are above politics. Often these issues defy political engagement because, by their nature, they concern matters of important and consequential public policy.

In fact, there is a limit to which government can always be accountable for organisations such as defence. Why is this? Simply because the issues are often longstanding, ingrained in the very culture and protected by the ongoing mystique of military activity or culture. Whether we like it or not, this is one of the unmentionables of politics and defence. The discontinuity of politics and government simply does not provide the time available for deep and permanent reform. Like military justice, these issues entail ongoing, non-political administrative processes which, if not attended to, can cause harm or poor outcomes. Indeed, I suggest that even the government of the day values such independent scrutiny. Why is this? Because of the public nature of its accountability, which can achieve what ministers often cannot. Again, the military justice inquiry is an excellent example. The wool can be pulled over eyes in departmental briefings, but it cannot be when the subject is open to full, ongoing, public scrutiny. Ministers are happy to have accountability sought by someone else and then use the outcome as a stick for reform, fully open to public scrutiny.

As we have noticed, many of these issues are not political by nature; they are essentially issues which successive governments have endorsed by their own practice. With that in mind, I suggest that defence procurement is one such issue. I do not mean the processes of procurement; I mean the ready availability of information from which procurement policy in itself is derived. Every newly elected government inherits the decisions of its predecessor—as well as a lot of its administration. The latter can be fixed in time; the former cannot because it is locked in. Any decision to remove that lock-in, as with the Seasprites, can be catastrophic financially.

However, if there is to be blame for this outcome, it must be in the process which allowed it to occur. Frankly, that process is seriously flawed. It is not the fault of any one government. It is endemic in our system of government, where elected governments are to some extent captive to the advice they receive. They are also by their nature restricted to the budgetary and political cycles. We suffer the risks of short-term decisions with very long term consequences. This is a most difficult decision-making process. In fact, it is almost impossible. Failure or suboptimum outcomes are inevitable, and I think that typifies the defence procurement conundrum. The existence of independent think tanks does help to pry open the oyster, even publicly funded groups such as the Aus-
tralian Strategic Policy Institute. But this in itself, of course, is a comment on the system.

One might wonder why governments tend to fund private organisations to ask the questions and to provide the scrutiny and the information which governments themselves are incapable of providing. The answer is obvious. At the heart of it is the lack of information both within government and publicly on the basis of which debates can be conducted and decisions reached that enjoy public support, if not consensus. After all, over the next 30 years this will entail expenditure of up to $300 billion of taxpayers' money. Yet if the present circumstances prevail decisions will continue to be made whereby these budgets will be locked in for as many as 10 successive governments. The Rudd government is locked in by decisions made by the Howard government, and so the cycle continues. Each of those decisions can only be as good as the information upon which they are based. To overturn them requires a virtual revolution. How can you criticise a prior decision to purchase a particular item when the basis for that decision is at best obscure or shrouded in the mists over time? Alternatives simply may not exist in the short term.

A further problem does exist. Our government has recently reformed procurement decision-making processes and introduced more checks and independence of scrutiny than has applied for many, many years. However, this improved process is still potentially hostage to secrecy and traditional internal defence behaviours. This shortcoming applies to the internal defence strategy group, the capability development group, the DMO and the DSTO right through to the National Security Committee of Cabinet and the cabinet itself. If this process is to be credible, it must allow free and unfettered access to an optimum amount of information; otherwise, the system is captive to the myopic views of any one individual group and the public interest can therefore be easily frustrated.

Nor should the process be captive to the corporate mindset of any one of the three services, whose attitudes are reportedly self-centred, regardless of the integrated needs of the whole. For those interested in the background to this comment, I recommend an article by Mr Andrew Davies of ASPI. In his article dated 22 January 2010 he reveals some of the internal dynamics of defence in capability decision-making. I also refer those interested to the article by Paul Dibb and Geoffrey Barker published in the *Australian* of 27 February 2010 which also makes some acerbic comments on the historic tension between military and civilian attitudes with respect to capability planning and procurement.

Put simply, if that allegedly selfish and combative culture is to be translated into the new post-Mortimer process, we have real cause for concern. Indeed, this goes to the heart of the Mortimer reforms because this tension, derived from institutional silos, compromises the quality of advice to governments and thereby creates political ownership, which I suggest is inappropriate in circumstances such as these and which the government is grappling with in an attempt to better avoid the problem in the future. These changes are therefore important but can easily lapse as governments and ministers come and go.

