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SITTING DAYS—2010

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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
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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

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<tr>
<td>Prime Minister</td>
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<tr>
<td>Deputy Prime Minister and Treasurer</td>
<td>Hon. Wayne Swan MP</td>
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<tr>
<td>Minister for Regional Australia, Regional Development and Local Government</td>
<td>Hon. Simon Crean MP</td>
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<tr>
<td>Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate</td>
<td>Senator Hon. Chris Evans</td>
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<tr>
<td>Minister for School Education, Early Childhood and Youth</td>
<td>Hon. Peter Garrett AM MP</td>
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<td>Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate</td>
<td>Senator Hon. Stephen Conroy</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>Hon. Kevin Rudd MP</td>
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<td>Hon. Dr Craig Emerson MP</td>
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<td>Hon. Stephen Smith MP</td>
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<td>Hon. Anthony Albanese MP</td>
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<td>Hon. Nicola Roxon MP</td>
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<td>Hon. Jenny Macklin MP</td>
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<td>Minister for Sustainability, Environment, Water, Population and Communities</td>
<td>Hon. Tony Burke MP</td>
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<td>Minister for Finance and Deregulation</td>
<td>Senator Hon. Penny Wong</td>
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<td>Minister for Innovation, Industry, Science and Research</td>
<td>Senator Hon. Kim Carr</td>
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<td>Attorney-General and Vice President of the Executive Council</td>
<td>Hon. Robert McClelland MP</td>
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<td>Minister for Agriculture, Fisheries and Forestry and Manager of Government Business in the Senate</td>
<td>Senator Hon. Joe Ludwig</td>
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<td>Minister for Resources and Energy and Minister for Tourism</td>
<td>Hon. Martin Ferguson AM, MP</td>
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<tr>
<td>Minister for Climate Change and Energy Efficiency</td>
<td>Hon. Greg Combet AM, MP</td>
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[The above ministers constitute the cabinet]
**GILLARD MINISTRY—continued**

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<tr>
<td>Minister for the Arts</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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<td>Minister for Sport</td>
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<td>Special Minister of State for the Public Service and Integrity</td>
<td>Hon. Gary Gray AO, MP</td>
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<td>Assistant Treasurer and Minister for Financial Services and</td>
<td>Hon. Bill Shorten MP</td>
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<td>Minister for Employment Participation and Childcare</td>
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<td>Minister for Indigenous Employment and Economic Development</td>
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<td>Minister for Human Services</td>
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<td>Parliamentary Secretary for Disabilities and Carers</td>
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<td>Parliamentary Secretary for Sustainability and Urban Water</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

Hon. Tony Abbott MP  
Hon. Julie Bishop MP  
Hon. Warren Truss MP  
Senator Hon. Eric Abetz  
Senator Hon. George Brandis SC  
Hon. Joe Hockey MP  
Hon. Christopher Pyne MP  
Senator Hon. Nigel Scullion  
Senator Barnaby Joyce  
Hon. Andrew Robb AO, MP  
Hon. Ian Macfarlane MP  
Senator Hon. David Johnston  
Hon. Malcolm Turnbull MP  
Hon. Peter Dutton MP  
Hon. Kevin Andrews MP  
Hon. Greg Hunt MP  
Mr Scott Morrison MP  
Mrs Sophie Mirabella MP  
Hon. John Cobb MP  
Hon. Bruce Billson MP

