INTERNET

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SITTING DAYS—2010

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<th>Month</th>
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<td>November</td>
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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-THIRD PARLIAMENT
FIRST SESSION—FIRST PERIOD

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

Senate Officeholders

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

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

Senate Party Leaders and Whips

Leader of the Australian Labor Party—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Hon. Stephen Michael Conroy
Leader of the Liberal Party of Australia—Senator Hon. Eric Abetz
Deputy Leader of the Liberal Party of Australia—Senator Hon. George Henry Brandis SC
Leader of the Nationals—Senator Barnaby Thomas Gerard Joyce
Deputy Leader of the Nationals—Senator Fiona Nash
Leader of the Australian Greens—Senator 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 Anne McEwen
Deputy Government Whips—Senators Carol Louise Brown and Helen Beatrice Polley
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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<th>State or Territory</th>
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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
GILLARD MINISTRY

Prime Minister  
Deputy Prime Minister and Treasurer  
Minister for Regional Australia, Regional Development and Local Government  
Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate 
Minister for School Education, Early Childhood and Youth 
Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate 
Minister for Foreign Affairs 
Minister for Trade 
Minister for Defence and Deputy Leader of the House 
Minister for Immigration and Citizenship 
Minister for Infrastructure and Transport and Leader of the House 
Minister for Health and Ageing 
Minister for Families, Housing, Community Services and Indigenous Affairs 
Minister for Sustainability, Environment, Water, Population and Communities 
Minister for Finance and Deregulation 
Minister for Innovation, Industry, Science and Research 
Attorney-General and Vice President of the Executive Council 
Minister for Agriculture, Fisheries and Forestry and Manager of Government Business in the Senate 
Minister for Resources and Energy and Minister for Tourism 
Minister for Climate Change and Energy Efficiency

Hon. Julia Gillard MP 
Hon. Wayne Swan MP 
Hon. Simon Crean MP 
Senator Hon. Chris Evans 
Hon. Peter Garrett AM MP 
Senator Hon. Stephen Conroy 
Hon. Kevin Rudd MP 
Hon. Dr Craig Emerson MP 
Hon. Stephen Smith MP 
Hon. Chris Bowen MP 
Hon. Anthony Albanese MP 
Hon. Nicola Roxon MP 
Hon. Jenny Macklin MP 
Hon. Tony Burke MP 
Senator Hon. Penny Wong 
Senator Hon. Kim Carr 
Hon. Robert McClelland MP 
Senator Hon. Joe Ludwig 
Hon. Martin Ferguson AM, MP 
Hon. Greg Combet AM, MP

[The above ministers constitute the cabinet]
**GILLARD MINISTRY—continued**

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<td>Minister for the Arts</td>
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<td>Minister for Social Inclusion</td>
<td>Hon. Tanya Plibersek MP</td>
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<td>Minister for Privacy and Freedom of Information</td>
<td>Hon. Brendan O’Connor MP</td>
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<tr>
<td>Minister for Sport</td>
<td>Senator Hon. Mark Arbib</td>
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<tr>
<td>Special Minister of State for the Public Service and Integrity</td>
<td>Hon. Gary Gray AO, MP</td>
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<tr>
<td>Assistant Treasurer and Minister for Financial Services and Superannuation</td>
<td>Hon. Bill Shorten MP</td>
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<tr>
<td>Minister for Employment Participation and Childcare</td>
<td>Hon. Kate Ellis MP</td>
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<tr>
<td>Minister for Indigenous Employment and Economic Development</td>
<td>Senator Hon. Mark Arbib</td>
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<tr>
<td>Minister for Veterans’ Affairs and Minister for Defence Science and Personnel</td>
<td>Hon. Warren Snowdon MP</td>
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<tr>
<td>Minister for Defence Materiel</td>
<td>Hon. Jason Clare MP</td>
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<td>Minister for Indigenous Health</td>
<td>Hon. Warren Snowdon MP</td>
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<td>Minister for Mental Health and Ageing</td>
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<td>Minister for Social Housing and Homelessness</td>
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<td>Minister for Home Affairs and Minister for Justice</td>
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<td>Cabinet Secretary</td>
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<td>Parliamentary Secretary for Disabilities and Carers</td>
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<td>Parliamentary Secretary for Community Services</td>
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<td>Parliamentary Secretary for Sustainability and Urban Water</td>
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<tr>
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<td>Hon. Mark Dreyfus QC, MP</td>
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SHADOW MINISTRY

Leader of the Opposition  
Deputy Leader of the Opposition and Shadow Minister for Foreign Affairs and Shadow Minister for Trade  
Leader of the Nationals and Shadow Minister for Infrastructure and Transport  
Leader of the Opposition in the Senate and Shadow Minister for Employment and Workplace Relations  
Deputy Leader of the Opposition in the Senate and Shadow Attorney-General and Shadow Minister for the Arts  
Shadow Treasurer  
Shadow Minister for Education, Apprenticeships and Training and Manager of Opposition Business in the House  
Shadow Minister for Indigenous Affairs and Deputy Leader of the Nationals  
Shadow Minister for Regional Development, Local Government and Water and Leader of the Nationals in the Senate  
Shadow Minister for Finance, Deregulation and Debt Reduction and Chairman, Coalition Policy Development Committee  
Shadow Minister for Energy and Resources  
Shadow Minister for Defence  
Shadow Minister for Communications and Broadband  
Shadow Minister for Health and Ageing  
Shadow Minister for Families, Housing and Human Services  
Shadow Minister for Climate Action, Environment and Heritage  
Shadow Minister for Productivity and Population and Shadow Minister for Immigration and Citizenship  
Shadow Minister for Innovation, Industry and Science  
Shadow Minister for Agriculture and Food Security  
Shadow Minister for Small Business, Competition Policy and Consumer Affairs

[The above constitute the shadow cabinet]
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<td>Shadow Minister for Employment Participation</td>
<td>Hon. Sussan Ley MP</td>
<td>Mr Michael Keenan MP</td>
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<td>Shadow Minister for Justice, Customs and Border Protection</td>
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<td>Shadow Assistant Treasurer and Shadow Minister for Financial Services and Superannuation</td>
<td>Senator Mathias Cormann</td>
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<td>Shadow Minister for Childcare and Early Childhood Learning</td>
<td>Hon. Sussan Ley MP</td>
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<td>Shadow Minister for Universities and Research</td>
<td>Senator Hon. Brett Mason</td>
<td>Mr Luke Hartsuyker MP</td>
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<td>Shadow Minister for Youth and Sport and Deputy Manager of Opposition Business in the House</td>
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<td>Hon. Bob Baldwin MP</td>
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<td>Shadow Minister for Defence Science, Technology and Personnel</td>
<td>Mr Stuart Robert MP</td>
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<td>Shadow Minister for Veterans’ Affairs</td>
<td>Senator Hon. Michael Ronaldson</td>
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<td>Shadow Minister for Regional Communications</td>
<td>Mr Luke Hartsuyker MP</td>
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<td>Senator Concetta Fierravanti-Wells</td>
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<td>Shadow Minister for Seniors</td>
<td>Hon. Bronwyn Bishop MP</td>
<td>Senator Mitch Fifield</td>
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<td>Shadow Minister for Disabilities, Carers and the Voluntary Sector and Manager of Opposition Business in the Senate</td>
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<td>Chairman, Scrutiny of Government Waste Committee</td>
<td>Mr Jamie Briggs MP</td>
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<td>Shadow Cabinet Secretary</td>
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<td>Shadow Parliamentary Secretary Assisting the Leader of the Opposition</td>
<td>Senator Cory Bernardi</td>
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<td>Shadow Parliamentary Secretary for International Development Assistance</td>
<td>Hon. Teresa Gambino MP</td>
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<td>Shadow Parliamentary Secretary for Roads and Regional Transport</td>
<td>Mr Darren Chester MP</td>
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<td>Shadow Parliamentary Secretary to the Shadow Attorney-General</td>
<td>Senator Gary Humphries</td>
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<td>Shadow Parliamentary Secretary for Tax Reform and Deputy Chairman, Coalition Policy Development Committee</td>
<td>Hon. Tony Smith MP</td>
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<td>Shadow Parliamentary Secretary for Regional Education</td>
<td>Senator Fiona Nash</td>
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<td>Shadow Parliamentary Secretary for Northern and Remote Australia</td>
<td>Senator Hon. Ian Macdonald</td>
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<td>Shadow Parliamentary Secretary for Local Government</td>
<td>Mr Don Randall MP</td>
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<td>Shadow Parliamentary Secretary for the Murray-Darling Basin</td>
<td>Senator Simon Birmingham</td>
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<td>Shadow Parliamentary Secretary for Defence Materiel</td>
<td>Senator Gary Humphries</td>
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<td>Shadow Parliamentary Secretary for the Defence Force and Defence Support</td>
<td>Senator Hon. Ian Macdonald</td>
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<tr>
<td>Shadow Parliamentary Secretary for Primary Healthcare</td>
<td>Dr Andrew Southcott MP</td>
<td></td>
</tr>
</tbody>
</table>
SHADOW MINISTRY—continued

| Shadow Parliamentary Secretary for Regional Health | Mr Andrew Laming MP |
| Shadow Parliamentary Secretary for Supporting Families | Senator Cory Bernardi |
| Shadow Parliamentary Secretary for the Status of Women | Senator Michaelia Cash |
| Shadow Parliamentary Secretary for Environment | Senator Simon Birmingham |
| Shadow Parliamentary Secretary for Citizenship and Settlement | Hon. Teresa Gambaro MP |
| Shadow Parliamentary Secretary for Immigration | Senator Michaelia Cash |
| Shadow Parliamentary Secretary for Innovation, Industry, and Science | Senator Hon. Richard Colbeck |
| Shadow Parliamentary Secretary for Fisheries and Forestry | Senator Hon. Richard Colbeck |
| Shadow Parliamentary Secretary for Small Business and Fair Competition | Senator Scott Ryan |
CONTENTS

THURSDAY, 28 OCTOBER

Chamber
Notices—
Presentation ........................................................................................................................................... 989
Business—
Consideration of Legislation ........................................................................................................... 990
Committees—
Rural Affairs and Transport References Committee—Reference.................................................. 991
Coal Seam Gas Projects.................................................................................................................................................. 993
Committees—
Rural Affairs and Transport References Committee—Reference.................................................. 1000
National apology for victims of forced adoption policies.............................................................. 1003
Parliamentary Zone.................................................................................................................................................. 1004
Migration Amendment (Detention of Minors) Bill 2010—
First Reading .................................................................................................................................................. 1004
Second Reading .................................................................................................................................................. 1005
Committees—
Gambling Reform Committee—Reference ...................................................................................... 1006
Social Security Amendment (Income Support for Regional Students) Bill 2010—
First Reading .................................................................................................................................................. 1007
Second Reading .................................................................................................................................................. 1007
Committees—
Economics References Committee—Reference .............................................................................. 1009
Publications Committee—Report........................................................................................................ 1010
Regulations and Ordinances Committee—Report.......................................................................... 1010
Budget—
Consideration by Estimates Committees—Additional Information............................................. 1010
Autonomous Sanctions Bill 2010, and
Veterans’ Affairs Legislation Amendment (Weekly Payments) Bill 2010—
First Reading .................................................................................................................................................. 1010
Second Reading .................................................................................................................................................. 1010
Committees—
Procedure Committee—Report ........................................................................................................ 1012
Native Title Amendment Bill (No. 1) 2010—
Second Reading .................................................................................................................................................. 1012
In Committee .................................................................................................................................................. 1019
Third Reading .................................................................................................................................................. 1024
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2010—
Second Reading .................................................................................................................................................. 1024
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010, and
Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010—
Second Reading .................................................................................................................................................. 1035
Third Reading .................................................................................................................................................. 1039
Primary Industries (Excise) Levies Amendment Bill 2010—
Second Reading .................................................................................................................................................. 1039
Third Reading .................................................................................................................................................. 1039
<table>
<thead>
<tr>
<th>Bill Title</th>
<th>Second Reading</th>
<th>Third Reading</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterans’ Affairs and Other Legislation Amendment (Miscellaneous Measures)</td>
<td>1040</td>
<td>1041</td>
</tr>
<tr>
<td>Food Standards Australia New Zealand Amendment Bill 2010</td>
<td>1041</td>
<td>1043</td>
</tr>
<tr>
<td>Carer Recognition Bill 2010</td>
<td>1043</td>
<td>1045</td>
</tr>
<tr>
<td>Tradex Scheme Amendment Bill 2010</td>
<td>1045</td>
<td>1046</td>
</tr>
<tr>
<td>Ozone Protection and Synthetic Greenhouse Gas Management Amendment Bill 2010</td>
<td>1046</td>
<td>1046</td>
</tr>
<tr>
<td>Law and Justice Legislation Amendment (Identity Crimes and Other Measures)</td>
<td>1047</td>
<td>1048</td>
</tr>
<tr>
<td>Questions Without Notice—</td>
<td>1048</td>
<td>1050</td>
</tr>
<tr>
<td>Broadband</td>
<td>1052</td>
<td>1054</td>
</tr>
<tr>
<td>Economy</td>
<td>1056</td>
<td>1058</td>
</tr>
<tr>
<td>Mr David Hicks</td>
<td>1059</td>
<td>1061</td>
</tr>
<tr>
<td>Alcohol Abuse</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Questions Without Notice: Additional Answers—</td>
<td>1062</td>
<td></td>
</tr>
<tr>
<td>Murray-Darling Basin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Questions Without Notice: Take Note of Answers—</td>
<td>1063</td>
<td></td>
</tr>
<tr>
<td>Broadband</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committees—</td>
<td>1068</td>
<td></td>
</tr>
<tr>
<td>Community Affairs References Committee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gambling Reform Committee—Reference</td>
<td>1068</td>
<td></td>
</tr>
<tr>
<td>Ministerial Statements—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office of Best Practice Regulation</td>
<td>1069</td>
<td></td>
</tr>
<tr>
<td>Auditor-General’s Reports—</td>
<td></td>
<td>1071</td>
</tr>
<tr>
<td>Report Nos 13 and 14 of 2010-11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minerals Resource Rent Tax—</td>
<td></td>
<td>1071</td>
</tr>
<tr>
<td>Return to Order</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committees—</td>
<td></td>
<td>1071</td>
</tr>
<tr>
<td>Selection of Bills Committee—Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex and Age Discrimination Legislation Amendment Bill 2010—</td>
<td>1074</td>
<td>1074</td>
</tr>
</tbody>
</table>
CONTENTS—continued

Independent Youth Allowance—
  Consideration of House of Representatives Message............................................. 1075
Evidence Amendment (Journalists’ Privilege) Bill 2010—
  Consideration of House of Representatives Message............................................. 1076
Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010—
  Second Reading.................................................................................................... 1076
Documents—
  Department of Broadband, Communications and the Digital Economy .............. 1107
  Consideration........................................................................................................ 1108
Committees—
  Environment and Communications References Committee—Report.................. 1108
  Regional and Remote Indigenous Communities Select Committee—Report........ 1109
  Community Affairs Legislation Committee—Report........................................... 1111
  Environment, Communications and the Arts References Committee—Report....... 1112
  Consideration........................................................................................................ 1113
Auditor-General’s Reports—
  Report No. 2 of 2010-11..................................................................................... 1114
  Report No. 5 of 2010-11..................................................................................... 1118
  Report No. 12 of 2010-11.................................................................................. 1119
  Consideration........................................................................................................ 1120
Adjournment—
  Mr Alojzy (Alex) Dziendziel................................................................................ 1120
  World Party Tasmania......................................................................................... 1120
  Child Abuse.......................................................................................................... 1122
Documents—
  Tabling................................................................................................................. 1124
Thursday, 28 October 2010

The PRESIDENT (Senator the Hon. John Hogg) took the chair at 9.30 am and read prayers and made an acknowledgement of country.

NOTICES

Presentation

Senator Siewert to move on the next day of sitting:

That the Senate—

(a) notes the implications of the consumer price index figure of 2.8 per cent (for the week beginning 24 October 2010) for the provision of aged care services, in light of the limitation of the recent increase in the Commonwealth aged care subsidy to 1.7 per cent;

(b) draws the attention of the Government to the yawning gap between the cost of living and the funding provided to aged care services;

(c) expresses concern at the impact of recent increases in electricity and water prices of 18.8 per cent on levels of care and the ongoing viability of many aged care services; and

(d) calls on the Commonwealth Government to restore the additional 2 per cent conditional adjustment payment as an interim measure to address the crisis in aged care.

Senator Siewert to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) mental illness is a significant health issue in our community and it must be considered a fundamental component of the national health reform plan,

(ii) 45 per cent of the nation’s population will experience a mental health disorder at some point in life,

(iii) mental illness required nearly two million occupied bed days in Australian public hospitals in 2007-08, and

(iv) it is estimated that approximately $380 million per year is spent providing acute hospital care to patients better cared for in other settings;

(b) calls on the Government to:

(i) provide additional funding of at least $350 million per year for mental health over the next 4 years to fund:

(A) $150 million per year for early intervention mental health programs including ‘headsapce’ and early psychosis prevention services,

(B) $100 million per year for incentives at the primary care level to target those in need, the vulnerable and long-term clientele working with the community and non-government organisation sector, and

(C) $100 million per year for alternatives to emergency department treatment such as multi-disciplinary community-based sub-acute services that supports ‘stepped’ (two-staged) prevention and recovery care,

(ii) establish a:

(A) dedicated Mental Health Commission to oversee the development of appropriate mental health services and transparent accountability at arms length from government, such as exists in New Zealand and Canada, and

(B) national network of one-stop shop community mental health centres accessible by public transport and centrally located, and

(iii) provide additional training for general practitioners and nurses to triage mental health appropriately; and

(c) send a message to the House of Representatives informing it of this resolution and requesting it concur.
Senator Stephens to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) five million Australians volunteer in their communities every year,
(ii) effectively realising the full potential of volunteers requires skilled, knowledgeable and professional volunteer managers who are responsible for their recruitment, training, administration and support,
(iii) volunteer managers provided leadership, direction, inspiration and motivation that allows people to effectively serve their communities,
(iv) well managed volunteer programs demonstrate that organisations value the involvement of the community and strive to make the most efficient use of resources, and
(v) 5 November marks World Volunteer Managers Day, recognising and promoting greater awareness of the role of volunteer managers in mobilising and supporting the world’s volunteers; and
(b) thanks Australia’s volunteer managers for their commitment to our community organisations.

Senator Bob Brown to move on the next day of sitting:
That the Senate congratulates the 2010 international meeting of the Campaign for the Establishment of a United Nations Parliamentary Assembly for the adoption of the Declaration of Buenos Aires, which:
(a) calls on the United Nations (UN) and its member states to establish a parliamentary assembly at the UN; and
(b) recognises the need to democratise global governance.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.33 am)—I give notice that, contingent on business being called on 22 November 2010, I shall move:
That so much of the standing orders be suspended as would prevent the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010 having precedence over all government business until determined.

BUSINESS
Consideration of Legislation

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.34 am)—I move:
That government business be interrupted at 12.45 pm to allow consideration of the following bills till not later than 2 pm today.

It is proposed to consider the following government business orders of the day—

No. 3—Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010

Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010—Resumption of second reading debate

No. 4—Primary Industries (Excise) Levies Amendment Bill 2010—Resumption of second reading debate

No. 5—Veterans’ Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2010—Resumption of second reading debate

No. 6—Food Standards Australia New Zealand Amendment Bill 2010—Resumption of second reading debate

No. 7—Carer Recognition Bill 2010—Resumption of second reading debate

No. 8—Tradex Scheme Amendment Bill 2010—Resumption of second reading debate

No. 9—Ozone Protection and Synthetic Greenhouse Gas Management Amendment Bill 2010—Resumption of second reading debate

Question agreed to.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.34 am)—I move:
That the order of general business for consideration today be as follows:

(a) general business order of the day no. 15—(Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010); and

(b) orders of the day relating to government documents.

Question agreed to.

COMMITTEES

Rural Affairs and Transport References Committee

Reference

Senator HEFFERNAN (New South Wales) (9.34 am)—I move:

That the following matter be referred to the Rural Affairs and Transport References Committee for inquiry and report by 30 November 2011:

The management of the Murray-Darling Basin, and the development and implementation of the Basin Plan, with particular reference to:

(a) the implications for agriculture and food production and the environment;

(b) the social and economic impacts of changes proposed in the Basin;

(c) the impact on sustainable productivity and on the viability of the Basin;

(d) the opportunities for a national reconfiguration of rural and regional Australia and its agricultural resources against the background of the Basin Plan and the science of the future;

(e) the extent to which options for more efficient water use can be found and the implications of more efficient water use, mining and gas extraction on the aquifer and its contribution to run off and water flow;

(f) the opportunities for producing more food by using less water with smarter farming and plant technology;

(g) the national implications of foreign ownership, including:

(i) corporate and sovereign takeover of agriculture land and water, and

(ii) water speculators;

(h) means to achieve sustainable diversion limits in a way that recognises production efficiency;

(i) options for all water savings including use of alternative basins; and

(j) any other related matters.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (9.35 am)—I seek leave to move an amendment to the motion.

Leave granted.

Senator JOYCE—I move:

After paragraph (i), insert:

(j) investigate any ambiguity in the Water Act 2007 which may prevent the delivery of a triple bottom line of economic, social and environmental outcomes; and

The amendment I have circulated is to investigate any ambiguities in the Water Act. I seek leave to make a brief statement.

The PRESIDENT—Leave is granted for two minutes.

Senator JOYCE—I move:

In the meetings that we are going to there is a sense that somehow the parliament has in a fashion deliberately and mischievously created an ambiguity. I think it is vitally important that we show the Australian people that in this parliament, in this Senate, we are trying to hide nothing. We have got no problems with anything being investigated. They wanted it explicitly stated and I gave an explicit commitment that I would do it. I think this is a good way to honour that commitment. The Labor Party believes there is no ambiguity in the act. I know the Australian Government Solicitor’s response said there is no ambiguity in the act. But I think it is extremely important that we show ourselves to be transparent and decisive in how we address this issue in this inquiry. Adding this section will do that.
Senator HANSON-YOUNG (South Australia) (9.36 am)—I seek leave to make a short statement on the comments made by Senator Joyce.

The PRESIDENT—Leave is granted for two minutes.

Senator HANSON-YOUNG—The Australian Greens were prepared to support Senator Heffernan’s motion, but we will not be able to support it if the amendment from Senator Joyce is accepted.

The PRESIDENT—The question therefore is that the amendment moved by Senator Joyce be agreed to.

Question put.

The Senate divided. [9.41 am]

(The President—Senator the Hon. JJ Hogg)

Ayes………… 33
Noes………… 32

Majority……… 1

AYES
Abetz, E. Adams, J.
Back, C.J. Barnett, G.
Birmingham, S. Boswell, R.L.D.
Boyce, S. Brandis, G.H.
Bushby, D.C. Cash, M.C.
Colbeck, R. Coonan, H.L.
Cormann, M.H.P. Fielding, S.
Fierravanti-Wells, C. FGiffield, M.P.
Fisher, M.J. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Kroger, H.
Macdonald, I. McGauran, J.J.J.
Nash, F. Parry, S. *
Payne, M.A. Ronaldson, M.
Ryan, S.M. Scullion, N.G.
Troeth, J.M. Trood, R.B.
Williams, J.R.

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

* denotes teller

Question agreed to.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.45 am)—by leave—Mr President, it appears the numbers in the chamber have not actually reflected the result of the vote. We have not ascertained from our side what the circumstances are.

Senator Bob Brown—We are unable to hear what is being said up here.

Senator LUDWIG—I have sought and obtained leave to make a short statement. It appears that the last vote did not reflect the numbers in the chamber. We are going to find out exactly what has happened. I am asking for that vote to be recommitted at a later hour. Because it is an amendment to a substantive motion, I would then ask that that substantive motion be held over to that time. I understand that we generally have broad agreement within the Senate that that is permissible. I do apologise that we have not been able, in the short space of time, to ascertain the exact nature of the problem. Given that the opposition, with the support of the Greens and with the support of Senator Xenophon, would normally negative the vote, I can reasonably surmise there is a problem with the counting.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (9.46 am)—by leave—Obviously someone from the Labor Party has failed to turn up to a division and
they have refused to name who the person is. This was a vitally important motion. It dealt with removing an ambiguity that is so rife out there in regional Australia. They believe that there is a sense of ambiguity in the act and that there are some sorts of tricks or games being played, and this was a vitally important motion that dealt with it. What the Labor Party have done right now is to shine a light on their statements in one area and their actions in another. It shines a light on the statements that they would stand by the position of the Australian Government Solicitor, they would stand by the ministerial statement, they would rely on a triple bottom line and they would remove ambiguity, yet they cannot even get their people to turn up to the chamber to vote. In this new paradigm what we now see is the Labor Party not only not wanting to remove the ambiguity but not even having the discipline to turn up to vote.

The PRESIDENT—Senator Ludwig, I will deal with the motion by leave if you are prepared to seek the leave to defer this matter.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.48 am)—I move:

That further consideration of the matter be adjourned till a later hour.

Question agreed to.

COAL SEAM GAS PROJECTS

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.48 am)—I move:

That the Senate—

(a) opposes the Santos and British Gas coal seam gas projects approved by the Government;

(b) calls on the Government to ensure full compensation to farmers and other existing businesses which lose productivity due to these projects; and

(c) requests the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities to table on or by 16 November 2010 all papers, reports, advice, findings or other documents relating to the Government’s assessments of those projects.

Senator COLBECK (Tasmania) (9.49 am)—by leave—I move:

Omit paragraphs (a) and (b).

Senator Bob Brown—We cannot hear.

The PRESIDENT—Could we have silence in the chamber. Senator Colbeck sought and was granted leave to move an amendment. The amendment is to remove paragraphs (a) and (b) of the substantive motion. Senator Colbeck now wants to seek leave to make a brief statement and then, Senator Brown, if you are going to seek leave, it might make sense to come after Senator Colbeck.

Senator COLBECK (Tasmania) (9.50 am)—by leave—The coalition cannot support the motion as it is presented by Senator Bob Brown of the Australian Greens, particularly given that the motion commences by opposing the projects and then goes on to seek information. The coalition are more than happy to support the seeking of information and then the consideration of a decision for support or otherwise of the projects. We think the motion has put the cart before the horse to a certain extent and so we are more than happy to support the Greens in paragraph (c), which is seeking information in relation to the decision that has been made by the government to support these projects, but we cannot support paragraphs (a) and (b), given that they effectively predate what would be a decision-making process.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.51 am)—by leave—I thank Senator Colbeck for that statement. The cart is not before the
horse; to some degree, the horse has bolted. The government has made a decision to give these projects the go-ahead. Yes, we are seeking information through this motion as to how the government could have made that decision. I am pleased to hear that the opposition will support paragraph (c). The first paragraph of this motion opposes the Santos and British Gas coal seam gas projects approved by the government because of the impact they do have on farmlands and other businesses in the Darling Downs and in that corridor between there and Gladstone. I would ask the mover of the amendment if he would allow paragraphs (a) and (b) to be considered separately; otherwise, I will move that this amendment be split into two so that the chamber can vote on each.

The second component of this is a call on the government, which has given the go-ahead to ensure full compensation to farmers and other existing businesses which lose productivity due to these projects. That is a quite separate matter to opposing the project. I agree that there are three very different elements in this motion and I would seek the mover of the amendment to simply have (a) and (b) considered separately.

The PRESIDENT—Senator Brown, it is within the discretion of the chair to put questions in a separate manner. Do you want (a) and (b) put separately, or can I take (a) and (b) together?

Senator Bob Brown—Separately.

The PRESIDENT—All right. In respect of general business notice of motion No. 72, I will put part (a) of Senator Colbeck’s amendment first.

Senator Colbeck interjecting—

The PRESIDENT—Your amendment is to delete part (a).

Senator Colbeck interjecting—

The PRESIDENT—Yes, your amendment is to remove (a) and (b) and I am putting your amendment, which is to remove part (a). I am splitting the question. I am going to remove part (a), then put a question to remove part (b).

Senator Colbeck—On a point of order, Mr President, just to clarify this: what you are effectively doing is putting my motion in separate parts.

The PRESIDENT—In two parts, yes.

Senator Colbeck—So you are separating my motion.

The PRESIDENT—Yes. It is not in any way trying to deny that being considered. We are considering the amendment by Senator Colbeck, which will remove part (a) of the notice of motion that is before us.

Senator Ian Macdonald—On a point of order, Mr President, I thought that Senator Colbeck’s motion was to remove paragraphs (a) and (b) from the motion. With respect, that is the issue we should be voting on.

The PRESIDENT—I am going to do that, Senator Macdonald, by putting the removal of (a) and then putting the removal of (b). I have been asked to put them separately and that is what I am doing.

Senator Ian Macdonald—With respect and by leave, Mr President, (a) and (b) are inextricably interwoven and your decision in removing them really changes the whole tenor of the debate which we are not having. Senator Colbeck has not agreed with this.

The PRESIDENT—Senator Colbeck, with respect, has understood what I am doing and seems to be agreeing with the way in which I am moving. I am not trying to get stuck into the debate as to how they are interlinked or anything else. I am just doing this as part of the procedure of the Senate.
Senator Colbeck—My understanding is not that you are doing it with my agreement but that you are doing it at your discretion.

The PRESIDENT—At my discretion, but I thought that you had agreed.

Senator Colbeck—No, my motion is to remove parts (a) and (b) and my understanding from what you had said—and I did not necessarily have a choice in it—was that you were going to do it in two parts. Senator Brown has made some comments about what his intentions are. My preference would be for my motion, as it stands, to be put to the chamber. But I recognise that you may have the discretion to put it in a form that you decide, and not necessarily with my agreement.

The PRESIDENT—Yes, but I am doing this as a result of the request that has been made by Senator Bob Brown, which he is entitled to do, that the amendment be split. I think that is a reasonable proposition and I will split the amendment and put the removal of part (a) first. Then I will put the removal of part (b).

Senator Colbeck—I understand your decision, Mr President, as long as the chamber understands that it is not with my consent; it is with my understanding.

The PRESIDENT—I understand that.

Senator Ian Macdonald—Mr President, again on a point of order, you have acceded to a request by someone who is not moving the amendment to deal with the amendment in a certain way. It does change the tenor of the whole voting situation. I suggest, with respect, that you should deal with the amendment as the mover of the amendment has sought and not deal with it as someone who has not moved the amendment has sought.

The PRESIDENT—Just before I call you, Senator Faulkner, it does not have to be up to the person involved in either the moving of the motion or the amendment as to whether something is going to be split. That has happened on the request of other senators around the chamber on numerous occasions. I hear what you say but that is not necessarily pertinent.

Senator Faulkner—Mr President, just on Senator Macdonald’s point of order, I think that what you say is correct—and, by the way, I apologise, but Senator Ronaldson is in my seat so I am just doing an impersonation here of Senator Polley, and a very poor one at that.

Honourable senators interjecting—

The PRESIDENT—Order, I cannot hear. People should be quiet. Senator Faulkner, proceed.

Senator Faulkner—That is probably because I am speaking from Senator Polley’s desk. In addressing the point of order made by Senator Ian Macdonald: I draw your attention, Mr President, to standing order 84(3), which I believe is the standing order on which you are able to rely as you address this matter. I am no expert on the matter before the chair. I have heard what has been said by senators, but I do note that standing order 84(3)—and standing order 84, of course, relates to the putting of questions—makes clear:

The President may order a complicated question to be divided.

I also note that often in this chamber—and I have certainly done it myself on many occasions—senators can so request that this take place, but at the end of the day these are matters for the President presiding before the full Senate or the Chairman of Committees if the Senate is in committee, where this is more likely to occur. I think we should acknowledge that that is the case—that this is something that more often occurs in the committee stage of debate than when the full Senate is in session. I hope that is of assistance and
enables you to have the full support of the standing orders in what you are proposing to do.

The PRESIDENT—In response to Senator Faulkner’s point: that is quite correct. This is no departure from the procedure that has been followed by presidents for a long period of time and I have no reason to depart from that now.

Senator Xenophon—I wonder whether it would assist, given Senator Macdonald’s and Senator Colbeck’s concerns, if I moved that the three parts of the motion be determined separately.

The PRESIDENT—No. We have already got the question before us and we have an amendment before us, which I need to determine. That is not something that can really be moved at this point.

Senator Ian Macdonald—Mr President, on a point of order: I suggest to you that, if you had taken Senator Xenophon’s motion and the Senate so decided, that would be one thing, but if you are doing it as an administrative decision it can have, dare I say, a political response, which I know that you as chairman of this gathering would not want to be part of.

The PRESIDENT—That is not a consideration for me. I am dealing with the amendment that is before the chair. I have an amendment from Senator Colbeck which seeks to remove paragraphs (a) and (b) and then Senator Bob Brown has requested that the three paragraphs—(a), (b) and (c)—of the motion be put separately. That is quite well within the standing orders. I am prepared to separate the motion and put the questions separately. That is the state of play at this stage.

Senator Joyce (Queensland—Leader of the Nationals in the Senate) (10.04 am)—Mr President, I—

Senator Hutchins interjecting—

Senator Joyce—Thank you for calling me the oracle, Senator Hutchins. I appreciate that.

The PRESIDENT—Senator Joyce, are you seeking leave to make a statement?

Senator Joyce—Yes, I am seeking leave to make a short statement.

The PRESIDENT—Leave is granted for two minutes.

Senator Joyce—The coalition may agree with compensation for landholders but, unless we know what has happened in paragraph (c), we can hardly allow paragraph (b) to go forward. Having these as three separate items, to be honest makes them nonsensical. How do you believe in compensation when you have not actually determined whether they deserve it yet?

The PRESIDENT—I do not become involved in the merits of the debate; I become involved in the process question of putting this matter before the chamber.

Senator Faulkner—Mr President, I have a point of order that might assist. Given that Senator Xenophon proposed a procedural mechanism which you rightly, in my view, ruled he was not able to move because of the question before the chair, I suggest it would nevertheless be perfectly reasonable for you to indicate to the Senate that it would be your intention under standing order 84(3) to put all parts of the motion separately if you wished to do so. I do not know if that assists or not, but it is certainly competent for you as President to do that without the necessity, if you like, of the procedural device that Senator Xenophon proposed. I do not know if that helps or not, but the spirit of my proposing it is to try to assist.

The PRESIDENT—The only way in which that would happen would be if Senator Colbeck were to withdraw his amendment
and I do not think, looking at Senator Colbeck, that is likely to happen. I will let Senator Colbeck speak for himself.

**Senator Colbeck**—Mr President, on the point of order: in effect that is what you are doing but we are voting on it in reverse. I think your approach is actually doing that. Agreement from me as the mover is another matter. You are effectively doing that anyway but it will just be reflected in the votes on the floor as we go through the process. Let us get on with it.

The **PRESIDENT**—The question now is that paragraph (a) be removed from motion No. 72 moved by Senator Bob Brown.

Question put.

The Senate divided. [10.10 am]

(The President—Senator the Hon. JJ Hogg)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>59</th>
</tr>
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<td>Noes</td>
<td>5</td>
</tr>
<tr>
<td>Majority</td>
<td>54</td>
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**AYES**

Abetz, E.  
Arbib, M.V.  
Barnett, G.  
Bilyk, C.L.  
Bishop, T.M.  
Boyce, S.  
Brown, C.L.  
Cameron, D.N.  
Cash, M.C.  
Collins, J.  
Coonan, H.L.  
Crossin, P.M.  
Faulkner, J.P.  
Fielding, S.  
Fifield, M.P.  
Furner, M.L.  
Hurley, A.  
Johnston, D.  
Kroger, H.  
Macdonald, I.  
McEwen, A. *  
McLucas, J.E.  
Nash, F.  
Payne, M.A.  
Ronaldson, M.  
Seullion, N.G.  
Stephens, U.  
Troeth, J.M.  
Williams, J.R.  
Xenophon, N.  
Parry, S.  
Pratt, L.C.  
Ryan, S.M.  
Sherry, N.J.  
Sterle, G.  
Trood, R.B.  
Wortley, D.  

**NOES**

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

* denotes teller

Question agreed to.

**Senator Bob Brown** (Tasmania—Leader of the Australian Greens) (10.14 am)—I seek leave to amend paragraph (b) to replace the word ‘these’ with the words ‘the Santos and British Gas coal seam gas’ so that the motion will now make sense.

Leave not granted.

**Senator Ian Macdonald**—Mr President, I rise on a point of order. In relation to the motion which you have now agreed to be put in three parts, with one part having been knocked out, the second part that we are now going to vote on is nonsensical, because it simply reads that the Senate calls upon the government to ensure full compensation to farmers and other existing businesses which lose productivity due to these projects—and we have no idea what ‘these projects’ means. Therefore, without recommitting to the discussion we had before, we have done the wrong thing by splitting them. So, Mr President, I would ask that you rule part (b) out of contention, simply because it is nonsensical and means nothing.

The **PRESIDENT**—That is not a point of order.

**Senator Williams** (New South Wales) (10.15 am)—Mr President, I seek leave to make a brief statement.

Leave granted.
On this very issue, I do support compensation for all property owners when they have their rights removed in any way whatsoever. We are very familiar with the Peter Spencer issue and how in New South Wales farmers cannot carry out activities on their land with no compensation whatsoever. I do support it in principle. I will not support part (b) of Senator Brown’s motion because it is too vague, too ambiguous. We need more detail. When the detail comes forward—and, as Senator Macdonald has said, let us find out the detail of part (c)—then that can progress the issue. That is why I will be supporting the amendment.

Senator Colbeck—Mr President, I rise on a point of order. I just question whether it is possible for the chamber to amend a clause that we are voting to remove. I understand what Senator Brown is trying to do—

The PRESIDENT—Leave has not been granted.

Senator Colbeck—I am making a point of order. Is it possible for the Senate to amend a clause that we are voting to remove? That is the motion before the chair as I understand it—to remove clause (b). So is it possible under the standing orders for Senator Brown to amend something that we are voting to remove?

The PRESIDENT—Yes, by leave, it would be. But leave was not granted.

Senator Bob Brown—Mr President, I rise on a point of order. Senator Macdonald and other opposition senators have now refused leave to have on the record that the matter that relates to these two projects. However, any reader of the Hansard of the Senate knows exactly what the projects are, so it makes no difference. I simply moved that amendment to have the record made clear and sensible, a matter which Senator Macdonald has now prevented. But that is his wish.

The PRESIDENT—Senator Brown, there is no point of order. I now have a question before the chair, which is that part (b), as per the amendment moved by Senator Colbeck, be removed.

Senator COLBECK (Tasmania) (10.18 am)—Mr President, I seek leave to make a one-minute statement.

Leave granted.

Senator COLBECK—I want to make it perfectly clear on the record that the opposition does not oppose appropriate compensation to farmers. I do not want it to be allowed to be put post this process that the opposition opposes appropriate compensation to farmers for any project. This is purely and simply to put that matter on the record so that it cannot be said afterwards that that is what we opposed.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.19 am)—Mr President, I seek leave to make a short statement.

Leave granted.

Senator BOB BROWN—This is complete nonsense and we all know that. This motion calls on the government to ensure full compensation to farmers and other existing businesses as a result of any impact that the projects that the motion is about would have. It is no good the opposition—the Nationals or the Liberals—saying that they are going to vote down this motion for compensation but they do not mean it; they are in support of compensation. You do not vote against something that a motion makes very clear that this Senate would otherwise be supporting. They are absolutely voting against compensation for the farmers and the other businesses under the terms of this motion, and when they
cross the floor to vote for this motion that is exactly what they are doing.

The PRESIDENT—I will make a statement about formal motions at the conclusion of this debate.

Senator Xenophon—Mr President, if I could seek your guidance; given that formality has been denied in relation to Senator Brown to amend this motion, can the Senate seek to suspend standing orders and allow for a vote in relation to that? In other words, can the will of the Senate override that denial of formality?

The PRESIDENT—Senator Xenophon, I thank you for your assistance. I have a question before the chair. I intend to put that question. The other statement that I would like to make, and I will make it now in respect of these formal motions, is that it is becoming far too much the practice that these motions that are meant to be dealt with in the formal sense are being amended and are being subject to statements, and debate is ensuing when this is not the way in which the business of this Senate should be handled for these motions. That is the fundamental problem that we are dealing with these issues. I would ask all senators to go away and review how they wish this business to be handled with these issues. I would ask all senators to go away and review how they wish this business to be handled, because it makes it very difficult for the chair, no matter who the chair is, when issues of this nature come up and there seems to be no agreement around the chamber as to the handling of the matters. It therefore has seen this issue blow out into a nearly 40-minute debate, mostly on procedure. I do not mind that, but I have rules and guidelines by which I must abide and precedent which has established the way in which these matters should be handled before the Senate over a long period of time. I have abided by the standing orders. I have abided by the precedent that has been set by presidents before me. So I would ask all senators to take that into consideration when we are dealing with matters of formality in the future.

The question before the chair now is that paragraph (b) of the amendment moved by Senator Colbeck for its deletion be agreed to.

Question put:
That the amendment (Senator Colbeck's) be agreed to.

The Senate divided. [10.27 am]
(The President—Senator the Hon. JJ Hogg)

Ayes.........  57
Noes..........  7
Majority.......  50

AYES

Abetz, E.
Arbib, M.V.
Barnett, G.
Birmingham, S.
Boswell, R.L.D.
Brandis, G.H.
Bushby, D.C.
Carr, K.J.
Colbeck, R.
Conroy, S.M.
Cormann, M.H.P.
Farrell, D.E.
Feeney, D.
Fifield, M.P.
Furner, M.L.
Hurley, A.
Johnston, D.
Kroger, H.
Macdonald, I.
Mason, B.J.
McGauran, J.J.J.
Moore, C.
Parry, S.*
Pratt, L.C.
Ryan, S.M.
Sherry, N.J.
Sterle, G.
Trood, R.B.
Wortley, D.

Adams, J.
Back, C.J.
Bernardi, C.
Bishop, T.M.
Boyece, S.
Brown, C.L.
Cameron, D.N.
Cash, M.C.
Collins, J.
Coonan, H.L.
Crossin, P.M.
Faulkner, I.P.
Fierravanti-Wells, C.
Forshaw, M.G.
Hogg, J.J.
Hutchins, S.P.
Joyce, B.
Ludwig, J.W.
Marshall, G.
McEwen, A.
McLucas, J.E.
Nash, F.
Payne, M.A.
Ronaldson, M.
Scahill, N.G.
Stephens, U.
Troeth, J.M.
Williams, J.R.

CHAMBER
Brown, B.J.  
Hanson-Young, S.C.  
Milne, C.  
Xenophon, N.  
* denotes teller

Question agreed to.

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

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.30 am)—by leave—I move:

That the Senate requests the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities to table on or by 16 November 2010 all papers, reports, advice, findings or other documents relating to the Government’s assessments of the Santos and British Gas coal seam gas projects.

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

There is a bit of confusion. I will put the question again. The motion was amended, by leave, to insert the words ‘Santos and British Gas’ into paragraph (c). That was done by leave. So the question now is that the motion, as amended, which removed (a) and (b) and left simply (c), be agreed to.

Question agreed to.

COMMITTEES

Rural Affairs and Transport References Committee Reference

Senator LUDLAM (Western Australia) (10.34 am)—by leave—This is an apology that I was hoping never to have to make to this chamber. Mr President, I was absent for the last vote and I ask that the vote on Senator’s Joyce amendment to the motion of Senator Heffernan to refer a matter to the Rural Affairs and Transport References Committee be recommitted. Through an inadvertence, I was on the other side of the building and, regrettably, I missed the bells so was not in the chamber at the time of that vote. I believe I also owe Senator Joyce an apology. I understand he launched a bit of a spray at the government in my absence for perhaps one of the government members missing the vote. It was me and I apologise.

Honourable senators interjecting—

Senator LUDLAM—I utterly deny that assertion but nonetheless offer my apologies to the chamber for missing the vote. I seek leave to have it recommitted.

Honourable senators interjecting—

Senator Joyce—I would like to apologise for having a go at the Labor government when I could have been having a go at the Greens.

The PRESIDENT—Order! Senator Joyce, you cannot just stand up. If you wish to make a statement, you need to seek leave to do so.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (10.35 am)—I wish to make a short statement.

The PRESIDENT—Leave is granted, with no time limit.

Honourable senators interjecting—

Senator JOYCE—It is quite obvious I have to apologise to the Labor Party because it was not the Labor Party that missed the division; it was the Greens who missed the division. We can understand why—there has been a lot of turmoil in the Greens lately while things have been going on. In amongst that turmoil they are now missing divisions. However, the fact remains that what is more important is this—

Honourable senators interjecting—

The PRESIDENT—Order! Senator Joyce, you are entitled to be heard in silence. Senator Joyce does not need help this morning, and neither do I.
Senator JOYCE—What is more important, as this vote goes to being recommitted, is that people understand that we are trying to say to the Australian people that we are not hiding behind anything and that we are quite happy for there to be an investigation into whether there is an ambiguity in the act. The Australian Government Solicitor says there is not and the ministerial statement says there is not, so this is something that should and can be dealt with. I do not see why there is political sensitivity in giving the Australian people their right to make sure that the act is unambiguous in delivering a triple bottom line. I think, in recommitting this, it is extremely important that this be shown because if it fails then those people at the demonstrations in Mildura, Shepparton and Goondiwindi will once more come back and say, ‘There was a vote on an issue that dealt with ambiguity in the act and you voted against it; you tried to hide behind the act.’ We in the coalition have nothing to hide behind; we have nothing to be ashamed of. We are quite willing—

The PRESIDENT—Order! Senator Joyce, you are now debating the issue. Senator Ludlam has sought leave to have the matter recommitted. Is leave granted?