The bottom line then is: what do we do about it? It is clear that something needs to be done to open up the provision of information. The public debate needs to be far better informed and the public needs to be engaged. National security is not a convenient blanket excuse for nondisclosure. I can illustrate this plea for better information by a personal anecdote. When I was opposition spokesman for defence procurement and personnel, I
tried with the help of the Parliamentary Library to track every major capital project from start to finish. This involved a massive spreadsheet full of detail gleaned from the public record but which was full of gaps. In short, I failed, simply because of the shifting sand—name changes, projects falling in and out of the financial limit, rescheduling, exchange rate changes, real costs being altered, variations, projects being suspended or cancelled et cetera. In spite of all my efforts, the information was simply not there. I note that the Australian Defence Business Review have now completed the task, and I congratulate them. In fact, I am told that it is also an informative document for defence. However, it really should not have come to this.

On the subject of accountability, I think it is obvious that the only means by which the accountability of defence is being achieved is by way of the parliamentary committee system, the ANAO and, of course, the media, for which defence is always in season. While I acknowledge the needs of the parliament more broadly, I believe that a more concentrated focus would be effective. Therefore, without wanting to impinge on the rights of the House of Representatives, I suggest that in the interests of budget accountability the JCPAA remains glaringly appropriate. It grows in knowledge and corporate understanding all the time. It does a fine job. For all other matters, including capability development, the Senate, as the natural house of review, would be an appropriate home for continuing more complete scrutiny of defence. I further suggest that defence be the exclusive subject of a committee separate from foreign affairs and trade, thus providing both more breadth and the continuity available through the nature of the Senate.

I think many of us in the parliament regard defence as a major matter of public policy which is above politics. I think there is a real role for the parliament, just as there is on other longstanding public policy issues, which should not be allowed to become politicised, excepting of course ongoing governance and management.

In summary, my strong view is that the current means by which the accountability of defence is managed is unsatisfactory and that, unless more information is forthcoming, more contestability is introduced and more accountability is provided, policy formulation on capability planning and specification is destined to repeat the failings of the past. There has to be a better way.

Rudd Government: Policy

Senator CORMANN (Western Australia) (9.36 pm)—No government of any persuasion likes it when it does not get its way in the Senate. However, the Rudd Labor government has taken the level of moaning, whingeing and sulking about so-called Senate obstruction to new levels. The Rudd Labor government does not like it when its legislation and its performance—or rather its lack of performance—gets scrutinised by the Senate. But the truth of the matter is that the Senate protects the Australian people from bad government and bad legislation.

Last week as part of a pre-election strategy, as part of the strategy of a government that is trying to set itself up with excuses as to why they have not delivered on their pre-election commitments and why, even though they promised the world on a whole range of things, they have not been able to follow through, they are now trying to point the finger at the Senate to find justifications for their failings and perhaps in the process find a way to justify in the public’s mind why they might need to rush to a double dissolution election. Last week we had five senior ministers, in a very confected press conference, running an attack on an obstructionist Senate. It was a very strange spectacle in-
deed, because, rather than getting on with the job of sorting things out and making things happen, we have a Rudd Labor government that is all talk and no action.

The principle is very simple: if the government puts forward good legislation, the Senate will support it; if the government puts forward bad legislation, the Senate will reject it. On occasion, I, along with colleagues on the Liberal-National Party benches, have experienced the government agreeing to negotiate improvements on what was very bad legislation. Dare I say it, there has been a series of backflips which have ultimately resulted in better policy outcomes for the Australian people as a direct result of the actions taken by Liberal Party, National Party, Greens and crossbench senators in response to deeply flawed government legislation.

I will pick a couple of examples. Remember the government’s attempts to cut funding for chemotherapy drugs by $100 million? It was a disgraceful, cold-hearted initiative from a cold-hearted government. They promise the world in health—that this was going to be a caring government that was going to make health a high priority—and they were cutting $100 million out of the budget for chemotherapy treatment. It was the scrutiny applied by senators in Senate estimates and the scrutiny applied by senators in this chamber that forced the most incompetent health minister since Federation, Nicola Roxon, to backflip and put the proposed $100 million cut for chemotherapy drugs onto the backburner. Then we had the proposal in the last budget from this cold-hearted, ideological Rudd Labor government to cut patient rebates for cataract surgery in half. This was yet another initiative that was going to hurt mostly elderly patients right across Australia, preventing them from getting access to life-changing surgery and forcing them into already overburdened public hospitals, making the situation worse for patients in both the public health system and the private health system and forcing elderly patients to either go without, at worst go blind, or take their chances in a public health system where the same procedure was going to cost more than the government was proposing to save through its cold-hearted, misguided and ideological budget cut. Those are just a few examples, but there is example after example where scrutiny in the Senate forced the government to reconsider and improve what was bad legislation.