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<td>Shadow Minister for Justice, Customs and Border Protection</td>
<td>Michael Keenan MP</td>
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<td>Shadow Assistant Treasurer and Shadow Minister for Financial Services</td>
<td>Mathias Cormann</td>
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<td>Shadow Minister for Childcare and Early Childhood Learning</td>
<td>Sussan Ley MP</td>
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<td>Shadow Minister for Universities and Research</td>
<td>Brett Mason</td>
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<td>Shadow Minister for Youth and Sport and Deputy Manager of Opposition</td>
<td>Luke Hartsuyker MP</td>
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<td>Shadow Minister for Indigenous Development and Employment</td>
<td>Marise Payne</td>
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<td>Shadow Minister for Regional Development</td>
<td>Bob Baldwin MP</td>
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<td>Shadow Special Minister of State</td>
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<td>Shadow Minister for Defence Science, Technology and Personnel</td>
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<td>Shadow Minister for Ageing and Shadow Minister for Mental Health</td>
<td>Concetta Fierravanti-Wells</td>
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<td>Shadow Minister for Disabilities, Carers and the Voluntary Sector</td>
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<td>Chairman, Scrutiny of Government Waste Committee</td>
<td>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>Cory Bernardi</td>
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<td>Shadow Parliamentary Secretary for Roads and Regional Transport</td>
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<td>Shadow Parliamentary Secretary to the Shadow Attorney-General</td>
<td>Gary Humphries</td>
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<td>Shadow Parliamentary Secretary for Tax Reform and Deputy Chairman,</td>
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<td>Ian Macdonald</td>
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<td>Andrew Southcott MP</td>
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<td>Mr Andrew Laming MP</td>
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<td>Shadow Parliamentary Secretary for Supporting Families</td>
<td>Senator Cory Bernardi</td>
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<td>Shadow Parliamentary Secretary for the Status of Women</td>
<td>Senator Michaelia Cash</td>
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<td>Shadow Parliamentary Secretary for Environment</td>
<td>Senator Simon Birmingham</td>
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<td>Shadow Parliamentary Secretary for Citizenship and Settlement</td>
<td>Hon. Teresa Gambaro MP</td>
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<td>Shadow Parliamentary Secretary for Immigration</td>
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<td>Shadow Parliamentary Secretary for Innovation, Industry, and Science</td>
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Monday, 15 November 2010

The PRESIDENT (Senator the Hon. John Hogg) took the chair at 12.30 pm and read prayers and made an acknowledgement of country.

COMMITTEES
Community Affairs Legislation Committee
Meeting
Senator MOORE (Queensland) (12.31 pm)—by leave—I move:
That the Community Affairs Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 4 pm, to take evidence for the committee’s inquiry into the provisions of Schedules 2 and 3 of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010.

Question agreed to.

Environment and Communications Legislation Committee
Meeting
Senator McEWEN (South Australia) (12.32 pm)—by leave—On behalf of Senator Cameron, the chair of the Environment and Communications Legislation Committee, I move:
That the Environment and Communications Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today, from 3 pm.

Question agreed to.

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (WEEKLY PAYMENTS) BILL 2010
Second Reading
Debate resumed from 28 October, on motion by Senator Sherry:
That this bill be now read a second time.

Senator RONALDSON (Victoria) (12.32 pm)—I rise to speak on the Veterans’ Affairs Legislation Amendment (Weekly Payments) Bill 2010. The coalition supports this bill. The bill will enable the Repatriation Commission and the Military Rehabilitation and Compensation Commission to establish a class of persons who are homeless or at risk of homelessness who will be eligible to receive their DVA entitlements weekly instead of fortnightly. Eligible veterans can make application to the Department of Veterans’ Affairs to be treated under these more beneficial arrangements. The bill ensures that homeless veterans are able to access similarly beneficial arrangements under veterans legislation as is available to other Australian government pensioners.

I do not propose to go through each section of the bill, but there are a number of related matters which I wish to discuss today. Last Thursday a number of Australians at 11 o’clock stopped for a minute’s silence to commemorate the 92nd anniversary of the end of the First World War. It was on that day that 10 new names were added to the Roll of Honour at the Australian War Memorial. They are Sapper Jacob Moerland and Sapper Darren Smith, who were killed in action on 7 June this year; Private Scott Palmer, Private Timothy Aplin and Private Benjamin Chuck, killed in action on 21 June this year; Private Nathan Bewes, killed in action on 9 July this year; Trooper Jason Brown, killed in action on 13 August this year; Private Grant Kirby and Private Tomas Dale, killed in action on 20 August this year; and Lance Corporal Jared MacKinney, killed in action on 24 August this year. Lest we forget the sacrifice of these 10 fine young men, we will remember them not just on 11 November but every day.

But I was disgusted to read in the Herald Sun newspaper in Melbourne that workers at VicRoads did not pause for one minute at 11
o’clock on 11 November. I say this in an apolitical sense because I know that the Premier expressed his outrage at the time, as did the leader of the opposition, but I do want to make further comments about this. I want to talk today about the commentary that was associated with and attached to the VicRoads decision in relation to this matter. They apparently were concerned about causing offence. VicRoads’s statement said that the organisation was ‘conscious of possible different cultural issues’ and did not ‘wish to cause offence to anyone’. Cause offence to whom exactly? To whom are they referring? Only after significant public pressure did VicRoads relent and encourage staff to observe a customary and traditional one minute’s silence for the fallen of all wars at 11 am on the 11th day of the 11th month—a tradition, I might say, that well and truly predates VicRoads.