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (10.37 am)—by leave—From time to time, honourable senators miss divisions for a range of reasons. We in the coalition have always accepted that and fully acknowledge that misadventure does happen to people right around this chamber. But what we do not accept is the hyperbole to which we were submitted by the Australian Greens in the past when two of our coalition colleagues missed a division. We were subjected to a rant that if we could not control our own senators it showed what a rabble we were, how out of control the opposition were—all the hyperbole under the sun. I warned Senator Brown at the time that something like that may well happen to the Australian Greens. Who was the first Australian Green to miss a vote? It was Senator Bob Brown himself. Today, we now have another Green who has missed a vote. If it is so difficult to manage a group of five, one wonders how difficult it will be when it becomes a group of nine on 1 July.

Senator Fifield—Sarah’s challenging Bob now?

Senator ABETZ—Very good, Senator Fifield. The point I make on behalf of the coalition and on behalf of the opposition is this: this happens from time to time. I have been one of those fortunate ones not to have missed a division—more by good fortune than by good management—and I claim no special credit for that, but I fully accept that one day I might. I trust that if anybody in the coalition or the Labor Party comes across a misadventure such as Senator Bob Brown has in the past and Senator Ludlam has today we would not be subjected to the silly hyperbole and exaggerated—

Senator Parry—Sanctimonious.

Senator ABETZ—and sanctimonious—a very good description—statements that we were submitted to by the Leader of the Australian Greens when, in the past, two coalition members missed a division. I simply say with respect to all senators: this is something that we all hope never happens to us. From time to time it will happen to individuals, and I think it makes very good sense that we deal with these matters with good grace and acceptance as it could just as likely happen to us just as, today, it has unfortunately happened to Senator Ludlam. I remind the Leader of the Australian Greens that on the last two occasions, if I recall correctly, that votes have had to be recommitted in the Senate, it has been as a result of the Australian Greens suffering a misadventure. I simply
suggest to them that they keep that in mind, and the next time one of the government or one of the coalition—or indeed my good friends Senator Xenophon or Senator Fielding—should miss a division, we will accept it in good grace, without all the hostility and grandstanding that we were subjected to in the past.

The PRESIDENT—Order! I am still waiting to see whether leave has been granted for the recommittal.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.41 am)—by leave—If that is the definition of good grace, the dictionary has just had a meltdown. Fancy Senator Abetz talking about good grace.

Opposition senators interjecting—

Senator BOB BROWN—All I can say about that over the baying of the opposition is ‘good gracious’. Let me invite the opposition, if Senator Abetz is so perfect and correct, to have a look at their own attendance to important matters in the House this morning and I think he might go a little more quietly. If he wants to point to the Greens’ record here, I suggest he consult his colleagues in the House about their record of attendance this morning in the other place.

The PRESIDENT—Order! Is leave granted for the recommittal?

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (10.43 am)—by leave—On behalf of the government, we accept that Senator Ludlam has now made a statement and formally asked for a recommittal. These things have occurred in the past and, of course, the position we have taken as a party, both in opposition and in government, is that if an explanation is made it is one that is in terms of a misadventure and we would therefore accept it to ensure that the voting within the House is reflective of the proportions of the members in the House. On that basis, clearly that has now been undertaken by Senator Ludlam and we agree. In terms of the humiliating apology by Senator Joyce in relation to his unfortunate attack on the wrong party, we gracefully accept his apology.

Senator Fielding—We cannot hear a thing. Could Senator Ludwig repeat the whole lot, because I did not hear a thing. If it is important enough to say it—

The PRESIDENT—I will have the acoustics in the chamber examined, but it may well be something wrong with that microphone. We will see about that in the fullness of time.

Honourable senators interjecting—

The PRESIDENT—As my colleague has just pointed out, it will be on Hansard for you to read tonight.

Senator FIFIELD (Victoria) (10.44 am)—by leave—Senator Abetz made a very eloquent case in relation to the sanctimony and hypocrisy of the Greens on a similar occasion, but I just thought it was important to show for the Hansard record what Senator Brown previously said on such an occasion, when it was the opposition—the coalition—who were in that position. What Senator Brown said on that occasion was:

However, this does show the opposition is in some disarray. It was absolutely known that this critical vote would be on this afternoon. It is a commentary on the opposition and the internal cohesion of the opposition that a senator could miss such a vital vote.

If on that occasion it was a commentary on the internal cohesion of the opposition, it is no less a commentary today on the internal cohesion of Senator Brown’s party. Senator Brown is well known for his sanctimony, but Senator Ludlam is, I think, cut from a different cloth. So I think we are quite understanding of Senator Ludlam, and we hope that this
has been a lesson for Senator Brown in particular.

The PRESIDENT—The question is that leave be granted for the recommittal.

Leave granted.

Senator XENOPHON (South Australia)
(10.46 am)—I seek leave to make a short statement.

The PRESIDENT—Leave is granted for two minutes.

Senator XENOPHON—I cannot support the amendment moved by Senator Joyce, for a number of reasons. Firstly, I believe that it would be more appropriate that any amendment to look at the Water Act be dealt with by the legal and constitutional affairs committee. The focus of the inquiry and the terms drafted by Senator Heffernan are quite clear: it is to look at the social and economic impacts and issues of environmental flows in respect of the impact that the guide to the plan would have. Recently the Australian Government Solicitor’s office, Chief General Counsel Robert Orr QC and Helen Neville, senior general counsel, have provided a legal opinion as to their view of the act. If Senator Joyce wishes to explore this then I think the appropriate vehicle is a separate committee, the legal and constitutional affairs committee. I think it would muddy the waters, so to speak, in relation to this particular inquiry.

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

The Senate divided. [10.52 am]
(The President—Senator the Hon. J J Hogg)

Ayes............ 32
Noes............ 32
Majority........ 0

AYES

Back, C.J.
Bernardi, C.
Boswell, R.L.D.
Brandis, G.H.
Cash, M.C.
Coonan, H.L.
Fierravanti-Wells, C.
Fisher, M.J.
Humphries, G.
Joyce, B.
Macdonald, I.
McGauran, J.J.
Parry, S. *
Ronaldson, M.
Scullion, N.G.
Trood, R.B.

NOES

Arbib, M.V.
Brown, B.J.
Cameron, D.N.
Collins, J.
Crossin, P.M.
Faulkner, J.P.
Forshaw, M.G.
Hanson-Young, S.C.
Hurley, A.
Ludlam, S.
Marshall, G.
McLucas, J.E.
Moore, C.
Sherry, N.J.
Stephens, U.
Wortley, D.

* denotes teller

Question negatived.

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

Question agreed to.

NATIONAL APOLOGY FOR VICTIMS OF FORCED ADOPTION POLICIES

Senator SIEWERT (Western Australia)
(10.55 am)—I move:

That the Senate—
(a) recognises the grief and anguish suffered by thousands of mothers who were vic-
tims of the forced adoption policies of the recent past;

(b) acknowledges the recent apology given by the Western Australian Parliament to those mothers whose children were removed and given up for adoption from the late 1940s to the 1980s in that state; and

(c) urges the Australian Government to commence the process of developing a national apology in consultation with state and territory governments, mothers and their families, experts and advocacy groups.

Senator SHERRY (Tasmania—Minister for Small Business, Minister Assisting on Deregulation and Minister Assisting the Minister for Tourism) (10.55 am)—by leave—The Australian government recognises the pain and suffering of mothers and children separated by inappropriate and unethical past adoption practices. The government is committed to an effective and ongoing dialogue with women and their children affected by past adoption practices.

The Australian government, together with the state and territory governments, has commissioned a joint national research study to study the experiences of people affected by past adoption practices, as well as the support and service needs of people affected by past adoption practices. The study demonstrates all jurisdictions’ commitment to understanding the pain and grief associated with past adoption practices. This new research will help us to better understand the experiences of people affected and, most importantly, to understand their current needs.

The Australian Institute of Family Studies will consult widely with affected individuals in undertaking the joint national research study into past adoption practices. This study is the largest ever conducted into past adoption practices in this country. It will report back to community services ministers in all jurisdictions in 2012.

The Australian government previously commissioned the Australian Institute of Family Studies to undertake a review of Australian research literature about past adoption practices and the impact on those affected. The literature review found that there is not currently a reliable evidence base for understanding the extent of past practices, the number of Australians who were affected and the long-term effects.

Question negatived.

PARLIAMENTARY ZONE

Senator SHERRY (Tasmania—Minister for Small Business, Minister Assisting on Deregulation and Minister Assisting the Minister for Tourism) (10.58 am)—At the request of Senator Feeney, I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposals by the National Capital Authority for capital works within the Parliamentary Zone, being:

(a) the construction of a new access road from Kings Avenue to the National Archives of Australia; and

(b) the installation of five new outdoor exhibits at Questacon, and making permanent seven existing temporary outdoor exhibits.

Question agreed to.

MIGRATION AMENDMENT (DETENTION OF MINORS) BILL 2010 First Reading

Senator HANSON-YOUNG (South Australia) (10.58 am)—I move:

That the following bill be introduced: A Bill for an Act to amend the Migration Act 1958 to prohibit the detention of minors in detention centres, and for related purposes.

Question agreed to.

Senator HANSON-YOUNG (South Australia) (10.58 am)—I present the bill and move:
That this bill may proceed without formalities and be now read a first time.
Question agreed to.
Bill read a first time.

Second Reading

Senator HANSON-YOUNG (South Australia) (10.59 am)—I move:
That this bill be now read a second time.
I seek leave to table an explanatory memorandum and to have the second reading speech incorporated in Hansard.
Leave granted.
The speech read as follows—
The Migration Amendment (Detention of Minors) Bill 2010 seeks to amend the Migration Act, to implement legal safeguards to protect children and young people from the harms of immigration detention. History has proven that we can’t simply rely on the goodwill of a compassionate Federal minister.

Despite promising that detention will only be as a last resort, and for the shortest practicable period, the fact that more than 740 children are currently held in various facilities across the country highlights the problems of failing to codify this 2007 policy commitment of detention as a last resort within legislation.

Although many in the community had hoped that the election of a new Labor Government three years ago would bring about massive change in the way in which we treat asylum seekers in this country, unfortunately many of us were not only disappointed, but also witnessed a return to the scaremongering that existed in 2001 and the years that followed.

While the former Minister for Immigration embarked on some key reforms, in abolishing Temporary Protection Visas, detention debts, and removing the 45 day rule, the failure to amend the Migration Act to include some of the key policy promises from 2007 highlights just how important it is to provide genuine legal safeguards.

Numerous reports over the years have identified the mental health effects of detaining minors in immigration detention. In 2004, the Human Rights Commission released a report A Last Resort? A National Inquiry into Children in Immigration Detention, stating “Children in detention exhibited symptoms including bed wetting, sleep walking and night terrors. At the severe end of the spectrum, some children became mute, refused to eat and drink, made suicide attempts and began to self-harm, such as by cutting themselves. Some children also were not meeting their developmental milestones”.

And although this report is more than six years old, the obvious long-term mental health impacts that detention has on young people is even more relevant now than ever before. It is clear that the current system is not only unworkable, but also severely damaging.

The Greens have long advocated for a more humane approach to the world’s most vulnerable, particularly children and families.

While I acknowledge, and indeed congratulate, the recent announcement by the new Immigration Minister, Chris Bowen, to move currently detained children and their families out of immigration detention into community housing, we must ensure that this policy shift is enshrined in legislation by giving a long-term solution to an unacceptable regime.

History has shown us that we can’t simply rely on the goodwill of a compassionate Federal minister. The fact that the Government is actually using existing powers that were put in place by the Howard Government in 2005 highlights how quickly moves to improve conditions for vulnerable asylum-seekers can be reversed.

The decision to remove children and unaccompanied minors and some family members from immigration detention is also a testament to the long public campaign by key NGOs and concerned members of the community.

This advocacy was key in bringing about change in 2005 under the Howard Government, and has undoubtedly played a key role in bringing about change in 2010.

Despite this positive step forward from the Gillard Government, the Greens remain concerned that this is merely a band-aid solution that fails to fully comply with our obligations under international law.
As a signatory to the 1951 Refugee Convention and its 1976 Protocol, Australia has an obligation to ensure that “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

While it is pleasing to see the Government finally recognise that children should not be detained in immigration detention, the fact that this decision remains one of policy, rather than law remains concerning, and must be corrected.

If we agree that children should not be subjected to immigration detention, we must have that enshrined within legislation – there should be no argument.

**What the Bill does:**

The Migration Amendment (Minors in Detention) Bill 2010 seeks to ensure that the decision to keep children and families out of immigration detention does not rely on the goodwill of the Minister of the day.

This Bill seeks to provide that children detained under the Migration Act 1958 not be held in immigration detention facilities but instead be placed, along with their immediate family members or guardians, in community residential housing.

In including the explicit reference to Article 4 and 37 of the Convention on the Rights of the Child, acts to strengthen and codify within the Migration Act, that minors must only be detained as a matter of last resort, not as a matter of first and only resort as is the current practice.

The Bill also seeks to expand the residence determination process, to ensure that the Minister, must, within 12 days, determine that a minor is to reside at a specified place within the community rather than being held in detention.

In expanding the residence determination section, this Bill seeks to appoint a guardian to advocate for the best interests of the minor. This is a particularly important point, when currently the Minister is both the perceived “detainer” and “guardian” of unaccompanied minors.

It is clear that the issue of asylum seekers, particularly children and their families, is an emotive one, but what we need to see from our political leaders, is leadership and courage not scaremongering and hysteria. We know from the experience from other countries, that there are more humane alternatives available for community-based support for asylum seekers.

Spain legislatively exempts minors from immigration detention (unless the parents who are also detained request to be housed in an appropriate facility together), while Canada and New Zealand make special provision for only detaining minors as a last resort.

While the Greens recognise the need to assess the claims of asylum-seekers, we do not believe that we should be treating these people as criminals. It is not, and never has been, illegal to seek asylum in this country, and yet, this very fact has been conveniently ignored by many seeking to score cheap political points.

We must remember that more than 92% of all children arriving by boat since 1999 have been recognised as genuine refugees.

It is time to get real about the damage these policies are doing to vulnerable and innocent children. We have a duty to ensure they receive fair and humane treatment. Let’s turn the page forever on detaining children in Australia.

I commend this Bill to the Senate.

**Senator HANSON-YOUNG**—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**COMMITTEES**

**Gambling Reform Committee**

**Reference**

**Senator FIFIELD** (Victoria) (10.59 am)—I move:

That the Poker Machine Harm Reduction Tax (Administration) Bill 2008 [2010] and the Poker Machine (Reduced Losses—Interim Measures) Bill 2010 be referred to the Joint Select Committee on Gambling Reform for inquiry and report in line with the terms of reference of the committee.

Question agreed to.
SOCIAL SECURITY AMENDMENT (INCOME SUPPORT FOR REGIONAL STUDENTS) BILL 2010

First Reading

Senator NASH (New South Wales) (11.00 am)—I move:

That the following bill be introduced: A Bill for an Act to amend the Social Security Act 1991 to improve income support for regional students, and for related purposes.

Question agreed to.

Senator NASH (New South Wales) (11.00 am)—I present the bill and move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator NASH (New South Wales) (11.01 am)—I move:

That this bill be now read a second time.

I seek leave to table an explanatory memorandum and to have the second reading speech incorporated in Hansard.

Leave granted.

The speech read as follows—

I present my Private Senator’s Bill Social Security Amendment (Income Support for Regional Students) Bill 2010.

Mr President, ensuring young Australians gain the best possible education should be an absolute priority of any Government.

In particular, regional students should have fair and equitable access to educational opportunities.

Earlier this year, the Labor Government brought in changes to the eligibility criteria for Independent Youth Allowance in a measure which has resulted in the completely unfair treatment of regional students.

There are two forms of Youth Allowance – Dependent and Independent. Students are eligible for Dependent Youth Allowance if the student’s parents income is below the allowable income threshold – the student is eligible for full or part-payment.

The other option is Independent Youth Allowance. Prior to the Government changes there were three criteria that students could use to access Independent Youth Allowance.

1. Students worked part-time for at least 15 hours a week for at least two years since leaving school, or
2. Students have been out of school for at least 18 months and have earned at least 75% of the maximum rate of pay under Wage Level A of the Australian Pay and Classification Scale in an 18 month period – the ‘gap year’.
3. Students have worked an average of 30 hours per week for 18 months out of two years.

For Inner Regional Students, this has been reduced to one criteria:

1. A student must work a minimum or an average of 30 hours per week for 18 months out of 2 year.

To understand fully the impact of these changes, we must first understand the application of the zoning.

When the Government made the changes to the eligibility criteria for Independent Youth Allowance, they used the Australian Standard Geographical Classification – Remoteness Area (ASGC – RA) map, for the purpose of determining the ‘regionality’ of students.

The map is in five zones - Metropolitan, Inner Regional, Outer Regional, Remote and Very Remote.

However, this is a flawed basis to determine the ‘regionality’ of students. The issue for regional students is the distance they have to travel to attend tertiary education and the ASGC-RA map does not adequately reflect that.

The issue here is that many students in regional areas simply have no choice but to relocate to attend tertiary education – and that comes as a cost.

In December 2009 the Rural and Regional Affairs and Transport Senate Committee, which I then chaired, handed down its report ‘Rural and Regional Access to Secondary and Tertiary Education Opportunities.'
That inquiry found that the cost of students having to relocate to undertake tertiary education was approximately $15,000 to $20,000 per year.

The inquiry also found that around 55% of students in metropolitan areas go on to tertiary education compared to only 33% of students in the regions. The inquiry also found that the biggest reason for the disparity in those numbers was the financial impediment for regional students, who face a significant financial burden having to relocate.

Mr President, many regional students don’t qualify for Dependent Youth Allowance. Many regional students, even if they did qualify for Dependent Youth Allowance, only qualify for a part-payment, which simply isn’t enough to alleviate the significant financial burden on regional students that has been outlined.

Before the changes, many regional students used the ‘gap year’ pathway to be able to access the financial assistance they so desperately needed to access further education.

Students across the regions worked hard for a year to be able to move away from home to attend university for further education, with the financial assistance they then gained through Independent Youth Allowance.

The Government has now taken away that opportunity for thousands of regional students. That is appalling.

The fact that the Government has applied different eligibly criterion to different zones on the ASGC-RA map is completely unfair. We now have a situation where some students living on one side of the road can access Independent Youth Allowance, and a student on the other side of the road can’t.

This is not fabrication. This is a fact. Federal Member for Gippsland, Darren Chester, talks about the town of Yarram in his electorate where this occurs. Ask many of my Coalition colleagues whose students face the same issue. And I congratulate the Member for Gippsland for his relentless work attempting to get fairness and equity for these students in his electorate. As have all my National and Liberal colleagues who live and work in the regions, who understand the terrible blow the Government has dealt to regional students across the country.

Mr President, the then Education Minister was Julia Gillard. The Prime Minister, in her capacity as Education Minister, kept talking about the ‘Education Revolution’, and how important opportunities in education are for students.

And yet, what did we see her do? Pull the rug out from under the feet of many regional students, taking away any possibility of them following their dreams to gain a tertiary education. That was unfair and that was wrong.

Why should one regional student be treated differently to another? Why shouldn’t all regional students have fair and equitable access to tertiary education? So many students, and their families, are devastated that they won’t be able to go on to university or tertiary education.

The only criteria that the Government has in place for students residing in Inner Regional areas is to work 30 hours a week, for 18 months out of a two year period.

This Government has absolutely no understanding of the needs of regional students. The Government should be making it easier for regional students to go on to tertiary education, not harder.

The Government needs to recognise that students from regional areas are much more likely to return to the regions and practice a profession. The Government also needs to recognise that parents in the regions often have to choose between shouldering the financial burden of sending their students away or moving back to the city where students can live at home while attending university. This of course results in much needed professionals leaving the regions, a fact which became evident during the senate inquiry.

They don’t understand that a 30 hour per week requirement is very hard to meet in the regions. Finding employment in regional areas and small communities is often very difficult.

Much of the employment available in the regions is seasonal, which doesn’t fit with the Government’s requirements.

The Government simply doesn’t understand. I had parents coming to me over the course of the inquiry that I chaired, and they said to me:
“We have three children. We simply can’t afford to send all three children to university, at a cost of around $20,000 a year. We are going to have to decide which one of our children will be able to go on to university.”

What a dreadful decision for any parent to have to make. And that is a decision that those parents have to make because of this Labor Government - because of the Gillard Labor Government.

The Prime Minister has the ability to change the legislation. The Prime Minister can amend the legislation so that all regional children are treated fairly. And yet she refuses to do so.

The reason for the Government not amending the Inner Regional zones is apparently one of expenditure. The Minister responsible, Senator Evans, and the department admitted to that during the recent Senate estimates hearing.

The Government simply doesn’t want to outlay the extra funds necessary to ensure regional students are treated fairly. That is appalling.

The Government can waste billions of dollars on pink batts, millions of dollars on shoddy school halls, and yet it cannot find the funds to ensure all regional students are treated fairly.

No wonder regional students and their families are devastated by the Government’s refusal to change the legislation to ensure fairness and equality.

Mr President, my Private Senators Bill seeks to amend the current legislation so that all regional students are treated fairly - so that all regional students are treated equitably, as they should be.

This Bill is straightforward. The object of this Act is to improve income support for regional students by extending the Youth Allowance so eligible students whose family home is in a location categorized under the Remoteness Structure as ‘Inner Regional Australia’.

The Bill requires that in paragraph 1067A (10E) (a) after ‘Remoteness Structure as’, “Inner Regional Australia” be inserted. It is as simple as that.

Mr President, I ask Senators to support the Bill.

This is quite simply an issue of fairness and equity for regional students. This Government can ensure that fairness and equity by amending the legislation, and implementing the same eligibility criteria across all regional areas.

It is the least that our regional students deserve.

I commend the Bill to the Senate.

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

Leave granted; debate adjourned.

COMMITTEES

Economics References Committee

Reference

Senator XENOPHON (South Australia) (11.02 am)—I seek leave to amend business of the Senate notice of motion No. 2 standing in my name and the name of Senator Bushby by adding Senator Williams as one of the movers of the motion.

Leave granted.

Senator XENOPHON—I, and also on behalf of Senator Bushby and Senator Williams, move:

That the following matter be referred to the Economics References Committee for inquiry and report by 31 March 2011:

Competition within the Australian banking sector, including:

(a) the current level of competition between bank and non-bank providers;

(b) the products available and fees and charges payable on those products;

(c) how competition impacts on unfair terms that may be included in contracts;

(d) the likely drivers of future change and innovation in the banking and non-banking sectors;

(e) the ease of moving between providers of banking services;

(f) the impact of the large banks being considered ‘too big to fail’ on profitability and competition;

(g) regulation that has the impact of restricting or hindering competition within the banking sector, particularly regulation imposed during the global financial crisis;
(h) opportunities for, and obstacles to, the creation of new banking services and the entry of new banking service providers;
(i) assessment of claims by banks of cost of capital;
(j) any other policies, practices and strategies that may enhance competition in banking, including legislative change;
(k) comparisons with relevant international jurisdictions;
(l) the role and impact of past inquiries into the banking sector in promoting reform; and
(m) any other related matter.

Question agreed to.

Publications Committee

Report

Senator FURNER (Queensland) (11.02 am)—On behalf of the Chair of the Publications Committee, Senator Carol Brown, I present the first report of the Publications Committee.

Ordered that the report be adopted.

Regulations and Ordinances Committee

Report

Senator FURNER (Queensland) (11.03 am)—On behalf of the Chair of the Standing Committee on Regulations and Ordinances, Senator Stephens, I present a volume of ministerial correspondence relating to the scrutiny of delegated legislation for the period November 2009 to June 2010.

BUDGET

Consideration by Estimates Committees

Additional Information

Senator FURNER (Queensland) (11.03 am)—I present additional information received by committees relating to estimates hearings:

The list read as follows—

Community Affairs Legislation Committee—10 volumes, including Hansards
Economics Legislation Committee—
Education, Employment and Workplace Relations Legislation Committee—2 volumes
Environment and Communications Legislation Committee—
Finance and Public Administration Legislation Committee—9 volumes

AUTONOMOUS SANCTIONS BILL 2010

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (WEEKLY PAYMENTS) BILL 2010

First Reading

Bills received from the House of Representatives.

Senator SHERRY (Tasmania—Minister for Small Business, Minister Assisting on Deregulation and Minister Assisting the Minister for Tourism) (11.04 am)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator SHERRY (Tasmania—Minister for Small Business, Minister Assisting on Deregulation and Minister Assisting the Minister for Tourism) (11.04 am)—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—
Autonomous Sanctions Bill 2010
The Autonomous Sanctions Bill 2010 was previously tabled before the House by the former Minister for Foreign Affairs, the Hon. Stephen Smith MP, on 26 May 2010.
I commend the speech the former minister made on that occasion in which he laid out the rationale for this bill.
The bill introduced today is unchanged from the bill that was tabled in parliament earlier this year.
It is appropriate to mention the importance of autonomous sanctions in international diplomacy.
These are specifically targeted measures that are intended to apply pressure on regimes engaging in behaviour of serious international concern.
Iran’s persistent failure to abide by legally binding United Nations Security Council decisions and to provide the necessary cooperation to enable the International Atomic Energy Agency to confirm that its nuclear activities are solely for peaceful purposes is a consistent threat to international peace and security.
In response to this threat, members of the international community, including Australia, the United States, the European Union, Canada, Japan and the Republic of Korea have imposed autonomous sanctions to reinforce and supplement United Nations Security Council sanctions against Iran.
In the past it has been possible to apply such sanctions using other existing instruments intended for other purposes.
Most recently a package of measures were applied against Iran with the support of the opposition during the caretaker period.
Australia does not take its obligations to international peace and security lightly.
It is imperative to support like-minded states in maintaining international peace and security.
This recent concerted international action targeting Iran’s nuclear and missile programs demonstrates the urgent need to strengthen Australia’s autonomous sanctions regime by allowing greater flexibility in the range of measures Australia can implement, beyond those achievable under existing instruments.
This will ensure that Australia’s autonomous sanctions can match the scope and strength of measures implemented by like-minded states.
Impact of sanctions on regimes
Earlier this year, North Korea’s threat to regional stability was on display again with its unprovoked attack on the Republic of Korea naval vessel, the Cheonan.
Autonomous sanctions further augment pressures on regimes where Security Council sanctions have been adopted, such as those with Iran and North Korea.
Autonomous sanctions are also a critical tool in applying pressure on regimes whose behaviour raises serious international concerns—whether it be human rights violations or acts of aggression—and are not subject to UNSC sanctions.
The measures in question are in accordance with section 14 of the Privacy Act 1988, which sets out the information privacy principles.
They do not allow a record keeper who has possession or control of a record that contains personal information to disclose the information to a person, body or agency (other than the individual concerned) other than as authorised under the measures in part 4 (this is in accordance with subparagraph 1(d) of information privacy principle 11).
They also do not allow a person, body or agency to whom personal information is disclosed pursuant to part 4 to use or disclose the information for a purpose other than the purpose for which the information was given (in accordance with paragraph 3 of information privacy principle 11).
The Australian government will continue to review regularly autonomous sanctions with respect to the ongoing need to apply pressure on particular regimes as well as the sanctions measures applied to that particular regime.
I commend the bill.
Veterans’ Affairs Legislation Amendment (Weekly Payments) Bill 2010

I am pleased to present legislation that will implement an important element of the Government’s strategy to address homelessness.

This Bill will implement, in the Repatriation system, a key reform of the White Paper, The Road Home: a national approach to reducing homelessness.

As part of this Government’s initiative, the Department of Veterans’ Affairs will introduce an option of weekly payments for those who are homeless or at risk.

Weekly payments for Centrelink clients became available in April this year and this Bill will enable weekly payments to also be available to those Veterans’ Affairs clients who will benefit from a shorter payment interval and who want to receive their payments on a weekly basis.

Existing legislation requires pensions to be paid fortnightly in arrears. Amendments in this bill will allow for weekly payments in a move that is more responsive and personalised to the needs of the most vulnerable.

While this change does not affect the total amount of pension a person can receive, a weekly payment regime will be one element of assistance to those more vulnerable clients to help them better manage their money and provide an opportunity to stabilise and improve their circumstances.

This is another change that is a clear demonstration of the Government’s leadership and commitment to review, update and improve support that is provided to those who serve, or have served, in the defence of our nation.

Debate (on motion by Senator Sherry) adjourned.

Ordered that the bills be listed on the Notice Paper as separate orders of the day.

COMMITTEES

Procedure Committee

Report

Senator SHERRYS (Tasmania—Minister for Small Business, Minister Assisting on Deregulation and Minister Assisting the Minister for Tourism) (11.05 am)—I move:

That the recommendations of the Procedure Committee in its third report of 2010, be adopted as follows:

(a) the order of the Senate providing modified rules for question time continue to operate as a temporary order to the end of the 2010 sittings and for the first two sitting weeks of 2011; and

(b) there be no change to standing order 104.

Question agreed to.

NATIVE TITLE AMENDMENT BILL (No. 1) 2010

Second Reading

Debate resumed from 30 September, on motion by Senator Ludwig:

That this bill be now read a second time.

Senator SCULLION (Northern Territory) (11.06 am)—I rise to provide the coalition’s support for the Native Title Amendment Bill (No. 1) 2010. The bill is designed to overcome the uncertainties and delays that are associated with land tenure and ownership in Aboriginal communities in the construction of housing and associated infrastructure.

This bill is the reintroduction of a bill entitled the Native Title Amendment Bill (No. 2) 2009, which was passed by the House of Representatives on 24 November 2009. The bill was introduced into the Senate on 26 November 2009 and lapsed at the end of the last parliament. I note that the previous bill was listed for debate on a number of occasions earlier in the year, even granted non-controversial status in this place, yet it was not debated or passed. Given that housing overcrowding and the poor state of much of the essential infrastructure in remote Aboriginal communities have been identified as directly contributing to poor health outcomes and high levels of social dysfunction, it is a disgrace that the government has not been able or willing to remove any impediments that would prevent the construction of housing and associated infrastructure.
The bill establishes a new subdivision within the future acts regime of the Native Title Act. The new subdivision in schedule 1 provides a process to assist the timely construction of public housing and a limited class of public facilities by or on behalf of the Crown, a local government body or other statutory authority of the Crown in any of its capacities, for Aboriginal people and Torres Strait Islanders in communities on Indigenous held land. Unfortunately, the current construction timetable for housing in Indigenous communities could not be described as timely.

This new process ensures that the representative Aboriginal or Torres Strait Islander body and any registered native title claimants and registered native title bodies corporate in relation to the area of land or waters are notified and afforded an opportunity to comment on acts which could affect native title—that is, future acts. In addition, a registered native title claimant or registered native title body corporate may request to be consulted regarding the doing of a proposed future act so far as it affects their registered native title rights and interests. The bill specifically states that native title is not extinguished under this act. The non-extinguishment principle applies, ensuring native title can revive if the act ceases to have effect. The subdivision also provides for compensation for any impact on native title rights and interests.

The new provisions in the act will operate for 10 years. This 10-year period is designed to match the 10-year funding period under current national partnership agreements between the Commonwealth and the states and territories on remote Indigenous housing and remote service delivery. Unfortunately, the national partnership agreement has already been in place for two years, having been announced in November 2008. In the Northern Territory, the SIHIP agreement has been going for 2½ years and was originally to end in 2011. Given that only 85 of the promised 750 new houses have been constructed in the Northern Territory to date, it is obvious that the 10-year time frame for the act will now be necessary, as Labor’s housing program has easily slipped by two years, if not more.

In the previous Prime Minister’s apology speech to the stolen generations, Kevin Rudd promised to address the chronic housing shortages experienced by Aboriginal and Torres Strait Islander people. Like most of this government’s history, sadly the outcomes have failed to live up to the promises. The passage of this bill will remove a possible issue that could further delay housing and infrastructure construction. It remains, as it always has, for this Labor government to move from words to actions and to build much needed houses and essential infrastructure in Aboriginal and Torres Strait Islander communities. I commend the bill to the Senate.

Senator SIEWERT (Western Australia) (11.10 am)—Before commenting on this bill, the Native Title Amendment Bill (No. 1) 2010, I would like to make some introductory remarks about native title reform in general. Nearly 18 years after the introduction of the Native Title Act in 1993, I think it is fair to say that native title has on the whole failed to deliver on its promises—the promises that were explicitly stated in the preamble and the objects of the act, and that were outlined by Prime Minister Paul Keating at the time it was introduced and, in fact, in the comments that he had made in his Redfern speech the year before. The preamble was quite explicit in stating the parliament’s intention in passing the act:

The people of Australia intend:

(a) to rectify the consequences of past injustices by the special measures contained in this Act ... for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders; and
(b) to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire.

However, in practice, the group that the act explicitly recognises as ‘the most disadvantaged in Australian society’, as a consequence of the dispossession of their lands, have had to rely on what is arguably one of the most complex pieces of Australian legislation to ensure their advancement and to recognise and protect, not establish, their existing rights.

In practice, over nearly two decades, only a handful of native title claims have been resolved, and many of these, you would have to say, are in the more remote parts of Australia and have not been of much interest to the non-Aboriginal population. In practice, the bar for recognition of these rights has been set too high, with the onus of proof of cultural continuity being placed on Aboriginal people and with evidence standards effectively mandating reliance on the written accounts of European colonists, denying the oral nature of Indigenous cultures. In practice, the bar for extinguishment has been set too low, and the principle of coexistence of native title rights is too often brushed aside or ignored. In practice, the rights that native title delivered have not been strong or complete enough to provide for the advancement of traditional owners or to provide a basis for economic and cultural development, as they have not provided an unambiguous and exploitable right to land and resources. In practice, the future acts regime has been designed and applied in the interests of development.

In practice, the provisions that were meant to address the challenges faced by the majority of First Australians who have been dispossessed of their lands and much of their culture have not been put into practice; and, though in many places the extinguishment of native title has been recognised, it has not been compensated. There has not been a successful claim under section 61 of the act. In practice, the manner in which traditional culture is defined in section 223 of the act fails to recognise dynamic and living cultures. Instead, it seeks to freeze culture in the pre-colonial past and provides insurmountable barriers to cultural resurgence in areas such as in my home state of Western Australia for the Noongar, Larrakia and Yorta Yorta cases, for example.

In practice, the failure of successive governments to adequately resource native title rep bodies and prescribe bodies corporate has undermined the ability of traditional owners to effectively realise their native title rights as the basis for economic and social development. Sadly, in practice, efforts to reform the Native Title Act to date—including, in fact, these ones—have focused predominantly on making applications of the act quicker and cheaper, and reducing the rights of traditional owners, as we are seeing here, rather than addressing native title’s failure to deliver.

This brings me to the current bill. Yet again, we see an opportunity missed to undertake major native title reform, and another series of amendments that reduces the rights of native title holders for reasons which are not justified. The deplorable state of public housing on remote Aboriginal and Torres Strait Islander communities has been an issue of serious concern in Australia for many decades. It was a serious problem well before native title was introduced. The primary cause of this problem is the chronic failure of state, territory and federal governments to provide adequate housing in Aboriginal communities. The Australian Greens welcome the commitment of the Commonwealth government to investing a significant proportion of resources to address overcrowding
and unmet need by providing new housing and improving the condition of existing housing stock to advance the health and safety of remote communities. We support that—that is in no doubt.

I am keen to support legitimate efforts by the Commonwealth to ensure that this housing is constructed quickly, is appropriate for the communities it serves, and meets Australian health and safety standards. However, I do not believe that the changes in this bill are necessary to deliver that outcome. Having spoken with Aboriginal communities and organisations and having participated in the Committee on Legal and Constitutional Affairs Legislation Committee inquiry into the previous bill, of 2009—which is the same bill as the current one, reintroduced—and having seen and heard the evidence presented to that committee, I am not convinced that this legislation is supported by, or in the best interests of, the communities it is meant to serve.

I am disappointed that, despite the government’s rhetoric about ‘resetting the relationship’ with Aboriginal communities and despite the statement in the apology speech that recognition of native title can provide a sturdy foundation for durable social and economic outcomes, and despite the promise to restore fully the operations of the Racial Discrimination Act in the NT—and of course I argue that they have not been fully restored—this government is pushing ahead without either a convincing rationale or any clear evidence of the need for these changes. These changes will undermine and diminish the native title rights of Aboriginal communities. They depend for their legislative basis on the suspension of the Racial Discrimination Act by the Howard government in its 1998 Wik amendments.

Please let me remind some of the ALP senators of their comments on the changes at the time, when they were in opposition. The ALP said that these laws depend on changes which were:

Morally repugnant, socially divisive and would endanger the process of reconciliation.

So my question is: given the lack of evidence that native title is creating uncertainty or holding up the provision of housing in the affected areas in WA and Queensland, and given the failure of the department to make a compelling case as to why they believe these changes are necessary, why would you want to go ahead with them? Why would you want to blindly push ahead with a series of changes that rely on the races power to pass a racially discriminatory bill, when we do not believe the evidence is compelling that it is native title that is holding up these changes and when, for decades, it has been the failure of state, territory and federal governments to provide that housing?

I think the North Queensland Land Council summed it up when they said in evidence to the committee inquiry that no government of any persuasion would consider taking away the property rights of non-Indigenous Australians to benefit the wider community—bearing in mind this is for housing and the provision of other community infrastructure. I think the North Queensland Land Council’s point was well made.

My main point of concern is the manner in which the legislation proposes to suspend and diminish native title rights, supposedly to achieve the objective of quickly delivering much-needed housing. I do not believe that this suspension and reduction of rights is necessary; I am not convinced it will make any difference to how quickly the new housing could be provided by governments if they used existing provisions, such as Indigenous Land Use Agreements, ILUAs, to negotiate in good faith—of course, that is essential—with native title holders or repre-
sentative bodies; and I remain concerned that the extent of derogation of these rights is significantly out of proportion to the supposed benefits of delivering the houses a bit more quickly.

I believe that the problems with the provision of housing on remote Aboriginal communities are best explained by the lack of investment by the relative governments. Their recalcitrance to enter into consultations and negotiations with Aboriginal communities in good faith is a much more likely reason for the delays in the delivery of adequate and appropriate housing in a timely manner. I believe that is the reason rather than any legal complexities or uncertainties around native title and state land rights acts or in fact any difficulties reaching agreements with Aboriginal communities desperate to get new housing. I believe the government has failed to demonstrate any causal link between native title and delays in delivering housing in Aboriginal communities. If such a causal link existed, we believe it would be relatively easy to compile comparative data with other states and territories.

The most compelling point for me is the fact that this bill purports to speed the delivery of houses to Aboriginal communities who have been crying out for those houses for decades, and yet all of the evidence to the committee from Aboriginal organisations clearly stated they did not want these laws and did not believe they were necessary. Surely you would think that, if there was a choice between suspending or diluting their rights and receiving the benefits of houses a few months earlier, it would be down to those right holders to decide if the alleged benefits outweighed the perceived costs. On the basis of the principle of equitable treatment, native title holders should have the same rights and abilities to protect their interests as other property right holders, and these rights should only be affected with their consent.

I participated in the committee inquiry, which I think was a very useful exercise because it brought up a number of points. I do not support the recommendations of the majority report, and I dissented from the assertions presented at the end of the report as the ‘committee view’. However, that being said, I found the arguments and evidence from the vast majority of submissions received and evidence presented to the committee—which makes up most of chapter 3 and the bulk of the report—to be compelling. I remain concerned, however, that the conclusions of the report do not reflect or properly address the evidence and arguments we were presented. If fact, there appears to be a major disconnect between the evidence presented, the concerns discussed and the arguments evaluated within the report, and its final conclusions. I cannot see how the evidence matches the conclusions, and I made that point.

There are some key issues I believe are essential here: the failure of the federal, WA and Queensland governments to make a compelling case or provide evidence of the need for these changes, bearing in mind that during the process of the committee inquiry it became apparent that these provisions only apply to certain lands in WA and Queensland; the existing options for reaching agreements on future acts, the shortcomings in the current approach to consultation and agreement making with native title holders and representative bodies, and the likely impact of the reforms on future use of ILUAs; and the diminution of native title, procedural and human rights by this legislation, its impact on the principle of non-extinguishment and its compatibility with the Racial Discrimination Act 1975.

These have led me to the conclusion that the proposed changes to the Native Title Act...
are not necessary to speed the delivery of new housing for Aboriginal communities experiencing extreme overcrowding, and would have a serious impact on the rights of native title holders that is out of proportion to any alleged gain. There is little evidence that these changes are supported or desired by the communities they are meant to benefit and ultimately they are likely to prove counterproductive in the wider task of addressing Indigenous disadvantage and improving life outcomes.

It became apparent late in the conduct of the committee inquiry that these laws only apply to a limited number of communities in Western Australia and Queensland where land is held for the benefit of Aboriginal or Torres Strait Islander people under particular state based land rights provisions and the federal native title regime also applies—that is, where a non-exclusive native title right coexists with, and is subject to, a state based statutory scheme.

The committee report ultimately agreed with the Law Council of Australia and the Northern Land Council that the practical application of the proposed reforms will be limited to future acts on a group of Indigenous communities within Queensland and Western Australia. This information was not provided in the Attorney-General’s second reading speech. As a result of the confirmation of this limited application only emerging late in the inquiry we were not able to then have hearings in Queensland or WA. As a consequence, there were three submissions and from land councils in Queensland: Cape York Land Council, Carpentaria Land Council and Northern Queensland Land Council.

I am concerned that that information was provided fairly late and there was some confusion in the committee as to where these provisions would or would not apply. When we asked about the time frame caused by the delay in these specific examples in Western Australia and Queensland, the department was not able to provide an analysis of the time delays caused by the interaction of these two specific pieces of legislation. There does not seem to be any comparison between the delay in providing houses in these specific situations in Western Australia and Queensland compared to the delays in providing housing in, for example, the Northern Territory and other communities that are not subject to the same provisions under both examples.

My understanding is that to date the provision of housing in these communities is a result of a whole lot of other process failures and not the specific processes of the interaction of state based legislation and native title law. It is poor justification for undermining native title. The government should be focusing on how to better the delivery of rights under the Native Title Act. We believe that community negotiation is a better way to ensure the delivery and repair of housing and infrastructure, and that that is both timely and just. I believe that communities have a fundamental right to be fully consulted on issues which directly impact upon their lives and I see fully informed prior consent as a crucial consideration where the rights and interests of communities are affected.

I am quite distressed that this principle is being overridden by the nature of the amendments in this bill. We need to be paying much greater attention to the broader reforms that are necessary. The most appropriate manner to resolve native title and housing issues is through negotiated outcomes. There are existing processes, such as Indigenous Land Use Agreements, which are sufficient and more appropriate than the proposed new mechanism. I am not convinced that the federal and state governments have made a compelling argument or provided any evidence, as I highlighted earlier, as to why
these amendments are necessary. What effort has been made to properly discuss with these communities that come under an ILUA the provision of those outcomes?

The evidence presented to the committee by NTSCorp, the Cape York Institute and the Northern Land Council show that in practice ILUAs can work quite effectively on the ground and in negotiations between Indigenous rights holders, mining companies, developers and other private sector interests and their communities. It seems that when corporate Australia and Indigenous communities get together in good faith they can negotiate mutually beneficial outcomes—in fact, sometimes surprisingly quickly. They suggest that complex and drawn out negotiations only seem to occur ‘where people are not willing to sit down with Indigenous groups and have these conversations,’ or where, apparently, some state and territory governments are involved. This raises questions as to whether the problem is that state and territory governments are not sitting down to negotiate in good faith or whether the standards and level of legal detail or certainty being pursued by state and territory governments are out of proportion to what is actually required to get things done on the ground. The Northern Land Council also convincingly argued that, contrary to the assertions made by state governments, there is in fact no apparent legal uncertainty with the negotiated outcomes of ILUAs. The state governments, we believe, have failed to make the case for this uncertainty. No evidence was presented that ILUAs would not be up to the challenge of providing these outcomes. We are extremely concerned that this bill seeks to further undermine native title rights and we urge the government to put the focus on improving native title, not continuing to amend, amend and amend—

(Time expired)

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (11.30 am)—I would like to thank senators for their contributions to the debate on the Native Title Amendment Bill (No. 1) 2010. Improving housing and reducing overcrowding in Indigenous communities is key to the government’s efforts to close the gap by reducing Indigenous disadvantage. To this end, COAG has committed $5.5 billion over 10 years to deliver much needed Indigenous housing in remote Indigenous communities across Australia. The proposed amendments would enable housing and infrastructure to be built in Indigenous communities on Indigenous-held land where native title may exist, after appropriate consultation with native title parties. The bill’s coverage of housing and associated infrastructure, including staff housing, represents a holistic approach, which recognises that community health and wellbeing depend on the availability of all of these public services.