Of course, we have had legislation put forward by the government which, even with the best of intentions, cannot be improved. We have had Labor’s flawed emissions trading scheme—the great, big new tax on everything; a great, big new tax which was going to push up the price of everything, cost jobs, put pressure on the economy and put our energy security at risk, and all of that without helping to reduce global greenhouse gas emissions by one bit. Of course, it is the responsibility of the Senate to scrutinise the actions of a government that is trying to con the Australian people into believing that something is being done when nothing is being done and, worse, things are actually going to be worse as a direct result of what the government is proposing to do. The Senate asked very reasonable, legitimate and sensible questions in relation to all these things and the government, again and again, refused to answer questions, refused to release information and refused to provide the Senate with modelling information, for example, which was at the basis of its Treasury modelling about the economic impact of its flawed emissions trading scheme. We believe to this day that the government and the Treasury economic modelling of the impact of the emissions trading scheme legislation underestimated the impact on jobs, on the cost of living, on our economy and on our
energy security, and to this day the government has refused to provide any of that information.

We have had Nicola Roxon, the health minister, trying to push through the Senate the Labor government’s broken promise on private health insurance. Before the last election, the Labor Party went to the election with the most emphatic promise that they would not make the same mistakes they made in the past and that they would not pursue an ideological crusade against people with private health insurance, but of course—as we all knew before the election they would—that is exactly what they did. They pursued a broken promise which was going to be bad for the health system, put additional pressure on our public hospitals, push up the cost of health insurance for millions of Australians and seriously put our health system out of balance. Of course, the Senate was quite within its rights to scrutinise what the government was proposing to do and make a judgment on that legislation.

Let me just add that we Liberal-National Party senators might make a judgment on a particular piece of legislation from the government. We might be of the view that it is a bad piece of legislation. Labor’s broken promise on private health insurance rebates was a particularly bad piece of legislation. It was bad for our health system and it was bad for patients across Australia, and we made a judgment that it should not be supported. But it is not because we made the judgment that that particular bad piece of legislation should be rejected in the Senate; it is because other senators in this chamber shared our judgment. It is because other senators in this chamber took our view that Labor’s broken promise on private health insurance rebates would make things worse for our health system and not better, that it would put additional pressure on our public hospitals, not less, and that it was going to put our health system out of balance that it was defeated.

The Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, was out there complaining about the Senate blocking the paid parental leave legislation—legislation that has not even been introduced into this Senate yet. How can we be blocking something that is not even before us? This government has become arrogant very quickly. The Rudd Labor government does not accept the important and legitimate responsibility of the Senate to scrutinise government legislation and to make a judgment that, if legislation put forward is bad legislation that is not in the national interest, then of course we should vote against it.

We had legislation the other day from Senator Conroy which essentially sought to break up Telstra. It was legislation which had serious ramifications for 1.4 million shareholders and their families, for 30,000 employees of Telstra and their families—working families—and for millions of customers of Telstra across the board. It was legislation whose sole purpose was to be a distraction from the absolute incompetence of the Minister for Broadband, Communications and the Digital Economy, Stephen Conroy, who has been unable to deliver on the pre-election commitment for a national broadband network.

Everything that is being done by this government at present has to be seen in the context of a government desperate to do everything it can to see itself re-elected. This government is not governing in the national interest. This government is totally focused on its own political self-interest. The Rudd Labor government is not focused on what is good for the Australian people. The Rudd Labor government is focused on what is good for itself. The only thing that stands
between the Rudd Labor government doing the wrong thing by the Australian people is this Senate, which of course is making sound judgments on a whole range of broken promises, on a whole range of initiatives that are not in the public interest. This is exactly what we were elected to do. This is what the Australian people expect us to do. (Time expired)

**Australian Consumer Law**

Senator PRATT (Western Australia) (9.47 pm)—I seek leave to speak for 20 minutes.

Leave granted.

Senator PRATT—This evening I rise to speak about the importance of the Australian government’s landmark reforms to Australian Consumer Law. These reforms are part of the Rudd government’s commitment to what I think are landmark microeconomic reforms that are going to boost Australia’s productivity by reducing business compliance costs while at the same time strengthening consumer protections. Our reforms to consumer laws are emblematic of the Rudd government’s approach to microeconomic reform because they embody our belief that stronger markets are fairer markets. Our conviction is that a stronger economy and a fairer economy go hand in hand.

The Hawke-Keating government took the same approach, and its reforms, which increased Australia’s exposure to international trade and liberalised our product markets, contributed to an impressive surge in productivity that lasted until the late nineties. These reforms, according to the Productivity Commission, added at least 2.5 per cent or $20 billion to our GDP. The Hawke-Keating government’s move to a decentralised wage bargaining system ensured that both employment and labour market flexibility also increased during this period. According to leading economic authorities, including the OECD, increased productivity was achieved without increased underemployment. That is the Labor way—a stronger economy through meaningful reforms that benefit everyone through increased employment.

In contrast, what did we see during the Howard-Costello years? What we saw on the coalition’s watch was a productivity slowdown. The coalition was content to ride the commodities boom associated with the rise of India and China and to indulge their ideological obsession with Work Choices. They were not prepared to do the heavy lifting needed over the long term to increase productivity and competition. So it has now fallen to the Rudd government to return Australia to a long-term growth path, the path it once enjoyed as a result of the Hawke-Keating microeconomic reform agenda, the path that the coalition failed to pursue even though the global context made their task much easier.