Disappointingly, the attitude of VicRoads has also been replicated elsewhere. Again the Herald Sun reported, last Friday, that Centrelink staff and customers in Newport ‘failed to observe the minute’s silence’. Further, the paper reported:

At the McDonald’s store on the corner of Victoria Pde and Smith St, Collingwood, burgers and fries took priority.

At the Commonwealth Bank branch in Burke Rd, Camberwell, service continued as normal.

RMIT University did not mark the 11th hour across its three campuses …

RMIT chief operating officer Steve Somogyi said the university respected “the right of its staff and students to mark Remembrance Day in their own way”.

What a complete and utter cop-out—observe it in their own way. Surely one minute’s silence every year is the absolute least that this nation can do to honour those who made the ultimate sacrifice in defence of our nation, our values and our way of life. I regret that this is the approach taken by some in positions of authority who are probably the same people who want to ban Father Christmas, carols and decorations at Christmas. It is simply political correctness gone mad. Remembrance Day is not a cultural cringe, as some believe. It is the most important of days to commemorate, reflect on and remember the sacrifice of others which has led to the nation we have today. Andrew Bolt in the Herald Sun last Friday wrote:

So far from showing “sensitivity” to its multicultural staff, VicRoads has insulted them. And rather than show “sensitivity” to all cultures, it has disrespected the one that matters most, and that’s where it’s been so irresponsible.

I absolutely and totally endorse those comments. We need to have positive leadership on this important national issue from the Gillard Labor government and it will be wholeheartedly supported by the coalition. Later today I intend writing to the vice-chancellors of Australia’s universities calling on them to mark 11 am on 11 November as a time for one minute’s silence on campus. I will be writing to the Minister for Veterans’ Affairs inviting him to join with me in establishing a program which I think should be called ‘Re-committing Australia to Remembrance Day’.

I remember well one of his predecessors, Con Sciacca, who put in place the fantastic Australia Remembers program. I think Con Sciacca played a pivotal role as a former Labor Minister for Veterans’ Affairs—for those listening to this speech who do not know who Con Sciacca is. He was, in my view, pivotal in re-educating another generation of young Australians about the importance of commemorating the sacrifices that others have made for this country. I invite the minister to join with me in establishing this program. I am happy for him to introduce it to-
morrow and for him to take ownership of it, but we do need to recommit Australia to Remembrance Day.

Look at those universities, TAFEs and schools and tell me one group of people in this country other than those educational institutions which is better able to organise one minute’s silence for one minute of the year. I call on them to use the rights they have to ensure that, as far as possible, classes cease for that minute and there is that minute’s observation. Would it not be fantastic for this country if at 11 o’clock every bus stopped, every tram stopped, every commuter stopped for a minute to commemorate, as I said before, what is one of our most important days of commemoration?

This brings me to another matter—that is, an issue raised with me last week by a colleague from the other place. In an email distributed last Thursday there is a claim that a veteran had committed suicide as a result of difficulties in claiming his entitlements through the Department of Veterans’ Affairs. This is obviously deeply distressing and very, very worrying. I am aware of allegations made in the past which have linked suicide to slow responses from the Department of Veterans’ Affairs in the processing of claims. Obviously all these allegations have been previously investigated. In light of this email, I ask the Minister for Veterans Affairs to request a thorough investigation of the claims made in the email and, where appropriate, to inform the parliament of the outcome. I have the email and, whilst I do not propose to detail the specifics in this place, I ask that the minister take on board the contents of the email which was, I note, sent to him and that he take action to ensure that the issues raised are dealt with and properly investigated.

As we near the end of a busy year, I draw the Senate’s attention to the plight of the Review of Military Compensation Arrangements. This review was commissioned by the previous Minister for Veterans’ Affairs in 2009. The previous minister appointed a steering committee to manage the review and appointed the secretary of his department to the role of chair. The steering committee includes representatives from the Department of Defence, Treasury, the Department of Finance and Deregulation and the Department of Education, Employment and Workplace Relations as well as an independent academic expert in veterans and compensation law. The review was due for completion in March 2010. The deadline was later extended to the end of this year. We now hear it will be 2011 before the review is completed and recommendations released for comment by the veteran and ex-service community. I raised concerns with the Department of Veterans’ Affairs through Senate estimates about the progress of the review and some of the issues being considered by the review. I am particularly concerned that defence personnel returning from Afghanistan may not be able to access additional compensation for new injuries. I am sure this will horrify many, many senators. This is the result of the offsetting of previous compensation payments under other acts against any new injuries covered by the MRCA legislation.