The new process gives native title parties an opportunity to provide input into the design and delivery of urgently needed housing and public infrastructure, and flexibility to choose the level of consultation that is appropriate. In this way the new process balances proper consultation with the need to ensure public housing and infrastructure projects proceed in a timely and certain way. The non-extinguishment principle, compensation and consultation mechanisms provided in the bill will ensure that any native title rights are not adversely affected in the long term. The bill’s sunset period of 10 years provides an incentive to state and territory governments to deliver on housing and infrastructure commitments in a timely manner, in accordance with national partnership agreements on remote Indigenous housing and remote service delivery.

I would now like to address some of the specific comments raised by senators, par-
particularly the point raised by Senator Siewert concerning evidence to demonstrate the need for the amendments in the act. It is often unclear whether native title exists over a particular community and whether the provision of housing and public infrastructure will trigger the need to comply with native title processes. There is also uncertainty about which of the existing future act processes would apply. There is a risk that this will create delays in deciding how to progress a project, leading to the adoption of cumbersome and lengthy procedures in an abundance of caution.

State governments advise that native title issues are likely to delay their ability to provide housing and infrastructure. Their experience has shown that delays in negotiating Indigenous Land Use Agreements can hold up delivery of public housing and infrastructure in Indigenous communities, and has the real potential to be a barrier to meeting targets under the COAG National Partnership Agreement on Remote Indigenous Housing.

In conclusion, this bill facilitates the delivery of the government’s unprecedented funding commitment to improve housing and reduce overcrowding in Indigenous communities. It does this by ensuring that vital investment in housing and community infrastructure proceeds expeditiously and in a manner consistent with the government’s commitment to work in partnership with Indigenous Australians. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is:

That the bill stand as printed.

Senator SIEWERT (Western Australia) (11.35 am)—I will ask my general questions first. This bill has been introduced twice; it was introduced previously during the 42nd Parliament but, as was pointed out earlier, it did not get dealt with. When the Attorney-General gave his second reading speech on this in 2009 he said:

... state governments have indicated that uncertainty in relation to native title can be a barrier to meeting housing and service delivery targets.

He noted:

This is creating delays.

In the second reading speech the Attorney-General made on the 2010 version, he said that there is a risk of creating delays. With all due respect, I appreciate that information was provided that the states say—this happened in the bill inquiry—that delays are being caused; my concern is, as I have articulated, that there have been delays in the provision of housing for decades. So what the government is saying now is: ‘There is a risk of delay’—after decades—’and so now we are going to further diminish your native title rights because there is a risk.’ This takes away any power properly to negotiate, for example, where housing is provided in communities. And there are disputes in some communities about, for example, where staff housing is provided—because this also deals with the provision, as I understand it, of facilities and staff housing.

I have been into communities in Western Australia where there is a dispute about, for example, where staff housing is provided. What this allows for is the overriding of communities’ ability to say where that housing will be provided. I would like to know why a change was made to the second reading speech to take it from ‘it is causing delays’ to ‘there is a risk of delay’. If possible, I would like quantitative evidence of the delays—days or months. Has there been a
comparison between what happens in these communities in WA and Queensland and what happens in the NT?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (11.38 am)—In terms of the specific question on whether there has been an analysis of the level of delay, I will take that away and hopefully get some answer back to you. But I think this bill is trying to address the absolute need for Indigenous housing—something that I am sure you do not disagree with. This bill attempts to ensure that the goal of delivering housing for Indigenous people is a priority, but it also recognises that consultation has to occur—of course that has to happen.

COAG is committed to delivering a large amount of money to deal with the incredible overcrowding—which you are aware of and I am certainly aware of in my part of the world. There is $5.5 billion over 10 years and that is a very large amount of money. We want to make sure that we can provide good-quality housing for Indigenous people in a reasonable amount of time.

In terms of there being analysis of delay, I will come back to you with an answer on that.

Senator SIEWERT (Western Australia) (11.39 am)—I do not want anybody taking away from this discussion the message that we are not fully committed to Indigenous housing—and I have been on the record dozens of times saying that.

Senator McLUCAS—I'm not suggesting that, Senator.

Senator SIEWERT—I was not implying that you were—that was just in case. During the inquiry, we did ask for the provision of hard evidence that this is happening, but it was not given at the time. This is dealing with the issue in Western Australia and Queensland. Have there been attempts in

those states to negotiate using ILUAs for the particular issues that we are talking about? Is there a demonstration that that process has failed? What sort of oversight will there be to ensure that the states are in fact negotiating in good faith? As you just said, there will be consultation. What role will the Commonwealth have in ensuring that that happens in good faith? I take it from your previous answer that the states will negotiate in good faith, the same as they are expected to do under an ILUA.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (11.41 am)—I can give you some examples. When the bill was first proposed the negotiations in Western Australia for housing and other public works in one large and very overcrowded community with very high housing needs had been running for over two years, meaning that the construction of 20 houses for which funding had already been committed could not commence. Similarly, in two other Western Australian communities negotiations for police facilities and staff housing had also been ongoing for two years and had yet to be resolved. I think those examples do indicate that there was an attempt to conduct those negotiations in good faith, but they did not achieve the outcome of our shared desire for the delivery of much-needed Indigenous housing in that particular community.

I am advised that Queensland and Western Australia are currently building on sites that are not affected by native title under the National Partnership Agreement on Remote Indigenous Housing. This will not be the case, I understand, in future years. A 12-month process will not allow the states to meet their targets under the NPA. I hope that is of assistance.

Senator SIEWERT (Western Australia) (11.43 am)—I am wondering whether the
Commonwealth actually spoke to the Aboriginal communities where the negotiations had been held up to find out why. I am sorry to say this but, in my opinion, state governments do not always negotiate in good faith. There may be other reasons—maybe justified reasons—why there were delays there. Did you seek to find out what the hold-ups were and whether they were justified?

**Senator McLUCAS** (Queensland—Parliamentary Secretary for Disabilities and Carers) (11.43 am)—In constructing public housing and infrastructure on Indigenous land it can be unclear whether there will be any impact on native title and whether compliance with the future acts regime is required. In many cases these dealings may not affect native title and therefore would not be future acts. However, state and territory governments have to undertake substantial and expensive due diligence to confirm this. To provide certainty and to reduce complexity, project components regularly comply with the future acts regime as a precautionary measure. This can mean delay in deciding how to progress a project and the adoption of cumbersome and lengthy procedures in an abundance of caution.

The government has consistently received advice from state governments that native title is likely to delay their ability to provide housing and infrastructure for Indigenous communities in a timely manner. Their experience has shown that delays in negotiating ILUAs can hold up delivery of public housing and infrastructure. Consequently, native title could be a barrier to meeting targets under the COAG National Partnership Agreement on Remote Indigenous Housing. There has been greater success putting in place secure tenure arrangements in communities on Indigenous-held land not subject to these uncertainties. I will come back to you on whether the Commonwealth engaged in discussions with Indigenous communities directly, outside of the negotiations that were happening between the state and those Indigenous communities.

**Senator SIEWERT** (Western Australia) (11.45 am)—I thank the minister for her answer. I remain concerned that the principal motivation for this is so that the government can override and not have to bother with the full process of consultation with communities. Is the minister or her government able to outline how this process will work if, in developing an ILUA, there is seen to be too long a delay? Has there been a time frame put in place for consulting communities and at what point will the government say, ‘Time’s up. We’ll make the decisions from here’?

**Senator McLUCAS** (Queensland—Parliamentary Secretary for Disabilities and Carers) (11.45 am)—In response to your previous question on the role of the Commonwealth in negotiating with Indigenous communities, I understand that it is our view that it is the role of the state to conduct those negotiations. I take your point about oversight but it is the role of the state in those circumstances to conduct those negotiations. I will come back to you on further questions.

**Senator SIEWERT** (Western Australia) (11.47 am)—That is one of my concerns. In Western Australia the state government has just said, ‘Time’s up for negotiation on James Price Point. We’re going to compulsorily acquire that land.’ My concern is that the state government may not give a sufficient time frame for communities to engage in the process properly. I am wondering what overview process there will be and whether you are talking to the states about a process to ensure that you are more comfortable with the fact that communities are being engaged with in good faith?

**Senator McLUCAS** (Queensland—Parliamentary Secretary for Disabilities and
On the question of how genuine consultation will be achieved our government is committed to genuine and ongoing consultation with Aboriginal people, including native title parties. This bill provides notification and consultation-period requirements for a consultation report to ensure that state and territory governments undertake real consultation with native title parties when planning and developing public housing and infrastructure projects. The quality of the consultation will be controlled and monitored by a scrutiny of the consultation report and through intergovernmental agreements, including the national partnership agreements. This allows parties to be flexible, to ensure consultation is tailored for the particular circumstances of any one project. To further ensure appropriate process and to assist states and territories the bill includes a mechanism to enable the minister to issue guidelines on how such consultation should occur. This enables the minister to prescribe the requirements for genuine consultation in a flexible manner that takes account of developing needs and changing circumstances in the native title context.

In response to your question on timeframe, native title holders, registered claimants and native title representative bodies are given an opportunity to comment on a project within two months from the date of notification. Native title holders and registered claimants also have the right to request further consultation with the action body about the project and potential impact on native title, and where consultation is requested, a total consultation period of up to four months is provided under the new process.

Senator Scullion (Northern Territory) (11.50 am)—I know Senator Scullion would agree with us that the provision of police housing, in particular, on remote communities is absolutely essential. But as well as public housing the new process also covers the construction and operation of other public facilities such as medical clinics, schools, police stations, street lighting, water supply and electricity distribution. The bill also includes staff housing in relation to the public facilities provided under the new process. Providing adequate housing for community service staff is an important part of ensuring that there are sufficient staff to deliver services in Indigenous communities. It is an approach that recognises that community health and wellbeing depend on the practical availability of both service delivery infrastructure and essential community service staff.

Senator Siewert (Western Australia) (11.53 am)—I move Greens amendments (1), (3) and (4) on sheet 6179 together:

1. Schedule 1, item 3, page 5 (line 23) to page 6 (line 9), omit subsections 24JAA(4) to (6), substitute:

   Act is valid, subject to right to negotiate

2. If this Subdivision applies to a future act, then, subject to Subdivision P
(which deals with the right to negotiate), the act is valid.

(3) Schedule 1, item 3, page 8 (lines 23 to 34), omit the definition of consultation period in section 24JAA.

(4) Schedule 1, page 9 (after line 4), after item 3, insert:

3A After paragraph 25(1)(aa)
Insert:
(ab) acts covered by section 24JAA
(which deals with public housing);

These amendments seek to protect the rights of native title holders to negotiate. I have articulated the arguments about our concern around the undermining of native title rights. This legislation does, we believe, take away the rights of native title holders to negotiate and it undermines the concept of fully informed prior consent. I will not articulate the arguments again. I have been through them and I do not want to hold up the chamber.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (11.54 am) The government does not support the amendments moved by Senator Siewert. The new process introduced by the bill balances genuine consultation with the need to ensure that urgently needed public housing and infrastructure projects can go ahead in a timely and certain way. The government does not consider the right to negotiate procedures to be the appropriate tool for the delivery of urgently needed public housing and infrastructure for the benefit of Indigenous communities on Indigenous held land. Where the parties cannot agree to an act going ahead within six months, the right to negotiate can lead to arbitration of the matter before the National Native Title Tribunal. The time involved in the right to negotiate process could substantially delay the delivery of urgently needed public housing and infrastructure to Indigenous people.

Senator SCULLION (Northern Territory) (11.55 am)—The opposition will not be supporting the Greens amendments. as the Greens will no doubt be aware. Support for these amendments would in fact negate the intent of the government’s legislation. I would like to make a couple of comments. First of all, I acknowledge that it is not only this issue that is slowing down the building of houses, Senator Siewert. I have spoken about that often. Without berating them too much, not only this government but state and territory governments over time have found it very difficult to roll out both infrastructure and housing in what we would call a timely way. In this case, the government have found a pretty reasonable balance.

I know you say that the benefits provided appear, certainly from the evidence we had at the committee hearings, to be somewhat out of proportion to the potential loss of rights for that period of time. But I continue to support the government’s legislation, given that they have clearly given some thought to articulating a process of consultation—although it may not be an ILUA. I can cite an example, not with housing but with infrastructure, in the Western Desert last year. It was brought to my attention that we had a dialysis chair there. The only reason the dialysis chair had not been used for a long period of time was that the Central Land Council had not provided a permit to dig six metres across a public road to connect it to the existing power pole to enable telecommunications. There was no mischief from the Central Land Council, but it happened because putting in any infrastructure dictated this process. I commend the Central Land Council for their swift action when they were advised of the matter. Sometimes inadvertently these processes hold things up. They involve strict liability; we have to go down this path. The native title process is, as it should be, an exhaustive process that has
exhaustive appeal processes. That is why this legislation is very important, given, as you acknowledge, the vital importance of us all striving to reduce the overcrowding in Aboriginal and Torres Strait Islander communities. I know you are a great champion of that, Senator Siewert. On balance, the reason that we do not support these amendments is that they remove the effect of the government’s amendment to the existing legislation.

As I said a little earlier, I think there is some uncertainty about whether native title would have an impact on this. The government have laid out an alternative process that seems to me to be quite reasonable. It gives people time but also puts an end to negotiations because, at the end of the day, these houses need to be built. If there are any blockages in the way, that will slow things down. We think, on balance, that it is absolutely, vitally important to remove any impediment. But, again, I do acknowledge that there are other impediments, through the state and territory governments, to the building of these houses.

Question negatived.

Senator SIEWERT (Western Australia) (11.59 am)—The Greens oppose item 3 in schedule 1 in the following terms:

(2) Schedule 1, item 3, page 6 (line 29) to page 8 (line 20), subsections 24JAA(10) to (18) TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that item 3 in schedule 1 stand as printed.

Question agreed to.

Senator SIEWERT (Western Australia) (11.59 am)—The Greens oppose item 8 in schedule 1 in the following terms:

(5) Schedule 1, item 8, page 9 (line 22) to page 10 (line 7), item TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that item 8 in schedule 1 stand as printed.

Question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (12.01 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Third Reading

Senator BRANDIS (Queensland) (12.01 pm)—The coalition support the Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2010. Identity fraud is Australia’s fastest-growing crime, with hundreds of thousands of victims and an estimated cost of more than $1 billion every year. It is evident that the rapid increase in technology and computer use is partly behind this emerging threat. Identity crimes are increasing due to advances in technology in the banking sector and the rapid increase of financial transactions via the internet and the use of credit cards.

An Australian Bureau of Statistics report released late last year found that in 2007 alone more than 800,000 people, or five per cent of the population, aged 15 and older, fell victim to at least one instance of fraud. Identity fraud accounted for almost half a million victims, with 77 per cent of those reporting
fraudulent transactions on their credit or bank cards. The remaining 23 per cent suffered identity theft involving unauthorised use of their personal details.

This bill implements changes to the identity crime offences recommended by the Model Criminal Law Officers Committee Final Report on Identity Crime. It seeks to insert three new identity crime offences into new part 9.5 of the Criminal Code Act 1995. With the exceptions of South Australia and Queensland, it is not currently an offence in Australia to assume or steal another person’s identity, except in restricted circumstances. Existing offences in the Criminal Code, such as theft, forgery, fraud and credit card skimming, do not adequately cover the varied and evolving types of identity crime—for instance, malicious software and phishing.

The proposed offences are framed in broad and technology-neutral language to ensure that, as new forms of identity crime emerge, the offences will continue to be valid. The offences include: dealing in identification information with the intention of committing or facilitating the commission of a Commonwealth indictable offence, punishable by up to five years imprisonment—that is, the dealing offence; possession of identification information with the intention of committing or facilitating the commission of conduct that constitutes the dealing offence, punishable by up to three years imprisonment; and possession of equipment to create identification documentation with the intention of committing or facilitating the commission of conduct that constitutes the dealing offence, punishable by up to three years imprisonment.

Schedule 4 to the bill contains several amendments which will establish a more consistent approach to the restrictions placed upon the disclosure of sensitive AUSTRA information and strengthen safeguards to protect against the disclosure of sensitive AUSTRA information.

The bill also contains several minor amendments to correct a drafting error in the Criminal Code Act 1995 and repeal a provision in the Judiciary Act 1903 which is no longer necessary. The bill contains key measures to resolve deficiencies in current legislation relating to identity crimes. The bill also includes measures designed to improve the administration of justice and the effective operation of the AFP and Commonwealth Director of Public Prosecutions.

In April 2005, the coalition government announced the National Identity Security Strategy to combat the misuse of stolen or assumed identities in the provision of government services. To support development of the strategy, the coalition allocated funding of $5.9 million over two years in the 2005-06 budget, including funding for a pilot document verification service. Under the coalition government, the Model Criminal Law Officers Committee released a discussion paper on identity crime and subsequently a final report in March 2008. This bill implements that law reform largely undertaken by the previous government and now brought to completion under the current government. The coalition therefore supports the policy underlying the bill and supports the passage of this bill.

Senator LUDLAM (Western Australia) (12.05 pm)—The Australian Greens will also be supporting the passage of the Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2010. In particular, we support the provisions that establish new offences for combating identity crime. We recognise that there are a diverse range of other measures in the bill, but I will confine my remarks today to the offences relating to identity crime.
We acknowledge at the outset the seriousness of such crimes and support attempts to assist in the investigation and prosecution of such offences. Identity crime has become more prevalent in recent years due to our ever-increasing reliance on new technology—a trend that will undoubtedly continue in the future. This is one of the issues that I hope to pursue in the inquiry that we proposed a couple of months ago into online privacy—which was supported by all sides of the chamber. Identity crime fits pretty squarely with the agenda of protecting people’s privacy online so that those flow-on consequences cannot occur. This is a trend that will undoubtedly continue into the future as these technologies become more ubiquitous.

Information from the Model Criminal Law Officers Committee of the Australian Federal Police states that identity crime costs Australia around $4 billion annually. Research from the Australian Bureau of Statistics also highlights the breadth of the issue, with research released in June 2008 concluding that around half a million Australians were victims of identity fraud. Identity theft must therefore be taken very seriously, as it has quite serious repercussions—most directly for the victim but also for the Australian taxpayer.

We therefore support the bill’s intention to strengthen Australia’s identity theft legislation, which at present is somewhat ad hoc and fails to comprehensively protect Australians. We are pleased that the bill uses language which ensures that, as new forms of identity theft emerge, the offences contained in the bill will remain applicable. This is something we will need to deal with as new technologies, and new communications technologies in particular, emerge.

In addition to supporting the introduction of three new identity crime offences, we strongly support the bill’s inclusion of a remedy for victims of identity crime. The bill provides that they may be granted a certificate by a magistrate to prove that they have been a victim of identity theft when negotiating with the relevant authorities over the misuse of their identity, such as in re-establishing their credit rating with financial institutions. These amendments are common sense. They are certainly well timed, given the emerging ubiquity of these technologies. The Australian Greens will be supporting this bill in its entirety.

**Senator Hutchins** (New South Wales) (12.08 pm)—It is always good to follow Senator Ludlam—who is on time.

**Senator Ludlam**—You couldn’t resist, could you!

**Senator Hutchins**—Identity fraud represents a serious threat to the community and can play a part in financing organised crime and terrorism. It is no small problem. According to the Australian Federal Police, identity fraud costs the Australian economy up to $4 billion a year. New measures to deter and penalise these crimes are essential in putting an end to this illicit industry. The Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2010 inserts new identity fraud offences into the Criminal Code Act 1995, making it an offence to deal in identification information, including specific offences for possessing identification information or the equipment used to make false documentation with the intent of dealing in such information.

The existing offences in the Criminal Code, covering such offences as theft, forgery, fraud and credit card skimming, are currently inadequate in addressing the many established and emerging types of identity crime. This bill will bring into effect recommendations on identity crime offences arising from the Model Criminal Law Officers
Committee Final Report on Identity Crime, which was released by the Standing Committee of Attorneys-General in March 2008. After passage of this bill, it will be an offence to make, supply or use identification information for the purpose of allowing one person to pass themselves off as another where it involves committing or facilitating the commission of a Commonwealth offence.

Significant improvements and changes in the nature of technology are common, along with the development of new applications for these advances. The utility of the internet in terms of such uses, such as communication, shopping and online banking, has become a part of everyday life and has changed the way we interact in both a social and commercial sense, so legislation must have a capacity to account for the invention of new forms of criminality associated with technological progress. This bill will grant such scope, ensuring that a strong disincentive will always be relevant to those engaging in identity theft, in whatever form it may take.

Key terms and definitions have deliberately been drafted in a technology-neutral manner, to avoid the problem of terms becoming outdated or technology surpassing the definition as it will exist in the act.

As identity crime is very often a transnational phenomenon, the three identity crimes offences created by this bill will extend to the actions of any Australian citizen or corporation outside Australia, removing any recourse to using the fact that a particular jurisdiction had not legislated on this type of conduct. Australians will not be able to escape prosecution for an identity crime offence committed outside Australia on the basis that the jurisdiction in which the action takes place does not have identity crime laws.

Of particular note in this bill is the provision allowing for the issue of a certificate outlining the circumstances in which an individual has been the victim of identity crime, to help those affected to minimise the inconvenience of such circumstances. In the certificate, the magistrate must record the identity of the victim and describe the manner in which the identification information was said to have been misused.

Identity crimes can have a significant impact on a victim’s personal financial affairs, such as their credit rating. A certificate issued by a magistrate may be useful in reducing this impact, especially when in discussion with financial institutions to isolate and remove fraudulent transactions or re-establish their credit rating. Considering the fact that individual victims are reported to spend an average of two or more years attempting to restore their credit ratings, these provisions have the potential to save victims of identity fraud offences from putting their lives on hold while clearing fraudulent transactions made in their name.

This bill goes a long way to making identity crime a less attractive source of finance for criminals, but the vigilance of individual citizens in protecting sensitive information concerning their identity is also essential. Initiatives like the recent National Identity Fraud Awareness Week, which occurred from 9 to 15 October this year, should bring home how serious a risk we take with our identity through seemingly innocuous actions. A study found that 75 per cent of Australians throw out enough personal information to put themselves at risk of identity fraud, and many unsolicited phone calls seek to contribute to building a profile of information that can be used for profiting from deception. Educational initiatives such as this should worry us enough to be less complacent about how we treat our own sensitive information.

Beyond the identity crimes provisions, this bill seeks to amend the Anti-Money
Laundering and Counter-Terrorism Financing Act 2006 to augment Australia’s regime of detection and deterrence when it comes to money laundering and the financing of terrorism and organised crime. Measures to ensure awareness of the reporting obligations for the movement of physical currency across borders under the act, along with improvements to restrict and protect against the release of AUSTRAC information, form the substance of this component of the bill.

Additionally, the bill amends part III of the Crimes Act 1914 in order to bring the administration of justice offences into line with chapter 2 of the Criminal Code Act 1995. It also makes amendment to the Australian Federal Police Act and the Director of Public Prosecutions Act. The suite of amendments in this bill will ensure that the operations of law enforcement agencies are improved. This bill represents a strong disincentive to identity fraud, as it imposes specific penalties on such actions. It is an additional welcome step in enhancing the capacity and capabilities of law enforcement to prevent serious and organised crime and prosecuting those involved in it. I am sure that the bill will go a long way towards arming our law enforcement agencies to deal with identity crimes while also assisting victims to rectify their financial records. I commend the bill.

Senator FIELDING (Victoria—Leader of the Family First Party) (12.15 pm)—In recent years, identity crimes have grown more prevalent and they continue to pose a serious threat to ordinary Australians. The Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2010 implements the recommendations of the Model Criminal Law Officers Committee and introduces three new offences into the Criminal Code. The bill also includes provisions which allow victims of identity crimes to obtain a certificate which may assist in re-establishing their credit histories. Family First supports these changes and the commitment by the government to address the current deficiencies in our laws. Family First firmly believes that matters relating to the identity of individuals deserve our serious attention given the significant consequences which exist where a person’s identity is abused.

We need strong protections in place to ensure that individuals’ identities remain protected, particularly where these identities are used to commit serious crimes. Remarkably, the issues of identity protection and identity verification continue to be a problem. This is most apparent in relation to the national criminal history record checking which takes place across the country every day. As it stands, people are able to hide their criminal history by changing their name by deed poll, thereby essentially erasing any record of their criminal history. This is because a person’s new name is not tagged in the systems with the criminal history associated with their previous name. It is a crazy loophole. Think about it—this means that a murderer, a drug dealer, an armed robber or any other person with a criminal history is able to hide it by changing their name by deed poll.

I was flabbergasted when I discovered some time ago that this loophole existed, because it is a serious hole in our criminal history checking system. People rely on criminal history checks all the time, especially before hiring new employees, and it is a serious breach of the trust which many people place in these checks. In many cases, these checks are performed before employing people in positions of trust, such as those that involve working with the elderly or children. These are positions of significant concern, so organisations undertake these checks to make sure that the people they are employing do not have an inappropriate criminal history.
It is now clear that criminal history checks are in many cases quite meaningless, because a person with a certain type of criminal past need only walk into the nearest births, deaths and marriages office, pay a small fee of around $50 and—hey-presto—watch as their criminal history vanishes instantly. Incredibly, the government has been aware of this crazy loophole for years, yet it does not seem to want to close it with any real urgency. I have raised this issue on a number of occasions, including through Senate estimates and hearings involving CrimTrac. The government continues to fail to urgently act to close this loophole which allows criminals to hide their criminal history.

I am flabbergasted that, on the one hand, the government clearly admits that it is aware of the potential for criminals to abuse this loophole yet, on the other hand, it suggests that there is nothing it can do to prevent this, claiming that it is a state issue. I have also raised the issue of criminals being able to change their names and hide their criminal history with the office of the Attorney-General, providing a list of amendments to this bill which I believed would strengthen the power of the Commonwealth to force the states to take action on this matter. In the beginning, my proposed amendments were met with silence; it was only after the meeting of the Standing Committee of Attorneys-General on 6 and 7 August 2009 that the Labor government finally saw fit to address this serious security issue. Even so, the response from the government has fallen well short of what any person would reasonably expect from a responsible government. A summary that was released of the decisions arrived at by the committee devoted just 28 words to this issue. It stated:

... Ministers requested that National Justice CEOs develop a best practice approach to the change of name process, to ensure that criminals cannot abuse the change of name system.

Clearly, everybody is aware of this issue and, quite frankly, it is simply not good enough not to act urgently. The CEOs were asked to go back to their states and develop a best practice approach, but that was over 12 months ago, and we are still waiting for proper action to ensure that criminals will no longer be able to go to any births, deaths and marriages office, change their names and thereby wipe away any record of their crimes. We need proper action, not more excuses or inaction from the government.

Family First has put forward amendments which try to force the Commonwealth government to take action on this issue. Under these amendments, the minister would be required to present a report on what could be done to urgently develop a nationally consistent scheme to make sure that this loophole is closed. In this report, the minister would also need to address what the Commonwealth was doing to implement such a scheme. This would force the issue to a federal level rather than leaving it at a state level and put pressure on the government to finally make serious attempts to fix this problem.

Family First’s amendments also include a suggested change to the Privacy Act to make it clear that the Privacy Act does not prevent agencies passing on relevant information. While this would not guarantee that information would be passed on, it would remove possible excuses for not doing so. This loophole, which allows criminals to erase their history of convictions, has existed for far too long. I understand that New South Wales has moved to address this issue, and it is high time that a nationally consistent approach was adopted. I urge all senators to look at these amendments as we go into the committee stage of this bill.

Senator BILYK (Tasmania) (12.22 pm)—I rise today to speak on a bill that is based at the heart of very contemporary Australian
society—that is, the Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2010. The Gillard government takes crime seriously and will do anything possible to protect the Australian people from the effects of crime—and, unfortunately, Australia has its fair share of identity crime.

Our identity is something that begins when we are born and given a name and a birth certificate. Our identity grows over time as we acquire personal identification numbers, passwords and licence and passport numbers. Our identity may also include a change of name, either through marriage or even just by deed poll. Regardless of what our identity consists of, it is ours for life—or at least it should be.

However, in today’s world with technology continually developing, it has become much easier for people to steal an identity or to create a new but fake one from scratch. Technology has played a huge role in the way identity crime and identity fraud is perpetrated, although in itself identity fraud is not a new concept. It has been around forever; it is just becoming more prolific. And even the most cautious people are at risk because of the ever-increasing, ever-changing technology available.

We need to be extremely conscious of protecting our identity and making sure that we are sensible with our personal information and what we do with it. It is also vital that parents educate their children about protecting their identity. In today’s world, it is just as important to teach your children about internet safety as it is to warn them about stranger danger.

We need legislation that makes it a crime to use someone else’s personal information, especially in criminal activities. We need to impose harsh penalties for doing so, because it does not matter how careful we are with our personal information, there will always be someone who can access that information and use it for their own gains. This bill will help clarify some areas of law that have previously been open to interpretation.

We part with personal information every day. It might be signing up for a new insurance policy, using online banking or giving information to someone over the phone. There are those of us who might misplace our wallet with all those important cards inside. Most people are honest and will use information only for the purposes they are intended for; however, there are some people who will use information for illicit reasons. Then there are the people who get access to our personal information without us even knowing that they have it. The fact that people can access our personal information without our knowledge is frightening.

People can even put incorrect information on websites about other people, and some of these can be edited by just about anyone. Currently, anyone who has their personal details misused has the onus placed on them to re-establish their identity. This is usually an onerous task, taking up a lot of time and effort and it can be very complicated. The changes proposed will hopefully make it easier by removing some of the difficulties and therefore decreasing the time and cost involved. It will identify how people can get help in re-establishing their identity, particularly when other people have committed criminal acts, carried on business activities or taken out loans in their name.

This bill has been worded so that emerging technology will be covered without having to make further changes. The term ‘equipment’ is not defined in the bill. This is so as to avoid a fast-dating of the provision. As an undefined term, ‘equipment’ will be defined by a court according to its plain and ordinary meaning. Therefore, equipment
used often to create false identification, such as photocopiers, scanners and computers, will all be included under the term.

The bill is making amendments to a number of different acts, which include the Crimes Act 1914, the Privacy Act 1988, the Criminal Code Act 1995, the Australian Federal Police Act 1979, the Judiciary Act 1903, the Director of Public Prosecutions Act 1983 and the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. In general, these amendments are designed to provide consistency and to make the operation of federal agencies easier. These amendments are in response to a report on identity crime handed down by the Model Criminal Law Officers Committee of the Standing Committee of Attorneys-General.

Currently only Queensland and South Australia have offences specific to identity crime. In other jurisdictions certain offences are covered by a variety of laws such as fraud, forgery, credit card skimming and theft, but this leaves a significant gap that enables conduct involving using someone else’s identity to go unpunished by the law. This is a serious problem that needs to be rectified as soon as possible. This bill will achieve that.

The Criminal Code Act 1995 will have three new offences listed once this bill has passed. These offences will be covered in the new part 9.5 of the act. Section 372.1 states that it is an offence to deal with identification information with the intent of ‘pretending to be, or passing themselves off as, another person’ with the ‘purpose of committing or facilitating a Commonwealth indictable offence’. Where the proposed offence is made out, an absolute liability applies with a penalty of imprisonment for five years. Section 372.2 states that it is an offence to be in possession of identification information with the intention of committing or facilitating the commission of conduct that constitutes the dealing offence, and this attracts a penalty of three years imprisonment. Section 372.3 relates to the proposed offence of possessing equipment to make identification documents, making it an offence to be in possession of equipment to create identification documentation with the intention of committing or facilitating the commission of conduct that constitutes the dealing offence. The penalty for that offence is three years imprisonment.

With the extended geographical jurisdiction, it will be an offence for an Australian citizen or body corporate to steal an identity while overseas. They will not be able to argue that they have done nothing wrong because the country they are located in does not have the same law. They will be committing an offence under Australian law while in another jurisdiction. This change recognises the serious impact identity crime can have on a global scale.

Under section 372.5, where a judge, a magistrate or a trier of fact in prosecution is not satisfied beyond reasonable doubt that someone is guilty of the offence of dealing in identification information, it is still possible for the accused to be found guilty of the offence of possessing identification information. All that is necessary is that the defendant has been accorded procedural fairness. Section 372.6 states that it is not an offence to attempt to commit offences under sections 372.1, 372.2 and 372.3. The reason for this is that harm only occurs when identity information has actually been used. Possession of information is not a sufficient cause.

This bill will alter part III of the Crimes Act 1914, which covers administration of justice offences to create consistency with the Criminal Code. It corrects a drafting oversight and also increases the penalties for a number of offences such as conspiracy to pervert the course of justice offences, which
are very serious offences. This is consistent with the Gillard government’s policy that anyone who obstructs, prevents, pervers or tries to defeat the legal process in an improper way should face the strongest possible criminal sanctions. This area also covers the conduct of judges and magistrates when setting bail. It makes it an offence to require excessive and unreasonable bail where the requirement represents an abuse of their office or where the judge or magistrate has a personal interest in the matter. Also covered are offences relating to witnesses and evidence. Offences include perverting the course of justice, giving of false testimony, deceiving witnesses and aiding a prisoner to escape from custody.

This bill proposes to alter the Director of Public Prosecutions Act 1983 by allowing delegation of powers and functions. This matter was previously unclear and clarification of this was certainly needed. This bill will not only clarify the power of the DPP to delegate but also make it possible for them to undertake a function despite previously having delegated that function to someone else. Under the proposed legislation, immunity against civil proceedings will be granted to the DPP and staff as well as to the Australian Government Solicitor while carrying out their duties. This provision covers both acts and omissions, but they must be carried out in good faith and in the course of duty to warrant immunity. These amendments will ensure that there is a single prosecuting authority involved in the prosecution of all charges and that more effective use is made of court resources. The duplication of resources has been an ongoing problem with our federal system of government. It is therefore important that we streamline the functions and powers of the DPP Act and processes.

Alcohol and drug-testing processes will be simplified under the Australian Federal Police Act 1979. The amendments will allow for the timely testing of AFP employees, thus ensuring that they are not under the influence while carrying out their duties.

Money laundering is a significant problem in Australia. It is estimated that $4.5 billion is laundered in Australia every year. The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 established the framework for AUSTRAC—the Australian Transaction Reports and Analysis Centre. This bill will establish a more consistent approach on the disclosure of sensitive information gathered by AUSTRAC, which has a sophisticated process able to track the flow of international funds. This information should not be revealed in a way which may compromise potential prosecutions. Under this bill, changes to the Anti-Money Laundering and Counter-Terrorism Financing Act will see people involved in cross-border transfers of currency and international fund transfers obligated to report any suspicions.

One aspect of the bill that I would particularly like to comment on is the provision to assist victims of identity crime. People can have huge debts run up on their credit cards before they realise they are missing. Their signatures can be faked or their names used for Centrelink or medical purposes. What happens to these people when they realise their credit card has not only been lost but has also paid for thousands of dollars worth of goods or a holiday or they find out someone has already applied for a passport with their details? It is bad enough to have a crime committed against you, but for the proceeds of that crime to then be involved in further crime is a complete travesty.

People will now be able to apply to a magistrate for a certificate which, if granted, will help the individual in their dealings with financial institutions when trying to get their credit rating reinstated. In order to get a cer-
certificate, the person will have to provide enough quality information to prove to the magistrate that on the balance of probabilities the identity offence has been committed. As we are all aware, it is much easier to establish that on the balance of probabilities an offence has been committed than to prove beyond reasonable doubt that it has been committed. This will mean that a certificate can be issued without having to secure a conviction of a person for using your identity. The certificate will need to have the individual’s personal details as well as the nature of the offence committed. Even in a case where the identity of the offender has been established, it is not a requirement to include the name of that person. With the certificate in hand, the person will be able to negotiate with the finance company to get the loan they want or to simply have their previously good credit rating restored. They will not have to wait for the sometimes lengthy court process to take place to get a conviction or, if the perpetrator is never found, they will still have the assistance to help with the difficulties the fraud has created. Under section 375.3, a certificate must not be issued if it is likely to influence a court case. This is vital to ensure that court proceedings are protected and that no person loses their right to a fair trial.

Another benefit of this bill is that prison sentences of up to 10 years can be imposed for some offences. The tough sentences implemented in this bill should act as a deterrent to people against committing the crime of invading another person’s privacy by assuming their identity. After all, as I have said, our identity is vital to our existence and it needs to be protected.

As parliamentarians we have an obligation to ensure that the Australian public is protected from crime as much as it possibly can be. We have an obligation to ensure that penalties imposed for offences are effective deterrents. Passing this bill is one way that we can meet those obligations. The Gillard government is serious about cleaning up on crime and will continue to work to do so. I commend the bill to the Senate.

Senator PARRY (Tasmania) (12.36 pm)—I also rise to speak on the Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2010. I do not propose to speak for very long and I commend the senators who have spoken before me, particularly Senator Hutchins, Chair of the Parliamentary Joint Committee on the Australian Crime Commission. Through that committee and through other involvement in this parliament, I have come to realise, as many others have, that identity crime has become a big issue in Australia and elsewhere. It needs additional resourcing and tools, and this legislation will go towards equipping jurisdictions in combating identity fraud. Identity crimes are very malicious types of crimes. They affect people on a very personal basis. To have one’s identity stolen is not a light matter, and that has been touched upon during this debate.

It is great that a government of this nature as well as the previous Howard government have always viewed ways to combat criminal activity as a priority for the government of the day, and it is good to see that the Labor Party is continuing the good measure that was introduced under the Howard government. It is nice for us to be in great agreement in relation to very sensible measures, such as the bill before us.

I want to mention two items in particular: firstly—and this has been touched upon—the varying nature of criminal activity and, secondly, the ability of organised crime to move very swiftly with new technologies. This bill has been very carefully crafted in the sense that it will not date very quickly on the definition of equipment. That is a very sensible
measure. I trust that the courts will view that measure with the intention that the parliament is placing on that particular provision. If we do not have legislation that is swift and flexible enough to combat these organisations, it makes life very difficult for law enforcement agencies.

Secondly, the introducing minister at the time, Minister Debus, made some comments in his second reading speech in relation to aspects of newly evolving methods of criminal organisations. He thoroughly agreed with the member for Farrer during the second reading debate in the House of Representatives. He indicated that we need to keep up to date, and that is why the government has approached the bill in the way it has. Another comment in that second reading speech was that people need to be able to get their lives back together upon the discovery of an identity crime. The legislative framework in this country has not provided for that to happen in a reasonable manner and to give justification to a person's identity being restored—in particular on a financial aspect.

If the government continues to legislate and the parliament continues to approve legislation that will combat serious and organised crime—other measures went through the parliament during the last term—it will go a long way to ensuring that organised criminals in this country and elsewhere understand that Australia is not a soft target and that Australia will often amend and adjust its legislative framework to attack the criminals at the very heart of their venture. Identity crime is one of those issues. The bill also addresses many other aspects which I certainly agree with and approve of, but I will not go into the detail of those. I commend the manner in which the bill was introduced and commend the bill to the Senate.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12.40 pm)—Firstly, I would like to thank senators for their support of the Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2010. Senator Brandis made reference to the National Identity Security Strategy. I seek to make a number of points in answer to his questions on the bill. The government continues to lead national action to prevent the identities of Australians being used for illegal purposes. The government is working with the states and territories to develop and implement the National Identity Security Strategy. One of the key elements of this strategy is the national Document Verification Service, which allows agencies to verify documents presented as proof of identity, such as passports or driver’s licenses, in real time. Once fully implemented, the DVS will help governments and individuals protect against identity theft by detecting false or stolen identity documents. The government is also working to expand the use of biometrics to anchor an identity by connecting personal information, such as a name, to the individual’s biometrics, such as a photograph or even a fingerprint.

It is important to raise community awareness about the risk of identity crime. That is why last year, on 23 November, the government launched the ID Theft booklet, which outlines how to prevent and respond to identity theft. Around 60,000 copies of the ID Theft booklet have been distributed nationwide for crime prevention activities. There is a range of other activities across the government aimed at preventing fraud and helping people to protect their identities online. For example, in March this year, Fraud Week included an online scams education and awareness campaign.

Senator Fielding raised the issue of criminal name changes. Name changes are governed by state and territory legislation and administered by their registries of births, deaths and marriages. The issue of criminal
name changes is being addressed by the Standing Committee of Attorneys-General. National justice chief executive officers are developing a best practice approach to changes of name to ensure criminals cannot abuse the change-of-name system. A proposal will be presented to attorneys-general later this year. A cooperative approach through the Standing Committee of Attorneys-General is the appropriate way to deal with this matter in the government’s view. Senator Fielding also mentioned the Privacy Act. That act already permits the use and disclosure of personal information for the prevention and detection of criminal offences, which would address the issue Senator Fielding raised.

Finally, the bill contains three new identity crime offences and other amendments that will improve the operation of Commonwealth agencies, including the AFP, the CDPP and AUSTRAC. As senators know, identity theft poses a significant threat to individuals and the entire Australian economy. In 2009-10 there were 124,000 victims of identity theft in Australia. The Australian Crime Commission’s 2010 Organised Crime Threat Assessment identified identity crime as one of the highest level threats. The identity crime offences in this bill bridge the gaps in existing legislation and limit the impact of identity crime on individuals and business. The offences are based on provisions prepared by the Model Criminal Law Officers Committee. Amendments to the Australian Federal Police Act 1979, the Director of Public Prosecutions Act 1983 and Anti-Money Laundering and Counter-Terrorism Financing Act 2006 are all designed to improve and simplify the administration of the Australian Federal Police, the Director of Public Prosecutions and AUSTRAC. This bill advances Australia’s response to identity crime and enhances the ability of Commonwealth agencies to perform their functions.

Question agreed to.

Bill read a second time.

**OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) BILL 2010**

**OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (SAFETY LEVIES) AMENDMENT BILL 2010**

**Second Reading**

Debate resumed from 25 October, on motion by Senator Sherry:

That this bill be now read a second time.

(Quorum formed)

Senator BRANDIS (Queensland) (12.48 pm)—I welcome the opportunity—at last!—to speak on the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010 and on the Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010, which cover an industry which is of great significance not only to the Australian economy but also to Australian energy security.

The bills amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 to implement policy and technical amendments. The act was last amended in 2009. The Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010 amends the 2003 act to provide transitional arrangements in relation to the phasing out of the pipeline safety management plan levy. The Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010 amends the Offshore Petroleum and Greenhouse Gas Storage Act 2006. I should have done that in reverse. This is a relatively small bill, mak-
ing a number of minor policy and technical amendments.

In 2008, the coalition supported the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008, which amended the Offshore Petroleum Act 2006 to establish a system of offshore titles to authorise transportation, injection and storage of greenhouse gas substances, principally carbon dioxide, into deep geological formations under the seabed. Of course, there has been a great deal of talk and not much action, in relation to geosequestration, from those on the other side, although I did note with interest the announcement of the minister two weeks ago, where a significant amount of money was awarded to various projects in relation to carbon capture and storage. Interestingly, though, most of that money went overseas. It is of some interest to me that the Global Carbon Capture and Storage Institute, established with such fanfare by the previous Prime Minister, has really received no international support of any great moment. In fact, only one country out of the many said to be involved in that institute has actually put any money up. At last count, the Americans, who offered $500,000, did so a few days before they received $6½ million for a project in Texas.

Serious questions are now being asked about the economic viability of carbon capture and storage. The missing link in all of this, apart from the government’s continued talk and insufficient action, is that the coal industry is going to have to put real dollars on the table. They will not be surprised by that message. If carbon capture and storage is to be economically viable, the coal industry is going to have to invest substantial sums of money in it. I am not talking about hundreds of millions of dollars; I am talking about several billions of dollars. Without that support and without commitment from other countries, the concept being championed by the Minister for Resources and Energy will simply go nowhere, along with the myriad other policies that have been announced during the Labor Party’s time in government that have gone nowhere.

The coalition does support in principle the establishment of a national offshore petroleum regulator, but it must be a national, not a federal, regulator—that is, it must have representatives from those states which are involved in the regulation of offshore petroleum along with the Commonwealth government. It needs to be a partnership—a partnership where we all share responsibility and also share the aim of making sure that the regulator operates in a way which will produce the optimum outcome. We need to ensure that all states agree with the establishment and operation of the national offshore petroleum regulator.

That is achievable but, along with its inability to deliver, this government continually fails in the area of consultation. We have seen a classic example of that recently with the discussion paper—I think it was perhaps a ‘guide to a discussion paper’; it seems to be of less importance everyday—on water management. The Gillard government has the same bad trait that the Rudd government had, and that is that it fails to consult. We need to have consultation in the case of the national offshore petroleum regulator. It is an issue that needs to be finalised, but it will not be finalised unless this government consults with all concerned, particularly, with the Western Australian government.

Unfortunately, there is much work to be done if the government is to meet its responsibilities to the oil and gas sector. It is particularly frustrating that the government has again delayed the release of its energy white paper, which obviously impacts on the oil and gas industry and a whole range of energy resources, not the least of which is electric-
ity. While this legislation today is important to the oil and gas industry, it does, nevertheless, highlight the piecemeal approach to energy policy in Australia. The most recent delaying tactic occurred earlier this month when the government fobbed off once again the release of the energy white paper with another excuse, this time attempting to pass off an energy efficiency report as a temporary stand-in for the energy white paper. The report is not an energy white paper and does not fill the void created by three years of inaction in this area by the Rudd, and now Gillard, governments.