An important part of rising to the challenge of increasing competition and boosting productivity is driving continuous improvement in regulatory quality. So our national partnership agreement with the states and territories to deliver a seamless national economy is designed to drive continuous improvement. The agreement entered into in 2008 commits both the Commonwealth and the states to 36 reforms to move Australia towards a seamless national economy. These include 27 priority reforms to reduce the regulatory burden on businesses and eight competition reforms. The agreement is designed to boost productivity and enable stronger medium-term economic growth and it does this by reducing the costs incurred by business from unnecessary or inconsistent regulation, improving workforce participation and labour market mobility, and driving competition reform.
This reform agenda forms part of the Rudd government's new agenda for Commonwealth-state relations. The Rudd government believes a partnership approach with the states works best to harmonise key regulations right across the nation. However, cooperative arrangements should have at their core a commitment to making real progress on issues of common concern. They should never be a cover for inaction, unnecessary delay or buck passing. Innovative structures have therefore been established at the COAG level to facilitate these reforms and others, and these are underpinned by new federal fiscal arrangements. The new Intergovernmental Agreement on Federal Financial Relations requires states to pursue jointly approved regulatory reforms. The national partnership agreement to deliver a seamless national economy provides incentive payments to the states that are contingent on performance, to ensure real progress on regulatory reform.

An Australian consumer law is one of the most important of the 27 regulation reforms needed to move Australia towards a seamless national economy. The Productivity Commission estimates the national benefits of consumer law reform at up to $4.5 billion a year. The Australian Consumer Law will rationalise the many national, state and territory consumer laws by replacing the myriad consumer legislation now in force across the nation. This will minimise compliance costs for business by dramatically reducing inconsistency and duplication in consumer law.

The legislation that has recently been debated in this place represents stage 1 of this process and delivers on the major elements of Australian consumer law reform. These include establishing a single national consumer law under which 13 different consumer protection laws become one; making provision for the application, administration and amendment of the Australian Consumer Law; introducing a national provision regulating unfair contract terms; and introducing new penalties, enforcement powers and consumer redress options. Very shortly, we will get the next wave of this reform in which we will see reforms based on best practice in state and territory consumer laws. We will also see the remainder of the Australian Consumer Law from the existing consumer protection provisions of the TPA; amendments to the TPA to clarify the scope of its unconscionable conduct provisions; a new national product safety system; and a new national consumer guarantees law. The states and territories are to apply the Australian Consumer Law by the end of 2010 so that it will be fully implemented by January 2011, thereby delivering, on time, one of the most important business regulatory reforms for a seamless national economy.

This legislation is part of one of the most significant overhauls of Australian consumer law in the last 25 years. A single national consumer law has been a long time coming in Australia, despite the longstanding support for the proposition from both consumers and businesses. Once again, it is a Labor government that has the courage, the initiative and the tenacity to grapple with a century-old problem and to bring historic reforms to fruition.

Finally, all businesses, whether they operate in both Broome and Darwin or right around the nation, will have only one set of consumer laws to comply with and consumers will have the security of knowing that their transactions with business are covered by the same safeguards, wherever they live and wherever they shop. Having one national consumer law will make for a better and stronger market for consumer products and services, while the new unfair contract terms law will make contracts fairer and consumers more confident. Consumers are currently frustrated by high penalty and exit fees in
contracts for financial services and essential utilities. They are particularly going to welcome the opportunity to seek redress through these provisions. At last, too, all the regulators—the ACCC, ASIC and the state and territory bodies—will have common enforcement powers so they can take effective action at the local and national level to safeguard consumers.

Improvements to the ACCC’s enforcement powers are long overdue. For many years, the state and territory consumer protection agencies have had powers the ACCC has lacked. As the Minister for Competition Policy and Consumer Affairs said when these reforms were announced, for too long the ACCC has struggled to protect consumers with one arm tied behind its back. Provisions for public warning powers and substantiation and infringement notices will finally give regulators the teeth to enforce consumer protection safeguards and inform consumers about unfair business practices. These reforms build on other steps that Rudd Labor has already taken to protect consumers and promote competition in our retail sector, including clarity and pricing reforms that give consumers confidence that the price advertised is the price they will pay. There are also a raft of pro-competition reforms in the supermarket sector including the relaxation of foreign investment rules for overseas owned supermarkets, the removal from tenancy agreements of restrictive clauses that inhibit the entry of rival supermarkets, COAG agreement to reform unwarranted anticompetitive provisions in planning laws, the announcement of legislative amendments to address creeping acquisitions, and the introduction of compulsory unit pricing to enable consumers to best value their shopping. These reforms are designed to put downward pressure on grocery prices as well as empowering consumers to readily choose products that offer good value for money.

In competition reform, as in consumer affairs, there has been a catalogue of unfinished business. Many of the long called for reforms were left languishing while our coalition predecessors focused on ideological obsessions that were of negligible importance to boosting productivity. Here too we have finally given the ACCC the powers it needs to do its job properly, allowing it to effectively regulate for robust competition through amendments to predatory pricing rules and cartel criminalisation. The task of driving improvements in competition policy and consumer protection is complex, demanding and ongoing. The Rudd government’s activism on these issues is founded on our belief that robust national competition is crucial to the nation’s productivity growth, which will help build a stronger and fairer economy over the long run for the benefit of all Australians. For Rudd Labor, more-open markets and fairer markets are not competing priorities; they are two sides of the same coin. Our reforms to Australian consumer law embody this belief. They also exemplify the government’s capacity to deliver on its commitments.

Local Government

Senator FORSHAW (New South Wales) (9.59 pm)—I seek leave to speak for up to 20 minutes.

Leave granted.

Senator FORSHAW—Tonight I rise to speak about the Rudd government’s tremendous support for local government. I think we know—senators, members of the House of Representatives and members of state parliaments know—of the importance of local government in providing many of the services that are so necessary for our citizens and families in the various suburbs and towns throughout this country. It is always said that local government is closest to the people. It is also true that local governments
end up bearing the brunt of many of the problems—and when they do that it sometimes takes the pressure off state and federal politicians.

The list of what local councils and municipalities provide is endless. It is not just ‘rates, roads and rubbish’ as the old saying goes; it is far more. I will just run through a quick list. Local councils provide planning, building inspection services, health inspection services, the provision of recreation and sporting facilities—whether they be ovals, parks, swimming pools or tennis courts and so on. They provide libraries, which are so important for everyone from the very young to the aged. They provide community support for child care and for the aged. They provide services and infrastructure for many local organisations, charities, chambers of commerce and so on. Those of us who live along the coast know that local councils maintain our beaches and provide funding for surf clubs—the great tradition of this country. Hundreds of thousands of lives have been protected or saved because of the work of our lifesavers. Often people do not know that local councils take a large part of the responsibility for that service.

When you go further out into the country and regional areas you find that councils often take on extra responsibilities that would be provided by bigger agencies or institutions in the cities—particularly water supply and sewerage services, and the provision and maintenance of bridges. Often these are services which are provided by local councils in the bush, and that differs from what happens in the cities. And of course the humble public toilet and other community amenities are provided by local councils.

I should declare a personal interest here. It is not a conflict of interest or a pecuniary interest; it is a personal one. My wife, as I think many know, is deputy mayor of the Sutherland Shire Council. This is certainly not a pecuniary interest because anyone who knows any councillors—some members of parliament have previously served on councils—would know that there is very little financial reward but there is a lot of hard work in being a councillor. Councillors often work every day. I think other than in the state of Queensland—or in the city of Brisbane—councillors are technically seen as having part-time positions, but they work the equivalent of full-time hours.

Why do I talk about local government? It has taken the Rudd government—I particularly want to compliment Minister Albanese tonight—to take the first real steps towards acknowledging the importance of local government in almost 40 years, since Gough Whitlam endeavoured to raise the status and importance of local government as the third tier of government in Australia with his proposed constitutional reforms. During the Howard years—those 12 long years—the government did continue the system of financial assistance grants to local government and funding for local roads through Roads to Recovery or black spot programs, but that was all they did. They just continued the previous system.

The Rudd government, through Minister Albanese, last year introduced the Regional and Local Community Infrastructure Program. This is a program that has now provided over $1 billion to local government throughout this country. It has been a fantastic development for local government and it has provided much needed financial support to local government to deal with the backlog in local community infrastructure. Some of those items that I mentioned a moment ago—fundamental services and facilities provided by local councils—have been improved because of the funding provided under the Regional and Local Community Infrastructure Program.
We know that each year the demands upon local councils have been increasing—as have the demands on state and federal governments, but I am dealing particularly with local councils tonight. It is natural: citizens want more and better services. When things are not working properly citizens want them fixed up straight away. If a particular facility—let’s say a toilet block or a stand at the local football oval—has deteriorated, the complaints come in pretty quick and people want it improved. Of course, they pay their rates and they believe they deserve a proper level of facility. Local governments have had to try to meet that ever-increasing demand despite ageing infrastructure. Of course the revenue base has not been keeping pace to ensure that councils can maintain even the basic demands that are placed upon them.

The Regional and Local Community Infrastructure Program recognises, for the first time in 40 years, the appropriate link between the federal government and local government. It took Prime Minister Rudd and Minister Albanese to finally give local government a real voice here in Canberra. I know that last year many of us were very pleased to attend a function here at Parliament House, when the Australian Council of Local Government was established. Mayors and senior managers from councils right across the country came to Canberra and had direct access, over a couple of days, to the Prime Minister, the Treasurer and other ministers. That was a first, and they appreciated it.