Households and businesses across Australia are focused on the rapidly escalating price of electricity. The federal government has comprehensively failed to provide leadership for the energy sector right across the board—electricity, oil, gas and coal—by dodging its responsibilities to provide the energy policy framework that would be contained in an energy white paper. There have been myriad excuses. First, there were the problems with the ETS. Now the Gillard government is trying to inflict more delays on the sector while its climate change panel deliberates for another year about a potential carbon tax.

The last energy white paper was delivered by the Howard government in 2004. In keeping with the regular five-year cycle, an updated version is now well and truly overdue. There have been enough excuses, enough delays and enough drip-feeds. It is time for the Gillard government to release a comprehensive energy white paper that will address the full range of issues affecting the energy sector.

Nevertheless, the coalition welcomes the changes to the legislation before the Senate today and supports the bills. The government must accept and address that its day of reckoning on energy matters is fast approaching. Every day it leaves the energy and resources sector without a clear framework is another day that investment decisions must be made in a policy vacuum and another day in which no solution is offered to limit the rapidly increasing electricity price rises being felt across Australia. The energy sector is so significant not only because of the price that the community pays for electricity but also because it is the basis of our economic development. There are a number of senators who are watching development in the onshore petroleum industry, particularly the coal seam industry, with great expectation, waiting for some definitive policies in relation to energy, from this government. While we as an opposition provide our constructive support where we can—as we do on these bills—we need to see some action if this country is to have the confidence to make investments that will see not only the exploration of oil and gas continue but also the development of onshore industries and, most importantly, the continued development of clean baseload electricity generation in Australia. With those remarks, I commend the bills to the Senate.

Senator SIEWERT (Western Australia) (12.55 pm)—While the Greens will not be opposing the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010 and the Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010, I did want to put on record our concerns that we still have not seen—and this will come as no surprise to the government, because I have been putting this issue on the agenda for some time—the Montara report released publicly. It was handed to government in June, and we have been concerned that the report has not been made public. The issue there for us is that we know from reading the transcripts from the Montara inquiry that there is a requirement for change to oil and gas regulation in this country. We be-
lieve that the transcript provides ways forward on that and we are anxious to see the government’s approach. We are pleased that parts of this bill do take some steps towards that. We understand that the government needed time to consider the report. However, we believe it is important that the public has access to that report as soon as possible and also understands where the government is going on oil and gas—its vision for oil and gas legislation in this country.

Having said that, we will not oppose these bills, because we can see this as a step in the right direction. We hope the government will articulate a framework for change to the oil and gas regulatory process and legislation as soon as possible. I know that many people, for example in my home state of Western Australia, are very anxious to see, first off, the Montara commission of inquiry’s report and also the government’s response.

The oil and gas industry, as Senator Brandis has said, is a very important industry to this country, no more so than in my home state of Western Australia, where the oil and gas industry is growing and more and more areas are being opened to oil and gas exploration and production. That industry (a) plays of an important role in our economy but (b) has enormous potential to pose risks to human lives and to our environment, as we saw with Montara. To a certain extent we in Western Australia escaped a bullet with the Montara leak in that the accident occurred further from the shore and it did not affect the Kimberley coast. With the level of oil and gas exploration and production that is going on in Western Australia, off the entire coast, there is a potential that we would not be so lucky in the future. In other words, we do not want to see an accident happen where oil and gas ends up on the shores of the Kimberley.

We have been very vocal in our opposition to the release of the Mentelle Basin, also known as the Naturalist Plateau, which is only 83 kilometres off the coast of Margaret River on the south-west coast of Western Australia. There is very strong opposition to the release of that area. In that case, if we had a spill the size of Montara it would end up from cape to cape on that south-west coast. If we had one the size of the spill in the Gulf of Mexico, it would end up on the beaches north of Perth and around the south coast. That is why we believe we need to amend our oil and gas legislation. There is very, very strong support in Western Australia for that.

This is a small step. We will be waiting very anxiously for the government’s release of the Montara report and to see their vision for the changes they are going to make to oil and gas legislation so that we can be confident we have the best possible regulation. World’s best practice is what we are looking for from the government in their response to any findings. I am sure that some strong findings were made, given the sort of evidence that was available in the transcripts. Very strong evidence was given and we expect to see a strong response from government.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (1.01 pm)—These bills underscore the government’s commitment to the maintenance and continuing improvement of a strong, effective framework for the regulation of offshore petroleum and greenhouse gas activities. By strengthening the functions and powers of the National Offshore Petroleum Safety Authority and clarifying titleholders’ occupational health and safety duties in relation to wells, the bills also demonstrate the government’s recognition that safety remains a key priority for the offshore petroleum industry and the government’s commitment to ensure
that safety matters are effectively incorpo-
rated within the offshore petroleum legisla-
tive regime. I thank senators for their contri-
butions and I commend the bills to the Sen-
ate.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining
stages without amendment or debate.

PRIMARY INDUSTRIES (EXCISE)
LEVIES AMENDMENT BILL 2010

Second Reading

Debate resumed from 25 October, on mo-
tion by Senator Sherry:

That this bill be now read a second time.

Senator COLBECK (Tasmania) (1.02
pm)—I rise to indicate the opposition’s sup-
port for the Primary Industries (Excise) Lev-
ies Amendment Bill 2010, which seeks to
amend the act to increase the cap on the re-
search and development component of the
chicken laying levy from 10c to 30c per lay-
ing chicken. The bill only approves a cap of
30c and is not a levy of 30c. The industry has
voted in favour of a levy of 13.5c per laying
chicken, which will be implemented as a re-
sult of the passing of this legislation. The
levy is imposed on laying chickens hatched
at any hatchery where at least 1,000 laying
chickens are hatched in a financial year and
it is imposed on laying chickens that are
older than 48 hours of hatching. It is impor-
tant to note that the industry has consulted
widely in making this decision to raise the
levy.

One thing I would like to put on the re-
cord is the potential impact on the price of
eggs in case there is any concern that that
might occur. According to the information I
have, on average each laying chicken will
produce about 27.5 dozen eggs during its
productive life, worth about $100 at the cur-
rent retail price, and therefore the cost of the
proposed levy increase per dozen eggs will
be about 0.09c from 1 July 2009 and an addi-
tional 0.013c from 1 July 2010. However,
due to the competition in the wholesale mar-
ket for eggs, egg producers tend to be price
takers and would most likely absorb the
costs, so there is little chance of a significant
increase in cost.

I will note that it is important that our
R&D is maintained at competitive levels. It
has been a factor that has maintained a com-
petitive advantage for our agricultural pro-
ducers. I also note that there is some concern
about the current circumstance with the gov-
ernment’s potential reduction of R&D for the
agricultural sector. It is one of the critical
matters for agriculture going forward. Ac-
cording to the former CEO of the National
Farmers Federation—I think the former CEO
or, if not, the about to be former CEO—Mr
Fargher, Australian farmers have a track re-
cord of success through research and innova-
tion to lead almost all Australian industries,
with average productivity growth of 2.8 per
cent per year for the last 30 years. Unfortu-
nately, that productivity growth has started to
fall away, so it is important that we continue
our efforts in respect of research and devel-
opment for our agricultural sector so that
they can maintain their global competitiv-
ness. I am happy to indicate the opposition’s
support for the legislation.

Senator FEENEY (Victoria—
Parliamentary Secretary for Defence) (1.05
pm)—I thank Senator Colbeck for his egg-
cellent contribution. I commend this bill to
the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining
stages without amendment or debate.
Debate resumed from 25 October, on motion by Senator Sherry:

That this bill be now read a second time.

Senator RONALDSON (Victoria) (1.06 pm)—I rise to speak briefly on the Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2010. It is not my intention to delay the Senate for too long today. This bill makes a number of minor housekeeping amendments to legislation affecting our veterans and ex-service people. I note that this bill was first introduced into the House of Representatives in November last year and lapsed when the election was called. It has been pushed through the parliament in the first three sitting weeks of this new parliament, which will ensure that the measures in this bill benefit our veterans.

While not opposing this bill, the coalition expresses some concern about the measures to enable the New South Wales state Labor government to charge an SES levy on insurance policy holders in that state. The state Labor government is so cash-strapped it is now expecting ordinary insurance policy holders to pay for their reckless spending. This is indeed a great shame. I note that this legislation allows for other state governments to also tax insurance policy holders with SES levies without requiring additional legislative change by the federal parliament. Insurance based taxes and levies are grossly unfair. They penalise those who choose to look after themselves. In Victoria we have the fire services levy, and in regional Victoria this is a big issue. The New South Wales state coalition did not support the SES levy; nevertheless, the state Labor government rammed it through. I note that in the other place, when this was being debated, one person who, not surprisingly, was very keen on increasing taxes was the member for Corangamite, Darren Cheeseman. He is well known for providing no support to the fishing industry. Darren Cheeseman is a great taxer of the people of Corangamite.

Another measure in the bill, to extend coverage of the white card to eligible Australian Federal Police officers who worked at Maralinga in the 1980s, is a welcome step. It is a continuation of arrangements put in place by the previous coalition government for British nuclear test veterans.

There are six other measures in the bill, which include: extending the period in which claims for medical related travel expenses can be lodged with the Department of Veterans' Affairs, from three months to 12 months; a technical change to the way documents are served under the Veterans' Entitlements Act 1986 and the Military Rehabilitation and Compensation Act 2004; a change to enable injuries sustained before 30 June 2004 to continue to be covered by the VE Act, where nominated by the veteran for that to occur; provisional amendments to include prisoners of war in the MRC Act so that compensation can be paid to eligible dependants of a POW taken prisoner after 1 July 2004; an alignment of the review and appeal processes between the Repatriation Medical Authority and the Specialist Medical Review Council; and, finally, minor amendments to the way lump sum payments are made under the MRC Act.

I am pleased to say the coalition is not opposing this bill and I commend the bill to the Senate.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (1.10 pm)—The Veterans’ Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2010 will improve the support provided
to our veterans, members and their dependants. The improved support includes giving
veterans and service members more time to make claims for non-treatment related travel
expenses. This involves extending from three to 12 months the time limit within which
such claims must be lodged. Amendments in the bill will make it clear that, as intended,
compensation will continue to be payable to eligible members where an initial war or de-
fence caused injury or disease is aggravated or materially contributed to by service under
the Military Rehabilitation and Compensation Act. The bill will also ensure that the
payment of a pension to the dependant of a veteran who was a prisoner of war will con-
tinue, as originally intended after the commencement of the Military Rehabilitation
and Compensation Act in 2004.

Other changes made by the bill will pro-
tect the interests of compensation recipients
under the Military Rehabilitation and Comp-
ensation Act by requiring that certain comp-
ensation payments be made to an account
maintained in the compensation recipient’s
name. The bill will also enable Victoria
Cross and decoration allowance recipients to receive both Victoria Cross or decoration
allowances under the Veterans’ Entitlements
Act and a Victoria Cross or decoration al-
lowance or annuity from a foreign country.

The bill will ensure that the Australian
Protective Service officers involved in pa-
trolling the exclusion zone at Maralinga be-
tween 1984 and 1988 are covered by the
Australian Participants in British Nuclear
Tests (Treatment) Act.

Other changes in the bill will enable De-
fence Service Homes Insurance to contribute
to the cost of providing emergency services
in New South Wales through the payment of
a state emergency services levy. The levy
will be collected from Defence Service
Homes Insurance policy holders and remitted
to the New South Wales government.

The bill includes minor changes to im-
prove the operation of the Specialist Medical
Review Council, firstly, by making it clear
that the Specialist Medical Review Council
may review a decision of the Repatriation
Medical Authority not to amend a statement
of principles; and, secondly, by enabling the
Specialist Medical Review Council to review
both versions of a statement of principles
that relate to a particular condition, even if
an applicant has requested a review of only
one of the statements of principles.

Finally, the bill will enable certain entities
under the Veterans’ Entitlements Act and the
Military Rehabilitation and Compensation
Act to specify the manner in which notices
and other documents may be served. This
will ensure that the legal effect of such no-
tices and documents is protected.

The changes made by the bill will enhance
the services and support we provide to our current and former military personnel and
their families.

Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages
without amendment or debate.

FOOD STANDARDS AUSTRALIA NEW
ZEALAND AMENDMENT BILL 2010

Second Reading
Debate resumed from 25 October, on mo-
tion by Senator Sherry:

That this bill be now read a second time.

Senator COLBECK (Tasmania) (1.14
pm)—I rise to speak on the Food Standards
Australia New Zealand Amendment Bill
2010. The issue of food standards in Aus-
tralia is obviously a significant concern, and we
understand that the government is currently
undertaking a process of review of food labelling in Australia under the Food Standards Australia New Zealand Act. We are waiting for the report of the inquiry that the government has commissioned which is due to be handed to the ministerial council, as I understand it, in December of this year and then on to COAG next year.

The issue of labelling under the Food Standards Australia New Zealand process is of significant concern in regional communities. There is a large concern amongst growers in particular that identification of product and its providence be accurately provided. In fact, last week I was talking to a group of fishermen in Northern Queensland who are very concerned about how their products are managed and labelled through the restaurant process. We recognise and acknowledge the labelling that has been provided for all fresh vegetables, fish, fruit and nuts and those sorts of things through the supermarkets and I think that is recognised by the producers as having had a positive impact on their products. We look forward to a continuation of the process through the mechanisms the government currently has in place and the fruition of those through the ministerial council and COAG process into next year.

Senator FIERRAVANTI-WELLS (New South Wales) (1.15 pm)—The Food Standards Australia New Zealand Amendment Bill 2010 seeks the recognition by Food Standards Australia New Zealand of the Australian Pesticides and Veterinary Medicines Authority, APVMA, residue risk assessment and the promulgation of the resulting maximum residue limits in the Australian New Zealand Food Standards Code, the food code.

At present we have two bodies and what this is going to do is reduce duplication. There is the compliance cost that currently exists, in particular, for primary producers and so this is a very sensible reform which will assist our primary producers. These reforms stem from a Howard government initiative designed to reduce red tape on business. The Productivity Commission undertook an inquiry into chemicals and plastic regulations. Following the release of their report, the recommendation was adopted by COAG on 3 July 2008.

The coalition supports this bill. We know that it will be welcomed by primary producers. It will also be welcomed by groups such as the National Farmers Federation, by pastoralists and by graziers’ organisations. The question we have is why it has taken two years to actually get to this point and to get legislation to the parliament. Indeed, the Productivity Commission indicated that this can be done quickly, and COAG agreed, yet I place on record the coalition’s concern that it has taken two years to get to this point. We have no reasons as to why this has happened but, in the interim, primary producers have continued to bear costs.

This is a bill that was introduced in the dying days of the last parliament and referred to a Senate committee, which enabled stakeholders an opportunity to put forward their concerns relating to public health and safety. As it now stands, stakeholders support the legislative change to remove the various inconsistencies between the two regulatory bodies. The coalition supports this bill.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (1.18 pm)—I just make the point on the Food Standards Australia New Zealand Amendment Bill 2010 that implementation of the reform has been delayed due to the need to resolve a number of complex legal issues relating to the respective roles of Food Standards Australia New Zealand and the Australian Pesticides and Veterinary Medicines Authority while ensuring that the integrity of the regulatory
systems both for food and for agricultural and veterinary chemicals is maintained. Without further ado, I thank senators for their contribution to the debate on this bill and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

CARER RECOGNITION BILL 2010

Second Reading

Debate resumed from 25 October, on motion by Senator Sherry:

That this bill be now read a second time.

Senator FIFIELD (Victoria) (1.20 pm)—I rise to speak on the Carer Recognition Bill 2010 and, in so doing, I wish I was rising to speak to a bill that gave carers a better deal. I wish I was rising to speak to a bill that did more than just recognise and one that actually delivered. This is not such a bill. The coalition will not oppose the bill. The bill sets out a statement for Carers Australia. The statement does not create rights but instead will establish key principles to provide guidance on how carers should be treated and considered by public service agencies and associated providers.

The bill establishes a legislative framework to increase recognition and awareness of informal carers and acknowledges the valuable contribution they make to society. And, as I have mentioned, it is the first element of the development of a National Carer Recognition Framework.

But the important thing to emphasise with this bill is that it is purely symbolic. It does not contain any practical measures to assist carers. I made reference to the Statement for Australia’s Carers which is at schedule 1 of the bill. At point 1 of that statement it says:

All carers should have the same rights, choices and opportunities as other Australians ...

All carers should have the same rights. Yet in part 4 of this bill it says:

This Act does not create rights or duties that are legally enforceable in judicial or other proceedings.

So the first statement of the schedule for Australian carers is that all carers ‘should have the same rights’, yet the same bill says that this act ‘does not create rights or duties that are legally enforceable’. And it goes on to say:

During Carers Week in October last year the Minister for Families, Community Services and Indigenous Affairs announced the government would develop a carer recognition framework and introduce legislation to parliament in 2010. The Carer Recognition Bill was introduced into the last parliament but lapsed due to the election and the bill that has been reintroduced is unchanged.

As I mentioned the coalition will not oppose the bill. The bill sets out a statement for Carers Australia. The statement does not create rights but instead will establish key principles to provide guidance on how carers should be treated and considered by public service agencies and associated providers.

The bill establishes a legislative framework to increase recognition and awareness of informal carers and acknowledges the valuable contribution they make to society. And, as I have mentioned, it is the first element of the development of a National Carer Recognition Framework.

But the important thing to emphasise with this bill is that it is purely symbolic. It does not contain any practical measures to assist carers. I made reference to the Statement for Australia’s Carers which is at schedule 1 of the bill. At point 1 of that statement it says:

All carers should have the same rights, choices and opportunities as other Australians ...

All carers should have the same rights. Yet in part 4 of this bill it says:

This Act does not create rights or duties that are legally enforceable in judicial or other proceedings.

So the first statement of the schedule for Australian carers is that all carers ‘should have the same rights’, yet the same bill says that this act ‘does not create rights or duties that are legally enforceable’. And it goes on to say:
A failure to comply with this Act does not affect the validity of any decision, and is not a ground for the review or challenge of any decision.

So I just think it is very important that we keep this particular piece of legislation in perspective. Yes, we are all in heated agreement that carers deserve recognition, but let us not pretend that this piece of legislation conveys or confers any new rights on carers despite what the act says at its opening, because later in the act it makes it clear that it does no such thing.

It is because this bill is purely symbolic that we think it is very important that practical measures not be neglected. That is why the coalition developed some practical policies for the last election to give real support to carers. For instance, the coalition promised to establish a Young Carer Scholarship program so that some 400,000 Australians under the age of 26 who care for a person with a disability or long-term illness could be considered for this particular scholarship program. The Australian Bureau of Statistics data show that 6.6 per cent of carers are aged 18 years and under and many of these young carers are missing the chance to further their education or to take part-time work to help them through secondary school or university. The coalition’s Young Carer Scholarship program would assist young carers through their secondary, TAFE and university studies. Under this program at least 150 annual scholarships valued up to $10,000 would be awarded depending on the level of education involved.

The coalition has also announced a plan to establish a Commonwealth Disability and Carer Ombudsman to give carers a real and independent voice and to be a policy activist within government for carers. These are just two practical initiatives which we would hope the government would take up so that what this particular administration does for carers is more than symbolic. Symbolism is important, recognition is important, but we also have to make sure that there are practical measures that assist carers.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (1.26 pm)—I am very pleased to be able to be in the chamber today to see the carriage of this important piece of legislation. The Carer Recognition Bill 2010 is the government’s legislative commitment to recognise and acknowledge the vital contribution that carers make to Australian society. The bill recognises that carers make a huge contribution to helping family members, friends and neighbours to live at home and remain connected to the community. It is time to recognise, respect and value the role of carers in Australia, and this bill is a step forward towards improving the lives of carers and people for whom they care. It will benefit society as a whole.

Last year the government heard carers’ calls for greater acknowledgement and increased recognition. This message came through loud and clear when the House of Representatives Standing Committee on Family, Community Housing and Youth tabled its report, Who cares...?: Report on the inquiry into better support for carers. Central to the government’s response to this inquiry was a commitment from the Commonwealth to lead the development of a National Carer Recognition Framework. This bill is the first element of that framework. It formally acknowledges the vital contribution that carers make to Australian society. This bill complements the carer recognition legislation already in place in some states and territories.

There are several key elements to the bill. Firstly, the bill establishes a broad and encompassing definition of ‘carer’. This definition captures the diversity of carers and care relationships. Importantly, the bill sets out a
statement for Australia’s carers. The statement contains 10 key principles that articulate how carers should be treated and considered in the policy, program and service delivery context. Public service agencies will be required to take all practicable measures to ensure their staff have an awareness and understanding of the principles in the statement. Public service care agencies will also need to ensure that their staff take action to reflect the statement’s principles when developing, implementing and providing or evaluating policies, programs or services directed to carers or the people for whom they care. The statement extends to associated providers, people or bodies contracted or funded by public service care agencies and their immediate contractors. These associated providers will need to ensure staff and agents have awareness and understanding of the statement’s principles and take action to reflect the principles when they develop, implement, provide or evaluate policies, programs or services directed to carers or to the people for whom they care.

The bill directs that public service agencies when developing human resource policies are to have due regard to the statement for Australia’s carers where those policies significantly affect an employee’s caring role. The bill directs public service care agencies to consult with carers and the bodies that represent them in the development and evaluation of policies, programs and services that are directed to them and to the people for whom they care. Public service care agencies will also be required to report publicly in their annual reports on their compliance with their obligations under the legislation.

The bill supports the work the government is undertaking to reform the system of support for carers and the people for whom they care, and recognises that carers should have the opportunities and the capacity to enjoy optimum health and wellbeing and social and economic participation. Implementation of the bill will drive a much needed increase in awareness and understanding of the role and contribution of carers. It will drive a much needed cultural and attitudinal shift so that carers’ interests are taken into account by Public Service agencies and service providers. Raising the status and the profile of the caring role will assist in improving the community’s awareness and recognition of carers and the people for whom they care.

I was somewhat disappointed with the tone of Senator Fifield’s contribution. The bill will deliver structural reform that will improve the way carers navigate their lives in terms of policy development, program design and service delivery. This is cultural change. Real systemic change will result from the passage of this bill. This will over time change the practices that mean that carers are terribly socially isolated, as we know. They will be considered by governments and government departments—this is not something that will just happen in FaHCSIA; this will happen across the whole of government. Unlike you, Senator Fifield, I do believe this will bring real change in their lives of the many hundreds of thousands of carers who care for those they love in this country.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

TRADEX SCHEME AMENDMENT BILL 2010

Second Reading

Debate resumed from 25 October, on motion by Senator Sherry:

That this bill be now read a second time.

Senator COLBECK (Tasmania) (1.32 pm)—I rise to briefly speak in support of the
Tradex Scheme Amendment Bill 2010. The government has given assurances that this legislation is merely to clarify eligibility status of partnerships for assistance under the Tradex Scheme and to remove some redundant provisions from the act. This scheme was put in place by the Howard government in 2000 as a key initiative of its industry statement at the time. It has played an important role in streamlining the way that relief is provided for businesses paying customs and GST on imported products which are ultimately intended for re-export.

On the understanding of the assurances that the government have provided to the opposition and their intention to continue to provide good stewardship of this scheme, the opposition is happy to support this legislation.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (1.33 pm)—I thank all senators for their contribution to the debate on the Tradex Scheme Amendment Bill 2010.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS MANAGEMENT AMENDMENT BILL 2010

Second Reading

Debate resumed from 25 October, on motion by Senator Sherry:

That this bill be now read a second time.

Senator ABETZ (Tasmania) (1.34 pm)—The coalition supports the Ozone Protection and Synthetic Greenhouse Gas Management Amendment Bill 2010. In fact, it was the coalition that introduced the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill in 2003 to place controls on substances that have a detrimental environmental impact on the global atmosphere, particularly ozone-depleting substances and synthetic greenhouse gases used as an alternative to ozone-depleting substances. Indeed, I recall that some 20 or so years ago in the Tasmanian Liberal government the then environment minister, Peter Hodgman, leading the way in Australia in this very area. The coalition has long had a strong practical action plan, and that has been well documented in the other place.

For the purposes of the record, the objectives of the bill are: to provide greater flexibility to the penalty regime, to allow ongoing staged phase-out of equipment in Australia using hydrochlorofluorocarbon to complement the staged phase-out of bulk HCFC imports needed to service this equipment, to codify the rights of those being investigated for any breach of the act and to clarify the definition of ‘forfeitable goods’ and its application to avoid confusion for users over what a forfeitable good is and make it easier for inspectors to enforce the act. The coalition supports this bill.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (1.36 pm)—I thank senators for their contribution to the debate on the Ozone Protection and Synthetic Greenhouse Gas Management Amendment Bill 2010.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.
Senator FIELDING (Victoria—Leader of the Family First Party) (1.37 pm)—by leave—I move Family First amendments (1) to (3) on sheet 6174:

(1) Clause 2, page 2 (table item 1), omit “3”, substitute “4”.

(2) Page 2 (after line 11), after clause 3, insert:

4 Criminal name change information

Object

(1) The object of this section is to advance a nationally-consistent approach to recording criminal name change information in police databases to ensure that criminal history checks are accurate and comprehensive.

Report on existing measures

(2) The Minister must, not later than 6 months after the commencement of this section, cause a written report to be prepared on:

(a) whether police databases are accurate and comprehensive in providing criminal history checks, particularly where name-based searches are involved;

(b) the measures that exist across Commonwealth, State and Territory jurisdictions to ensure that criminal name change information is properly recorded on police databases;

(c) the barriers that prevent criminal name change information being properly recorded on police databases;

(d) the measures that can be taken by the Commonwealth, working together with the States and Territories, to ensure that criminal history checks are as comprehensive as possible.

(3) To assist in preparing the report, the Minister must request information from the ministers responsible for police in each State and Territory.

(4) The Minister must cause a copy of the report prepared under subsection (2) to be laid before each House of Parliament within 9 sitting days after the Minister receives the report.

Annual report on progress

(5) As soon as practicable after 30 June each year, commencing 30 June 2010, the Minister must cause a written report to be prepared on the progress that has been made:

(a) in developing and implementing a nationally-consistent approach which ensures that all criminal name change information is transmitted to, and recorded on, police databases; and

(b) in removing any barriers that prevent criminal name change information being properly recorded on police databases; and

(c) in ensuring that criminal history checks are as comprehensive as possible.

(6) The Minister must cause a copy of each report prepared under subsection (5) to be laid before each House of Parliament within 9 sitting days after the Minister receives the report.

Interpretation

(7) In this section:

criminal name change information means any information received by any Commonwealth, State or Territory agency, or recorded in a database of any such agency, which indicates that a person with a criminal history has:

(a) registered a change in his or her name, whether by deed poll or by any other formal process; or

(b) adopted a new name by any informal process.
police databases means the databases used by police and other agencies in the Commonwealth and in each State and Territory to undertake criminal history checks.

(3) Page 37 (after line 16), at the end of Schedule 7, add:

5 At the end of Division 2 of Part III
Add:
16AA Criminal name change information
(1) Nothing in this Act prevents, or is intended to prevent, an agency transferring criminal name change information to another agency for the purpose of recording that information in a police database.
(2) In this section:
criminal name change information means any information received by any Commonwealth, State or Territory agency, or recorded in a database of any such agency, which indicates that a person with a criminal history has:
(a) registered a change in his or her name, whether by deed poll or by any other formal process; or
(b) adopted a new name by any informal process.
police database means any database used by the police or other agencies in the Commonwealth or in any State or Territory to undertake criminal history checks.

In my speech in the second reading debate I spoke about the issue of how someone can hide their criminal history by changing their name by deed poll. It is an issue I have been working on for quite a few years, and I did note that the government is undertaking various actions to resolve this issue. I would like to ensure those actions are followed through by making sure that these amendments that I have put forward force the government to report back to the Senate and hold them more accountable. Amendment (3) also deals with making sure that the Privacy Act does not stand in the way of further action being taken. I commend the amendments to the Senate.

Senator FIFIELD (Victoria)—Manager of Opposition Business in the Senate (1.38 pm)—I indicate that the opposition will not be supporting the amendments.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (1.38 pm)—The government will not be supporting the amendments.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (1.39 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Sitting suspended from 1.40 pm to 2.00 pm

QUESTIONS WITHOUT NOTICE

Broadband

Senator HUMPHRIES (2.00 pm)—My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. I refer the minister to a report in the Australian newspaper on Tuesday that the ISP Exetel, despite—

Government senators interjecting—

The PRESIDENT—Order! Senator Humphries, you deserve to be heard in silence. On my right I need silence.

Senator HUMPHRIES—I seem to have raised a sensitive subject. I refer the minister to the Australian newspaper on Tuesday in which it was reported that the ISP Exetel, despite offering connections to the NBN for
free, has only subscribed 18 customers in the five months since commencing that offer. Given that the government cannot even give away the NBN for free, what will be the real financial impact for the Commonwealth of this white elephant?

Senator CONROY—I thank Senator Humphries for his lack of interest in this topic for many years, but we will be fibring-up Gungahlin for you. You should feel free to go to Gungahlin and explain to those residents that you want to stop it.

The PRESIDENT—Senator Conroy, address your comments to the chair.

Senator CONROY—I apologise, Mr President, and I accept your admonishment. Senator Humphries is trying to stop the broadband network from being built. He should go to Gungahlin and explain to all the residents of Gungahlin, who have had absolutely appalling broadband, that he wants to stop it.

On to Tasmania and the report—since we officially launched on 12 August 2010, the NBN in Tasmania has seen a steady increase in the take-up of services. Following community consultation in the first release site, there has also been a strong and positive consent rate of residents choosing to connect to the NBN. For the interest of those opposite—and you can draw your own conclusions about the comments of a particular RSP, as we call them—Telstra announced that for the first time as part of the agreement they were going to test the network of NBN. They said they were going to trial it for 100 people—

Senator Brandis—On a point of order, Mr President. The minister was asked about a number. He was asked the financial cost to the Commonwealth and he has not been directly or even indirectly relevant to that. He should be required to address the question: what is the financial cost?

The PRESIDENT—The question was broader than that. That was part of the question, you are quite correct. There is no point of order so I advise the minister that he has 38 seconds remaining to answer the question.

Senator CONROY—In Tasmania, Telstra announced that they were going to trial 100 people using the National Broadband Network. They had 700 applications; 700 people wanted to trial the National Broadband Network and they can only fit in 100. I cannot explain to you why one RSP has this many customers and another RSP has a different number of customers. You might want to have that conversation with the individual. We are offering a very significant paradigm shift. I have said this publicly before and I have also said I do not know if this model will work. (Time expired)

Senator HUMPHRIES—Mr President, I will try again and ask a supplementary question. I refer the minister to his statement made on Insiders on Sunday:

… all of the arguments around take-up are irrelevant once we reach the agreement with Telstra.

What will be the financial impact for the Commonwealth if the government fails to reach agreement with Telstra.

Senator CONROY—The government has reached an agreement with Telstra, a heads of agreement. In the process there are going to be significant savings for taxpayers and significant savings for the NBN Company from this agreement. The agreement that we have reached is worth $11 billion. It is a 100-page heads of agreement—

Honourable senators interjecting—

The PRESIDENT—Order! There is too much noise in the chamber.

Senator CONROY—We are in the process of finalising the agreement. This agreement is being recommended to shareholders by the board so unless they are in breach of
the corporations law they are recommending the agreement to their shareholders. You might want to speculate about hypotheticals, what will or will or not happen, but we are engaged in— (Time expired)

Senator HUMPHRIES—Mr President, I ask a further supplementary question. Given the minister cannot explain to the Senate the financial impact of the lower-than-expected take-up of his NBN and he cannot explain the potential failure of not reaching an agreement with Telstra, will he at least refer the so-called paradigm shifting, game-changing pricing structure of the NBN to the Productivity Commission to provide him with the answers he clearly does not have himself?

Senator CONROY—Your question started with a false premise and it just goes wrong from there. I was talking about paradigm-shifting for the new pricing product offered by the company you were referring to. The NBN is changing the entire structure of the market. In the new structurally separated market, which those opposite have now finally decided they support, there will be a paradigm shift. But let me be very clear about this: your premise is false. We do not have a low take-up; we are actually ahead of schedule. I listed them yesterday and I will proudly list them again for you: Willunga, 87 per cent; Armidale, 84 per cent—

Senator Brandis—How many people live in Willunga?

Senator CONROY—Well, unlike you, we actually care how many people live in Willunga and we care about giving them broadband.

Senator Brandis interjecting—

Senator CONROY—Senator Brandis, if you want to go to Willunga and tell them they cannot have it, feel free. I will come and stand next to you. You come to Willunga and tell them they cannot have it. I will stand right next to you. You can come and tell them. (Time expired)

Economy

Senator MARSHALL (2.08 pm)—My question is to the Minister for Finance and Deregulation, Senator Wong. Can the minister outline to the Senate and the importance of long-term sustainable economic reform and how the government proposes to boost productivity and participation? Is the minister aware of any alternative approaches that would hinder this reform agenda?

Senator WONG—I thank Senator Marshall for his question. We on this side of the chamber do understand the importance of long-term economic reform and the importance of boosting productivity and participation. This is a party of economic reform. Labor oversaw the modernisation of the Australian economy. We floated the dollar, brought down tariffs and introduced a modern superannuation system—the last of which was opposed vehemently by the Liberal Party—and we have a plan to boost productivity and participation through our investments in human capital. We are strengthening our financial system, reforming our education system and reforming our telecommunications sector and we are committed to progressing further reforms today to meet the challenges of tomorrow—such as tax reform, a carbon price and doing more on superannuation.

Let us contrast this with those opposite. We have an opposition that does not know what its plan for the economy is, an opposition that does not know what its reform agenda is and it is an opposition that does not even know if it wants Mr Hockey to remain as shadow Treasurer. What the opposition do know, as we have already seen today in question time, is how to quote from the Australian. I wonder if they would be interested in commenting on a paragraph by Matthew Franklin in the Australian. He said:
Mr Hockey is in deep strife with his colleagues, who blame him for inviting Gillard’s attacks with loose comments about the need for government to use levers to prevent banks from increasing interest rates beyond increases made to the official rate by the Reserve Bank.

That was from the opposition’s journal of choice, their preferred reading before question time. It points out not only the many positions they have adopted but also their own internal strife. This is an opposition that is completely divided and unable to put forward anything positive. *Time expired*

**Senator Marshall**—Mr President, I ask a supplementary question. Can the minister outline to the Senate the importance of sensible policies to build the capacity of the Australian economy and does the minister believe there are challenges ahead in relation to capacity building?

**Senator Wong**—There are substantial challenges in relation to capacity building. We understand that. That is why we put in place a range of policies prior to the election and have made further commitments which are about increasing the capacity of the Australian economy. But one of the most significant challenges is the fact that those opposite are intent on saying no and tearing down and wrecking any sensible economic reform. During the election campaign, amongst the things that Mr Abbott proposed to cut were the trades training centres, Computers in Schools and the National Broadband Network. It is quite clear that those opposite wish to tear up any of the investments which go to the long-term challenges that the nation faces, because they are unable to put forward a sensible agenda to boost productivity, boost participation and increase the capacity of the Australian economy in the years ahead to meet the challenges that we know exist.

**Senator Marshall**—Mr President, I ask a further supplementary question. Can the minister outline to the Senate the government’s views on recent commentary on economic policymaking, including any alternative approaches to economic reform?

**Senator Wong**—We certainly have had a range of alternative approaches, and I have traversed some of them in previous question times this week—various thought bubbles from Mr Hockey and from Mr Robb. This contrasts with the long-term plan that this government has to reform the Australian economy, improve participation and boost productivity, as well as our commitment to strict fiscal rules. The reality is that the opposition we see today are so focused on internal divisions that they are unable to develop any credible economic policy and they are threatening to cut the very investments that would boost the capacity of the Australian economy. It is quite extraordinary. We have Mr Hockey apparently indicating to the papers that he thinks it is either Mr Turnbull, Mr Robb or Mr Macfarlane behind the leak. This is what they are focused on. Not only would they rather see the government fail than the nation succeed, but now their priority is to see each other fail *Time expired*

**Distinguished Visitors**

The President—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from Argentina led by Senator Sonia Escudero. I also acknowledge the sad occasion of the passing overnight of the former President Nestor Kirchner (President of Argentina 2003-07), who was also the husband of the current President Cristina Fernandez de Kirchner. I convey the condolences of all senators to you at this sad time, but I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!
QUESTIONS WITHOUT NOTICE

Broadband

Senator BARNETT (2.14 pm)—My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Can the minister please advise the total cost to date of the National Broadband Network rollout in Tasmania?

Senator CONROY—It is a great mystery to me that I keep getting asked this question. We have completed stage 1 and we are in the process of starting up stage 2—something that has been mentioned in the chamber already. It is supported by the Tasmanian Liberal Party. But what I find comical is that Senator Barnett turned up at estimates and asked me a string of questions that had actually been answered many months before.

Senator Cormann—You obviously do not know the answer!

Senator CONROY—We know the answer. The problem is you do not know the answer when it is already on the public record.

Senator Ian Macdonald—Mr President, it distresses me to have to take a point of order on relevance. It is quite clear that the minister has not addressed the one issue raised by Senator Barnett. He only raised one issue: what is the cost. Talking about what Senator Barnett might or might not have done at estimates cannot be anywhere near the requirement of ‘directly relevant’ to the question of the cost of the rollout in Tasmania. Mr President, can I ask you to say to the minister that if he does not know the question he should sit down. He should not be allowed to prattle on about what opposition senators might have done at estimates or elsewhere. If he cannot answer the question, Mr President, you have an obligation to sit him down.

Senator Ludwig—Mr President, on the point of order: what the opposition have clearly not been doing is listening to the answer that Senator Conroy has been giving. Senator Conroy has been answering the question. The answer was, if you recall, that it was on the public record. That is clearly within the definition of being relevant to the question. The minister has been answering the question. Those opposite, if they do not read all the public editions, clearly read the Australian, as the first question provided. Nevertheless, the minister is being relevant to the question and there is no point of order.

The PRESIDENT—The standing orders allow two minutes for the answering of the question. The minister still has one minute 25 seconds remaining of that two minutes in which to answer the question. I cannot instruct the minister how to answer the question, although I am listening to the minister’s answer to the question to ensure that the question is addressed.

Senator CONROY—As I was saying, Senator Barnett came and asked this very question at estimates. If he had bothered to read the Hansard from the previous estimates he would have found the entire contractual price: $37 million. As Mr Quigley has repeatedly said, for stage 1 at $137 million we came in under budget and on time. The reason I cannot answer that specifically is that there is a range of contracts that are currently about to be finalised. So when you say ‘to date’ do you mean at five o’clock today? I am not sure if it was signed yesterday. It may have actually been signed yesterday, Senator Brandis, but I am not managing it on a day-to-day basis. It is actually run by NBN Co. So, if you want to know what stage 1 costs, it has already been put on the public record, and despite Senator Barnett not wanting to bother reading Hansard—
Senator Barnett—Mr President, a point of order on relevance: Senator Conroy has referred to a $37 million contract. I asked the question of the total cost to date of the rollout in Tasmania. The senator refused to answer this question at Senate estimates. He is refusing again today. He knows the answer and he is refusing to advise the Senate of the answer. I would ask you to ask him to answer the question or sit him down.

Senator Chris Evans—Mr President, on the point of order: I think Senator Barnett just proved the point Senator Conroy made about not listening. He was directly answering the question, indicating what stage 1 had cost and describing the contractual arrangements that would incur further costs. He could not have been more direct if he tried. So I would suggest Senator Barnett listen to the answer, given it is his third go at it.

Senator Brandis—Mr President, on the point of order: in his answer a few moments before Senate Barnett’s point of order was taken, Senator Conroy said ‘The reason I cannot specifically answer your question’ and went on to explain why he could not answer the question. Now that he has told the Senate that he cannot answer the question, what further he has to say can have no bearing on the question.

The President—That is not a point of order. I cannot instruct the minister how to answer the question. Senator Conroy, continue.

Senator Conroy—There is a contractual process that is possibly complete or possibly not complete—and no, I do not get a daily update. That is no great surprise. I do not get a daily update on Australia Post’s operations either—how many postmen went out today. (Time expired)

Senator Barnett—Mr President, I ask a supplementary question. Clearly, the minister has demonstrated he is not on top of his brief. Now that the government has back-flipped and agreed that NBN Co. should install and pay for a backup battery with every broadband connection, does it agree with the McKinsey-KPMG report that this will cost an additional $90 million to $150 million each year? Will it reimburse Tasmanians and others who have already paid for the backup batteries?

Senator Conroy—We are in the process of conducting the pilot in Tasmania. The McKinsey report made a number of recommendations, which the government has been considering, but as I have made clear recently we intend to mandate that there be battery backup as insurance if a home, for instance, catches fire as part of the contractual basis from NBN Co. We have made it very clear. We have stated it on a number of occasions—NBN Co. I do not know how many more times I have got to say that to you.

Senator Abetz—That was a firm contract. Do you know the price? Was it budgeted?

Senator Conroy—Was it budgeted in what, Senator Abetz?

The President—Order! Senator Abetz and Senator Conroy, there should be no exchange across the chamber. Senator Conroy, you should be directing your comments to me.

Senator Conroy—The NBN business case, which I will receive very shortly, Mr President, includes that cost. This was a decision that I informed NBN Co. of many, many weeks ago, long before it came up as a public matter of discussion. (Time expired)

Senator Barnett—Mr President, I ask a further supplementary question. Senator Conroy has refused to answer whether he will reimburse Tasmanians or others who have already paid for the backup batteries. Now that the minister has conceded that they do not have a business case prepared yet for
the NBN, will the minister agree, upon receipt of that business plan, to release it? Secondly, why won’t the minister submit Australia’s biggest infrastructure project to a cost-benefit analysis?

Senator CONROY—As I have indicated many times, subject to any commercial-in-confidence issues, we will be releasing a raft of information around the business plan. The reason that we are not going to waste Australian taxpayers’ money is that there are hundreds of cost-benefit analyses around Australia about the benefits of broadband to productivity. There are hundreds of them. All you have to do is stop being lazy and actually do it. But the premise of the cost-benefit argument is that you start off with a loss in the business case. As McKinsey made clear, it is financially viable and delivers affordable broadband. I am confident that the business case we are going to be receiving shortly will absolutely reinforce the business plan.

Senator Barnett—Will you release it?

Senator CONROY—As I have said, subject to items that may be commercial-in-confidence, the details will be released. (Time expired)

Murray-Darling Basin

Senator HANSON-YOUNG (2.24 pm)—My question is to the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, Senator Conroy. Senator Conroy, I hope you still have some voice left. Will the minister confirm that a requirement of the constitutional head of power, under section 51 of the Constitution, on which the Water Act is based, is to uphold our obligations under international environmental treaties and that therefore any reforms to the Murray-Darling Basin under the act must deliver environmental sustainability and protection?

Senator CONROY—As has been argued and discussed and debated in the last few days in this chamber, the government sought legal advice about the interpretation. It has been tabled, but I will go through it again. Broadly, the advice outlines that the Water Act gives effect to relevant international agreements, provides for the establishment of environmentally sustainable limits on the quantities of water that may be taken, provides for the use of the Murray-Darling Basin water resources in a way that optimises economic, social and environmental outcomes, improves water security for all users and, subject to the environmentally sustainable limits, maximises the net economic returns to the Australian community.

The international agreements which underpin the Water Act recognise the importance of social and economic factors. The act specifically states that, in giving effect to those agreements, the plan should promote the use and management of basin water resources in a way that optimises economic, social and environmental outcomes. So it is clear from this advice that environmental, economic and social considerations are central to the Water Act and that the basin plan can appropriately take these into account.

The key challenge before the parliament is for this to be the term in which action is taken across the basin to restore the system to health. We need to do this in a way that delivers three core outcomes: healthy rivers, strong communities and food production. Sensible reform will find a way to provide all three. The government trusts that the issuing of this advice provides a level of confidence that it is possible to provide sensible and lasting—(Time expired)

Senator HANSON-YOUNG—Mr President, I ask a supplementary question. I thank the minister for his answer. The minister referred to the requirement under the act to restore the river to health. We know that in order to do that we must see a return of no
less than 3,000 to 4,000 gigalitres. That would be upholding our requirements under the act. Will the government confirm their commitment to delivering this?

Senator CONROY—As Minister Burke has repeatedly said, ultimately this will be a vote of this parliament, as is set out clearly in the legislation. We remain firmly committed to getting the balance right between the environmental, economic and social considerations. The minister will comply with his responsibilities by putting legislation, regulation, before this parliament to determine what the final outcome is. So the question is a little premature. What I think we have seen in the last couple of weeks is a realisation that further consultation is needed, further analysis is needed—and that is exactly what the minister has set in place. We are in a circumstance where the government will follow the letter of the law as we are required to. Minister Burke will comply with all of his obligations and ultimately this parliament and this chamber will be part of the process. (Time expired)

Senator HANSON-YOUNG—Mr President, I ask a further supplementary question. Given the lack of commitment to delivering the minimum amount required to return the river to health, it seems as though the public have no other option than to assume that the government is backing away from upholding the requirements of the act. Could I please ask the government whether they will rule out any amendments to the Water Act?