I have spoken to many mayors and councillors in my travels throughout my state of New South Wales and I can assure you that whether they are Labor, Liberal, National Party or Independent I have not had one complaint that that was a terrible thing to do. They have been lauding this government because of the initiative of the establishment of the Australian Council of Local Government. They finally recognise that they now have a voice here in Canberra to present their case for increased funding and for greater recognition of the importance of local government. None of that was ever on the agenda in the previous Howard government—none of it. What was on the agenda was the sort of mickey mouse scheme like the Regional Partnerships and Sustainable Regions Program.

I know, Madam Acting Deputy President Moore, you were here during the years of the Howard government. I am sure you will recall the inquiry of the Senate Finance and Public Administration References Committee into the Regional Partnerships and Sustainable Regions Program. I certainly recall it because I chaired the inquiry. We travelled around this country and whilst, in principle, the scheme had some very noble objectives, and quite a lot of projects received some support, there were some shocking scandals. There were cases such as Beaudesert Rail in Queensland, which received a grant for almost $6 million to establish a heritage railway tourism project. It did not pass the funding test at first. It did not meet the criteria—but that did not matter. From the former Prime Minister and others—I will use the word: there was interference, to ensure they got the funding because it happened to be in a National Party electorate. What happened? The project went bankrupt before the trains even started to roll.

There are many other examples, if you read the committee report, whether it be Tumbi Umbi Creek or projects up in the Atherton Tablelands or in other parts of Australia. There were some shocking examples of political pork-barrelling, where guidelines laid down by the department were often ignored and recommendations not to fund or prioritise a project were overridden by ministerial interference. That was a program that
was never based on a fair and equitable assessment.

Contrary to that, the Regional and Local Government Infrastructure Program, which now amounts to around $1 billion, has ensured that every council in this country has received at least two grants. These grants are based upon the Financial Assistance Grants formula, which ensures fairness and equity in the program. There have been other moneys within that program which are available for large projects, where councils have to submit their proposals and have them rigorously tested against the appropriate guidelines. There is a stark contrast between the approach taken by our government and that of the previous government. I look forward to the continuation of this program. I know that local government, having established the direct link with the federal government, and having had the Australian Council of Local Government established, giving them a real voice here in Canberra, are looking forward to the federal government taking a more active and direct role in supporting councils to improve their local infrastructure and services.

I have had the benefit of visiting areas in my duty electorates. I refer to Cowper on the Mid North Coast, a National Party seat, where I was privileged to open some of the facilities there. I spent a day at the Coffs Harbour City Council and also at Nambucca, Bellingen and Dorrigo. I visited projects such as the improved surf club facilities at Nambucca beach, improved and new public amenities at Bellingen and improved pedestrian walkways and footpaths in the town of Urunga.

In many cases, these are not huge projects, but they are extremely important. For instance—and I am not sure if too many people know about this; certainly the people in the area know—they have been affected by up to five flood events in one year. Just as they were starting to recover from the first or second flood that came through the mid North Coast, they got hit with another one. This placed a huge financial burden on those councils. So they are grateful to this government for the assistance.

I want to conclude by referring to one important project that I was privileged to attend a couple of weeks ago, on 4 March. That was in Sydney at what everyone knows as The Gap. Under the Regional and Local Community Infrastructure Program, the government has provided two grants, one of $248,000 for the installation of CCTV cameras and emergency phones at The Gap. It is part of the Woollahra Council. It is on that beautiful headland at the entrance to Sydney Harbour. It is a place of magnificent coastal beauty. But it is also a place of great sadness and trauma for many Australians, and has been for many years. This is because The Gap, unfortunately, is famous as a suicide location. The installation of these CCTV cameras and these phones means that there will be an early warning system, if I can call it that, and a facility for people who are in distress and hopefully lives will be saved as a result.

It took a Rudd Labor government to provide these funds. I would not want to score political points out of this issue. Like you, Acting Deputy President Moore, I have been involved in inquiries and other debates in this chamber on issues to do with mental health. It is an area that should be above political point scoring. But I must say that I am very disturbed that, while it took the Rudd Labor government and Minister Albanese to provide any financial assistance for these facilities to be built at The Gap, we still have people like Piers Akerman—that sleazy, grubby journalist—attacking the Labor government. He wrote in an article on 15 February:
With at least one person a month taking their own life at The Gap, one of the nation’s most visited tourist destinations and the principal end point for suicidal individuals, the Rudd government is stone-walling attempts by concerned citizens, the parents of suicide victims, Lifeline, the Black Dog Institute and the local Woollahra Council to obtain funding to save lives.

The fact of the matter is that the first federal government that has ever done anything to provide these cameras is the Rudd government when it provided those funds under the Regional and Local Community Infrastructure Program. John Howard never did it. There is no indication that Malcolm Turnbull, the member for Wentworth, who was the member for that area, took up the cause. And this is not a new issue; this is not a problem that has just arisen. So I reject the criticisms of Piers Akerman and some of the other public comment that I have read in the Wentworth Courier newspaper.

I am proud that we put the funds in to start this work. There is more to be work. The council is seeking more funding. That application will be considered, along with all the others that have been put in around the country. I want to finish on that note. There is nothing more important, obviously, than saving lives. But funding for things like surf clubs and a whole range of other facilities helps to do that too. This is a great program.

Senate adjourned at 10.20 pm

DOCUMENTS

Tabling

The following government documents were tabled:

Australian Competition and Consumer Commission—Telstra’s compliance with the price control arrangements—Report for 2008-09.


Australian Radiation Protection and Nuclear Safety Agency—Quarterly report for the period 1 October to 31 December 2009.


Migration Act 1958—Report for the period 1 July to 31 October 2009—

Section 91Y—Protection visa processing taking more than 90 days.

Section 440A—Conduct of Refugee Review Tribunal reviews not completed within 90 days.


Treaties—

Bilateral—Agreement between the Government of Australia and the Government of the former Yugoslav Republic of Macedonia on Social Security, Canberra, 26 October 2009—Text, together with national interest analysis.

Multilateral—Explanatory statements 2010—


No. 3—Amendment to Annex II of the United Nations Educational, Scientific and Cultural Organisation

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]


Civil Aviation Act—Civil Aviation Regulations and Civil Aviation Safety Regulations—Instrument No. CASA EX13/10—Exemption – agricultural rating (incendiary dropping at or above 500 feet); Exemption – CASA Part 137 (incendiary dropping above or below 500 feet) [F2010L00506]*.

Corporations Act—ASIC Class Order [CO 10/105] [F2010L00667]*.


2010/10—Director-General Navy Personnel and Training – title amendment.

2010/11—Overseas benchmark and summer schools – amendment.

Environment Protection and Biodiversity Conservation Act—Adoption of State Plan as Recovery Plan, dated 5 March 2010 [F2010L00643]*.


4 of 2010—Prudential Standard LPS 520 Fit and Proper [F2010L00622]*.

Mutual Recognition Act—Select Legislative Instrument 2010 No. 41—Mutual Recognition Act 1992 Amendment Regulations 2010 (No. 1) [F2010L00651]*.

National Consumer Credit Protection Act—Select Legislative Instrument 2010 No. 44—National Consumer Credit Protection Regulations 2010 [F2010L00631]*.


Trans-Tasman Mutual Recognition Act—Select Legislative Instrument 2010 No. 42—Trans-Tasman Mutual Recognition Act 1997 Amendment Regulations 2010 (No. 1) [F2010L00653]*.

* Explanatory statement tabled with legislative instrument.

Indexed Lists of Departmental and Agency Files

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2009—Statement of compliance—Department of Education, Employment and Workplace Relations.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Indonesia: Counterterrorism Initiatives

(Question No. 2474)

Senator Johnston asked the Minister representing the Minister for Foreign Affairs, upon notice, on 25 November 2009:
For the period 1 July 2011 to 30 June 2015, what funding will the Government commit to counterterrorism initiatives in Indonesia.

Senator Faulkner—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:
In the 2009-10 Budget, the Government committed $28.1 million over three years from 2010-11 to the Department of Foreign Affairs and Trade, as part of a cross-portfolio Budget measure of $193.2 million (from 1 July 2009 to 30 June 2013) to continue Australia’s international counter-terrorism capability and programs. The Budget measure focuses on building capacity to address terrorism challenges in South-East Asia. The Government has made no specific funding commitment for counter-terrorism activities solely in Indonesia. However, Australia and Indonesia have had first-class cooperation in counter-terrorism matters over a number of years and the Government is committed to continuing close cooperation in the future.

Afghanistan: Human Rights

(Question No. 2480)

Senator Johnston asked the Minister representing the Minister for Foreign Affairs, upon notice, on 25 November 2009:
(1) (a) What investigation has the Government undertaken into reports that new laws in Afghanistan deny women their basic rights; and (b) have any meetings been held in relation to this issue; if so: (i) who attended the meetings, (ii) on what dates were the meetings held, and (iii) where were the meetings held.
(2) Has the Australian Government made any representations to the Afghanistan Government on the new laws; if so, what response was received.