Senator CONROY—I reject that assertion and the assumption underpinning the question. I do not think it is in any way possible to characterise Minister Burke’s statements in the way that you have described. This was an act of parliament that started off on that side of the chamber with all support and that was amended, with everyone’s support, in the previous parliament. This is an act that people are very comfortable with. If we have differing interpretations, that is the reason that the minister sought the advice. So we are comfortable—

Senator Hanson-Young—Mr President, I rise on a point of order. I put a very specific question to the minister: will the government rule out amending the Water Act? That is the question that has been put to the minister. I would like him to answer it.

Senator Ludwig—Mr President, on the point of order: I assume that Senator Hanson-Young was attempting to indicate, on the basis of relevance, that the minister was not answering. However, what Senator Hanson-Young then did was to reinterpolate her question. That is not the question that was asked. In fact, it is a different question that has been taken on the point of order. The minister has been answering the question that was asked by Senator Hanson-Young. I submit that there is no point of order.

The PRESIDENT—Senator Hanson-Young, I am going to rule on the point of order that you have taken, and if you want to take a further point of order you can. There is no point of order. I cannot instruct the minister how to answer the question. I believe the minister is answering the question but I cannot instruct the minister how to answer the question. I can draw the minister’s attention to the question, which I will do, and there are 23 seconds remaining.

Senator Hanson-Young—I would like for the record to be correct and that Hansard fully reflect that the question about amending the Water Act was clearly part of my final supplementary question. I would like you to consider that.

The PRESIDENT—The Hansard will always reflect the business that is transacted in this chamber, so it is up to you to look at the proof of the Hansard when it comes out.
If you disagree with the proof of the Hansard then you have opportunities to correct it.

Senator CONROY—I do appreciate the show we are getting today from Senator Hanson-Young—shameless campaigning ongoing, really. It is just shameless. There is nothing that Minister Burke has said that could possibly be interpreted in the way that the senator has sought to try to imply, absolutely nothing. (Time expired)

Superannuation

Senator CORMANN (2.32 pm)—My question is to the Minister representing the Minister for Financial Services and Superannuation, Senator Sherry. I refer the minister to the Labor Party’s pre-election commitment to:

… request the Productivity Commission to design a process for the selection and ongoing review of the superannuation funds to be included in modern awards or enterprise agreements as default funds.

Given that, in his otherwise comprehensive statement on superannuation made in parliament earlier this week, Minister Shorten faithfully regurgitated all other superannuation election promises developed by his predecessor—except for this one—has this unequivocal pre-election commitment become Labor’s latest broken promise?

Senator SHERRY—Thank you for the question on superannuation. It is always good to get a question on superannuation, albeit in my representational capacity on this occasion. The senator has asked about Minister Shorten’s speech earlier in the week in the House of Representatives, and of course the senator has referred to a range of commitments that this Labor government has given, and has long given, in respect of superannuation.

Senator Cormann interjecting—

Senator SHERRY—I think, if you look at the question, the senator has referred to the statement by Mr Shorten and the range of initiatives that this Labor government has proudly announced in respect of superannuation. This is the government of superannuation, as we know, looking back at our record over 20 years.

Senator Cormann interjecting—

Senator SHERRY—I would not call the superannuation guarantee and $1.2 trillion in saving a failure. I would not call the fact that the Labor government has increased the retirement savings of all Australians a failure.

Senator Cormann—Mr President, I rise on a point of order. I asked the minister a very specific question on whether or not the pre-election commitment to design a process through the Productivity Commission for the selection and ongoing review of superannuation funds to be included in modern awards as default funds is going to be another broken promise. I would ask you to instruct the minister to be directly relevant to the question.

The PRESIDENT—There is no point of order, but I do draw to the attention of the chamber the fact that, during the response to the question, there was an interjection by you with another question, which the minister responded to. That makes it difficult for me. If there is a question that you would like answered and you stick to that one question, it gives me a chance to rule. I did think that the minister, in fairness to him, was coming to the answer. Minister, you have got 46 seconds remaining. I draw your attention to the question and you have heard the ruling on the point of order.

Senator SHERRY—Thank you very much for that ruling, Mr President. As I indicated, the question did refer to the speech by my colleague Minister Shorten earlier in the week which outlined—

Senator Cormann—I asked about default super funds and you know it.
Senator SHERRY—I think that if the senator, who is interjecting again, looks at his question, he will see that he referred to Mr Shorten’s speech. Of course, the key aspects of that speech referred to the Labor government’s intention to increase the superannuation guarantee from nine to 12 per cent, which will benefit 8.4 million Australians—and which we know the Liberal Party opposite will oppose, like they have always opposed superannuation in this country—

Senator Cormann—On the point of order: nothing in my question referred to the super guarantee. My question was whether the government will fulfil its commitment to refer to the Productivity Commission a process for the selection of default funds under modern awards. The minister has not, in any way, shape or form, addressed that question whatsoever, and I would ask you to instruct the minister to be directly relevant to the question.

The PRESIDENT—As I have said, I cannot instruct the minister how to answer the question. I did draw the minister’s attention to the question at the time of the last point of order. I do so again, and I ask the minister to resume his answer, with five seconds remaining.

Senator SHERRY—Minister Shorten’s speech also referred to the fact that we will be implementing a simple, low-fee— (Time expired)

Senator CORMANN—The answer clearly was yes. Mr President, I ask a supplementary question. Given Labor wanted the Productivity Commission to design a process that was ‘based on objective criteria and evidence so the selection of eligible default funds is transparent and competitive’, does the government concede that selection of default funds is not transparent and competitive now?

Senator SHERRY—Whilst I am not the minister but the minister representing, I do recall that in terms of default funds—

Senator Cormann—It was your policy. It was a good policy.

The PRESIDENT—Senator Cormann, it makes it very difficult when you ask a question of the minister and then interject on your own question.

Senator SHERRY—I think I was attempting to directly respond to the senator’s question about default funds. As I was saying, I do recall reference in the completed Cooper review, which examined the operation structure of our superannuation system—and a very fine report I might say in passing—to the issue of default funds. I recall an examination of the current parameters for establishing default funds, which, as Senator Cormann correctly—at least on this occasion—observed are established, primarily, not exclusively, through the industrial award system— (Time expired)

Senator CORMANN—Mr President, I ask a further supplementary question. Given that the government made this commitment to refer the selection of default funds to the Productivity Commission on 1 August, when will the government have the courage to action this commitment so that employees across Australia can benefit from competition between default superannuation funds under the modern awards?

Senator Sterle—you don’t give a damn about workers, you hypocrites!

The PRESIDENT—Senator Sterle, you will need to withdraw that.

Senator Sterle—I withdraw that comment.

Senator SHERRY—I do not think I have had this many interruptions about superannuation for many years. Let us get back to the issue of default funds, the Productivity
Commission and the Cooper review. As I was saying, I am certainly aware of the Cooper review recommendations—

**Senator Cormann**—You made a commitment after Cooper.

**The President**—Senator Sherry, ignore the interjections and continue with your remarks. People are entitled to two supplementary questions. This is the second supplementary question.

**Senator Sherry**—I welcome all this interest, but I think six interjections and three points of order is setting a new standard. And I am genuinely attempting to provide information to Senator Cormann about superannuation—I am just so keen to do it. But to come back to the point that the senator makes in that last supplementary question: he contends an issue of competition choice. I think what is important is effective competition and the reduction of fees and charges that would result from effective competition. I know that as a consequence of the referred-to ‘choice of fund regime’, fees and charges have not— *(Time expired)*

**Imports**

**Senator Wortley** *(2.41 pm)*—My question is the Minister for Innovation, Industry, Science and Research, Senator Carr. Can the minister—

**Opposition senators interjecting—**

**The President**—Just wait a minute, Senator Wortley. I know people are excited about this question but I do nonetheless need to hear it.

**Senator Wortley**—Thank you, Mr President. Can the minister respond to suggestions on ABC radio that the food and grocery industry may no longer have a future in Australia, thanks to rising imports?

**Senator Carr**—I thank Senator Wortley for her question. I am aware of some misleading reports circulating about our food-processing sector. Some reports have suggested that Australia will be a net importer of food. Today’s report stems from the Australian Food and Grocery Council’s 2010 State of the Industry report, a document that says Australia is a net importer by value of food and grocery products. Some people might think that ‘grocery products’ just means ‘food’. It does not; it includes soap, toothpaste, nappies and other household items. The report actually says that the grocery sector saw real growth of 3.2 per cent in 2006-07 and 2007-08, of which medical and pharmaceutical products made up 48.6 per cent of total turnover.

The Food and Grocery Council report does not take into account food commodities not purchased directly by consumers—such as wheat. The report shows that in the food and beverage category we are in fact a net exporter of food to the tune of some $6 billion. The picture gets clearer when you look at other commodities. In the period of 2009-10 Australia exported $24 billion worth of food products. Food imports in the same year were worth $10 billion. We should be proud of the fact that this is a country that produces 1.1 per cent of the world’s total food. But when you look at the amount traded, we produce three per cent of the total of food traded in the world. No-one is denying that there are serious challenges facing the food industry, but there are enormous opportunities— *(Time expired)*

**Senator Wortley**—Mr President, I ask a supplementary question. Is the minister aware of speculation that 300,000 jobs in the food processing sector could move offshore?

**Senator Carr**—I am disheartened by the appearance of these irresponsible comments. This is a government that does understand that there are serious challenges. But we will not deal with those challenges by indulging in the doomsday prophecies of
those opposite, and we do not have to deal with those challenges by turning off international investors or encouraging people to think of this country as a place which is not good to invest in. We need businesses in this country to stay strong. They are critical to the provision of quality jobs and quality exports, and they are the lifeblood of communities right across the country. That is why this government is in the business of transformation. That is why we are in the business of ensuring that this country stays ahead of the curve. Our competitors may have the edge in low-value, low-tech, labour-hungry manufacturing, but we want to ensure that we retain a competitive advantage, that we—

(Time expired)

Senator WORTLEY—Mr President, I ask a further supplementary question. I thank the minister for his answer and ask: does the minister believe Australian manufacturers can remain competitive in the volatile global economy?

Senator CARR—Without any help from those opposite, Australia throughout the economic crisis outperformed just about every other advanced economy in the world, and Australian manufacturing in particular stood up well to the challenge. In Germany, for instance, manufacturing gross value added slumped by 24 per cent and in the United States it fell by 17 per cent, but in this country there was a fall of 10 per cent. Australia also recorded one of the lowest falls in manufacturing employment. Employment in the sector declined by 6.7 per cent compared to 13 per cent in the United States and 11 per cent in the United Kingdom. The effects of the global economic crisis have, of course, subsided. Manufacturing is making a sustained recovery across advanced economies. Australian manufacturing gross value added has increased by some 5.6 per cent since June last year. (Time expired)

Mr David Hicks

Senator BRANDIS (2.47 pm)—My question is addressed to the Minister representing the Attorney-General, Senator Ludwig. Is the minister aware of reports that the convicted terrorist, David Hicks, has entered into an agreement with Random House for the publication of a memoir, *Guantanamo: My Journey*. What steps has the government taken either under clause 2d of the plea agreement between Hicks and the United States of America, by which Hicks assigned to the Australian government any profits which he might make from the publication of such a memoir, or under section 152 of the Proceeds of Crime Act, to recover those profits from Hicks?

Senator LUDWIG—I thank Senator Brandis for his question. As he has pointed out, in October Random House Australia released the personal memoir of David Hicks, *Guantanamo: My Journey*. The Attorney-General is aware of the comments made by the shadow Attorney-General, Senator Brandis, that Mr Hicks is in breach of his pre-trial agreement. Senator Brandis should of course know better than to advocate that the Attorney-General pre-empt the outcome of an independent investigation by law enforcement agencies. Senator Brandis would be aware from reports that that is a matter that is currently being investigated by law enforcement agencies.

The Australian Federal Police is making further inquiries to enable it to determine whether and what action is to be taken in relation to this matter. A decision to commence literary proceeds action under the Proceeds of Crime Act 2002 is at the discretion of the Commonwealth Director of Public Prosecutions following an investigation by the Australian Federal Police, as Senator Brandis would well know. On that basis, it is
not appropriate to comment on the likelihood of future legal proceedings.

On the part of the question in relation to the pre-trial agreement, the Attorney-General is of course aware of the pre-trial agreement between Mr Hicks and the United States. One of the clauses in the pre-trial agreement dealt, as I think Senator Brandis has pointed out, with any profits Mr Hicks received in connection with any publication of information relating to this illegal conduct. It is envisaged that the enforcement of this provision—(Time expired)

Senator BRANDIS—Mr President, I ask a supplementary question. If the Director of Public Prosecutions fails to initiate proceedings under section 152 of the Proceeds of Crime Act to recover such profits from Hicks, will the Attorney-General exercise his power under section 8 of the Director of Public Prosecutions Act to direct the Director of Public Prosecutions to bring an application to recover them?

Senator LUDWIG—I thank Senator Brandis for his question. Again Senator Brandis is well ahead of the game in respect of this. He was well ahead of the game with his question trying to receive an answer well in advance of the law enforcement agencies investigating the matter, and he has now put himself right out there well before the Director of Public Prosecutions might be able to come to a concluded view on this matter. I would suggest that Senator Brandis exercise caution in this area and wait for the matter to be investigated by law enforcement agencies and, similarly, wait for the Director of Public Prosecutions to come to a concluded view on this matter. As Senator Brandis knows very well, it would be inappropriate for either me on behalf of the Attorney-General or the Attorney-General himself to pre-empt any decision of the Director of Public Prosecutions on this matter. As I said in answering Senator Brandis’ first question—and it is worth going back to that for the record—it was envisaged that the enforcement of this provision—(Time expired)

Senator BRANDIS—Mr President, I ask a second supplementary question. Minister, why has the government failed to act promptly to take all legal avenues available to it to deprive Hicks of the profits he stands to make from selling the story of his involvement in—

Government senators interjecting—

The PRESIDENT—Order! Just wait a minute, Senator Brandis. You are entitled to be heard in silence. If senators wish to debate it, they can debate it at the end of question time.

Senator BRANDIS—terrorist activities that may have placed the lives of Australian soldiers at risk? Is the Attorney-General’s failure to act promptly not yet another example of the indifference, complacency and contempt which have become the trademark of the Gillard government?

Senator LUDWIG—It is unfortunate that Senator Brandis has now descended into a critique of his own poor question. We have provided to the Senate and to Senator Brandis, in relation to both the primary question and the first supplementary question, an answer that underpins the fact that the Australian Federal Police are investigating the matter. I am sure Senator Brandis is not calling on them to finalise their investigation without properly conducting one. I am sure Senator Brandis would agree that the procedures that are undertaken by the Federal Police are undertaken appropriately and concluded appropriately and that proper advice is provided to the Commonwealth Director of Public Prosecutions. I am sure Senator Brandis would not want that truncated in any way that would cause a mishandling of the matter, particularly given his comments. I would
reject his comments in his supplementary question. They are outrageous, they are incorrect and they do not go to the substance of the matter. They have merely been made to provide—(Time expired)

Alcohol Abuse

Senator FIELDING (2.53 pm)—Mr President, my question is to the minister representing the Minister for Health and Ageing, Senator Ludwig. Is the government aware of the research published by Newcastle university’s school of medicine that found that the incidents of assaults in Newcastle plummeted by 37 per cent over an 18-month period from the restrictions of the sale of alcohol in the early hours of the morning? Has the issue of time restrictions on the sale of alcohol been discussed at COAG or any ministerial council under COAG dealing with health matters? If so, what has been the outcome of these discussions?

Senator LUDWIG—I thank Senator Fielding for his question. I understand it is in two parts. The first part relates to the troubling issue of what states and territories have to deal with in terms of excessive consumption of alcohol and the resultant problems that creates, both for the policing and the hospital admissions that occur as a result of that, particularly in the Newcastle area. The second part relates to closing hours, which, as I understand it, is a matter that the states and territories deal with. Senator Fielding seems to be inter-relating those two questions to be able to provide a base for a position that is being put about the health effects of excessive consumption of alcohol.

The Gillard Labor government has been addressing the substantive issues around the primary matter dealing specifically with health in relation to the effects of alcoholism, including the work that we have done around health and hospital funds and being able to provide additional work for the hospital system. But in terms of the specifics of the question, I will take it on notice. I will see if Minister Roxon can add to the answer and whether or not we can provide any additional information to Senator Fielding. I would add, though, that I think it relates more to the trading hours of particular establishments. It is a matter that I may not be able to ask the minister to provide additional information on. Nonetheless, I will see what the minister can respond to from the question asked by Senator Fielding.

Senator FIELDING—Mr President, I ask a supplementary question. Given that restricting the sale of alcohol in the early hours of the morning is a strategy that has proven to be successful, will the government commit to using the federal corporations powers to restrict the sale of takeaway alcohol in the early hours of the morning, similar to what is being proposed in the Family First’s responsible takeaway hours bill?

Senator LUDWIG—I thank Senator Fielding for his question. I did understand correctly that the primary question did go substantively to the issue of closing and opening hours for hotels and other establishments which retail or sell liquor. One of the difficulties with that—though it does appear now that it has been clarified by Senator Fielding in the supplementary question—is it goes far more to state and territory laws and it seems to go within the broad area that they have responsibility for.

Senator Fielding—Mr President, I rise on a point of order. The question was focused on federal corporations powers, which is quite clearly a federal issue, not a state issue. The minister would be aware that the government can use federal corporations powers to restrict the sale of alcohol.

Senator Chris Evans—Mr President, on that point of order: the senator is quite wrong in the sense that Senator Ludwig is doing his
best with the brief before him to answer the question put by Senator Fielding. He is trying to be helpful. He is trying to address the issues, and was directly relevant to the question asked. Mr President, we have had a succession of points of order today. People are misusing that mechanism of the Senate by taking frivolous points of order and effectively wanting to argue the case. Mr President, as you know, the time for that is during taking note of answers. I ask you to rule that there is no point of order. But I do draw your attention to the fact that this has become habitual behaviour that totally disrupts question time.

The PRESIDENT—Senator Ludwig, I draw your attention to the question. You have 24 seconds remaining to answer the question.

Senator LUDWIG—Thank you, Mr President. I understand the point that Senator Fielding raised in relation to the point of order. I know the question went to the corporations powers but, if you look at the corporations powers, it may not in itself be sufficient because there may be unincorporated associations, clubs and a range of other entities right across the board, including— (Time expired)

Senator FIELDING—Mr President, I ask a further supplementary question. Given that 22,000 children suffer alcohol related child abuse every year, will the government commit to address the restriction of takeaway alcohol at the next COAG meeting?

Senator LUDWIG—I thank Senator Fielding for his interest. Senator Fielding of course does touch on a very important matter: there are children out there who suffer child abuse through the effects of alcoholism in the family unit. It is a serious matter. I will take the question on notice and ask Minister Roxon whether she can respond. Clearly, as the minister representing Minister Roxon, I cannot commit to addressing it at COAG, but I am sure she would agree with me that it is a serious matter and I am sure she would encourage the states and territories to address it themselves.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Murray-Darling Basin

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.01 pm)—I seek leave to incorporate in Hansard answers to questions asked of me by Senators Joyce and Birmingham regarding the Murray-Darling Basin Authority.

Leave granted.

The answers read as follows—

In response to the question by Senator Joyce, “Can the Minister confirm that the Labor Government has spent $100m in departmental expenses for the MDBA on a report that its own advice said was premised on a false premise?” The MDBA has been funded $42.8 million in 2009-10 and 2010-11 for its Basin plan functions. In response to the questions from Senator Birmingham I am advised by the Minister’s office that the records show the minister first met with Mike Taylor, Chair of the Authority, on the 6 October 2010. I am advised the minister sought legal advice from the Australian Government Solicitor on dealing with social and economic issues under the Water Act 2007 (the Water Act) on 14 October. This advice was released publicly and tabled on 25 October.

Minister Burke’s office is unaware as to whether this was raised with Minister Wong.
QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Broadband

Senator HUMPHRIES (Australian Capital Territory) (3.02 pm)—I move:

That the Senate take note of the answers given by the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) to questions without notice asked by Senators Barnett and Humphries today, relating to the National Broadband Network.

I particularly draw attention to Senator Conroy’s shameless defence of his government’s lack of accountability on the question of the National Broadband Network. I think every Australian taxpayer, no matter what their needs with respect to broadband and no matter what their location in this country, ought to be deeply concerned about this government’s approach towards this massive new infrastructure, which will cost taxpayers billions of dollars, which has not defined well the extent of its coverage, the cost structure that it is going to face or the extent of the take-up that it requires in order to meet its expectations and which represents an enormous risk to the Australian taxpayer and to the Australian community.

In the course of his answers today, Senator Conroy described seeking further information about the National Broadband Network—for example, a cost-benefit analysis of the network’s value to the Australian people—as a waste of taxpayers’ money. Here we have the largest investment ever made by an Australian government in infrastructure by a long shot and a basic preliminary analysis of that project is rejected by this government. Only a little while ago, the government’s own Infrastructure Australia recommended:

In order to demonstrate that the Benefit Cost Analysis is indeed robust, full transparency of the assumptions, parameters and values which are used in each Benefit Cost Analysis is required.

What do we hear from this government? We hear: ‘We don’t need that. It’s too expensive. It’ll take too long. It’ll hold things up.’ But, of course, none of those things are true. What we know about this National Broadband Network should fill all of us with a great deal of dread—not because it is not an ambitious, grand plan. Grand plans are fine, as long as you have the wherewithal to back up the assumptions that you make about what this grand plan is going to achieve.

This minister has a touch of the Rex Connors about him. He has a determination to make this thing happen that seems to know no obstacle and a desire to push aside the critics and plough ahead with what he wants to do without fully explaining to the Australian people how he is going to get there. For example, we have heroic assumptions about the level of take-up of this new scheme. The scheme requires take-up of somewhere between 70 and 90 per cent of available consumers. That is an enormously large level of take-up to make this all work, when countries like the United States have achieved 25 per cent of consumers taking up their options. Even in South Korea, only 40 per cent of customers have taken up similar products.

The level of investment here seems to be out of kilter with the hard facts about both need and expectation of take-up. It is worth looking at what is going on in the United States at the moment, for example. The United States is also investing federal taxpayers’ dollars in broadband initiatives, but it is investing a total of only $7 billion—across the entire United States of America. On a per capita basis, Australia is investing 100 times more in broadband than the United States, the home of the internet. Is that wise? Is that justified? Can the minister explain why the government is making such a tangibly larger, more risky investment in these circumstances than even the United States of America is making? No, he cannot, because he does not
believe that these things need to be done. We are told that in due course information will be laid on the table about the National Broadband Network—not a cost-benefit analysis or the kind of careful work before projects begin recommended by Infrastructure Australia, but in due course some facts and figures will be placed on the table, no doubt at the point beyond which it will be impossible to return.

I think we should all be fearful about this exercise. I think we need to be asking questions and demanding answers and requiring the government to justify, point by point, the basis of this new national scheme. We need to know how much it will cost Australians to get access to voice and broadband services, what the revenues of the business will be, how it will be commercially justifiable when, for example, it avoids entirely the use of wireless, which is the fastest-growing internet element in Australia at the moment, how it justifies the heroic assumptions it makes about take-up and how it is that the Australian community can come out of this with a decent investment and not lose a great deal of money in the process. That is what we are asking for here and, if the government cannot supply it, we have to ask why.

Senator BILYK (Tasmania) (3.07 pm)—Senator Humphries, with regard to your comment about the minister being determined to make this happen, I just say that he is determined to make it happen and I think it is appropriate that he is determined to make the NBN happen. It is what Australians want.

Senator Barnett—At what cost?

Senator BILYK—I did not actually hear the interjection, but Senator Barnett interjects. If Senator Barnett had been a bit more online with his state colleagues in Tasmania he would have realised that it was an important issue to voters in the federal election and maybe the Liberal Party would not have lost a senator but gained someone in the House of Representatives instead of ending up with the absolutely abysmal outcome that they ended up with. We are running the pilot in Tasmania, and it is important that this pilot is being run in Tasmania—where Tasmanians want it. The other side did nothing and I think it to cost them dearly in Tasmania in the federal election.

This is a 40-year investment. The other side did nothing for 12 years. In fact, over the past 14 years, how many plans have they had? There were 18 in the 12 years they were in government and now we are up to 20. Those on that side have had 20 plans as to what they would do with regard to the NBN. They have no concept of keeping up with the technological age. The NBN is key to Australians having fast and effective communications. As I said, we are committed and determined to make it happen. The rollout of fibre-to-the-premise will deliver speeds of up to 100 megabytes—50 times faster than most people experience today. Just imagine what that could do in the areas of education and health and in everybody’s life. But, no, they are opposing this process because that is what they do on that side: they just oppose for opposition’s sake. Even though it is the second time they are in opposition, they have not quite got the hang of the fact that they are in opposition. Some of them are still trying to come to grips with that. The majority of people on that side just stand up and say no, no, no. They are the party of the nos. It is completely disingenuous for them to behave like that.

What they also try to do is distort the costings that we have. Their alleged costings are based on a 40-year project. This is a long-term project. Members of their own side have said that it is a long-term project. Even with their costings it works out to be 13c a day per household, which I do not think many Australians have too many problems
with. I know that not too many Tasmanians do. I have not had anyone in Tasmania complain to me or my office about it. As I said, if Senator Barnett and the opposition had really known what the people wanted, especially in Tasmania, they would have been supporting this program and backing it. It has cost them dearly.

Senator Humphries—Especially in Denison.

Senator BILYK—I am happy to take that interjection because in Denison the Liberal vote went down. I would not be worrying too much about Denison, where their vote went down.

Senator Abetz—The Senate team did very well in Denison.

Senator BILYK—In fact, all our people did well in Tasmania, Senator Abetz. They put in a tremendous effort and they are backing this project. They know it is good for Tasmania, they know it is good for the people, they know it is good for business and they know it is good for e-health. We will continue to make sure that we let people in Tasmania know that your side are not backing it, even though, as I said at the beginning of my contribution today, your Liberal colleagues in Tasmania are. So I presume there is a bit of a divide there, and that in itself will be interesting to watch.

Senator Sterle—Someone’s not listening.

Senator BILYK—So who is not listening? That is right, Senator Sterle. I wonder who is not listening. I think the state Liberal Party have been listening, but the federal Liberal Party in Tasmania just think they know it all. They do not mind what is good for the people of Tasmania. (Time expired)

Senator BARNETT (Tasmania) (3.12 pm)—It is an honour to stand in this place and respond to the answers from Senator Conroy and also to respond to Senator Bilyk. She referred to the costs of the rollout of the NBN in Tasmania, but nobody knows the exact costs. We have been asking on the record, in Senate estimates last week and again today, and the minister refuses to answer. Senator Bilyk stands in here and talks about the costs of the NBN in Tasmania, and she does not even know the answer herself. This is a disgrace.

For months and months we have been trying to get this information out of Minister Conroy and we have confirmed on the public record today that a $37 million contract has been signed for stage 1 of the rollout of the NBN in Tasmania. The minister has refused to advise the Senate of the total cost of the rollout in Tasmania to date, and there is a very big difference. Obviously there is the award of a contract for $37 million. He will not say who it is with. I assume it is with Aurora, but he refuses to say. He has also put on the public record today that there are a number of other contracts that are about to be signed or perhaps were signed in the last few days. He is clearly not on top of his brief. He confirmed that in his answers today. He does not know. He said he does not know, but does he really know? I would like to know and the public would like to know the exact status of the rollout in Tasmania and the total cost. Is it not fair for the taxpayer to know? I would like the minister and the government to come clean.

What we do know—he revealed this in budget estimates last week—is that Tasmania has the lowest connection rate in Australia, at 50 per cent. There are 262 homes that have an active connection, and Senator Conroy says to himself and to the public that that is a good rate to date—goodness gracious me! What could be lower and more appalling than those sorts of sign-up rates to date? We also know that the cost to the ISP is nil. So what sort of commercial arrangement do we have here? And those rates for the ISPs go
through to 30 June next year. We all want better, faster, more affordable broadband. Despite what Senator Bilyk and others might say about what is happening in Tasmania and around this country, we want better. But the way this government is going about it—the mismanagement and maladministration—is something to be ashamed of.

In terms of the battery backup, we need to clear it up and fix it very swiftly. The government have done a backflip in the last couple of days. They have now confirmed that the cost of the battery backup will be paid for by the NBN Co. The minister answered that today. That is one thing he answered—that is good news. What he did not reveal is whether he agreed with what the McKinsey-KPMG report says about the cost of the battery back-up, that it:

… would cost an additional $90-$150 million each year.

That is a lot of money each year for taxpayers. The minister would not agree on the record today whether he supported or rejected those figures. So the question I then asked is: will Tasmanians who have already paid for their battery backup be reimbursed?

I have had communication with a John Salmon at Midway Point. He is very disappointed and upset with the dozens of phone calls he has had to make to try and get signed up in Tasmania. The delays that have occurred for him and his family have been extreme, and he is not a happy pumpkin. He says that he was told it would be $90 for a battery backup. What about the Tasmanians and those elsewhere around Australia who have already paid for a battery backup? Will the minister reimburse that money? Will the government ensure that that is reimbursed? We do not know.

It is a bit of a shemozzle because they do not have a business plan, and that was confirmed on the record today. I asked when the business plan would be available and whether he would make it available, and Senator Conroy indicated that he hoped that it would be. We will hold him to that, and we want a copy of that business plan as a matter of urgency because we know they have not been acting in accordance with one. Why won’t they release the cost-benefit analysis? I want to know about the joint venture with the Tasmanian government. When will that be consummated? What sort of equity is held between NBN Co. in Tasmania and the federal and state governments? We need these answers, and we need them as a matter of urgency. I thank the Senate.

Senator MARSHALL (Victoria) (3.18 pm)—The opposition seem very confused about what they are trying to get answers to today. A number of questions were asked of Minister Conroy, which he answered, and even Senator Barnett in his contribution talked about the number of things they learnt today from the minister’s answers to questions. But Senator Barnett then went on to say, ‘But I want to know about all these other things’—things he did not actually ask the minister today. So I suggest that if there are specific things which Senator Barnett or others wish to ask the minister they should in fact ask him and then not complain when the minister does not answer questions which have not been asked.

Senator Barnett—We have—last week in Senate estimates.

Senator MARSHALL—Well, I thought the motion that we were debating today was about taking note of answers to questions asked today. You cannot have it both ways, Senator Barnett. You simply cannot come in and say, ‘The minister didn’t answer questions I didn’t ask.’ We have a process at question time here where you get to ask a question and the minister only gets four minutes to answer it. You then ask other ques-
tions, or interject by asking other questions, and complain if the minister cannot answer everything in four minutes—indeed, he cannot.

I think Senator Humphries, again, also made quite a confused contribution today. In fact, much of what Senator Humphries said I can agree with. He actually talked about this being the largest investment by a long shot in internet infrastructure—and indeed it is. It is something the previous government, the Howard government, mucked around on—could not come to a policy position on—over 12 years. All that time we watched our education facilities, our health facilities and our businesses start to lag behind where they would have been if a proper investment had been made when it should have been in those 12 years. They never had a policy. In fact, that is probably not true—I withdraw that. They had many, many policies. I understand they had 20 or so policies over the 12-year period. But, even though they had that many policies, they never actually struck a blow. They never struck a blow to implement any of them and they never struck a blow to improve the internet infrastructure of this country—something that our educational communities, our health communities, our businesses and individuals are absolutely crying out for. The opposition had no vision when they were in government and they have no vision now.

Senator Humphries made this criticism: Minister Conroy has a determination to make this happen. Well, I can agree with that. Minister Conroy has an absolute determination to make this happen, and that is something we on this side, this government, are absolutely proud of. It is a shame that those on that side of the chamber did not have any determination when they were in government—if they had, we might have a half-decent broadband system now. But they did not. They had no determination. So I do not see it as any critici

Then, true to form—and this is what the Liberal coalition always falls back to—there were the words that Senator Humphries used. He said that we should all be fearful about this exercise. We should be fearful about a fast internet! We should be fearful about this government actually doing something to improve the internet! That is just so typical of the opposition. When they do not have a reasonable argument, when they cannot do or say anything that has vision or is going to actually benefit this country, they turn around and say that Australians should be fearful. We should be fearful! And there it was again today, about the internet—fearful about fast internet! They say we should be fearful about all sorts of things: we should be fearful about climate change, we should be fearful about doing anything about climate change, we should be fearful of immigrants—we should be fearful of all those things! But now the coalition says we should be fearful of fast internet as well—good Lord! All the opposition want to do is say no, so they say we should be fearful about things.

The Australian people deserve a lot better from their opposition—from an opposition that claims that one day they may be seen realistically as an alternate government. Instead of having policies which they never implement or policies that they have no intention of implementing or that will never work, they should sit down and try to develop some vision for this country and try to catch up with what this government is doing about making this place a great place to learn, a great place to do business and a great place to use a fast internet system.

Senator FISHER (South Australia) (3.23 pm)—There are only two ways in which fear
is permeating the debate about the National Broadband Network. The first way is that Labor backbenchers have been so fearful that they, as Senator Cameron says, are in a zombie-like stance, unable to say what they really think and unable to tell the truth about the National Broadband Network. The second way in which fear is being used by the Labor Party to permeate this debate is the suggestion that anyone who disagrees with Labor’s National Broadband Network plan is, they say, a National Broadband Network sceptic. They attempt to silence through fear. Well, not so. The coalition says, ‘Australians deserve access to faster and cheaper broadband, but not Labor’s way.’

Back to the zombie backbenchers. Senator Bilyk was criticising previous speakers in this debate for not knowing what their constituents want. If Senator Bilyk knows her party’s policy on the National Broadband Network, she is not doing all that well in explaining it. Let’s see what happens with the policy zombies in that respect. Senator Bilyk said—and I would hope that Hansard reflects what Senator Bilyk said: ‘-ytes’ not ‘-its’.

In terms of the National Broadband Network itself, Senator Conroy’s earlier comments to the Senate in the context of the water infrastructure are pertinent:

The government is determined that the investment ... will result in value for money: fit-for-purpose projects which best provide for a viable and sustainable future ... Comprehensive due diligence assessment of business cases is necessary and involves rigorous analysis against technical, socioeconomic and environmental data.

There are a couple of things about that. Firstly, Senator Conroy said to the Senate today that in due course, once the government has received NBN Co.’s business case, it will release ‘a raft’ of information about the National Broadband Network. A raft of information is not the same as the business case. A raft of information from this government is likely to be riddled with holes. Minister Conroy will release information that he is happy for us to see and that he wants the public to think about but he will not reveal the truth, because the government is in the business of not being accountable and of hiding the truth. If Minister Conroy were to do as he said to the Senate the government was determined to do with water infrastructure spending, he would ensure that the National Broadband Network would deliver value for money. Tell that to the Tasmanians who have demonstrated by turning away rather than taking it up—the 10 per cent of Tasmanians who have taken up the National Broadband Network in Tasmania.

Question agreed to.

COMMITTEES
Community Affairs References Committee
Gambling Reform Committee
Reference

Senator XENOPHON (South Australia)
(3.28 pm)—I seek leave to move a motion to
transfer a reference from the Senate Community Affairs References Committee to the Joint Select Committee on Gambling Reform.

Leave granted.

Senator XENOPHON—I move:

That—

(a) the inquiry into the prevalence of interactive and online gambling in Australia be withdrawn from the Community Affairs References Committee and referred to the Joint Select Committee on Gambling Reform in line with the terms of reference of the committee; and

(b) in conducting its inquiry, the Joint Select Committee on Gambling Reform have the power to consider and use the records of the Community Affairs References Committees appointed in this Parliament and in the previous Parliament relating to the inquiry.

Question agreed to.

MINISTERIAL STATEMENTS

Office of Best Practice Regulation

Senator WONG (South Australia—Minister for Finance and Deregulation) (3.29 pm)—I table a statement on the Office of Best Practice Regulation and seek leave to incorporate the statement in Hansard.

Leave granted.

The statement read as follows—

As the Minister for Finance and Deregulation, one of my key roles is to ensure that the Government delivers better regulation for the Australian community.

Well designed regulation is of critical importance to the Australian economy. Good regulation can encourage innovation and minimise compliance costs for business, including small business, and the not-for-profit sector. Poorly designed regulation, however, can cause frustration and impose unnecessary costs on all sectors of the community.

Almost all regulations have the potential to affect our productivity, either through the incentives which they provide to businesses and the not-for-profit sector to change operating and investment decisions, or more directly through their impacts on compliance costs. Our strong and continued commitment to regulatory reform is therefore an important element in the Government’s strategy to enhance productivity.

The Government is firmly committed to improving both the quality of our stock of existing regulation and to ensure that new regulation is necessary and appropriate for the purpose. An important element is ensuring that proposed regulations are thoroughly scrutinised so they are introduced only where necessary and at minimum cost to business and consumers.

Today, I would like to reaffirm the Government’s commitment to a comprehensive regulatory assessment process, and to the independence of the Office of Best Practice Regulation (OBPR), which sits within the Department of Finance and Deregulation. This applies to both regulatory decisions made by the Australian Government and the Council of Australian Governments (COAG).

The OBPR assesses the adequacy of Regulation Impact Statements against the guidelines agreed by the Government or COAG. Proposals can generally not proceed to the decision-making stage until OBPR certification has been received.

The Department of the Prime Minister & Cabinet plays a gatekeeper role to ensure that Cabinet Submissions that require regulatory impact analysis do not proceed unless accompanied by a Regulation Impact Statement.

The OBPR will also continue to prepare the annual Best Practice Regulation Report. This report outlines compliance with the best practice regulation requirements on an agency by agency basis, and its public release is an important element in ensuring transparent and accountable regulation making. Publication of the report will be prepared and authorised by the Executive Director of the OBPR and presented to the Minister for Finance and Deregulation as a final report.

Consistent with international best practice, the OBPR needs to exercise its decision-making functions independently. The Government will ensure that Ministers do not influence the OBPR’s decisions in determining the adequacy of...
Regulation Impact Statement or agency compliance with the Best Practice Regulation Guidelines.

Decisions on the adequacy of a regulatory impact analysis and compliance with the best practice regulation requirements will continue to be made independently by the Executive Director of the OBPR. The OBPR will continue to brief Cabinet and me independently on the quality of regulatory analysis which accompanies regulatory proposals which are submitted to Cabinet.

As the OBPR is part of the Department of Finance and Deregulation, the Department’s Secretary will continue to support the independence of OBPR’s decision making on best practice regulation requirements, and will ensure that the OBPR Executive Director has the capacity to make decisions concerning the adequacy of Regulation Impact Statement and agency compliance with the guidelines free from undue influence.

The arrangements I have outlined support the Government’s commitment to ensure that good regulatory management is a part of normal government process—a clear break with the episodic interest in cutting red tape of the previous Coalition Government.

The Gillard Labor Government has put in place practical reforms to strengthen and streamline the regulatory assessment process.

First, the OBPR now maintains an online register, the Best Practice Regulation Updates, of all Regulation Impact Statements to make them easy to find. The website also contains the OBPR’s assessment of Regulation Impact Statements and a list of non-compliant proposals. Compliance and non-compliance are now reported live. This is a major step forward and an important illustration of the Government’s commitment to transparency, to better decision making and to open consultation. Not only are Regulation Impact Statements now released centrally, in an easy to find location on the Finance website, but there is now an accompanying blog facility which enables anyone who wishes to comment on the quality of the analysis, including the adequacy of consultation.

I encourage business and community groups to make use of this facility. Over time it will provide a valuable source of feedback to the Government to assist the way in which we develop regulatory proposals affecting business, the community and the not for profit sector.

Second, the Government has enhanced the consultation requirements of the RIS process. A consultation plan must now be developed and included in department and agency Annual Regulatory Plans, which will be published on the OBPR website. The OBPR will report on whether consultation plans were published as part of Annual Regulatory Plans in the 2010-11 Best Practice Regulation Report. The OBPR will also assess compliance with the consultation requirements.

These reforms strengthen the process, so business and the community can be confident that the impact of proposed new regulation is comprehensively assessed.

The regulatory assessment process we have is world class—in February 2010 the OECD asserted that ‘Australia is in many respects a model among OECD countries for the quality of its institutional underpinning for regulatory reform and for the application of reform strategies.’ Revisions to the regulatory impact assessment process are part of the Government’s commitment to working in partnership with the business community and others, to improve the quality of regulation and the way we do our business.

I commend the statement to the Senate.

Senator WONG—by leave—I move:
That the Senate take note of the statement.

Senator WONG—I will be very brief because I think the statement speaks for itself. Obviously, as Minister for Finance and Deregulation one of my key roles is to ensure that the government delivers better regulation for the Australian community. What I am tabling today is a statement which reaffirms the government’s commitment to a comprehensive regulatory assessment process and also the independence of the Office of Best Practice Regulation, which sits in my department. In doing so, I am continuing the affirmation and the commitment that was
made by my predecessor, Mr Tanner, in relation to the independence of the office.

Question agreed to.

AUDITOR-GENERAL'S REPORTS
Report Nos. 13 and 14 of 2010-11
The ACTING DEPUTY PRESIDENT (Senator Trood)—In accordance with the provisions of the Auditor-General Act 1997, I present two reports of the Auditor-General:

MINERALS RESOURCE RENT TAX
Return to Order
Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (3.31 pm)—I table statements relating to the orders for the production of documents relating to mining tax.

COMMITTEES
Selection of Bills Committee
Report
Senator McEWEN (South Australia) (3.31 pm)—by leave—I present the 13th report of 2010 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator McEWEN—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 13 OF 2010

1. The committee met in private session on Thursday, 28 October 2010 at 11.59 am.

2. The committee resolved to recommend—
That—
(a) the provisions of the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by the last sitting day of the 2011 autumn sittings (see appendix 1 for a statement of reasons for referral); and
(b) the Education Services for Overseas Students Legislation Amendment Bill 2010 be referred immediately to the Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 22 November 2010 (see appendix 2 for a statement of reasons for referral); and
(c) the provisions of the Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010 be referred immediately to the Economics Legislation Committee for inquiry and report by the second sitting day in 2011 (see appendix 3 for a statement of reasons for referral).

3. The committee also resolved to recommend—
That in respect of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010 certain provisions of the bill be referred to committees as follows—
(a) the provisions of Schedules 2 and 3 of the bill be referred immediately to the Community Affairs Legislation Committee for inquiry and report by 22 November 2010 (see appendix 4 for a statement of reasons for referral); and
(b) the provisions of Schedule 4 of the bill be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by first sitting day in 2011 (see appendix 5 for a statement of reasons for referral).

4. The committee resolved to recommend—
That the International Financial Institutions
Legislation Amendment Bill 2010 not be referred to a committee.

The committee recommends accordingly.

5. The committee deferred consideration of the following bills to its next meeting:
   • Responsible Takeaway Alcohol Hours Bill 2010
   • Migration Amendment (Detention of Minors) Bill 2010
   • Social Security Amendment (Income Support for Regional Students) Bill 2010.

(Anne McEwen)
Chair
28 October 2010

APPENDIX 1
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010
Reasons for referral/principal issues for consideration:
The Bill will ratify the Convention on Cluster Munitions, however the Bill is inconsistent with recommendations made by JSCOT when it reviewed the Convention in 42nd Parliament. It is recommended that the bill be referred to the Senate Committee on Foreign Affairs, Defence and Trade.
Possible submissions or evidence from:
Law Council of Australia
Red Cross
Medical Association for the Prevention of War
Amnesty International
International Campaign to Bang Landmines
Law Society of Australia
Oxfam
CICD — Campaign for International Cooperation and Disarmament
AusCare - ActionAid
Women’s International League for Peace and Freedom
Australian Medical Association
Gun Control Australia
Committee to which bill is to be referred:
Senate Committee on Foreign Affairs, Defence and Trade
Possible hearing date(s):
Possible reporting date:
Last Sitting day of Autumn sittings 2011
(signed)
Rachel Seiwert
Whip/Selection of Bills Committee member

APPENDIX 2
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Education Services for Overseas Students Legislation Amendment Bill 2010
Reasons for referral/principal issues for consideration:
On 24 June 2010 the Senate referred the following matter to the Senate Education, Employment and Workplace Relations Committee for inquiry and report.
Upon the 42nd Parliament being prorogued the Committee had yet to finalise their inquiry and report
Possible submissions or evidence from:
The hearings have already been conducted.
Committee to which bill is to be referred:
Senate Education, Employment and Workplace Relations Committee
Possible hearing date(s):
The hearings have already been conducted.
Possible reporting date:
November 2010
(signed)
M. Fifield
Whip/Selection of Bills Committee member
APPENDIX 3
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010
Reasons for referral/principal issues for consideration:
Changes to the GST agreement with the States represent a fundamental shift in Commonwealth-State financial arrangements
Possible submissions or evidence from:
State Treasuries
State Health Departments
Commonwealth Treasury
Commonwealth Department of Finance and Deregulation
Commonwealth Department of Health and Ageing
Australian Medical Association
Committee to which bill is to be referred:
Economics Legislation Committee
Possible hearing date(s):
November - December
Possible reporting date:
31 January 2011
(signed)
M. Fifield
Whip/Selection of Bills Committee member

APPENDIX 4
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010
Only Schedule 2 to be referred
Reasons for referral/principal issues for consideration:
Investigate the issue of portability for Disability Support Pension recipients with severe disability and a legal guardian (related item to Schedule 2)
Possible submissions or evidence from:
Department of Families, Housing, Community Services & Indigenous Affairs
Committee to which bill is to be referred:
Community Affairs
Possible hearing date(s):
November 2010
Possible reporting date:
November 2010
(signed)
M. Fifield
Whip/Selection of Bills Committee member

APPENDIX 5
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010
Only Schedule 3 & 4 to be referred
Reasons for referral/principal issues for consideration:
Investigate the role of the Indigenous I and Council, ILC, in Native Title settlement
Investigate the financial and resource implications on the ILC of this bill
Investigate the implications of the ‘Blue Mud Bay’ case on the scheduled parcels of land.
Possible submissions or evidence from:
Indigenous Land Corporation
National Native Title Tribunal
Northern Territory Government
Northern Land Council
Northern Territory fishing industry, both recreational and professional
Committee to which bill is to be referred:
Legal and Constitutional
Possible hearing date(s):
November 2010
Possible reporting date:
November 2010
(signed)
M. Fifield
Whip/Selection of Bills Committee member

Senator McEWEN (South Australia) (3.33 pm)—by leave—I move:
That in respect of the reference of the provisions of the Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010, the Economics Legislation Committee have the power to consider and use the records of its predecessor committee appointed in the previous Parliament relating to its consideration of an earlier version of the bill.

Question agreed to.

SEX AND AGE DISCRIMINATION LEGISLATION AMENDMENT BILL 2010

First Reading

Bill received from the House of Representatives.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (3.33 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 LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (3.33 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—

I am pleased to introduce the Sex and Age Discrimination Legislation Amendment Bill 2010. The Bill implements two election promises by the Gillard Government:

- to strengthen protections against sex discrimination and sexual harassment by improving on the existing Sex Discrimination Act 1984, and
- to introduce a new dedicated position of Age Discrimination Commissioner in the Australian Human Rights Commission, as part of the Government’s commitment to ensure that all Australians are able to participate in Australian society, regardless of their age.

Amendments to the Sex Discrimination Act

As I mentioned, the Bill includes amendments to enhance protections against sex discrimination and sexual harassment. These amendments form part of the Government’s response to the Senate Legal and Constitutional Affairs Committee’s Inquiry into the effectiveness of the Sex Discrimination Act in eliminating discrimination and promoting gender equality.

Other recommendations in the Report will be considered by the Government as part of its review of anti-discrimination laws under Australia’s Human Rights Framework.

There are four key amendments to the Sex Discrimination Act:

First, it will ensure the Act provides equal protection to women and men.

Second, it will broaden the prohibition on discrimination on the ground of family responsibilities to provide equal protection from discrimination, including indirect discrimination, to both men and women in all areas of work.

The Gillard Government is committed to taking action to support working families and ensure there are adequate protections in place. Likewise, to be competitive, it is in the interest of Australian workplaces to provide greater flexibility to workers to allow all Australians to fulfil their caring responsibilities.

Third, it will establish breastfeeding as a separate ground of discrimination, rather than as a subset of sex discrimination.
Finally, it will strengthen the protections against sexual harassment in workplaces and schools. Recent events have highlighted that sexual harassment continues to be a widespread problem in the workplace. In addition, younger victims of sexual harassment are facing the growing problem of cyber-bullying and harassment by electronic means.

These amendments send a strong message that sexual harassment in any form is unacceptable.

**Age Discrimination Commissioner**

I am also pleased that the Bill includes amendments to the Age Discrimination Act to establish the position of Age Discrimination Commissioner within the Australian Human Rights Commission. The Commission already has powers and functions under the Act to seek to address the problems of age discrimination in our society. To date, the Sex Discrimination Commissioner, Elizabeth Broderick, has been responsible for age discrimination issues. I would like to acknowledge and thank her for her strong advocacy in this area.

However, Australia’s ageing population has highlighted the need for a dedicated Commissioner to engage with stakeholders, including industry and community representatives, to address discrimination in the workplace and in the community, to promote respect and fairness and tackle the attitudes and stereotypes that can contribute to age discrimination.

The Bill includes a number of amendments, which are largely administrative in nature, that provide the mechanism for appointment and the terms and conditions of employment for the new Commissioner. The Bill also ensures the Commissioner is a member of the Commission and has the same advocacy powers as the other Commissioners.

**Conclusion**

These amendments will strengthen protections for working families and also send a strong message that sexual harassment is unacceptable, especially in the workplace.

The establishment of an Age Discrimination Commissioner is also vital to address the continuing occurrence of age discrimination in the workplace and the broader community.

Debate (on motion by Senator Lundy) adjourned.

**INDEPENDENT YOUTH ALLOWANCE**

**Consideration of House of Representatives Message**

The ACTING DEPUTY PRESIDENT (Senator Trood)—A message has been received from the House of Representatives forwarding a resolution agreed to by the House relating to criteria for independent youth allowance. Copies of the resolution have been circulated to senators in the chamber.

The message read as follows—

Mr President

The House of Representatives acquaints the Senate with a resolution agreed to this day in the following terms:

That the House requires the Government:

(a) urgently to introduce legislation to reinstate the former workplace participation criteria for independent youth allowance, to apply to students whose family home is located in inner regional areas as defined by the Australian Bureau of Statistics instrument Australian Standard Geographical Classification; and

(b) to appropriate funds necessary to meet the additional cost of expanding the criteria for participation, with the funds to come from the Education Investment Fund.

and request the concurrence of the Senate

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (3.34 pm)—I move:

That consideration of the message he made an order of the day for the next day of sitting.

Question agreed to.
EVIDENCE AMENDMENT (JOURNALISTS’ PRIVILEGE) BILL 2010

Consideration of House of Representatives Message

Message received from the House of Representatives forwarding the bill for concurrence.

Ordered that consideration of the message be made an order of the day for the next day of sitting.

RESTORING TERRITORY RIGHTS (VOLUNTARY EUTHANASIA LEGISLATION) BILL 2010

Second Reading

Debate resumed from 29 September, on motion by Senator Bob Brown:

That this bill be now read a second time.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.35 pm)—The Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010 comes before the Senate again with the very serious intent of having it carried through to a vote. At the outset I want to thank the people within all parties who have agreed to a conscience vote on the matter. There has been some debate about whether the bill warrants a conscience vote because it is not about euthanasia per se; it is about restoring the rights of legislatures. It was the Andrews Euthanasia Laws Bill 1996, which took away the rights of the territories to legislate in the matter of voluntary euthanasia. Secondly, and more directly, the bill repeals the Euthanasia Laws Act 1997, the Andrews act, which removed the right of the territories to legislate on voluntary euthanasia. But I want to make it abundantly clear that, unlike a bill I brought before this parliament a year or two ago, this bill does not reinstate the Northern Territory Rights of the Terminally Ill Act. That matter came to the attention of the Senate committee looking into this legislation. I am very grateful to the committee because when we got into discussion with legal advisers it was found that my original legislation would not only restore the right of the Northern Territory to legislate in this matter, but would effectively restore the Rights of the Terminally Ill Act 1995, with no way that the territory legislation could then get rid of it. In other words, it had the exact opposite effect—it would have taken away of the rights of the territories—which I wanted to put into effect through this legislation. So this legislation has been altered. I reiterate that this bill, if enacted, will not restore the Northern Territory Rights of the Terminally Ill Act. That act is effectively quashed. It remains quashed and it
cannot, and would not, be resurrected as part of the passage of this legislation.

What this legislation does do, however, is restore the right of those three assemblies representing the democratic wishes of the people of the Northern Territory, the ACT and Norfolk Island to be able to determine their own future so far as the matter of euthanasia is concerned. We are now in the extraordinary position where these territory legislatures can enact laws parallel to the states on everything except on this one thing—voluntary euthanasia. That should be remedied. To not rectify this wrong of 1996-97 is to take away the rights of the voters of the Northern Territory, the ACT and Norfolk Island. Having said that, the intent of the Andrews legislation at the time—and this was widely and popularly understood—was to override the Northern Territory legislation. The passage of that contentious bill through this parliament did just that. And that intent is still in effect, as it was in 1997, regardless of what the House of Representatives does if this bill were to pass the Senate as I hope it will.

The important thing here is to look at the democratic rights of the people living in the territories compared to those of people living in the states. It may be that the Northern Territory will opt for statehood in coming years, and I would support that if it happens. But until and unless that happens, the legislative assemblies of the Northern Territory, the Australian Capital Territory and Norfolk Island—as elected by the voters—are put at second-rate status compared to voters in the states by the taking away of their right to legislate for voluntary euthanasia should they wish to do so in the future. I would ask honourable senators to make a very firm deliberation and, whether or not they are in favour of voluntary euthanasia—and I, of course, am in favour of it; I am a keen advocate for it and have been all my parliamentary life—to separate their view on that issue from the issue of democratic rights, which is entailed in this legislation.

I am sure the issue of voluntary euthanasia will be canvassed by most speakers who add to this debate. The reality is that the opinion polls show that 70 to 80 per cent of Australians or more—and this includes people who live in the Northern Territory—favour legislation for voluntary euthanasia. It is not for us to use some artifice to prevent people in the territories—as against the states—from being able to look at such legislation if they wish. Indeed, when we get to the states, we can see the difference for the people in the territories who have been deprived of this right. In the last 24 months, legislation has come forward in the parliaments of Victoria, South Australia, Western Australia, New South Wales and Tasmania to give effect to voluntary euthanasia. So far, there has been no determination in South Australia or New South Wales, where the Hon. Cate Faehrmann, a Greens member of the upper house, has recently introduced legislation.

But how those parliaments debate and make their determinations is not the matter in question. This is a matter of high public interest—of quite extraordinary and ongoing public interest and indeed anguish. It has a right to be, because we are all subject to both life and death by definition of our taking part in this debate; and our constituents, likewise. There should not be a suppression of that debate amongst the half million to one million people who live in the territories as against every other Australian when it gets to debate at a political level.

I am hoping that, through the support of this chamber, this suppression of the rights of people in the territories on this one issue, contentious as it may be, will be withdrawn and hopefully—if this legislation gets through this chamber and the other place—
the rights of the territories will be restored. I have to add to this, for those who do not know, that the very cause of this debate is that under the Constitution the Commonwealth does have the power to make laws for the territories, not for the states. The Constitution lays down the rights of the states in no lesser way than it lays down the rights of the Commonwealth, but when it comes to the territories, even though they have legislative assemblies, they can be overridden by the Commonwealth—indeed these days by the executive of the Commonwealth.

That is a matter I will continue to address because I think it should be quite extraordinary circumstances of national significance and requiring a full debate of the parliament—as indeed the Andrews bill did back in 1996-97—that sees the exercise of that law. Nevertheless, the Andrews bill which, by determination of this parliament, ended the Rights of the Terminally Ill Act in Northern Territory has an enduring other negative impact, which is to take away those democratic rights from that half million to one million Australians. Through this piece of legislation I hope to see this parliament maturely, wisely and quite fairly restore that right to every voter and every elected representative of the territories of Norfolk Island, the Australian Capital Territory and the Northern Territory. I commend this bill to the chamber.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (3.47 pm)—Today I am not intending to address the substance of the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010. I stand in my capacity as the representative minister in the chamber. Instead, I will make some points about how the Senate might choose to consider this bill. In its simplest form the senate is a meeting. As with all meetings we have rules for operating, agendas to be followed and time limits to be adhered to. As with many rules in life the rules are here to maintain order. These rules are now being revisited in light of the new political paradigm that has been bestowed upon the parliament by the voters. Currently the Senate has only sat within this new paradigm for a short period. If we consider that the first week of sitting for the new parliament was mainly ceremonial, we have only been sitting for one week.

In the past week of sitting the Senate and the other place have given significant time to the debate over Australia’s involvement with Afghanistan, and quite rightly so. Australia’s involvement in Afghanistan is clearly an issue that the Australian public has significant interest in. Similarly, the euthanasia debate is one that has polarised the electorate and it is a debate in which all senators should be given time to consider their views and those of the electorate. And time should be given for party processes to be dealt with. Senators should also be given reasonable time to participate in the debate and present their views on the issue.

In 1996, when the original bill was introduced, the Senate spent six days debating this issue between December 1996 and March 1997. The House of Representatives also debated this issue for nine days during September to December 1996. Perhaps the Senate will not require the same amount of time for this bill and my point is not solely on an issue of time. Important bills can often be given relatively brief debate in the chamber and that does not undermine their significance. However, I do request the Senate give consideration for this bill to be debated to the extent that it is the will of the Senate. Often bills have also had considerable examination by a Senate committee. I know that this bill has not been examined by a committee though a related bill has. It is possible that a
committee referral is also appropriate for this bill given that it is likely to be voted on.

A parliament like this one Australia has not experienced for over 70 years. As I mentioned previously it is a new paradigm. Private members’ bills will now carry more interest than in recent memory and will continue to help members of this place to inform the parliament about issues that are important to their electorates. Unlike other bills discussed under general business, Senator Bob Brown has announced his intention that this bill should be voted on by the Senate. A notice of motion from Senator Bob Brown seeking to have this bill considered and voted on by the Senate initiated a procedure committee report tabled earlier today. At this stage the Senate is yet to agree to regular processes for consideration of a private senator’s bill that will be voted on. I anticipate that these procedures will be adopted shortly—probably as soon as our next sitting week.

These new procedures should allow for a variety of checks and balances and party processes. The timing of the debate on this bill today has not allowed these to incur. Without any doubt, the bill we are discussing today is a significant bill. It seeks to reverse an act that passed the parliament in 1996. It raises a plethora of issues: territory versus state rights, individual rights and issues of profound religious conviction for some. These issues deserve respectful and full consideration. These are issues that the debate today can only touch upon. All senators should have received more advanced notification that this bill would be debated today. As I understand it most senators received advice that this bill would be listed today on Tuesday of this week. This is a bill that requires extensive debate in the chamber. Senators should have had time to consider their position on the bill and to prepare their contribution. The Senate should also provide time for these contributions to be delivered. That will not be possible today. Today we will just begin the debate on this matter.

It is also difficult to accommodate a debate on the issue in the two sitting weeks scheduled before we rise for the year. Like the debate on Afghanistan that we had this week, important matters should not be rushed through the Senate. They take time. They also take the cooperation of senators to ensure that regular Senate business can accommodate an important debate. Senator Bob Brown knows that the government is prepared to ensure that there is time to debate this bill in the Senate, and there have been discussions with him about how this bill could be accommodated. There is an agreement between the Australian Greens and the Australian Labor Party to allow debate on private senators’ bills. We have every intention of honouring that agreement. I can only hope that this can be done in a way that allows senators to give the issue the consideration and exposure that it deserves. Given that I am a senator of the Australian Capital Territory, I look forward to another opportunity to present my views on this bill in a suitable context in this place.

Senator SCULLION (Northern Territory) (3.53 pm)—In rising to speak to the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010, I would like to commend Senator Bob Brown. I am always cynical when Senator Brown puts up bills because he seems to be very good at value-adding. But in this case it is a worthwhile bill on a number of fronts. I know that over a long time he has been a champion of euthanasia and I commend him for that. Restoring territory rights is something that I have been very keen on for a very long time. I must have been partially asleep while considering what this new paradigm meant but whilst I was doing that Bob got on with the business and introduced this legislation. It is some-
The stated objective of the bill that we are debating today is to restore the rights of the Northern Territory, the Australian Capital Territory and Norfolk Island parliaments to debate and pass laws for the governance of their territories. The catalyst for the introduction of this bill, however, was the passage of the Rights of the Terminally Ill Act 1995 through the Northern Territory parliament in 1996 and the subsequent Euthanasia Laws Act 1997 through the Australian parliament, which overturned the Northern Territory’s law.

I accept that, given the emotive nature of euthanasia, it is very difficult to separate this issue in order to focus our attention simply on the restoring of the states rights objectives of the bill, which I fully support. Those of us on this side of the chamber believe it is a fundamental right that members and senators are able to vote on sensitive matters such as euthanasia according to their conscience. Therefore, it is appropriate that this bill will be dealt with in this way.

Whilst the bill is associated with euthanasia in the Northern Territory, there is no connection between an outcome of this bill and the re-establishment of a process in the Northern Territory that will allow for euthanasia. That being the case, the fundamental issue at stake is that a Commonwealth act is in place that forever forbids the Northern Territory, the Australian Capital Territory and Norfolk Island legislatures from discussing something. I think that that strikes at the very heart of our democracy. I know that Senators Crossin and Lundy would share my view that you have to be in a particular place, you have to be in the shoes of Territorians, to understand just how marked we feel that somehow it is okay for Western Australia, for example, to debate this matter—it is quite okay for them to do it and to come to whatever decision Western Australians come to—but for some reason or other because we are a territory we simply cannot do it. The attitude seems to be that we are not very smart or that we have some sort of democratic process that is perverted. I hope that all people in this place would see this not as a vote on euthanasia but genuinely as a vote to allow a group of Australians, who by dint of choice or birth or other things have found themselves living in a territory, to make their own decisions. It is a very important point. While this is a conscience vote, I appeal to people to see it as a wider issue. It is an issue for me personally. It is about the rights of people of the territories to be equal in how they cast their votes and make decisions, through democratic processes in the places that they live.

The Commonwealth has no specific constitutional powers to intervene in the states as it does in the territories. It is really a question of equity. In this place—the Australian Senate, which is colloquially referred to as the states’ house—it is a question I think we must consider very seriously. I did a bit of research into who had said what in the past. The Senate conducted an inquiry into the euthanasia bill in 1997. Someone that I know is well known to Senator Crossin, Maggie Hickey, who was then the Northern Territory opposition leader, made a very incisive contribution. She said:

Senators:
The members of the House of Representatives who voted this bill to you for consideration used their conscience to vote solely on the issue of euthanasia.

Your conscience vote is perhaps more complex.
Your conscience vote must also include the historical responsibility of being the states house and by being freed from party constraints you have an opportunity to exercise that historical opportunity.
It is a rare opportunity.

My plea to you is to focus on this responsibility in discharging your conscience and not on the issue of euthanasia itself.

As I said at the outset, Territory Labor allowed all of its members a conscience vote on the issue of euthanasia. Some voted against and some voted for.

We are, however, united in our opposition to the Andrews bill. That unity was borne out of the fact that even those members who have taken a very strong stand against this legislation believe it is our constitutional right to enact the law and to remove it in the future if they are successful in persuading the parliament to do so.

Wise words. I think we really should be able to focus in this place on the elements of this debate. This is really about equity.

The Northern Territory (Self-Government) Act 1978 intended the Northern Territory to be given self-determination, yet the Commonwealth is able to override its legislation. The Commonwealth has this power through section 122 of the Constitution, which is a plenary power with no limitations on its use or in fact the subject matter it covers. I am certainly not Senator Brandis and I have very little knowledge of the Constitution, I have to say. Like most of us, I have a broad understanding. But I think there is a spirit of the Constitution and the spirit of the Constitution talks about other things.

If you have the time—I do not commend it to you—and look at the details of the things the Constitution does you will see that the Constitution lays out what the Commonwealth is responsible for and, by omission, what the states and territories are responsible for. I think that is one of the tasks it does. It talks about what the Commonwealth is responsible for. I will not go into the detail but it includes trade and commerce, taxation, borrowing money on the public credit card—you guys should be interested in that!—naval and military defence of the Commonwealth, lighthouses, quarantine, currency, weights and measures, and it goes on and on. Some of the things have been specifically used since I have been here, such as marriage and ‘the people of any race for whom it is deemed necessary to make special laws’.

When the Commonwealth wants to intervene, we tend to look for some place in the Constitution about how we can intervene. I have been a part of that process. When you fail to be able to intervene with the wide range of capacities and powers that the Commonwealth has, you then lean back to section 122 and say, ‘It does give us the capacity.’ It may do, but I do not think it gives you the moral high ground or a moral place to do so. If it did in this particular case euthanasia would be there. It would have been made implicit by the founding fathers and the people who wrote the Constitution. The fact that it is not there does not necessarily mean that because it is a state or territory you can lean in a new section 122 for pretty much anything you want. I think that it is really the spirit of the Constitution, not necessarily the exact words of the Constitution, that we should follow in this regard.

When Northern Territory Chief Minister Marshall Perron first introduced the Rights of the Terminally Ill Bill in February 1995, it was immediately referred to a select committee, which received over 1,000 submissions, took oral evidence and conducted hearings across the Territory—including in a number of Aboriginal communities. The Rights of the Terminally Ill Act 1995 came into effect on 1 July 1996, and nearly three months later a man in his mid 60s who had been suffering from prostate cancer was the first person reported to use the legislation to die. Before his death, on 9 September 1996, the Commonwealth government introduced a bill into the Australian parliament with the stated objective of preventing the Northern Territory,
the Australian Capital Territory and Norfolk Island from passing certain laws permitting euthanasia. As I have said, while the Commonwealth does not have the constitutional law to prohibit euthanasia outright in Australia, because it could make laws for the government of a territory they invoked section 122.

Whenever I look at legislation in this place and do not understand it, it is useful to go back and have a look at the second reading speech, because it can give you some insight about what mischief was trying to be prevented. Of course, that is impossible with the Constitution. Section 122 says:

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of...

In the context of modern Australia, the circumstances where a state would at some future time vacate a piece of land that needed some laws are not the circumstances we are in now. When this Constitution was written we did not have the Northern Territory (Self-Government) Act, we did not have the Australian Capital Territory (Self-Government) Act and we did not have whatever act allows Norfolk Island to govern. So using the constitutional power was not, I do not think, legitimate. Four people used the provisions of the Northern Territory government's Rights of the Terminally Ill Act before the Commonwealth government passed the Euthanasia Laws Act 1997. Of the four people, three were Territorians. Despite fears of some opponents to the legislation, only one person travelled from outside the Territory to use the provisions.

As I indicated earlier, last month in Western Australia the parliament debated a euthanasia bill, but it was voted down. The Northern Territory may be interested; I am not really sure. Some Territorians have mentioned it on both sides of the debate. People in the Northern Territory will be thinking about the debate, just as people in Western Australia might. There may be some people like me who do not have a really focused view on it. I am not prevented by my theology from having a theological position on it, but I recognise that there will be many people who have been in circumstances that really sharpen their views on these matters—and I respect that. But what is the difference between somebody trundling to work in the Northern Territory and somebody trundling to work in Perth? There is absolutely none. As Australians, this really strikes at the heart of the issue. Why is it that Northern Territorians and people in the Australian Capital Territory and Norfolk Island should be thinking and pondering these matters about entering into a process when they are exactly the same as people in Western Australia, New South Wales and Victoria—except that they live in a place that ends in the word 'territory' and do not have the same access to a democracy? That strikes fundamentally at the heart of our Constitution and what Australia means.

What every Australian believes in is equity. Two men or two women should have the same rights wherever they go. This legislation rights that wrong. I think that fundamentally the citizens in the Northern Territory and the wider Territory, as a result of the Euthanasia Laws Act 1997, see themselves as simply excluded from the debate. It is important, as I have indicated, to recognise that this bill will not reinstate the Northern Territory Rights of the Terminally Ill Act. Euthanasia will not be legislated as a result of this bill, but it will be possible now for the Northern Territory and other territories to be able to be part of the debate, just the same as any other citizen of Australia. It is important to note, perhaps as an observation, that the Northern Territory Chief Minister, Paul Hen-
derson, has indicated that it is not a priority for his government. I can tell you that when anybody who is a leader in parliament makes such a claim, there will be people on talkback radio expressing their view about his view, and I am sure some of them will be saying, ‘It’s probably not your entire deal, Mate, because other people in the community will want to ensure that they have their say,’ and there will equally be people who will be saying, ‘Yes, we think that is a good idea.’ But right at the moment it does not matter a fig what the Chief Minister of the Northern Territory thinks or is inclined to do, because there is a piece of legislation currently on the books of the Commonwealth that prevents us from even considering, or possibly having a debate, coming to a vote and making our own laws on it. That is simply stupid. It flies against every value that everybody in this place should have.

There are a number of things I should briefly speak about. Often people see the Northern Territory as some faraway place, but that is not the case. The process in the Northern Territory was a rigorous process. There was a very strong debate. There were plenty of attempts to amend and overturn the Rights of the Terminally Ill Act 1995 within the Northern Territory Legislative Assembly. In August 1996, the Rights of the Terminally Ill Amendment Bill 1996 was introduced into the Northern Territory Legislative Assembly. That legislation would have prohibited the performance of physician assisted suicide or active voluntary euthanasia in a public hospital or a health clinic. It was introduced in order to address concerns expressed by Indigenous people about the previous act. The bill’s second reading was negatived 15 to 10.

The Respect for Human Life Bill 1996 was introduced on 15 May 1996 and it would have repealed the Rights of the Terminally Ill Act 1995, but that was up to Territorians. They have a proper process to ensure that their constituents are served. That bill’s second reading was negatived 14 to 11 in August 1996. I think this demonstrates that the Northern Territory parliament is not above the law or above due and proper process. Its legislation, like all legislation that is passed in this place, may be tested in court.

We may not like a piece of legislation that is being debated in another parliament but we must respect their right to have that debate. A state or territory parliament may pass legislation that we as individuals or collectively might object to but it is their right to pass legislation so long as it is within their constitutional area of responsibility and is not inconsistent with Commonwealth laws. The Northern Territory was in that exact situation. Euthanasia was not on the list of issues under the Constitution that the Commonwealth could act on.

We as Commonwealth parliamentarians can say, ‘Well, we think that is a bit odious and we’re off to make comments about what happens in the states and territories and whether we like it or don’t like it’. But the difference is when we as a Commonwealth government interdict in a territory issue in a way that is different for a state. I think the house that represents the states—originally in terms of equity and finance but I think conventionally—should be the house of the states that ensures that there is equity between the states.

There could not be a more important debate or a more important vote. This is not only a test about how people feel about Territorians; this is a test about how people feel about the strength and dignity of the Senate of Australia. I know there will be plenty of debate in the Northern Territory on this matter. The principal debate we are having in the Northern Territory is twofold. There are those who harangue me that we should be pro-euthanasia and there are those who ha-
range me saying we should be against euthanasia. But the vast majority of people are saying to me, ‘We want the right to make our own decision in the Northern Territory.’ It should be the same right—it does not matter what your beliefs in this matter are—as anywhere else.

I accept that the Commonwealth should be able to deal with matters listed in the Constitution, but when it is not listed it should be the convention of this place not to allow the government of this place to intervene. We have it in black and white. We have the lists of those areas under which we are able to intervene, and so, by the absences there, that should be it. Section 122, outdated though it is, is something we should not use in this place. Every time I make heroic statements in this place I wonder if I am going to have to eat my words, but I can tell you that on this one I will not.

As I have said, I think this is a real test. We live in a democracy and, whilst this sometimes means that laws that we do not like are passed—to quote Churchill, ‘Democracy is the worst form of government, except for all the others that have been tried.’—we need to protect that tenet of government. As I have said a couple of times already in my submission today, this is not about euthanasia. For me, this bill, whilst it is associated with allowing a territory to discuss a certain thing, is primarily about restoring the rights of the Northern Territory to make its own decisions, as it has done on a whole range of very complex issues over a very long time.

So I encourage everyone entering this debate and this vote to think about territorians—whether they are Norfolk Islanders, Australian Capital Territorians or Northern Territorians—to consider how people feel about this. They are not stupid. They have the capacity to make their own decisions. This is not only a test of what you think about the Northern Territory but also, fundamentally, a test of how you feel about the Senate.

Senator CROSSIN (Northern Territory) (4.13 pm)—Given the controversy that this legislation, the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010, has created, particularly in the Northern Territory, it is a pity that the Senate is not being broadcast today. It is a pity that people in the Northern Territory did not hear Senator Scullion’s contribution. I commend Senator Scullion on his speech. A lot of people think we probably only have a love of seafood in common, but we also share a passion for defending the rights of the Northern Territory government—a competent government—and the rights of Territorians.

The importance of the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010 is stated in its title. Senator Scullion and Senator Bob Brown are right: it is predominantly about restoring the rights of Territorians. It is linked to the issue of euthanasia but it is 100 per cent about restoring the rights of people in the Northern Territory government to legislate on matters that it is competent and wants to legislate on.

I turn now to a brief history of the events that have brought us here today. There are three territories in the Commonwealth—the Northern Territory, the Australian Capital Territory and Norfolk Island. They have all been granted self-government by the Commonwealth, which allows the residents of those territories to elect members to their respective legislative assemblies, which then make laws on their behalf. In 1995, the Northern Territory Legislative Assembly debated the Rights of the Terminally Ill Bill 1995 under its constitutional legislative rights. The assembly was entitled to debate euthanasia under the powers given to it by
the Northern Territory (Self-Government) Act 1978. The Rights of the Terminally Ill Bill was then passed by the Northern Territory Legislative Assembly. It was an extremely difficult debate that caused massive controversy in the Northern Territory and around the country because it was in fact the first of its kind in the world. As I said, that bill—which was on an issue that the Northern Territory government had legitimate rights to debate and legislate on for the people of the Northern Territory—was passed.

No-one is denying that euthanasia is a deeply controversial, personal and emotive issue. There is no doubt about that. It is an extremely difficult issue, and those people who support having euthanasia laws in this country take a courageous stand. But the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010 is not about reinstating the right of people to access euthanasia in the Northern Territory. I do not know how many times Senator Scullion and I need to repeat this, but this bill is about the right of the Northern Territory Legislative Assembly to consider whether the assembly itself will reinstate that right. This bill is about the right of the respective legislative assemblies of the territories under their constitutionally granted legislative powers to make laws they believe need to be made for people in Norfolk Island, in the Australian Capital Territory and in the Northern Territory. But some people do not see this bill like that.

The Rights of the Terminally Ill Act was challenged in 1996. One of the challenges queried whether the Northern Territory Legislative Assembly actually had the power to enact the law. A majority of the full Northern Territory Supreme Court came down with the decision that the legislative assembly did in fact have that power. But then a bill was introduced into this parliament that successfully overturned the Northern Territory law by overturning the decision of the Northern Territory Supreme Court. In 1996 Kevin Andrews introduced a private member’s bill, the Euthanasia Laws Bill, to overturn the Northern Territory’s euthanasia laws and thereby remove the rights of Territorians. This was to be done by amending the Northern Territory self-government legislation to remove the Northern Territory’s power to legislate on euthanasia. The Euthanasia Laws Bill, also known as the Andrews bill, went one step further. It also amended the self-government acts of the ACT and Norfolk Island to remove their constitutional legislative right to legalise euthanasia if it was the will of the people in those jurisdictions, even though neither Norfolk Island nor the ACT had ever contemplated that.

I remember having a very substantial conversation with former senators Bob Collins and Grant Tambling about this issue. Both of them had a very clear view about euthanasia, but both of them also had a very clear view about the rights of Territorians. They both expressed to me their view that they did not want to support the right of people to access euthanasia but found themselves in a situation where they had to vote against the Kevin Andrews bill because in so doing they would be defending the rights of Territorians. They both expressed to me their view that they did not want to support the right of people to access euthanasia but found themselves in a situation where they had to vote against the Kevin Andrews bill because in so doing they would be defending the rights of Territorians to have confidence in their own competent and legitimate assembly. The Andrews bill was passed by the federal government in a conscience vote, and it came into force in 1997.

I have heard an argument that the debate we are now having on Senator Brown’s bill should be decided by conscience vote, and I understand that both parties have agreed to that. So be it, but that is not a position I agree with. I think that we should be looking at the constitutional and legal rights of Territorians, and I think both parties should have made a decision about that. But if there is going to be conscience vote, in the same way that there was with the Andrews bill, I hope that the contributions in this place today of Sena-
tor Scullion and I—two people who have been duly elected to represent Territorians in this chamber—are listened to and taken note of.

In 2008, Senator Brown introduced the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill to overturn the Andrews bill. Senator Brown’s bill sought to give back to the three territories their right to legislate for the terminally ill if they so chose and it also aimed to restore the Northern Territory’s euthanasia law once the bill was passed. The bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry, and we handed down a report in June 2008. We received over 1,800 submissions, and we found during our inquiry that the issues of legal and constitutional rights versus the arguments for and against euthanasia were blurred.

The crucial legal and constitutional issue that came up in that inquiry—and it continues to be a crucial issue today—was whether it is appropriate for the federal parliament to use its power to override legitimate and competent legislation originating in the legislative assemblies of the ACT, Norfolk Island and, in particular, the Northern Territory. We found that there were many people who wanted the rights of Territorians reinstated but not the right of people to access euthanasia under the previous Northern Territory law. We also found that, under section 122 of the Constitution, the Commonwealth does have the power to override the laws of the Territory.

The key issue is whether or not the euthanasia act was an appropriate use of that power from a constitutional policy perspective. We recommended that the two issues were split, that the rights of territorians should be reinstated and the issue of whether or not those territories should have euthanasia is another discreet and separate issue. The main constitutional issues raised by the Andrews bill were political rather than legal. The central question was whether or not it was acceptable politically for the Commonwealth to take back part of the legislative powers it had conferred on the territories at self-government.

What I want to do is talk about the submissions to the inquiry that supported the rights of the terminally ill bill in 2008 on constitutional policy grounds. They did so for three key reasons, and this is what people said back then: the euthanasia act interfered with democracy and self-government of the territories, it discriminated against the territories and territories’ citizens compared to the rest of states and states’ citizens, and it demonstrated an inconsistent treatment of territories by the Commonwealth. A wide range of organisations and individuals supported the bill based on these grounds: the Northern Territory Law Reform Committee, the Law Council, Gilbert and Tobin Centre of Public Law, the then Attorney-General of the ACT and the Northern Territory government. They were all in support of repealing the euthanasia act on constitutional grounds.

The president of the NT Law Reform Committee at the time, the Hon. Austin Asche, had this to say:

Any Commonwealth enactment based on policy—that is, based on a difference of opinion between the Commonwealth and the Territory—is of course an interference with the self-government of the Territory. If the Commonwealth disagrees with a policy of a territory then the grant of self-government is really illusory.

That is a very valid point. The three Australian territories have been granted self-government. If the members of both chambers of the federal parliament wanted to repeal every piece of legislation that was passed in the territory parliaments that this parliament did not agree with, we would have a never-ending bevy of legislation be-
fore us. Self-government would really be a figment of one’s imagination. It would not really exist.

Our report also quoted the Gilbert and Tobin law centre, which goes further and says the euthanasia act:

… should be repealed because it is inappropriate that the Commonwealth Parliament remove power pre-emptively from any self-governing jurisdiction within Australia. The law is inconsistent with basic principles of democracy and indeed with the very concept of self-government in the Australian Territories.

What we have before us today is a bill that stepped up to the plate and separated the issues. It separates the issues of the constitutionality of the Territory government, the ACT government and Norfolk Island and preserves their rights under the self-government act and whether or not there should be euthanasia legislation in these territories. This bill purely focuses on the right to reinstate the constitutional legislative right of the territories to make laws about euthanasia if they so wish.

I want to point people in the direction of the submission from the Northern Territory Chief Minister, Paul Henderson, during my inquiry on 11 April 2008. His concluding comments in his submission say that ‘in principle the Northern Territory would welcome the removal of the limitation on its self-governing capacity’. He goes on to say that it is ‘not a subject matter’—that is, the rights of whether or not the Commonwealth should take away the rights of the Northern Territory government—‘that sits well with legal uncertainty and confusion’. The inadequacy of the bill—that is, the bill of 2008, not this bill—and the uncertainty it creates demonstrates the inappropriateness of the Commonwealth parliament pursuing territory related issues without consultation with the Northern Territory. And we know that on radio the Chief Minister has also said that at this point in time voluntary euthanasia legislation is not on his agenda. So the Northern Territory government has no intention whatsoever of reintroducing voluntary euthanasia legislation under the chief ministership of Paul Henderson. What this bill will simply do is give back the rights to those territories to be able to legislate on euthanasia if they wish to do it. It does not reinstate the previous legislation; it does not allow people from the Territory or anywhere else in this country at this point in time to access euthanasia if this legislation goes through.

So when the time comes to vote on this bill before us, I ask and plead with people in this chamber to not base their votes on whether or not they support euthanasia. That will be a call for the governments in the Northern Territory, the ACT and Norfolk to make once this bill is passed. This bill is about restoring the constitutional legislative rights of the territories to make laws for their people, just as the states do. Senator Scullion made a very good point. If I am a Victorian walking down Bourke Street or Collins Street and I am under the jurisdiction of the Victorian parliament, why should my rights be any different to a person in Darwin who walks down Mitchell Street or Knuckey Street? Why should we be treated differently because we choose to live in a territory? Why should our parliaments be considered second-rate, incompetent parliaments just because we live in the ACT, Norfolk Island or the Northern Territory? I ask people in this chamber to think about that, to think about the equality of rights that we so proudly champion for people around this country and this world in other matters. Let us think about the constitutionality of the rights of people who live in these territories.

If the states wanted to legalise euthanasia, the Commonwealth would be powerless to interfere, so why should the territories be any different? The Commonwealth has granted
itself government to legislate for the people living in the territories. So why do we not just let those governments get on with doing the work they are competent in doing? I might add that this is a great debate and a great argument for giving the Northern Territory statehood. I want to quote from Marshall Perron. It is interesting: I am quoting from Marshall Perron; Senator Scullion is quoting from a former member of the Labor Party opposition in the Territory, Maggie Hickey. Marshall Perron, the former Chief Minister—the person who introduced the first legislation—sums up the situation very nicely. He says:

Hansard shows that the majority of federal members supported the Euthanasia Laws Act—

the original Andrews act—

because they opposed voluntary euthanasia. To them, crushing the principles of self-government was simply collateral damage. Put simply, the Euthanasia Laws Act means the citizens of the territories have 218 politicians whom they cannot vote for determining policy on voluntary euthanasia for them. The other 20 million citizens in this federation are not in that situation.

The bill before us would give the territories back their constitutional right to make laws on euthanasia, if that is the will of the people. That is the will of the people. Senator Scullion and I represent those people. We represent the 200,000 or more people who put both of us back in this chamber fewer than three months ago. We make this call because we are on the streets, we see the emails and we listen to the telephone calls. We know what people think and feel about euthanasia in the Territory, but I can tell you they are very passionate about their rights being reinstated and the role that the Commonwealth government takes for granted in overriding legislation that is passed by a competent and legitimate government. The ACT and the Northern Territory each have only two House of Representatives members and two senators to represent them in federal parliament. That should absolutely not mean that the rest of Australia can meddle in territory matters simply because they hold more votes or they do not agree with the subject matter of certain legislation.

Regardless of whether you agree with voluntary euthanasia, it has to be up to the democratically elected parliament of each territory—or each state, for that matter, or federation—to make laws if it is the will of the people. That is democracy. People in the Northern Territory get on the roll to vote for a Territory parliament and they have faith that that parliament will make laws that will benefit their lives, not laws that are passed in the Territory but squashed and quashed by the federal parliament. This law is a matter of principle. This bill will again grant Territorians their rights under self-government and should be supported and passed by both chambers of this parliament. Territorians have been granted self-government and should be allowed to make laws within their constitutional legislative rights.

In concluding my speech, I urge members of parliament to pay very careful attention to my and Senator Scullion’s contributions. It is probably not often in this place that you get senators from opposing political parties reading off the same song sheet, so to speak, but we are duly elected people from the Northern Territory who were put here by the voters in the Northern Territory. This is not about reinstating your right to access euthanasia; this is about giving back Territorians their right to have a competent government to legislate on their behalf. (Time expired)

Senator BOYCE (Queensland) (4.33 pm)—I would like to congratulate both Senator Scullion and Senate Crossin, whose speeches I have had the pleasure of hearing, on their strong advocacy for states’ rights.

Senator Stephens—Territory rights.
Senator BOYCE—Territory rights, as Senator Stephens quite rightly corrects me. This is about territories having the same rights as others, although I was somewhat startled to hear Senator Crossin’s suggestion that there should not be a conscience vote on this issue. Given that, as I understand it, it was a decision of the Labor Party caucus to have a conscience vote, we seem to have some strange opposition going on in all sorts of directions.

As both Senator Scullion and Senator Crossin have pointed out, the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010 is about territory rights. It is about the right of the Northern Territory to pass the same sorts of laws that states have the right to pass. However, I would suggest that, if this bill were called the Restoring Territory Rights (Government Charges) Bill 2010 or the Restoring Territory Rights (Possible Land Title Issues) Bill 2010, it would not have been presented by the Greens. The fact that it is about such a controversial, media worthy topic is the whole reason that this bill has been brought to this place by the Greens. The intention is to cause debate not just about territory rights, which I think everybody in this place would agree should be upheld in the same way as states’ rights, but to cause debate on the topic of euthanasia itself.

So I want to focus a little on the subject of euthanasia, or what I shall refer to as often as possible throughout my speech as assisted suicide. The definitions of euthanasia, voluntary euthanasia and involuntary euthanasia become wider and stranger as we go, so I think assisted suicide is a better term to use when talking about this subject. I would like to quote from an article by a UK disability group founder and advocate, Alison Davis, called ‘No less human: voluntary euthanasia and disability. A personal story’:

The terms denoting the killing of human beings, for their own supposed benefit or that of others, have changed out of all recognition since the ancient Greeks coined the term ‘euthanasia’ meaning ‘a good death.’ Progressively this became something of a taboo term, and ‘assisted suicide’ or ‘assisted dying’ have become the preferred term. Usually now the term—

and she is speaking of the UK—

‘dying with dignity’ is used to mean deliberate killing, as in the UK where the ‘Voluntary Euthanasia Society has recently changed its name to ‘Dignity in Dying,’ suggesting that only a procured death is ‘dignified.’

Ms Davis goes on to say:

… I know from my own experience that what is needed is not to be abandoned or presumed to be ‘better off dead,’ or to have one’s worst fears of being ‘burdensome’ confirmed, but rather to be surrounded by those who care.

She puts an argument, which I am going to go through in terms of a number of disability advocacies, about the fact that euthanasia in many cases is a disguise for ageism and ableism—that is, discrimination against the aged and discrimination against those with a disability. She says:

What hasn’t changed is the sort of people regarded as having a right to have their lives ended prematurely. Terminally ill people always seem to qualify for what I’ll call, for the sake of clarity, “euthanasia” or “assisted suicide.” Incurably or profoundly disabled people as well as elderly people also often qualify for having their lives deemed “not worth living” whether or not they have asked, or can ask, to be killed.

This of course raises issues about people with intellectual disabilities, disorders or conditions that might prevent them from having a view or an understanding of the effect of assisted suicide.

Interestingly enough, the argument has been put by Physical Disability Australia and other groups that, in fact, the United Nations Convention on the Rights of Persons with Disabilities mitigates against legalising
euthanasia in Australia. They point out that Australia was one of the first countries to ratify the United Nations Convention on the Rights of Persons with Disabilities. Article 10 deals with the right to life. It says:

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis ...

The contention of many disability groups would be that this is impossible to achieve. Given the current attitudes towards older people and people with disabilities, it is impossible to achieve that equal basis of quality of life, effective enjoyment of life, for people with disabilities. In fact, it is the beginning of a slippery slope that we begin to march down if euthanasia were legalised.

The 1993 House of Lords select committee decision—which I think has been mentioned already—in what was referred to as the Bland case, stated:

We do not think it is possible to set secure limits on voluntary euthanasia. It would be impossible to frame safeguards against non-voluntary euthanasia if voluntary euthanasia were to be legalised. It would be next to impossible to ensure that all acts of euthanasia were truly voluntary, and that any liberalisation of the law was not abused. Moreover, to create an exception to the general prohibition of intentional killing would inevitably open the way to its further erosion, whether by design, by inadvertence, or by the human tendency to test the limits of any regulation. These dangers are such that we believe that any decriminalisation of voluntary euthanasia would give rise to more and more grave problems than those it sought to address.

This was referred to by what was the Human Rights and Equal Opportunity Commission in Australia in December 1996. They called it the 'sophisticated version' of the 'slippery slope argument' but point out that it must be taken seriously because the question is: is it possible in practice, with the best of intentions, to conceive a legislative scheme which is immunised against potential abuses? My contention, and the contention that I am raising today in support of the many disability rights advocates, is that it is not possible to do that.

I turn to some information that comes from an outstanding Canadian bioethicist with a disability in an article headed 'Why disability rights movements do not support euthanasia: safeguards broken beyond repair'. He was very involved in moves for legislative changes in Canada. He pointed out that a Gallup poll in Canada showed that 75 per cent of Canadians were in favour of euthanasia where someone had a terminal illness; only 17 per cent were against. Fifty-seven per cent were in favour of euthanasia where people had an incurable illness and 32 per cent were opposed.