Senator Faulkner—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:
(1) The Australian Government is firmly committed to efforts to protect and promote human rights in Afghanistan, and continues to monitor developments in relation to the Shia Personal Status Law (SPSL), which came into effect on 27 July 2009. The Government supports efforts by the international community, led by the United Nations Assistance Mission in Afghanistan (UNAMA), to seek clarification from Afghan authorities of the provisions of the SPSL and their implications for the rights of women. These efforts have been hampered by the absence of an official English-language translation of the law and by uncertainty about how the legislation would be applied in relation to other relevant Afghan laws.
The Australian Government has made formal representations on the SPSL to the Afghan Government in Kabul and in Canberra. The Deputy Head of Mission at the Australian Embassy Kabul made representations on the SPSL to the Afghan Ministry of Foreign Affairs (MFA) in May and June 2009. The Afghan MFA noted Australia’s concerns on this matter. DFAT senior officials also made representations on the SPSL to the Ambassador of the Islamic Republic of Afghanistan in Canberra in June 2009. The Ambassador undertook to relay Australia’s views to Kabul. Further representations were made by DFAT senior officials on two occasions in January 2010. Subsequent to these discussions, the Afghan Embassy advised that it had confirmed that no official English-language translation was available. The SPSL has been discussed in the course of the Australian Government’s regular engagement with Afghan authorities and international partners in Kabul on a range of Afghan matters. In September 2009, I raised the issue of women’s rights in the Group of Friends of Afghanistan meeting in New York, which was attended by Afghanistan’s (then) Foreign Minister Spanta. In my address at the London Conference on Afghanistan in January 2010 I raised the importance of the Afghan Government meeting the needs of women and girls.

**Jobs Fund Scheme**

(Question No. 2593)

Senator Bob Brown asked the Minister representing the Minister for Environment Protection, Heritage and the Arts, upon notice, on 2 February 2010:

With reference to the answer to question on notice no. 2424, concerning the notification to an Australian Greens senator of announcements for the Jobs Fund scheme: On which occasions, if any, was the media release provided to Senator B. Brown’s office more than 24 hours prior to the event.

Senator Wong—The Minister for Environment Protection, Heritage and the Arts has provided the following answer to the honourable senator’s question.

Media releases for the heritage component of the Jobs Fund were generally provided to the office of Senator Bob Brown the night before the announcement.

**Pacific Agreement on Closer Economic Relations Plus**

(Question No. 2594)

Senator Bob Brown asked the Minister representing the Minister for Trade, upon notice, on 2 February 2010:

With reference to the Pacific Agreement on Closer Economic Relations (PACER) Plus trade agreements:

1. When will the Government be tabling in both houses of parliament documentation which includes independent assessments of the costs and benefits of proposals which will cover economic, employment, regional, social, cultural, regulatory and environmental impacts which are expected to arise from PACER Plus.

2. Which institutions have been approved for use by Pacific nations as part of Australia’s offer of research aid under PACER Plus negotiations.

3. Do these institutions offer a full range of expertise in the likely economic, employment, regional, social, cultural, regulatory and environmental impacts of free trade agreements; if not, what help
will Australia give Pacific nations to ensure they can commission independent research on the full range of possible effects of the agreements in these areas.

Senator Carr—The Minister for Trade has provided following answer to the honourable senator’s question:

(1) The PACER Plus negotiation process is at an early stage and no substantive provisions of the proposed agreement have yet been discussed by participating countries. Once the text of the agreement is finalised, the Government will table relevant documentation in Parliament in the context of the Joint Standing Committee on Treaties’ consideration of whether Australia should take legally binding treaty action. At this early stage of negotiations, a number of independent assessments relating to the potential impacts of PACER Plus are already in the public domain, such as:


“Responding to the Revenue Consequences of Trade Reforms in the Forum Island Countries”, Nikunj Soni, Belinda Harries, Betty Zinner-Toa, (2007).


On 18 August 2009, I (Mr Crean) delivered a Ministerial Statement on PACER Plus to Parliament and tabled a document summarising the views of domestic stakeholders received as part of the consultative process.

(2) The institutions approved for use by Pacific nations as part of Australia’s offer of research aid under PACER Plus negotiations, known as the Trade Research Initiative, are:

Institute for International Trade, University of Adelaide
Pacific Institute of Public Policy (Vanuatu)
University of the South Pacific (Fiji, with campuses in the region)
National University of Samoa
University of Papua New Guinea
National Research Institute of Papua New Guinea.

(3) The institutions offer high-quality advice on trade-related issues to Forum Island countries’ governments. Individual Trade Research Initiative studies focus on topics of direct relevance to the Forum Island country and can include the impacts of liberalisation, policy responses, optimal negotiation outcomes and support needs. They identify Forum Island Country interests that fall broadly into any of the following categories:

Trade policy and regulations
Trade development and promotion
Trade-related infrastructure needs
Building productive capacity
Trade-related adjustment
Community interests and challenges.

Each Forum Island Country is able to finalise terms of reference for their Trade Research Initiative study with the approved institution of their choice.