He was making the point that we slide from 'terminal', which is probably the understanding that most people would have of what euthanasia is about, to 'incurable'. Where do we slide to from there? As I pointed out, with the embedded ableism and ageism already in our society, the tendency to keep moving the goalposts until you have 'involuntary euthanasia', not 'voluntary euthanasia', legal or illegal, would be massive. Professor Wolbring said:

As the above quotes show—

he is talking about the Gallup poll in Canada—

the term right to die is not limited to the term terminal anymore. Often the term incurable is used. Now what does that mean for the disability rights movement? With the change of one word, we include now everyone with a condition not viewed as mainstream. Even I, a thalidomide, am incurable! Very likely I will not wake up one morning with my legs being there—

that is, he will not be cured—

An Alzheimer person is incurable, as are people who are schizophrenic, a manic depressive person, HIV positive people—
they are all incurable—

Public perceptions toward these characteristics—
as we all know—
vary. Certain characteristics are so stigmatized that the public views those people with these characteristics as being better off dead; that is, the quality of life is so low that no life at all is a preferable option.

The shift from terminal to incurable takes away the first safeguard against abuse—
of these laws. Further, in the same area, an alarming statistic is quoted by Dr Wolbring. He points out:

The British Medical Journal reported on 29 October 1994 that, “People in Britain are more likely to request euthanasia to avoid being a burden on their relatives than because they are in pain.”

This is even more so the case since the numbers have gone up. The push in both areas for the elderly and those with disabilities to stop being a burden is, in my view and the view of many in the disability rights area, an unintended but absolutely guaranteed consequence of our attempts to develop law in the area of voluntary euthanasia.

There is also some very good Australian writings in this area, and I would like to quote extensively from the writings of the late Associate Professor Christopher Newell AM, an amazing Tasmanian man who died in 2008. He was in a wheelchair and suffered throughout most of his life a number of illnesses and a lot of pain because of his disability. Professor Newell argues in an article called ‘Critical reflections on euthanasia and people with disability’:

Whatever one’s personal views—
the issues involved in—
so-called euthanasia cannot safely be legalised or even decriminalised.
That is his view, and it is a view shared very widely within the disability community.

Professor Newell was, if nothing else, an extremely persuasive and articulate advocate for the cause of disability rights. In fact, he was a well-known and famous educator. One of his books was called Better off Dead than Disabled, a sardonic reflection on the quality of education for children with disabilities, in which he goes through the many arguments that have been made on the topic of euthanasia. I must add here that everyone that I am aware of in this area has enormous sympathy for people who are suffering, and I hope to talk soon about what I see as the issues in that area.

Professor Newell, in his usual clear way, continues later in the article mentioned earlier:

… we live in a society which has oppressed people with disability via its very structures and norms, and where the dominant knowledge is that it is ‘better to be dead than disabled’. Indeed, unless one is presented with a positive social model which suggests that people with disabilities can achieve, and which challenges dominant stereotypes of the quality of life for people with disabilities, then inevitably it is seen as reasonable that people should either be allowed to end their lives, or have their lives ended for them, voluntarily or involuntarily.

The reason I am speaking today is that the voices of disability advocates in this area are often not heard. Along with Professor Newell, I would argue that we must recognise that the calls for legalising medical killing for people who are considered terminally ill ignore the subjective nature of the judgement about the quality of life of people with terminal illness. Someone who is on a respirator, for instance, could be considered terminally ill; if you take the respirator away, they will die. There are also many practical problems, for people with diseases, that could kill them. Dr Newell makes the point that, under what was then the Northern Territory legislation—the very short-lived legislation—insulin-dependent diabetes could have been
considered ‘terminal’ because without treat-
ment it could cause death. That definition
could have been applied.

It could be called fanciful or exaggerated
to suggest that these are problems that would
develop—I think that would probably be one
of the last areas where we would see any-
thing proposed—but it indicates the huge
risk of unintended consequences of laws that
do not respect the rights of the vulnerable in
our community, the rights of people who are
not seen to have the same status or eligibility
for rights as the general population. Dr New-
ell quotes from research from the Nether-
lands:

… there has been a significant incidence of unre-
quested medical killing of aged people and
younger people with disability—
in the Netherlands since the legislation there
was introduced. This is research undertaken
by disability advocates in Holland that has
looked at how this has happened.

It is a creeping change that just comes on.
Dr Newell, again in his very articulate, clear
prose points out that he can understand that
people would want to undertake euthanasia.
It is a cry for help and an opening up of a
dialogue, in his view—even to attempt sui-
cide. He says:

It is a very human cry of despair and one which I
have experienced myself in requesting death.

But he goes on to point out that it is as much
about power relations, social constructions,
and ableist and ageist values.

I would also like to look also at the work
being done by Palliative Care Australia who
are meeting in Canberra today and, this very
day, revising their position statement on
euthanasia. They make the point that in fact
requests to die, euthanasia, are in many ways
simply a result of a failure to provide good
and adequate palliative care. That is certainly
something that we must change and must
work on to improve.

Senator LUDLAM (Western Australia)
(4.53 pm)—What we have seen so far this
afternoon—and I congratulate Senator
Brown on bringing this bill forward—is per-
haps a better quality of debate than we are
used to. There is something about bringing a
conscience vote before the chamber that
seems to bring out the best in people. I sup-
pose is it with a sense of irony that I am
listening to Senator Boyce now put these
quite measured arguments that I have not had
an opportunity to hear before firsthand in this
setting, and reflect on the fact that this debate
cannot currently occur in the assemblies of
the territories of this country. That is why we
are here having this debate tonight. We hold
ourselves competent to have this debate, as
we do on many other subjects which are lit-
erally questions of life or death, and yet we
do not believe that our colleagues in territory
assemblies should have the same right to
have that debate and exercise their views.

I have enjoyed and appreciated the contri-
butions of all of my colleagues so far, par-
ticularly Senator Scullion and Senator
Crossin, who spoke very passionately on
behalf of their constituents in the Northern
Territory. I will speak briefly tonight about
how Senator Siewert and I, having done a lot
of work in the Northern Territory, have found
ourselves confronted frequently with exactly
the same frustrations.

I will, however, call into question Senator
Lundy’s contribution, which I must admit I
found very difficult to understand. This is a
debate that has been brewing in this chamber
since 1996. Senator Brown, who can correct
the record if I am wrong when he closes the
debate, introduced a piece of legislation, this
piece of legislation, in around 2007. That is
several years that it has been lying on the
Notice Paper. The Australian Greens—
Senator Brown—wrote to Prime Minister
Rudd in 2009. There was no reply. We noti-
fied the current Prime Minister—in fact, the
current parliament and the whole country through the press more than a month ago—that this would be the first bill that we would bring forward. So I do not understand—if indeed there was implied criticism in Senator Lundy’s comments—how this was somehow an inappropriate use of the chamber’s time. I have absolutely no idea what was being referred to there, but I think in fact we have already seen the quality of the debate so far prove that wrong.

It is a very important to note that the effect of the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2008 will be to repeal of the Euthanasia Laws Act 1997 which removed the right of the territories to legislate for voluntary euthanasia. The bill we debate here, as everybody has already noted, will not make voluntary euthanasia legal here or in the territories or anywhere else. It does not even seek to reinstate the NT’s Rights of the Terminally Ill Act, as Senator Brown outlined and the reasons for that, which was overturned by the federal government in 1997. For better or worse, those debates need to be had elsewhere. This bill will allow the Northern Territory legislature to have that debate over again at a time of its choosing in order to decide for itself once more if it chooses to bring that debate forward. Similarly, the bill will enable the ACT and Norfolk Island to have the same legal right as the states to determine their own laws for the peace, order and good government of the territories, including, surely, the right, if they choose, to legislate for voluntary euthanasia so that advocates for and against—as we have heard tonight—can make their case and stand up and speak up for the people who put them into the assemblies in the first place.

The Euthanasia Laws Act passed in this place in 1996 amended the Northern Territory (Self-Government) Act 1988 and the Norfolk Island Act 1979 with quite specific regard to euthanasia, including the withdrawal or withholding of medical or surgical measures for prolonging the life of a patient. It also contained a clause that specifically prevented the Northern Territory from being able to enforce its Rights of the Terminally Ill Act, stating that it:

... has no force or effect as a law of the Territory.

What an awful abuse of federal executive power. We must not overrule the laws created through legitimate democratic processes that this parliament does not agree with simply because we can. The Chief Ministers of the ACT and the Northern Territory have both expressed frustration at the Commonwealth for removing their right to debate and determine their own laws and make their own way on this matter. Recently ACT Chief Minister Jon Stanhope said:

It’s for the people of the ACT to decide whether or not they will support their politicians in making these decisions on their behalf.

If this assembly chooses to remove all discrimination against gays and lesbians in relation to their relationships, and chooses to legislate for euthanasia that’s a decision for us.

The Euthanasia Laws Act is not the only instance of this abuse of federal power against the territories. In 2006, as my colleague Senator Hanson-Young well knows, the Commonwealth disallowed the Australian Capital Territory’s Civil Unions Act 2006 and then the Civil Partnerships Act, soon after in 2007. In what became an ugly battle of wills and jurisdiction, the ACT persisted and eventually passed the Civil Partnerships Act 2008 and then the Greens’ Civil Partnerships Amendment Act 2009, making the ACT the first territory in the country to formally legalise civil partnerships ceremonies for same-sex couples. Even then there was a sting in the tail of that legislation at the behest of the Commonwealth. It should never have come to such a battle. The Greens are
working to challenge the executive’s ability to override the ACT with the Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010, which is also currently before this parliament.

The Commonwealth retains the power to directly administer uranium mining and Aboriginal lands in the Northern Territory, powers which it does not possess with respect to the states, and powers which, I submit, have been frequently abused. We have subsequently seen the Commonwealth attempt to impose a radioactive waste dump on Aboriginal communities near Tennant Creek and, as my colleague Senator Siewert well knows, the infamous example of the Northern Territory intervention, using the implied constitutional weakness of the Northern Territory to override the environmental, social, economic and human rights of Australian citizens just because they happen to live in the Northern Territory.

These controversial and divisive acts were imposed by the Commonwealth without the support of the people of the territories—in fact, against their expressed opposition—expressed through their locally elected representatives, simply because they could. So of these abuses of Commonwealth executive power—overriding the self-government acts, which recognise and empower the territories to determine their own laws through a democratically elected assembly—we are seeing again tonight another example. I firmly hope that through this debate, whenever it is able to be concluded and put to a vote, we can, at least in this one instance, roll back some of that abuse of the Commonwealth’s constitutional power.

The debate on the bill currently before the parliament is not a debate on euthanasia; it is a debate about this fundamental inequality between states and territories. It will not legalise voluntary euthanasia; it will simply restore the rights of territorians to be able to legislate for euthanasia, just as the states can.

I note that my colleague and good friend, Robin Chapple MLC, recently brought on for debate in the parliament of Western Australia a bill that would have legalised, under very strict conditions, a form of voluntary euthanasia. He introduced it in May 2010. It was debated in September. To their credit, Premier Barnett and the opposition ALP leader in Western Australia, allowed a conscience vote for all sides of parliament, as is entirely appropriate. The vote in this case, regrettably, was lost, but at least the debate was had.

Voluntary euthanasia is currently legal in Switzerland, the Netherlands, Belgium and also in the states of Oregon and Washington in the United States. In Australia, we know that there is overwhelming support for voluntary euthanasia. A Newspoll survey in February 2007 found that 80 per cent of Australians agreed with the statement that, for a hopelessly ill patient experiencing unrelievable suffering with absolutely no chance of recovering, a doctor should be allowed to provide a lethal dose if requested by the patient. Fourteen per cent disagreed; six per cent could not say. That debate can be had in this chamber; it cannot be had in the territories. In September 2010, Auspoll asked 1,500 respondents two questions and came up with these results: 78 per cent of Australians agreed that the territory governments should have the same power to make euthanasia laws as state governments. Seventy-six per cent agreed that people with a terminal illness should legally be able to choose euthanasia.

More than the polls, more than the intellectual arguments that have gone back and forth around this issue for many, many years,
this is ultimately a human and a very personal issue. Shavda, who died of a rare and incurable cancer and left us nine years ago tonight, had often said: ‘You wouldn’t let a dog suffer the way we do our loved ones with cancer or a terminal illness.’ A long-time advocate of voluntary euthanasia, Shavda wanted the right to be able to end her own life before the pain got too much to bear. She wanted to be able to say, ‘I’ve had enough—it’s time to go.’ But without the means or legal protection available, this is a very difficult and perilous task, for her as well as for her family, her doctor and others around her.

This is not something that many among us would choose. But for those suffering a terminal illness, who would prefer to die with dignity before the suffering simply gets too much to bear, it is an act of humane kindness and compassion. It takes great strength to face such a decision. This is an important debate. It is one that is very much worth having. But this is not actually the question before us today. The question before us, as others have said, is whether the territories should have the right to debate this issue themselves. Some might find the idea of the law interfering with an individual’s choice to end their own life odd. But the only thing more peculiar is that one parliament would prevent another parliament, duly elected, from being able to have that debate itself. I commend this bill to the Senate. Enough for today.

Senator STEPHENS (New South Wales) (5.04 pm)—It is very interesting to have the opportunity to be part of this debate on the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2008. I think we have a challenge before us. For those who might have just begun listening to the parliamentary broadcast, we are here debating Senator Bob Brown’s bill which seeks to recognise the rights of the legislative assemblies of the Australian Capital Territory, the Northern Territory and Norfolk Island to make laws for the peace, order and good government of their territories, including the right to legislate for voluntary euthanasia and to repeal the Euthanasia Laws Act 1997, which removed the right of the territories to legislate for voluntary euthanasia.

Senator Boyce, in her contribution to this debate, asked, ‘Would we be having the same level of interest if this was a debate about reinstating territory rights for something like the GST payments or minerals or something different from this?’ In fact, what we have in front of us right now is a tactic by the Greens to bring a focus onto the issue of euthanasia by coupling it with this important debate about territories’ rights and their restoration. This really frustrates me, because it is quite an unfair strategy, I have to say to Senator Brown.

If this was really a euthanasia debate, we would have negotiated something that was like the debate that we had on Afghanistan. We would not be here in a debate which has been coupled up, in this complicated, tricky way, which is trying to drive a wedge through this issue. Of course we listened to the contributions from the territory senators, and of course they are here as passionate advocates of the citizens that they represent. Of course they are here as advocates for the rights of our territories, their good governance and the decisions that they want to be able to make. But, by having the two issues linked together, suddenly we have something highly contentious—and very media friendly. Certainly there will be a lot of interest from the media about this. So something that is purported to be about territory rights we all know is, in fact, about something very different.

To remind everyone: the Northern Territory legislature passed that first euthanasia
law, the rights of the terminally ill legislation, in 1995 and then in 1997 the Commonwealth parliament overrode the Territory law with its own Euthanasia Laws Act, which did not repeal the Territory legislation but rendered it inoperative. Therefore, this tactic today is about restoring the rights of the Northern Territory, Norfolk Island and the Australian Capital Territory.

Senator Ludlam reminded us about the process that happened after that. While ever the Howard government had control of the Senate there was no way that we were actually going to be able to revisit this issue. As soon as the Howard government lost control of the Senate after the new Senate came into being in 2008, Senator Brown attempted to reintroduce his Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008. Those of us who were here at the time remember that it was actually a pretty dodgy piece of legislation. It was described by many as ‘ham-fisted’, and even the Northern Territory government opposed the bill. The Northern Territory Chief Minister at the time said he found it very high-handed and arrogant of Senator Bob Brown to be introducing legislation into the federal parliament that affected the Northern Territory without having had consultation at all with the Territory government or the people of the Northern Territory.

In fact, at the time, if the bill had been passed, it would have had the effect of resuming the operation of the original 1995 bill, which by then even Dr Philip Nitschke had conceded in an article was ‘defective legislation’. The Northern Territory law requires a psychiatrist to have confirmed that the patient is not suffering from a treatable clinical depression in respect of the illness before a medical practitioner is allowed to administer the lethal injection. Dr Nitschke and his co-author stated at the time that ‘confirmation was not easy since patients perceived such a mandatory assessment as a hurdle to overcome’. Philip Nitschke understood that every patient held that view. To what extent was the psychiatrist trusted with important data and able to build an appropriate alliance that permitted a genuine understanding of the patient’s plight? At the time, we were very concerned to find out that Dr Nitschke had personally paid the fee for the psychiatric assessment of one of the patients that he euthanised. So you can see that this was a very contentious issue in 1995, it was a very contentious issue in 2008 and it continues to be a very contentious issue now.

Of course, we have heard the arguments. The champion of territory rights, the ACT Chief Minister Jon Stanhope, says that the debate is about the ACT’s right to make its own laws and not the rights and wrongs of euthanasia. So why on earth has Senator Brown taken the position of locking these two debates together, which makes it very frustrating not only for of us here in this chamber but also for those outside the chamber who are listening and trying to understand what this is all about. I am getting hundreds of emails every day that basically say: don’t support Senator Brown’s call to reintroduce euthanasia. So it is inextricably linked and, regardless of the technical wording and the development of this piece of legislation, in the hearts and minds of Australians everywhere the issue is not about territory rights. Perhaps in the Northern Territory and the ACT, people see the dual argument. But most people who understand this debate know it is about euthanasia. And that is why we need to have the debate here today. We need to understand that, here in the Commonwealth parliament, we have an overarching social duty and a responsibility to commit to the public interest and ensure that the common good is served.

We have heard from several senators that Chief Minister Paul Henderson says the
Northern Territory should have the right to make its own legislation without interference from the federal government. The quote we have heard used from Paul Henderson is that ‘voluntary euthanasia is not on my agenda’. That is fine, of course, but we know that in a referendum in 1998 the Northern Territory rejected becoming a state. So you cannot have your bread and have it buttered too; you cannot have it both ways. They rejected the rights of full self-government, including on this issue.

Let us go to another important challenge. I listened to Senator Ludlam’s thoughtful contribution, and I appreciated his point that this is an opportunity to listen to a very thoughtful debate around these issues. But he said something about our right to make laws ‘simply because we can’. I think there is a real issue in that statement alone: do we even have the right to make a law about euthanasia? As Senator Barnett would know, a couple of centuries ago there was a lively debate about slavery. There were debates in the United States about whether some states should be able to make a law on whether they would have slave or free territories. I think it was Abraham Lincoln who argued against the notion that if a community want slavery they have the right to have it. The counterpoint of that is that there is nothing wrong with slavery. If you admit that there is something wrong with it then logically you cannot say that anyone has a right to do wrong. I think that is the conundrum we are confronted with here: if laws permitting euthanasia are always wrong, can there really be a right to make such a law in the first place? This goes to the challenge we have in this very, very difficult debate.

Senator Boyce made a really important point about definitions, the softening of the language—euthanasia, homicide, suicide, assisted suicide and death with dignity. This is a softening of the language about confronting euthanasia. There is a kind of continuum along the spectrum of assisted suicide—which is part of what Philip Nitschke was trying to do—for those who in a very coherent state of mind make a decision like that. And then you have the very significant contribution of Senator Boyce to the debate: the discrimination that we are seeing more and more, which she described as an issue of ageism and ableism—those who are frail, who are elderly, who feel that they are a burden on their families and who succumb to the kind of pressure being placed on them that they are a burden on their families. This is really a slippery slope—the decision, the discussion and the evidence that was provided by Senator Boyce about the ableism, the treatment of the disabled and the expectation that you can make those kinds of decisions. Where did we even start to have this kind of debate? Any kind of mercy killing or aid in dying, even in what seems to be the purest and most compassionate of intentions, contravenes the fundamental principle that human life has value, that human life is sacred from conception to natural death.

I am happy to wear my Catholic beliefs on my sleeve, having just been to Rome and witnessed the wonderful canonisation of Mary MacKillop. I met the wonderful woman whose experience was a life of miracles performed on her at a desperate situation in her own health. She was expected to die. She made an extraordinary recovery and was there. I met the young man beaten to a pulp in Bondi, the young Irishman whose parents flew here and made the decision to take him home to die. Yet there he was standing in front of us, telling us that he thanked God that no-one had turned off his ventilator. He is a bright and dynamic young man. Let us think about what it is that we are trying to focus on when we think about the issue of human dignity.
Let us think about the question of whether legislating to enable euthanasia inevitably leads to a situation where some individuals will risk having their deaths hastened against their will. Senator Boyce went to that issue. I think once a state or territory accepts killing upon demand in certain situations we are opening the door to justifying killing a human being under some intolerable conditions. You have to think about this. There is a possibility of developing broader criteria and making euthanasia more widespread. It is not scaremongering, although lots of people would claim that it is—it is a fact. Some people who promote assisted dying want to go beyond having mercy killings for people close to death, to having assisted dying for the very disabled, for the ill and even, in the case of Dignitas in Switzerland, for the depressed. Take the case of the Netherlands, where euthanasia and assisted suicide were legislated. At first it was only available to the terminally ill. Since 1998, however, the regulations have been used to permit access to euthanasia and assisted suicide to persons who are not terminally ill but suffer hopelessly from chronic physical or even psychological illness.

Can you listen to what is happening here? This effectively sanctions suicide as a response to personal hardship. It gives a green light to hopelessness and social pessimism. It is important that we as a government are aware of and guard against the growth and spread of social pessimism across Australia, guard against a shift away from improving human life towards a focus on bringing to an end damaged or impaired human life and guard against creating a climate that will undermine the relationship between elderly or dependent relatives and their families, allowing social pressures be exerted on very vulnerable people to volunteer for euthanasia in order not to be a burden.

Some might say that is a scenario too extreme, but I have to say the anti-euthanasia arguments often are extreme. I have heard some of them: a cost-effective way of dealing with the problems of an ageing demographic or a water shortage. We might laugh, but before dismissing those kinds of arguments completely we need to realise that they demonstrate a kind of thinking that moves away from judging human life by its internal worth or its moral meaning towards judging it by lesser measures, such as financial implications or environmental implications. Where there is life there is hope and we cannot be certain that a person is going to die, and I gave you the two examples of those fine healthy people and the many more people that I met while I was in Rome.

Apart from the misdiagnoses and the rapid pace of advances in medical science, there are cases where patients confound doctors by getting better or living longer and more comfortably than was expected. This would confound those who do not believe in miracles. Think about a person living with AIDS. In the past, someone like that might have decided to end his life and in fact would have continued to live a long time. For those people who are diagnosed with AIDS now, they have a prognosis of enjoying a good quality of life because of the development of new treatments for that disease.

Senator Boyce made a very important point about the issue of palliative care and the fact that Palliative Care Australia is meeting today to update its position on euthanasia. Palliative care programs focus on reducing the suffering of terminally ill patients. There is great evidence that better pain control and improvement of the psychosocial situation can alleviate a large proportion of the suffering of the terminally ill. This is where we need to be putting our efforts and this is where we need to be putting our resources.
The pros and cons of allowing individual states and territories to decide on their own euthanasia legislation all actually come back to our national cultural values and practices. It is important—and obvious—that these values and practices change over time, but it is also very important that in our role as federal law-makers we do not jump the gun and decide that something is or is not acceptable just because it is fashionable. We have to take into account what our constituents are saying to us, and in my case this has been overwhelmingly an urge to reject Senator Brown’s bill. But we also have to keep informed about the latest research about the practice of euthanasia and its effects. Our task is not easy, because there is no way to reach a consensus.

The debate about voluntary euthanasia has been going on for years, for centuries. In ancient Greece, Hippocrates was against it while Plato and Pythagoras supported it. Today doctors sign the Hippocratic oath, but while the AMA opposes the introduction of voluntary euthanasia legislation the Doctors Reform Society supports it. Our challenge remains the same as theirs: to think about society’s obligations to those who are coping with terminal illness and to weigh up the things that are not easily commensurable. There is the obligation to provide the means for diminishing pain and suffering, the obligation to provide an easier access to death for those who wish for it and the obligation to uphold the human rights of the most disadvantaged members of our society—the old, the poor, the disabled and the infirm. As I said, miracles happen in nature and, even if you are not a believer, where there is life there is hope.

I would like to finish by quoting from an email that I received this afternoon, a letter from Dr Gawler from the Royal Darwin Hospital. He says:

Dear Parliamentarian,

As a Senior Surgeon at the Royal Darwin Hospital, I must say that I see very grave dangers in making it possible to pass euthanasia legislation in the Territories.

There are insurmountable problems because of Indigenous Cultural and Linguistic differences in ensuring (without a shadow of doubt) that informed consent has truly been given for euthanasia.

Indigenous people are the sickest and the most frequent users of Health Services in the Northern Territory. Therefore this proposed legislation puts at risk the lives of the most vulnerable members of the Territory’s population.

Please oppose this inadvisable and inappropriate legislation.

Yours faithfully,

(Dr) David M Gawler MB BS FRACS FRCS(Eng) FRCS(Glasg) FICS

Senator BACK (Western Australia) (5.24 pm)—I rise to contribute to the debate on the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010, which is in front of the chamber. I really see this as an opportunity lost. As an ardent federalist from Western Australia, I very much stand up for the rights of the states and territories. Anybody who hears me speak in this chamber,
particularly when it comes to matters associated with royalties, would know that I am deeply offended when others try to put to one side constitutional rights in that case.

I will share that, in this particular instance, what is difficult for me is the reference to voluntary euthanasia legislation. I will address that. It is of concern to me that Senator Bob Brown has elected to include the term ‘voluntary euthanasia legislation’ in a bill that I believe could have simply been entitled the ‘restoring territory rights bill’. It is also of concern to me why, with four territory senators in this place, they have not been the ones to bring this legislation forward. However, it is, I believe, as has been said by others, a question relating to euthanasia. I have also made it my business to inquire into the views of those in the territories. The words of the previous speaker will in fact be incorporated into Hansard because I will be quoting from them too.

Being a veterinarian, I come to this debate, unusually, from the position of a medically related professional. It is the case that I have, over time, had occasion to euthanase many of my patients. Even in the animal world this process is extremely difficult. There have been many occasions when I have been disturbed by the rationale offered to me by those who are charged with the responsibility for decisions on the euthanasia of those patients. There is one thing I can say to you that is indisputable—that is that the action, once completed, cannot be reversed. It is this experience and that of my own family circumstance—and I am sure there are many others in this place who also have been touched and affected by the question—which informs my opinion that it is morally and ethically undesirable to engage in legislation which will take human life by medical means. Any law permitting this must inevitably be subject to unpredictable abuse, as indeed I believe we have seen in the instances from overseas which have been quoted in this place.

I turn first, then, to the issue of euthanasia based on medical grounds, particularly related to terminal illness. When faced with a terminal illness, as we know, the fear of pain is often overwhelming. But the adoption of high standards of palliative care is the most rational, most effective and most humane action in answering the call against promoting euthanasia for the terminally ill. It is true that this has not always been the case. I empathise with those who relate stories of sitting beside terminally ill loved ones in extreme pain in the hours before their demise. I too have experienced that. But medicine has improved significantly in this country and, again, my own observation confirms this. Competent counselling should always confirm the value of palliative care and that treatment will usually lead to a dignified end. Once this is understood, many people will choose to live and to enjoy as far as possible the time that is left to them with family and friends.

Pain can be managed and/or controlled, in the vast majority of instances, to allow a person to continue functioning. There is very little pain which cannot be either totally eliminated or brought to a point where the patient can in fact withstand a threshold that is acceptable to them. Any competent doctor is able to achieve this. In the very few instances of terminally ill people who are not able to be assisted in this way then heavy sedation or even light anaesthesia is possible. But, as we know, suffering is not just physical. It can be psychological, and these conditions can be managed.

The National Health and Medical Research Council in its paper on palliative care in 2009 stated:
Palliative care needs to commence as soon as a patient is diagnosed with a terminal condition. This could be 10 years before they actually die.

The medical profession feels deeply that it has not been adequately consulted on all aspects of this debate, particularly on those that impact squarely upon them: adequacy of palliative care, the ‘right to die’ argument, their own legal rights and obligations, and their role in administering a fatal dose. In Australia there is the common-law right of every person to refuse any or all medical treatment that may sustain life, and this is not clearly understood by patients and perhaps in the past by doctors.

I turn to the proposed bill. As the previous speaker said, I actually communicated at length this morning with a senior surgeon from Darwin, Dr David Gawler. I will not repeat those words used by Senator Stephens, except to say that the point he made to me was:

Importantly, if Indigenous people think medical staff have the power to terminate lives, the fear and distress will prevent many Aboriginal people from seeking and accepting medical treatment.

He went on to tell me that, bearing in mind Indigenous cultural and linguistic differences, there may be ‘insurmountable problems’ in ensuring in each and every case that they have fully informed and have given consent for euthanasia. He makes the point that Aboriginal people do not enjoy good standards of health and are most frequent users of health services. If I can quote these figures, the Northern Territory has the smallest population of the Australian states and territories, the highest proportion of Aborigines within that—27 per cent was the last figure I saw—but almost 50 per cent of deaths in the Northern Territory are of Aboriginal people.

Dr Gawler is of the belief the proposed legislation puts at risk the most vulnerable members of the population, and that is Aboriginal people in the Territory. It is interesting that in a paper in 1997 in the Lancet, John Collins and Frank Brennan agreed very much with Dr Gawler on the adverse effect on Aboriginal people in the Northern Territory of euthanasia. They report that the traditional Aboriginal viewpoint prohibiting euthanasia was rejected by the Northern Territory parliament as an argument against the act at a time of heightened concern around Australia about Aboriginal self-determination and health. The healthcare systems for Aboriginal patients are part of a unique complex which includes description of wellbeing, cause of illness, healing practices and the prerequisite social behaviours that a person experiences. They said at the time that the Northern Australian Aboriginal Legal Service admitted that euthanasia and suicide were not well known or understood in Aboriginal culture and that the most non-English-speaking Aborigines in the Territory were being denied their opportunity to make informed comment or response to the proposed legislation at that time due to a lack of interpreters.

It was interesting to note the similarity between the concerns expressed by Collins and Brennan in 1997 and those of Dr Gawler to me this morning. He then went on to talk about intervention by outside agents under Aboriginal law and the possible concern associated with payback. Equally interesting was the note from the New York state task force on life and the law in the United States, giving a warning of the potential ill effects of euthanasia legislation on marginalised groups, in which they said that they:

…unanimously concluded the dangers of such a dramatic change in public policy far outweigh any possible benefits and that the risks would be most severe for those who are elderly, poor, socially disadvantaged or without access to good medical care.
I support the position taken by Palliative Care Australia calling for the development of social policy affirming death to be part of life; support for the dying, their family and their carers; accepting quality care at the end of life is a basic human right; for government to allocate sufficient resources to ensure this; for the promotion of community discussion of death and dying through ongoing communication, for the development of initiatives designed to increase community and health practitioner capacity; and for the rollout of national guidelines to promote good practice.

I turn to the concept of euthanasia for non-medical reasons, often referred to as the ‘tired of life’ philosophy. Of course this, then, is not a medical issue—there is no need for the medical profession to be involved. In fact, it would be possible then to license lawyers, plumbers or even veterinarians to perform euthanasia in a non-medical context. It draws attention to the possibility of uncontrolled and unexpected applications of the principle of so-called lawful killing and it is presented quite often as the principle of self-determination. I recommend to the Senate a book by Dr Brian Pollard, a now retired Sydney anaesthetist. His book is titled Should we kill the dying? In it he states that self-determination is sometimes spoken of, firstly, as though it were the most dominant of the principles of care and, secondly, as though it would guarantee higher levels of patient satisfaction when people were given every opportunity to say what they wanted. Dr Pollard contends that neither of these is true. He says as a principle it is subject to the restraints of competing legitimate rights of others, either as individuals or society as a whole. He says that more important is the fact of patients who sometimes choose, with or without advice, courses of action which eventually prove to have unwelcome results, ranging from being merely unpleasant to the disastrous. I come back to the comment I made at the commencement of this discussion, and that is that, once enacted, euthanasia certainly cannot be reversed.

Legal and ethical codes hold that the rights and therefore the power to take the life of a dying person do not lie with other persons and that therefore euthanasia is unethical. And it is not difficult, then, to move towards expanded applications, which might or might not be resisted. Indeed, there could be compelling economic arguments, some of which we have heard here this afternoon. I give one as an example: escalating health costs. It was put to me in a seminar not long ago that 75 per cent of the Australian health budget is actually spent on people who will be dead 12 months after the expenditure has been exacted on them. How does this fact play out in the context of the euthanasia debate, given the rapidly increasing contribution of the health budget to our overall budget? I turn, secondly, to the high cost of funding, maintaining and supporting intensive care units and of older members of families becoming a burden both on family and society.

When the legal process is incapable of determining precisely either the motive of the one to do the killing or the capacity of the person asking to be killed, it is saying that the law is powerless to detect or to prevent abuse. This I believe to be an issue of enormous concern. Some of those who advocate euthanasia do not hide the fact that their eventual aim is to extend it further than the terminally ill—once the public has been conditioned to accept killing—as an acceptable mode of dealing with this social problem. We are all aware of the risk that an elderly member of a family might elect for euthanasia on the basis that they feel they are a burden to their family. And it is plausible, at least in some instances, that family members might do nothing to dissuade that eld-
erly member from this apprehension, whatever might be their motive.

I turn to the potential for abuse. We see this very instance in Holland, where, from the 1990s through to the present, the government of that country has continually reviewed the legislation surrounding euthanasia and has continually shifted the goalposts and the basis of these reviews. More and more people are accessing euthanasia for reasons that are not medical in their origins. Indeed, many members of the medical profession in such countries have come to see it as another useful tool in their treatment armoury. The law is being applied, for example, to people without their consent—perhaps those who are unconscious or in a coma. It is obvious that an unconscious person or one in a coma can neither give nor deny their permission.

Ilora Finlay, from the House of Lords in the United Kingdom, wrote in the *Lancet*: For example, in the Netherlands there is campaigning for euthanasia to be allowed for people with dementia and for a so-called suicide pill to be available for those who are “tired of life”… She notes:… in the short space of time since the Dutch 2002 Euthanasia Act was passed there has been the so-called Groningen Protocol governing the euthanasia of infants.

I find, and I am sure the vast majority of Australians would find, such a proposition entirely repugnant and one that should be absolutely and utterly rejected by Australian society.

Laws may be constructed to allow only for the euthanasia of terminally ill patients under certain carefully controlled circumstances. The intent of those seeking and those constructing that legislation may well want it to go no further. However, as we have seen in overseas experiences—Holland has been mentioned, also Switzerland, Belgium and others—a person can bring a claim of discrimination or denial of natural justice in their personal circumstances, based on an existing law which was constructed only for the terminally ill. These limitations have been consistently overturned under court challenges, on discrimination and other grounds. We have seen evidence of this in countries like Holland and Belgium where euthanasia has been legal for several years. An example presented to me recently was the agreed euthanasia of a 12-year-old boy in Holland. I do not know the circumstances, but I would go a long way on a hot day to be convinced of the validity of euthanising a 12-year-old boy.

I return to the comments of Dr Pollard, the now retired Sydney anaesthetist and a person who had much experience in this area. Dr Pollard suggests that the supporters of euthanasia frequently quote Holland as a country to be copied because voluntary euthanasia is actively practised, but rarely is one told why it would be beneficial to do so. The benefit in being directly killed, even when one may be in distress, is not self-evident, Dr Pollard contends.

So where is the legal line and who draws it? A case of this type would simply open a Pandora’s box. Euthanasia would become accepted in instances which the lawmakers never proposed it for, and the community would inevitably suffer as a result. Opportunities would abound. A relative for whom one has a duty of care is disabled, unconscious or in a coma; it may be more convenient for the person holding power of attorney for that disabled relative to have them euthanased rather than keep them alive. It is not a long bow to draw to inquire whether access to the estate of the now deceased relative might have been at least in part a motive for the decision taken.
I find myself in that very position as the person who holds power of attorney and the carer for my aged mother, who turns 95 this coming week. She is, and has been for the last nine years, a stroke victim in a wheelchair in a nursing home—a woman of enormous dignity, tremendous independence and, I must say, some dominance, a trait which did not find its way to me or my brothers! But my mother certainly does not wish to be with us. While she did have great mental acuity, she now does not, and that is a circumstance in which she herself, being very Catholic, would pray on a nightly basis not to wake up the next morning. However, that circumstance is not one she is able to exact. I for one would not like to be placed in the position of having to make that decision on her behalf.

I conclude by going back to where we started. If this were a bill dealing simply with the rights of the territories to consider legislation in the same way that the states can do now, it would have my support. But I cannot because it has been linked to the question of voluntary euthanasia, which is in fact the issue that has dominated the attention of the community. That to me is a disappointment and, therefore, the bill will not have my support.

Senator PRATT (Western Australia) (5.44 pm)—This evening I rise to speak in favour of the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010. I am in favour of well-crafted legislation that gives Australians the right to die with dignity. I will have more to say later on this point. However, for me, the primary reason for supporting this legislation does not relate to the merits of voluntary euthanasia per se. Rather, I support this bill because I believe in our democracy. More particularly, I believe in the democratic rights of Australians and that they should not be overridden merely because they happen to live in an Australian territory and not in an Australian state.

It should be emphasised that the purpose of this bill is clear. It is to restore to Territorians a right that was taken away from them by this parliament more than a decade ago when this parliament chose to pass the Euthanasia Laws Bill 1997. That is the right to elect an assembly with the power to legislate for voluntary euthanasia. I would like to emphasise that this bill does not reinstate the Northern Territory Rights of the Terminally Ill Act 1995; it merely gives the territories the power to enact legislation for voluntary euthanasia if they so choose.

The Northern Territory was granted self-government in 1978 and the ACT became self-governing in 1988. More than 228,000 Australians now live in the Northern Territory and 357,000 live in the ACT. That is significantly more than half a million Australians whose democratic rights are directly affected by this bill. So the question is: should these more than half a million Australians whose democratic rights are directly affected by this bill. So the question is: should these more than half a million Australians who live in our six states? As Senator Ludlam highlighted, Western Australia has recently had the opportunity to debate such laws. There is no doubt that state legislatures have the power to enact legislation on this issue. And there is now no doubt that but for the Euthanasia Laws Act 1997 the territories’ legislatures would also have this power.

By taking this power away from Territorians, this parliament said to Australian citizens in the territories: ‘You are second-class citizens. You, through your duly constituted local legislature, are less capable of governing yourselves than the residents of the six Australian states. Your legislature cannot be trusted to act appropriately and responsibly, unlike the state legislatures.’
I am not questioning this parliament’s right to take away the territories’ rights in this fashion. But having a power does not justify its use. In this case, our democratic conventions are clearly against taking back powers granted to subordinate legislatures in this fashion.

As a developing democracy, Australia benefited from these conventions. The British parliament had the power to overturn this parliament’s laws until 1942. It had the power to overturn laws passed by the states until 1986. Not only did the British parliament not exercise these powers but it specifically rejected the option of doing so, noting in 1942:

... the long standing constitutional convention that the Parliament would not interfere in the affairs of the Dominion, self-governing State or Colony save at the request of the Government of that Dominion ...

As a West Australian, I can say the issue at stake in that instance was far from trivial. It concerned a request from my home state to secede from the Federation. I, for one, am glad that the imperial parliament restrained from interfering in colonial affairs on that occasion and I only wish that Canberra had shown similar restraint in relation to its self-governing territories in 1997. Canberra’s interference was contrary to our democratic traditions and our conventions. It left our self-governing territories in the unenviable position of not knowing when such conventions would be breached next. To this day, Australian citizens in the territories are left in the situation of not knowing whether their self-government is a reality or whether their self-government is merely a token privilege that may be withdrawn at any time.

The argument that euthanasia is highly controversial and morally charged does not set limits on this parliament’s potential to interfere in territory affairs. There are many such issues that might fall under such an umbrella. Some of those include illegal drugs, the criminalisation of homosexuality, the rights of same-sex couples, the recognition of same-sex relationships, the regulation of artificial conception procedures, surrogacy arrangements, stem cell research, adoption laws, laws relating to pornography and prostitution, and the criminalisation of abortion.

Similarly, the characterisation of euthanasia as a life-and-death issue also fails to clearly limit this parliament’s field of action in relation to territory laws. Abortion is also seen by many as a life-and-death issue, as are artificial conception procedures and stem cell research. There are other issues that could potentially be characterised in this manner. They also include criminal laws relating to murder and all forms of manslaughter, including industrial manslaughter and infanticide. There is a wide range of morally controversial life-and-death issues that illustrate just how dangerous this precedent, which was set in 1997, is when this parliament chose to interfere with the territories’ powers of self-government. This precedent was unpredictable, unjust and arbitrary interference.

The sorry reality is that by passing the Euthanasia Laws Bill 1997 the parliament at that point signalled to Australian citizens in the territories that it was prepared to subject their rights to self-government to the political imperatives of the day, for in this instance a morally controversial matter or life-and-death issue are merely pseudonyms for politically contentious legislation.

What Territorians found out in 1997 was that the Australian parliament was prepared to arbitrarily interfere in their affairs if their legislature passed laws that were sufficiently politically contentious. The plain truth is that this parliament’s action made a mockery of the Northern Territory’s status of self-government. It instituted a Clayton’s self-government for the territories, self-
government in name only, form and no substance. It matters little, I think, that this parliament has rarely chosen to exercise such powers. It took nearly 20 years before this parliament decided to curtail the territories’ powers of self-government. But now that precedent has been set, Territorians can never rest easy on this score until this parliament restores their rights to self-government in full.

So I hope I have been able to demonstrate to you why I see this bill primarily through the prism of territory rights or, more specifically, as a matter which is of crucial significance to the democratic rights of Australian citizens in the territories. I do accept, however, that there could be instances in which a territory government passed legislation that was so objectionable that it brought the whole matter of a territory’s self-government and its capacity for self-government into question. Such legislation would have to be way outside existing local or international community standards. In such a situation, I would argue, we would question whether the territory concerned should have self-government at all, and not simply whether the legislation itself should stand.

So I think that it is telling that this question never arose in 1997. Nobody ever suggested that the passage of euthanasia legislation was evidence that the Northern Territory itself was unfit for self-government. Such an argument would have been unsustainable, because legislation for voluntary euthanasia in clearly prescribed circumstances is not extreme in the sense of being way outside existing local or international community standards. There may be a minority of people in our community who wish that voluntary euthanasia legislation was widely regarded as extreme in civilised communities, but the simple fact is that this is not the case. As Senator Bob Brown rightly pointed out in his second reading speech on the bill before us, every opinion poll conducted over the last two decades has shown that approximately three-quarters of Australians support the concept of voluntary euthanasia, so voluntary euthanasia legislation can hardly be said to be extreme in terms of Australian community standards. As Senator Brown pointed out, a number of established democracies on the international stage also have laws which give their citizens the right to die with dignity if they so choose. These democracies include Israel, the Netherlands, Belgium and Switzerland, as well as the US state of Oregon. The existence of these laws has not brought the wrath of the international community onto the countries concerned. Yes, in having such laws, these countries are in a minority amongst established democracies, but the civilised world has not condemned, and does not condemn, them for having such laws. The reason for this is obvious. Such laws may be controversial. They may be morally repugnant to significant numbers of people. But they are simply not regarded by the international community as a whole as outside the standards of civilised communities.

While I do not regard this debate as primarily being on the merits of euthanasia legislation, I do not wish to be disingenuous about my own views on this very important question. Personally, as a legislator, I am prepared to consider laws that would allow, through proper prescribed processes in specific circumstances, for the capacity of people with a terminal illness or condition to access a dignified death. The citizens of the Northern Territory who are concerned about their own circumstances should have the right to urge their parliamentarians to consider their circumstances. I do believe that in this country we must talk more about dying. We must invest more in good palliative care in this country. However, even with the very best care, for some people there is pain and
other symptoms that simply cannot be borne and that people would prefer not to bear. Here in Australia we should invest more in people’s capacity to have a good death. More often than not such a death should not in any way need access to legalised voluntary euthanasia. As a community, I believe we need to talk more about dying to support people’s capacity to confront—as we all must at some point—the circumstances of our death. There is a need to focus on bringing together the medical, social and spiritual support that people need. I am a member of Palliative Care Western Australia and this is something that I firmly believe. Certainly, professionals in palliative care would prefer us to pay more attention to the medical, social and spiritual aspects of dying, and I think that is the debate that much of Australia would prefer us to be having. But I do recognise that there are circumstances in which voluntary euthanasia might be contemplated, and they are certainly ones which I might personally contemplate.

Nevertheless, I do not believe that one needs to support voluntary euthanasia to support this bill. It is primarily a matter of Territorians’ democratic rights. It is about their right to elect a government with the same powers as state governments to make laws for the benefit of their people and in accordance with their local community standards. So this parliament’s decision in 1997 undermined those rights. This parliament undermined those rights in a manner that was arbitrary and unjust. The passage of the euthanasia legislation was not a sufficient justification for abrogating Territorians’ right to self-government—not when the majority of Australians support the concept of euthanasia and not when the international community does not believe such laws warrant our condemnation.

Debate interrupted.
money, some $43 billion, does not even warrant a cost-benefit analysis.

When the government commissioned the $25 million study of the whole process they did not ask for an examination of alternative options and they did not ask for the merits of the policy. In fact, those that did the implementation study particularly made the point that they had been told by the government not to examine alternative options and not to examine the merits of the policy. The government never ask themselves: what are we trying to achieve and what is the most effective way of achieving it? One assessment firm has suggested that the NBN proposal would have a net present value of minus $9 billion.

A more prudent approach in my view would be to deal with areas of underservice around Australia and then, if demand progresses as time progresses and other technologies do not overtake fixed line connectivity, build greater connectivity. We have recently had the farce of the Prime Minister lecturing us all about economic Hansonism, yet here we are with a government that is proposing to overthrow 20 years of telecommunications reform and 20 years of competition policy by creating a new government owned monopoly over the fixed line communications in complete contravention of existing competition laws.

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Senator Macdonald, I need to interrupt your train of thought as the time for general business, which includes government documents, has now expired.

Senator IAN MACDONALD—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following orders of the day relating to government documents were considered:


General business order of the day no. 2 relating to government documents was called on but no motion was moved.

COMMITTEES

Environment and Communications References Committee

Report

Debate resumed from 25 October, on motion by Senator Parry:

That the Senate take note of the report.

Senator FISHER (South Australia) (6.06 pm)—As the Chair of the Senate Environment and Communications References Committee it was good to have tabled the Sustainable management by the Commonwealth of water resources report in the Senate the day before the Murray-Darling Basin Authority released its guide to the draft plan to the plan. I want to thank the secretariat of the committee, who worked long and hard to help the committee deliver this quality document. It is interesting to note that both the coalition and the government were able to agree on the report contained in this quality document. We were unanimous in the recommendations we made.

Given the release of the authority’s guide to the draft plan to the plan the subsequent day, there are some interesting recommendations. In particular, there are recommendations that suggest consultation by government, by authority, with communities affected. There are recommendations that sug-
gest tracking, evaluation and monitoring of impact of water buybacks, recommendations that recommend in the strongest terms that there be a community impact statement each and every time a community is to be or is affected by the buyback of water, and recommendations that there be consideration given to some sort of structural adjustment package for those affected by water reforms. All of those sorts of recommendations were agreed between the coalition and the government. Despite that, the very next day the Murray-Darling Basin Authority released the long-awaited guide to the draft plan to the plan, which spectacularly ignored any sort of consultation and spectacularly ignored any sort of social and economic assessment, and focused purely on environment issues.

How is it that it has taken this Labor government until the past week or so to recognise the folly of its ways, with the Prime Minister, during the election campaign, saying, ‘We will implement carte blanche each and every thing that the MDBA says and recommends,’; Minister Burke saying that it is not for the government to interfere in the MDBA processes and iterations; Minister Crean saying that in fact it is for the parliament to determine—and now the government is hoisting the MDBA out on a limb and acting as if the government always expected the MDBA to take into account social and economic factors? And why on earth has the MDBA not done so? It is an unforgivable state of affairs and it is a great shame that the Labor government was not able to take more note of the policy zombies on the back bench. If I can pay my colleagues on this committee from the Labor Party a compliment, I say to them that as policy zombies they actually could have suggested to Labor’s frontbench a few things that might have prevented the debacle in which we now find ourselves on the MDBA and more generally. I seek leave to continue my remarks.

Leave granted; debate adjourned.

Regional and Remote Indigenous Communities Select Committee Report

Debate resumed from 30 September, on motion by Senator Bushby:

That the Senate take note of the report.

Senator Ian Macdonald (Queensland) (6.10 pm)—I wish to say a few words in talking to the motion before the chair to note this particular report. This was a report in which the committee members looked into the issues with some care and dedication and I think the report is well worth reading and in fact adopting where appropriate recommendations are made. But I want to mention an issue that came up in this report, although there was a separate committee looking at this other issue at the same time as this particular committee was in Cape York. It was mentioned in relation to this committee, and it is the Wild Rivers legislation of the Queensland government.

To recapitulate very briefly, the Queensland Labor government has introduced the so-called Wild Rivers legislation, I always say, which effectively curtails activity in wild rivers areas. I know that the Queensland ministers have said, ‘Oh, it does not really curtail investment in these areas,’ but the evidence before both this and the other committee that I referred to clearly showed that some Indigenous people were indeed led to a conclusion that their rights to their land would be impacted upon. When someone said, ‘You can always apply for permission and consent,’ the response of one of the witnesses was, ‘Well, who is going to pay for it? We don’t have the money to engage teams of lawyers and accountants to go through and try and get some permission under the Wild Rivers legislation.’

As a result of that, Mr Abbott, in the other place, and Senator Scullion, here, have
moved a bill that was in fact passed by the Senate prior to the election and which sought to overturn the Queensland legislation insofar as certain aspects of the Wild Rivers legislation were concerned. What Mr Abbott’s bill does, in short—and I paraphrase—is it says that you cannot declare a wild river in this area without the permission of the traditional owners. A lot of misconception and untruthfulness is being promoted about what Mr Abbott’s bill actually says, but that is the guts of Mr Abbott’s bill—that you cannot have a wild rivers regime in these areas unless the traditional owners agree.

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Senator Macdonald, I need to interrupt you for a moment. We are taking note here of the final report of the Senate Select Committee on Regional and Remote Indigenous Communities, which did not actually report into the Wild Rivers situation or the legislation, so I just want you to be mindful that we are taking note of the actual report of that committee and the contents of that report.

Senator IAN MACDONALD—Thank you. You might notice that in my earlier remarks I indicated that there was a separate committee meeting in Cape York at the time this committee was in Cape York. Indeed, Senator Barnett was there, amongst others. I think you were also there, Madam Acting Deputy President Crossin. But certainly Wild Rivers was mentioned in the hearings of this particular committee, of which I am discussing the report. I am very conscious and thank you for your advice, but I was aware of that and I am being very careful to relate it to this particular report.

As I was saying, there is a lot of misunderstanding—some of it deliberately promoted—about what Mr Abbott’s bill might do. It is all relevant to regional and remote Indigenous communities and their ability to do things on their land which will give them an economic future and which will provide employment for their people. Mr Abbott’s bill says, ‘Yes, if you want a Wild Rivers regime, that’s fine; but you can’t do it unless the traditional owners agree.’ And who could argue with that? That is all by way of background and in the context of the Regional and Remote Indigenous Communities Select Committee report. But just this week the Queensland government has sought to extend that Wild Rivers legislation to take in not just rivers in Cape York and the Gulf of Carpentaria but those right down into western Queensland. The rivers running into Lake Eyre are now also going to be subjected to this Wild Rivers legislation, which will perhaps not impact so heavily on Indigenous people in the west—although some will be impacted upon—but on other landowners in that area, who will find that their enjoyment and use of their land is to be further curtailed. It will, in fact, impact upon remote Indigenous communities as well.

What concerns me is that in Queensland we have been going through a water reform process. It has been going on for four or five years, from memory, and all of these issues were looked into. Those water resources plans give the government and appropriate authorities the necessary power to properly manage land in those areas. Why, then, do you need this draconian, sledgehammer Wild Rivers legislation coming in over the top of it? The water resource management plans that are in place are sufficient to properly manage in a sustainable way the water resources in those rivers.

So it is probably timely to mention that. I will not take it much further at this stage except to again compliment the select committee on the work it did in relation to regional and remote Indigenous communities. I seek leave to continue my remarks later.
Leave granted; debate adjourned.

Community Affairs Legislation Committee Report

Debate resumed from 30 September, on motion by Senator Bushby:

That the Senate take note of the report.

Senator BARNETT (Tasmania) (6.19 pm)—I commend the Community Affairs Legislation Committee report. It is on the National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2010, and I wanted to address the aspects of the report with respect to diabetes and the concern for people with type 1 diabetes, of which there are about 140,000 around Australia—juvenile diabetes, type 1 diabetes, insulin-dependent diabetes. A big issue for that community at the moment is access to insulin pumps. Of course the biggest issue of all is a cure, and last weekend we had, at least in Tasmania, the Walk to Cure Diabetes. I want to commend on the record John and Gaylene White, for their efforts to make such a successful event in and around Launceston, and the JDRF, the Juvenile Diabetes Research Foundation, who have organised such walks for a cure around Australia, raising millions of dollars for a cure for type 1 diabetes. I commend them, congratulate them and thank all the families involved in that.

With respect to insulin pumps, the particular concern that I raised in Senate estimates last week is that under the government’s new subsidy program there are only 96 young Australians under the age of 18 who have accessed that program and that subsidy. In my view, that proves that the program as it is currently structured is not working. I have raised that with the department and I have put them on notice again that they need to work through this issue with the Juvenile Diabetes Research Foundation, who manage the program. They do a great job. I congratulate them and Mike Wilson and his leadership there. I know that Diabetes Australia and Professor Greg Johnson has a view about this, and it is similar to my own: the system currently is not working adequately. It needs to be restructured. The subsidy clearly is not big enough. It is only available at the moment for children under 18 years of age. That is discriminatory; it should be available to 19-year-olds, 20-year-olds and 21-year-olds. I used an example last week of a 21-year-old who unfortunately had a very brittle form of diabetes and needed a pump but did not have the funding. He was from a low-income family was not able to afford an insulin pump.

I bring that to the attention of the Minister for Health and Ageing, Nicola Roxon, and I bring it to the attention of the department again. This program really needs to be re-looked at and I urge the government to take whatever measures possible—liaise with the JDRF, Diabetes Australia, the peak bodies and with me. I put on the record my special interest here. I do have an insulin pump and I do have type 1 diabetes. I am the only federal member of parliament with type 1 diabetes. I put that on the record; it has been on the record month in, month out; year in, year out since I have been in the Senate. I wanted to put that on the record during this debate and to say that clearly, when only 96 young people are accessing the program when millions of dollars have been allocated to this program, this is not working. We do not want those funds to go to waste. I want those funds to be well used and to be dedicated and allocated to young Australians of whatever shape, size, colour and sex with type 1 diabetes. If they have brittle diabetes, an insulin pump can help. We know that, everybody in the diabetes community knows that and this is something that the government will have to have a good, hard look at. I make those observations and I seek leave to continue my remarks.
Leave granted; debate adjourned.

Environment, Communications and the Arts References Committee
Report

Debate resumed from 30 September, on a motion by Senator Bushby:

That the Senate take note of the report.

Senator FISHER (South Australia) (6.26 pm)—I rise to take note of the report on the administration and effectiveness of the Green Loans Program. As chair of the committee I want to recognise the work put into that report by the secretariat, in particular Stephen Palethorpe and Nina Boughey. I also want to take this opportunity to recognise the contribution to the inquiry made by some of the many Australians whose lives have been affected by the Green Loans Program, and in most cases affected in a negative way. In particular I want to recognise the contribution of a number of assessors or would-be assessors who were attracted to the industry by the government’s implementation of this program and who came before the inquiry to tell their stories.

Unfortunately, the Green Loans Program is the latest in what is becoming a line of bungled government programs. It follows on the heels of the Home Insulation Program and the Building the Education Revolution program, which sadly is still ongoing. Like the Home Insulation Program, the Green Loans Program has left a wreckage in its wake. For example there is a wreckage of people who trained to be Green Loans assessors and bought equipment to do so. Some of them found themselves with a whole lot of training and no job to do. Others found themselves with a whole lot of training with jobs they did, but for which they could not get payment from the government.

The report found, amongst other things, that the Green Loans Program suffered from poor preparation and poor process in its implementation. It suffered from a government enforcing its attempts to get assessors into people’s homes and to get money out of the door. In short it suffered as a government imposed program of haste forced upon a department that was ill equipped and ill resourced to cope with the task of the scale and complexity put before it. Does that sound familiar? Yes, it sounds similar to, for example, the bungled and now scrapped Home Insulation Program.

The government senators in their dissenting report suggested that the Green Loans Program is in the process of being refashioned into the Green Start program. Government senators really should realise that refashioning the program will only refashion the problems—refashioning Green Loans into Green Start will only refashion the problems.

The majority report of the committee recommends a range of things. It recommends that the Commonwealth Ombudsman, by an own motion, instigate a review of the department that carried out the implementation of this program, its people, its systems and its processes, because something was very crook in Tallarook. The report also recommends that the Green Loans program not proceed, because there is no evidence that the government has learnt the errors of its ways. Firstly, there is no evidence that the government has learnt to assess these ‘sound good’ programs to ensure that they will ‘do good’ in the way the government wants to implement them. Secondly, the government must task a job to a department that is equipped to deliver. Thirdly, the government must not impose upon a department tasks which the department is incapable—through no fault of its own—of delivering upon. Fourthly, the government must set up a monitoring and evaluation process that checks that requirements are met and that the program achieves its aims. The government
has not learnt the error of its ways, so the report recommends that the Green Start program not proceed.

The report also contains a range of recommendations for the government to try to make some good to individuals who were damaged by the program—not that making some good will get those individuals ahead of the game. At best, it might help them to return to a level playing field or to where they were before they made the—for many of them—unfortunate decision to attempt to do the government’s bidding by being spear carriers to implement the Green Loans program.

The final recommendation in the report is the one that suggests that this government in particular, before it implements any environmental program, conduct an evaluation of that program to ensure that it will deliver a net environmental benefit and/or come at a cost that represents value for money for taxpayers. Just because these environmental things sound good does not mean that they will do good. The government needs to prove that it has done the preparation and that it has in place the processes to ensure that its ‘sound good’ and ‘feel good’ policies will actually do some good. The government owes that to the Australian people. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following orders of the day relating to committee reports and government responses were considered:


Community Affairs References Committee—Report—The prevalence of interactive and online gambling in Australia. Motion of Senator Bushby to take note of report agreed to.

Community Affairs References Committee—Report—Planning options and services for people ageing with a disability. Motion of Senator Bushby to take note of report agreed to.

Fuel and Energy—Select Committee—Final report. Motion of Senator Bushby to take note of report called on. Debate adjourned till the next day of sitting, Senator Bushby in continuation.


Community Affairs Legislation Committee—Report—Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009. Motion of Senator Bushby to take note of report agreed to.

Community Affairs Legislation Committee—Report—Food Standards Amendment (Truth in Labelling—Palm Oil) Bill 2009. Motion of Senator Bushby to take note of the report called on. Debate adjourned till the next day of sitting, Senator Bushby in continuation.

Community Affairs Legislation Committee—Report—National Health and Hospitals Network Bill 2010 [Provisions]. Motion of Senator Bushby to take note of report called on. On the motion of Senator Barnett the debate was adjourned till the next day of sitting.

Agricultural and Related Industries—Select Committee—Final report—Food production in Australia. Motion of Senator Bushby to take note of report called on. Debate adjourned till the next day of sitting, Senator Bushby in continuation.

Foreign Affairs, Defence and Trade References Committee—Interim report—
Australia’s administration and management of the Torres Strait. Motion of Senator Bushby to take note of report called on. Debate adjourned till the next day of sitting, Senator Bushby in continuation.

Finance and Public Administration References Committee—Interim report—Reform of Australian Government administration. Motion of Senator Bushby to take note of report agreed to.


Economics References Committee—Interim and final reports—The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework [Inquiry into the role of liquidators and administrators]. Motion of Senator Williams to take note of report agreed to.


Agricultural and Related Industries—Select Committee—Report—The incidence and severity of bushfires across Australia. Motion of Senator Bushby to take note of report agreed to.

Fuel and Energy—Select Committee—Second interim report—The mining tax: Still bad for the economy—Still bad for jobs. Motion of Senator Bushby to take note of report agreed to.


Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Review of the Defence annual report 2008-09. Motion of Senator Parry to take note of report called on. On the motion of Senator Bushby the debate was adjourned till the next day of sitting.

Economics References Committee—Report—Access of small business to finance. Motion of Senator Parry to take note of report agreed to.

Finance and Public Administration References Committee—Report—The funding arrangements for tax reform advertising. Motion of Senator Parry to take note of report agreed to.

AUDITOR-GENERAL’S REPORTS

Report No. 2 of 2010-11

Debate resumed from 30 September, on motion by Senator Bushby:

That the Senate take note of the report.

Senator BARNETT (Tasmania) (6.35 pm)—With regard to this report on Infrastructure Australia and infrastructure funding for Tasmania, can I say: we in Tasmania have been dudged. We have been dudged; we have been diddled; we have missed out totally. We have diddly-squat. It is not on; it is not fair; it is not right. The approach by the Gillard Labor government has been disgraceful.

They delivered a budget last year where there was $22 billion of funding for road, rail and port upgrade in and around Australia.
How much money came to Tasmania out of that fund? Not one dollar. That is not good enough. We are being dudded in Tasmania because of the lack of advocacy, the lack of representation, the lack of fighting for Tasmania. It is not on. It is not good enough. I put the Labor representatives from Tasmania, state and federal, on notice: you must try harder. Members of the federal Labor government and the state Labor government must try harder. The state Labor government should hang their heads in shame. Did they put in an application to Infrastructure Australia for funding? Did they, Senator Bushby? He is shaking his head and he knows that they did not. Senator Carol Brown is across the chamber, listening in, and she knows the failure and the dismal performance of the state Labor government in terms of their lack of action.

Senator Ian Macdonald—Shame!

Senator BARNETT—It is absolutely shameful behaviour, as Senator Macdonald has indicated and as we all know. They should have put in an application for a $150 million upgrade to Bell Bay Port in Northern Tasmania. It was there. It was ready to go. Unfortunately, the former Labor government, before the election, did not even put in an application. It is not good enough. Let me just say on the record that we made the views of the Tasmania Liberal Senate team—with the strong support of Steve Titmus, the federal Liberal candidate for Bass—very clear before the election. We strongly argued in favour of that application for the Bell Bay Port upgrade. It would do wonders for Northern Tasmania. We need that support. Jobs are in short supply in Northern Tasmania and across the state at the moment. I will talk about the north-east in a minute, but I just want to say that that is not good enough.

During the election campaign we also indicated our strong support for the gas rollout. We need access to gas, like our neighbours on the mainland have. We need that access. It is an improper, inappropriate and shameful display and lack of action by the state Labor government and our federal Labor government that we have not had that access. The funding is there. Infrastructure Australia have the money. An application must be put in so that we can take hold of that opportunity and grasp with both hands this wonderful opportunity. Tasmania deserves its fair share.

I mentioned the north-east. It is so tough for them at the moment. In and around Scottsdale they have had some very hard knocks, including more in the last couple of weeks. Gunns announced that the Scottsdale sawmill would close in the next few months. We know that means that over 100 jobs will go. Earlier this week, I indicated strong support for the Musselroe Bay wind farm. We have in fact been arguing for that for years, but in recent months we finally got the government to act and provide legislative support for the renewable energy certificate so that we can get action up there. But, if we got some Infrastructure Australia funds for the north-east, I would be right behind Dorset Council if they made recommendations for an application for funding for some road upgrades. They are always keen for some upgrades to their roads in the north-east. They deserve it and they need it. Mayor Barry Jarvis is leading Dorset Council. He is doing a good job. I am looking forward to meeting with him and the council, along with Sophie Mirabella, the shadow minister for innovation industry and science, on 5 November when we visit Scottsdale.

In terms of infrastructure upgrade, the defence facility at Scottsdale needs to take hold of the opportunity that is going to be available to it. There is an upgrade. We have been arguing for it for years. The government has finally listened and is now undergoing an
upgrade in and around Scottsdale. That is very good news, and congratulations to all those who are working in the facility. That is great. We have lobbied and lobbied on that for years. The government has finally listened and is doing the upgrade. But there are more opportunities there, so ‘watch this space’ with respect to a defence facility.

Tasmania deserves its fair share. We have been dummied. We have been diddled. We have missed out big time, but we will fight. The Tasmanian Liberal Senate team will fight and the state Liberals will fight. We ask all federal and state members to fight for our fair share from Infrastructure Australia.

**Senator IAN MACDONALD (Queensland) (6.41 pm)**—The Auditor-General has conducted a performance audit of Infrastructure Australia, particularly the conduct of Infrastructure Australia in the first national infrastructure audit and development of the infrastructure priority list. As the Auditor-General points out, the purpose of Infrastructure Australia is to assess major infrastructure projects that are being talked about or suggested within our nation. Quite clearly, it is the role of Infrastructure Australia to carefully assess Australia’s infrastructure needs and then to prioritise them into what might appropriately be a subject for further government investigation and eventually investment of public monies.

Regrettably, and this is noted by the Auditor-General, a number of projects that are being developed in Australia at the moment constitute election promises from the 2007 and 2010 elections, which will not be going to Infrastructure Australia. They are projects hatched in the back rooms of the Labor Party somewhere around Australia, and they come forward without a great deal of assessment or figuring or cost-benefit analysis. They are simply thrust upon the Australian public as something the public will have to pay for, even though the work Infrastructure Australia is supposed to do with all major infrastructure projects has not been done.

Perhaps the most significant infrastructure project in Australia in recent times is a proposal to spend $43 billion not of Senator Conroy’s money, not of Ms Gillard’s money, but of Australian taxpayers’ money. Forty-three billion dollars is a huge spend in anyone’s language. It even makes the money wasted on the pink batts scheme pale into insignificance. It even makes the $16 billion wasted—much of it wasted—on the Julia Gillard memorial school halls program pale into insignificance.

**Senator McLucas**—We’re not going to talk about the Bruce Highway, are we?

**Senator IAN MACDONALD**—Here we have a proposal to spend $43 billion of taxpayers’ money—and I emphasise that. It is not Senator McLucas’s money. If it were Senator McLucas’s money, you could be assured that the first thing she would do is get a cost-benefit analysis done. She would insist that, if she were investing $43 billion, she knew she would get a return on her investment. Very few people currently in this chamber will be alive in 30 or 40 years down the track when, as the implementation study says, you might get a return—but absolutely nobody believes that.

**Senator McLucas interjecting**—

**Senator IAN MACDONALD**—I hear Senator McLucas saying a lot, and no doubt she will speak after me on this. If it were her money, she would not spend $43, let alone $43 billion, unless she knew she was going to get a return for that $43 billion. It is Infrastructure Australia’s job to look at these proposals and ask questions. Is it a good proposal? Is it worth the investment? Should it take priority over hospitals? Should it take priority over roads? Should it take priority over investment in our natural resources?
Infrastructure Australia are there to ask questions such as these, but were they asked to look at Australia’s biggest investment in infrastructure in decades? No, they were not. They were particularly excluded from the investigation of this major investment in infrastructure, and you can understand why. It is because this is the Labor Party’s 25th iteration, or thereabouts, of some form of policy on the NBN.

Senator Conroy has been flapping around in the dark since before the 2007 election, when was trying to get some sort of policy that he could go to an election with and offer to the Australian public. But things have changed, and we have got to this situation now where, almost sight unseen and with no cost-benefit analysis done, we are going ahead to satisfy the political egos of Senator Conroy and Ms Gillard—and I say that without wanting to be personally unkind to them—by saying that they are producing a National Broadband Network.

Everybody in Australia wants a national broadband network. We already had the rudiments of it, or more than rudiments of it—a number of companies already had the job partly done. Certainly it needed government investment—and Senator Conroy first told us that he would be able to do it for $4.7 billion. We needed a proposal, which the previous coalition government had actually put in place, to ensure that there was a national network that complemented the existing network and provided fast broadband to those parts of Australia that did not then have it. That was the coalition’s policy, and it was actually in place.

Senator Conroy became the minister, illegally cancelled the contract and then put up his proposal of $4.7 billion to assist Telstra to expand their network. He then spent $20 million on some feasibility studies, had a fight with Telstra and worked out that he could not do anything. So he cancelled that and—almost, it seems, in a fit of pique—said, ‘If we can’t get our way with Telstra and do it for $4.7 billion, we will spend $43 billion of taxpayers’ money in duplicating, and triplicating in part, a system that is already there.’ As the Auditor-General points out in several documents, there is a system now in Tasmania. Senator Conroy keeps talking about it. I think Senator Barnett mentioned it in question time today. Senator Barnett, there are, from memory, 500 connections active—

Senator Barnett—Yes, that’s right.

Senator IAN MACDONALD—for a $37 million spend so far. Boy oh boy, that is good investment!

Senator Barnett—There are 262 active.

Senator IAN MACDONALD—There are 262 active. Sorry; I gave Senator Conroy the benefit of a few hundred extra. But it is not a total spend of $37 million; that is just the contract. Senator Conroy refused to tell us what has already been spent. We worked out at estimates that those people who have signed up have done so because they are not being charged—it is being given away for free.

Senator McLucas—You’re making this up.

Senator Ian Macdonald—I am not making this up, Senator McLucas. Have a look at the estimates Hansard. The government is not getting a cent in returns from the investment in Tasmania because NBN Co. is giving away for free its part of the $43 billion investment. It is typical of Labor Party business economics that you spend all this money, give the service away for free and then have the hide to tell Australians that the government going to make a profit out of this and give a return on the investment of $43 billion.
It has become clearer and clearer as we ask questions about the NBN at estimates and other committees that the government will not get any return at all on their investment in Tasmania until, at the very earliest, July next year—another nine months away. Until then, generous old NBN Co, which is the Australian taxpayer, is simply giving away its investment for zero return. It is no wonder that those few people who have signed up to this NBN Co. in Tasmania have done so—they are not being charged for it. They are paying the internet service provider a fee, but they are not paying NBN Co. anything for the fibre rollout. That is a disgrace of the first order. I am sure that the Auditor-General in future reports will continue to look at this and he will report unfavourably on how you can spend that sort of money in Tasmania yet give away your commercial expertise and the network for no return at all.

(Time expired)

Report No. 5 of 2010-11
Debate resumed from 30 September, on motion by Senator Bushby:

That the Senate take note of the document.

Senator Barnett (Tasmania) (6.52 pm)—I take note of that report. I wish to commend the Auditor-General on a fine report because it relates to the Practice Incentives Program, which is a very important program. It is administered by the Department of Health and Ageing in association with Medicare Australia. A particular aspect of that program relates to those who are impacted by diabetes. There are about 1.5 million people with diabetes in Australia. About 140,000 of those have type 1. I particularly wish to express my concerns for and on behalf of those with type 2 diabetes. They are not getting the deal that they should. The government announced prior to the election a particular incentive, a particular initiative, and that was nearly $440 million for a particular program that would help and benefit people with diabetes.

Since then we have heard nothing. The government promised and agreed to establish a diabetes advisory group made up of particular stakeholders, key people—for example, Diabetes Australia, the AMA and others. That is fair enough; it is entirely appropriate to have the key stakeholders in that group. But guess what? They have not heard anything. They do not know what is going on. There are no terms of reference.

Senator McLucas—How long ago was it?

Senator Barnett—Senator McLucas was here last week when I asked some questions of the department. She was representing the minister and she would know that I asked about this on the record last week in Senate estimates. We did not get the answers from the department. I put them on notice then and I am following it up tonight to say: this is important. The government cannot keep sitting on their hands and saying the federal election got in the way of action. This was announced well and truly before the federal election. The federal election was 21 August; we are here now at the end of October. We need action and we need it fast. People with diabetes deserve that support. I am making it very clear to the department in particular, but also to Nicola Roxon—look, I commend her, she has a big job as minister for health, but the fact is there are 1.5 million-plus Aussies out there with diabetes who deserve that support. Diabetes was made a national health priority under Michael Wooldridge, a former Liberal health minister. He was an excellent minister. Gee, he did a good job.

Senator Ian Macdonald interjecting—

Senator Barnett—Senator Macdonald acknowledges that, and others do too because he made diabetes a national health
priority and we had a lot of action and initiatives under the coalition when we were in government.

With respect to obesity, this government adopted my recommendation in my 2006 book. They adopted the recommendation to make obesity a national health priority. I commend the government on accepting that suggestion and recommendation. But what have they done? Not much. Obesity leads to diabetes, cancer, heart disease and a range of other health complications. In Senate estimates last week we revealed that obesity in the Defence Force was very high, at 14 per cent, and obesity and overweight at 62 per cent—and that is on par with the US.

With respect to the Practice Incentives Program, I will leave it there. There is a short amount of time left and I want other senators to have the opportunity to express their views. But this is an important matter. The government is on notice; Minister Roxon is on notice. We will be watching this with great interest for and on behalf of those people with diabetes and their families around Australia. I seek leave to continue my remarks.

Leave granted; debate adjourned.

Report No. 12 of 2010-11

Debate resumed from 25 October, on motion by Senator Macdonald:

That the Senate take note of the document.

Senator FISHER (South Australia) (6.57 pm)—I take note of this report. I want to commend the Auditor-General on the necessary job that unfortunately the Auditor-General had to do—duty-bound, common sense bound—on the bungled Home Insulation Program. The Auditor-General touches on what is currently the raw nerve of the mop-up of the mess, the aftermath, the wreckage in the wake of the Home Insulation Program—that is, mums and dads who had their roofs insulated under the Home Insulation Program and now know not what they have festering in their ceilings because the government is continuing to refuse to release the results of its inspections. There are now some 100,000 homes that it has inspected.

During Senate estimates the government attempted to say, ‘We’re telling you that 46 per cent of homeowners inspected had foil removed, 40 per cent of homeowners inspected elected to implement safety switches and the other 14 per cent have simply had inspections’. Telling us 46 per cent, 40 per cent and 14 per cent means nothing. It does not tell us what has happened in those ceilings, whether they had bungled installations and whether they have accidents waiting to happen. That is the information to which the Australian public is entitled.

I have written two letters to responsible ministers. I asked questions at estimates. There have been no responses to my letters from ministers and there were no responses at estimates as to how many of the South Australians who had insulation installed under this program had insulation installed by installers who were licensed, as they were required to be by South Australian laws—the only state that at least had some laws requiring insulation installers to be licensed, and it would appear you did not even have to have a South Australian licence to be registered to install this dodgy insulation under this bungled and botched program. At least our response on those issues would possibly provide South Australian mums and dads with some small reassurance, but, no—we are in the dark. We are well insulated—we wish! We still do not know. So thank you very much for not much, government. I seek leave to continue my remarks later.

Leave granted; debate adjourned.
Consideration

The following orders of the day relating to reports of the Auditor-General were considered:

Auditor-General—Audit report No. 1 of 2010-11—Performance audit—Implementation of the Family Relationship Centres initiative—Attorney-General’s Department: Department of Families, Housing, Community Services and Indigenous Affairs. Motion of Senator Bushby to take note of document agreed to.

Auditor-General—Audit report No. 3 of 2010-11—Performance audit—The establishment, implementation and administration of the strategic projects component of the Regional and Local Community Infrastructure Program—Department of Infrastructure, Transport, Regional Development and Local Government. Motion of Senator Bushby to take note of document called on. Debate adjourned till the next day of sitting, Senator Bushby in continuation.

Auditor-General—Audit report No. 4 of 2010-11—Performance audit—National Security Hotline—Australian Security Intelligence Organisation; Attorney-General’s Department; Australian Federal Police. Motion of Senator Bushby to take note of document agreed to.

Orders of the day Nos 6 and 7 relating to reports of the Auditor-General were called on but no motion was moved.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Order! There being no further consideration of committee reports, government responses and Auditor-General’s reports, I propose the question:

That the Senate do now adjourn.

Mr Alojzy (Alex) Dziendziel
World Party Tasmania

Senator CAROL BROWN (Tasmania) (7.00 pm)—I start by acknowledging the work of a member of the Tasmanian Polish community who recently passed away. Alojzy Dziendziel was born in Poland in 1926 and passed away in Hobart on 21 August 2010. A service was held for Alex, as I knew him, in the Santa Teresa church in Moonah on 26 August and I was touched by how many people came to pay their respects to such a remarkable Tasmanian. The Santa Teresa church was overflowing into the car park with people paying their respects. Included among the mourners along with me were the former federal member for Denison, Mr Duncan Kerr SC; Mr Scott Bacon, the state member for Denison; a former state member for Denison, Mr Graeme Sturges; Adriana Taylor, Mayor of Glenorchy and member for Elwick; the ALP state secretary, Mr John Dowling; and Senator-elect Lisa Singh.

In the eulogy given by Professor Jan Pankulski, I gained a deeper insight into Alex’s early history. Alex was born in the Polish Silesia, the mining region in southern Poland, in 1926. Living through the peak of the economic depression and border disputes between the newly formed Poland and Germany, the war upheavals threw him to Italy and then to Egypt. As a teenager he joined the cadets and at 18 he joined the Polish army, where he played a role in liberating Italy. After the liberation he worked in the military hospital, and after the end of the war he was sent to England, where he spent some time in a mine-sweeping unit. Together with hundreds of other Polish soldiers, Alex was stranded in Britain—without a free country to return to. Looking for a new home, Alex volunteered as a contract worker in Australia.

He landed in Tasmania in August 1948, starting work in the Hydro-Electric Commission’s construction camps in Bronte Park, deep in the bush. It was back-breaking work in a very cold climate and harsh conditions, but Alex was determined to make it—to set-
tle in a new country and call Australia home. During his first leave, in 1951, Alex travelled to Western Australia, where he met and fell in love with a Polish girl called Maria. They wed and settled in Tasmania.

For those who knew him, Alex had three great loves: his wife, Maria, a budding Polish community and the Glenorchy community, in the northern suburbs of Hobart. From day one of his arrival in Tasmania, Alex joined the Good Neighbour Council and the Polish Association, and gradually became the leading member of the two communities. Every Christmas he spent hours visiting the ill and lonely people in hospitals and organising charity events for the needy. He was vice-president and then president of the Polish Association, and at the same time worked in the Good Neighbour Council, the Returned Services League and dozens of other organisations. Alex exerted boundless energy for his community work—always planning and executing his initiatives. He contributed to the welfare committee, the seniors club, the Cultural Diversity Advisory Committee, the Ethnic Communities Council of Tasmania and the Red Cross, to name a few.

Alex served as a justice of the peace for 40 years and had been a member of the RSL for 58 years. Remarkably, at the age of 80, Alex was still a member of 15 committees in Tasmania. In recognition of his service to the community and his tireless work, he was awarded an MBE OAM in 1979. The Polish government decorated him with the Chivalry Cross for his military service. Alex was loved and respected by all his Glenorchy friends, by the Polish community in Tasmania, which he served for over half a century, and by all Tasmanians who experienced his generosity and goodwill.

There have been hundreds of beneficiaries of his work, including those whom he engaged with whilst working for the Polish Association, especially for his favourite seniors club, the RSL, the Good Neighbour Council, the Abbeyfield Society, the Ethnic Communities Council—now the Multicultural Council—the Council on the Ageing, the Tasmanian Pensioners Union, Glenorchy Community Health Forum and many others.

Alex and Maria had no children of their own, but they always insisted that they had the largest family of all: the entire Glenorchy and Polish community. We will all miss his wisdom, energy and, above all, his tireless devotion to helping others. He was a truly remarkable man who worked tirelessly to help migrants settle in Australia and in Tasmania in particular, strengthening and enriching our socially diverse society. Alex’s lifelong work laid the foundations for a more inclusive, vibrant and culturally diverse community in Tasmania.

Alex was also a life member of the Australian Labor Party. He was an active and long-term member of the Glenorchy branch, always volunteering enthusiastically at every election campaign and in branch activities. He was well regarded by everyone in the party and in the Tasmanian community and his legacy will live on in various organisations and initiatives he established.

Thanks to the work of people like Alex, Tasmania is a place where differences of culture and faith are celebrated. Tasmanian life has been enriched by people from around the world who have come to our state to live, work or study. This harmonious coexistence of cultures, languages and faiths would not be possible without the efforts of those working in the community to build relationships.

I have already reflected on the remarkable achievements of one man, Alojzy Dziendziel, but I also want to take this opportunity to...
acknowledge a few other Tasmanians who are committed to fostering a sense of shared identity and purpose in our community. The tragic murder of Zhang ‘Tina’ Yu, a young Chinese student undertaking an accounting degree at the University of Tasmania in 2009, prompted a Tasmanian barrister and a music industry representative to take action to show that Tasmanians embrace and celebrate diversity. Mr Stephen Estcourt QC and Mr Martin Blackwell engaged a group of 10 volunteers to launch the World Party Tasmania event.

The organising committee comprised representatives from local businesses and community organisations as well as individuals from various sections of the community, and they developed a vision. Their aim was for a World Party—a not-for-profit, one-day festival style event aimed at celebrating cultural diversity in Tasmania whilst quietly commemorating the death of Tina. The World Party initiative gathered momentum in a few short months and, after securing six corporate sponsors, the group hosted World Party 2010 on Saturday, 16 October in the Hobart City Hall. I was happy to be in attendance.

World Party was an overwhelming success, with around 6,000 Tasmanians, including a large contingent of overseas students, attending the event between 2 pm and midnight. The Hobart City Hall was lined with food stalls from different sections of the community and the stage was alive with music and dancing from all corners of the world. There were different food stalls dotted amongst the many people who came to sample the tastes and sounds that enrich our community. We were privileged to have an array of back-to-back performances of dance and music from 2 pm through to midnight. The event gave members of our community from all backgrounds and of all ages the opportunity to celebrate and exchange cultures through food, music and dance. Federal and state politicians who supported and attended the event throughout the day were dotted amongst the crowds who poured into the city hall.

The Premier of Tasmania, Mr David Bartlett, praised event organisers for providing ‘a chance for Tasmanians to participate in the fun, energy and creativity that other cultures have to offer’. In a short address at the event, Premier Bartlett spoke of the importance of embracing diversity. He said:

We all have a duty to help build harmony, respect and compassion in our society, as we welcome students, visitors, refugees and immigrants from all around the world.

The overwhelming success of the event was a public demonstration that Tasmanians are proud to be a part of a truly multicultural community. I think plans are already underway for a World Party 2011. I want to put on the record tonight my personal gratitude to the coordinators of World Party and to the volunteers who brought the event together.

**Child Abuse**

**Senator KROGER** (Victoria) (7.09 pm)—I rise this evening to speak about the urgent needs of adults surviving child abuse. As co-convenor of Parliamentarians Against Child Abuse, known as PACAN, I have taken a very keen interest in the critical work undertaken by ASCA—Adults Surviving Child Abuse. ASCA is a national charity which works to advance the wellbeing of Australian adults who have suffered any form of abuse or neglect in childhood. The time is long overdue for all governments to support some two million forgotten Australians. There is a very practical way for this to occur. Last year, on 16 November, Australia said sorry to the forgotten Australians and child migrants. Sadly, most abuse occurs in the home and family, perpetrated by someone the child knows.
Forget-Me-Knot Day is on 12 November this year. It is a national day on which ASCA asks all Australians to unite in support of the more than two million adults surviving child abuse. To support this worthy cause all Australians are encouraged to wear a tangled knot, the symbol of the day. This day brings together communities from around Australia and acknowledges those whose childhoods have betrayed them. There is still a need for ongoing community and government support in this vital area. All adult Australians abused as children deserve and need our help and support. For too long child abuse survivors have been forgotten by governments and the community. The cost to individuals, families and communities in social, health and economic terms is a national disgrace.

National and international research has demonstrated a number of adverse impacts of child abuse and neglect, many of which are associated with significant financial costs for individuals and the communities in which they live. These include future drug and alcohol abuse, mental illness, poor health, homelessness, juvenile offending, criminality and incarceration. While not all children who have suffered abuse or neglect go on to develop these problems, child maltreatment often comes at great cost to individuals and society.

A 2007 Australian university initiated study of over 21,000 older Australians found that over 13 per cent of those surveyed reported having been either sexually or physically abused in childhood or both. These figures do not include those who have been emotionally abused, neglected or forced to live in domestic violence situations. The study found child abuse survivors are almost 2½ times as likely to have poor mental health outcomes, four times more likely to be unhappy even in much later life, and more likely to have poor physical health. Childhood physical and sexual abuse increases the risk of having three or more medical diseases, including cardiovascular events in women. It causes a higher prevalence of broken relationships and lower rates of marriage in later life, lower levels of social support, an increased risk of living alone, and an increased likelihood of smoking, substance abuse and physical inactivity. ASCA is the key national organisation working to meet the needs of these people.

In 2008, the Australian Childhood Foundation, along with Child Abuse Prevention Research Australia, published a research paper entitled *The cost of child abuse in Australia*. The study estimated that the annual cost of child abuse and neglect for all people ever abused in Australia was $4 billion in 2007, while the value of the burden of disease—a measure of lifetime costs of fear, mental anguish and pain relating to child abuse and neglect—represented a staggering $6.7 billion and could be as high as $30.1 billion. The report also estimated that the lifetime costs for the population of children reportedly abused for the first time in 2007 would be $6 billion, with the burden of disease representing a further $7.7 billion and could be as high as $38.7 billion, including the monetary value of the pain and suffering that survivors experience.

ASCA relies on funding from a mixture of modest private sponsorship and government funding. The organisation wishes to secure a more stable, predictable and longer-term funding stream with which to sustain its much-needed support services for a population of child abuse survivors that are otherwise passed over by most government health or social justice budget allocations. A business case for funding has been submitted to the federal government, which I have further endorsed in correspondence to the minister. The need of this organisation over a three-year period is for about $500,000, which seems significantly small. When one consid-
ers the annual financial cost of dealing with child abuse in Australia versus the cost of funding this worthy organisation, I cannot find any reason for Minister Macklin and the government not to take up this cause.

Some of the work of this organisation includes the operation of a 1300 telephone line, which is operated between 9 am and 5 pm Monday to Friday. This line is manned by qualified and experienced trauma counsellors. It also produces a monthly newsletter, in both electronic and hard-copy versions, for members and subscribers and a quarterly e-health bulletin for health professionals. It also has a comprehensive interactive website with extensive resources for survivors, supporters and healthcare professionals.

ASCA’s other core service is its workshops. In 2008 their research and program manager developed a set of psychoeducational Creating New Possibilities workshops, following extensive literature research in the trauma area. These provide evidence based services designed specifically for adult survivors of child abuse. In 2009 these were delivered with the support of the federal government, which funded 20 of these workshops. The response was extraordinary and it served to reaffirm that there was an unsatisfied demand for these services, which continues today. Workshops were conducted in city and regional areas to consistently high acclaim. In 2009 ASCA delivered almost 50 workshops around Australia to survivors, their supporters and healthcare professionals.

Psychoeducational workshops for survivors provide information about how the abuse suffered in childhood may be impacting current and past behaviours and feelings as well as physical and psychological health. These workshops provide much-needed insight as well as tools for positive change. The workshops address the core underlying issues of abuse, promoting enhanced health and wellbeing and more meaningful engagement in the community. This reduces the social and health repercussions of unaddressed abuse and neglect. These include suicide, self-harm and other mental and physical health repercussions; substance abuse and criminality; and family dysfunction and breakdown. These programs help reduce disadvantage, chronic marginalisation and social exclusion.

Without further funding assurances, ASCA will not be able to sustain a skeletal support program—let alone expand its services to meet the clear demand. An urgent positive response to funding would mean the difference between fulfilling a community need and turning away adult survivors of child abuse. Without question, ASCA’s priority is the health and wellbeing of Australian survivors of child abuse. The latest round of workshops will finish in Canberra at the end of this month. When these finish, ASCA has no identified government funding to keep them going into 2011. Needless to say, this circumstance puts significant pressure on the operations of this organisation.

In conclusion, whilst some survivors show remarkable resilience and function well, many do not. Without the right help, many survivors continue to struggle in their daily lives. Untangling the knot of their child abuse can continue right into their old age. For the sake of these victims, I implore Minister Macklin to grant ongoing concurrent funding for ASCA.

Senate adjourned at 7.20 pm

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is
tabled with an instrument unless otherwise indicated by an asterisk.]

Acts Interpretation Act—Statement pursuant to subsection 34C(6) relating to the extension of specified period for presentation of a report—Department of Families, Housing, Community Services and Indigenous Affairs—Report for 2009-10.

Appropriation Act (No. 1) 2009-2010—Determination to Reduce Appropriations Upon Request (No. 2 of 2010-2011) [F2010L02812].

Australian Prudential Regulation Authority Act—Australian Prudential Regulation Authority (Confidentiality) Determination No. 19 of 2010—Information provided by locally-incorporated banks and foreign ADIs under Reporting Standard ARS 320.0 [F2010L02813].

Broadcasting Services Act—Variation to Licence Area Plan for Bunbury Radio – No. 1 of 2010 [F2010L02810].

Civil Aviation Act—
Civil Aviation Regulations—Instruments Nos CASA—
366/10—Instructions – use of Global Positioning System (GPS) [F2010L02802].
EX85/10—Exemption – use of radiocommunication systems in firefighting operations (Western Australia) [F2010L02570].
EX89/10—Exemption – from standard take-off and landing minima – Thai Airways [F2010L02701].

Civil Aviation Safety Regulations—Instrument No. CASA EX88/10—Exemption – to produce a modification or replacement part [F2010L02639].

Commissioner of Taxation—Public Rulings—
Class Rulings—

Fuel Tax Determination—Addendum—FTD 2006/2.

Environment Protection and Biodiversity Conservation Act—Amendments of lists of exempt native specimens—
EPBC303DC/SFS/2010/39 [F2010L02811].
EPBC303DC/SFS/2010/46 [F2010L02716].
EPBC303DC/SFS/2010/48 [F2010L02715].

Financial Management and Accountability Act—Financial Management and Accountability Determination 2010/21 – Section 32 (Transfer of Function from TREASURY to DSEWPaC) [F2010L02809].

Health Insurance Act—
Health Insurance (Home-Based Sleep Studies) Determination 2010 (No. 1) [F2010L02723].
Health Insurance (Home-Based Sleep Studies) Determination 2010 (No. 2) [F2010L02724].

Marriage Act—Marriage Regulations—Marriage (Celebrancy qualifications or skills) Amendment Determination 2010 (No. 1) [F2010L02807].

Migration Act—Migration Regulations—Instrument IMMI 10/062—Access to movement records [F2010L02756].

Nation Building Program (National Land Transport) Act—Variation of the Nation Building Program Roads to Recovery List Instrument No. 2010/1 [F2010L02814].