I am quite sure that when Danna Vale, a previous coalition Minister for Veterans’ Affairs, introduced the Military Rehabilitation and Compensation Bill 2003 in parliament, she did not intend this to happen. In fact, Mrs Vale told the other place when she introduced the bill:

A member who suffers an injury or illness after that date—that is, 1 July 2004—will be able to combine prior impairments from the SRCA and VEA—the Veterans’ Entitlements Act—
with the new arrangements to get the best possible outcome.

I quote from the House of Representatives debates of 4 December 2003, page 23,809. I emphasise the words ‘the best possible outcome’. I hope that the former minister’s words have been used by the review in their deliberations into the Military Rehabilitation and Compensation Act, because they reflect very clearly the intention of this parliament—specifically, the previous coalition government in making provision for injured veterans and ex-service people’s entitlements under the law. I remain concerned, however, that this critical review is being delayed by bureaucratic argument. I have heard from a number of sources that the review’s delay is due to an argument between Finance, Treasury and Workplace Relations wanting to water down provisions of the MRCA to make it more of a civilian workers compensation scheme versus Defence, DVA and the compensation law expert, who, quite rightly, demand that MRCA appropriately reflect the unique nature of military service.

Caught in the middle of all this is the Secretary of the Department of Veterans’ Affairs and the chair of the review, Mr Ian Campbell. As well as being secretary of DVA and chairman of the review, Mr Campbell is also Chairman of the Military Rehabilitation and Compensation Commission, the MRCC, and the President of the Repatriation Commission. He is in the unfortunate, yet deliberate, position of being both the poacher and the gamekeeper in relation to this issue. The MRCC is the independent commission which determines entitlements under the MRCA and the Safety, Rehabilitation and Compensation Act for compensation for ex-ADF personnel. The commission is responsible for determining how the act is administered and the level of entitlements available to claimants. It is independent of government, and the Minister for Veteran’s Affairs has no legislative authority to override decisions of the commission. So the minister has no role in this; it is truly independent. It has five commissioners, of which Mr Campbell is the chair. Here we have the chair of that commission—the commission which sets the entitlements—also chairing a review of the entitlements provided by the act. When I said before that it is independent, I of course meant it is independent of government. But that is where the independence stops, because where the chair of that commission—the commission which sets the entitlements—is also chairing a review of the entitlements provided by the act, there has to be a clear conflict of interest. There must be.

During the last parliament, the Labor government championed two key reviews, out of some 180 in total, to highlight their so-called ‘reform’ credentials. The first was the Harmer review of pensions. This is a review which has fallen foul of the veteran community because it did not include a number of matters, but it was undertaken by Dr Jeff Harmer, Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs, FaHCSIA. But Dr Harmer is not also the head of Centrelink, the authority which administers payments under the Social Security Act. Dr Harmer’s position of policy making versus policy delivery is clearly defined.

There is also, of course, the Henry taxation review. While much of this review remains shrouded in secrecy, what is clear is that while the author of the review, Treasury secretary Dr Ken Henry, made recommendations on revenue measures, he is not also the Commissioner of Taxation. Dr Henry is not responsible for the administration of his recommendations. It falls to the Commissioner of Taxation to make determinations under the tax act about compliance, not the secretary of the department. So, under the Social Security Act and the tax act, the delineation of the
roles of the respective secretary and decision makers is clear. Yet in Veterans’ Affairs, a deliberate conflict of interest has been established by the Labor government. In this case, the secretary is both the decision maker and the reviewer—the poacher and the game-keeper. The Secretary of the Department of Veterans’ Affairs must be the most conflicted departmental secretary in the entire Public Service in relation to this matter. It is not fair that the secretary of the department has been placed in this position. Something simply has to give.

I am very concerned that the important review of military compensation arrangements presently underway is being bogged down by bureaucratic games. Putting to one side the cost implications of a review such as this, efforts by some on the steering committee to, apparently, make military compensation more comparable with civilian workers compensation are, quite frankly, utterly disgraceful. The unique nature of military service requires that compensation for injuries sustained in the line of duty reflects the uniqueness of that service. But, in the event of a three-all tie on the steering committee, which way does Mr Campbell go? In this position both Mr Campbell and the review he chairs are conflicted. He has been placed in an extraordinary, invidious position by this government, and as a parliament we must ask ourselves whether this is a tenable position in which the executive government has placed the Public Service.

I am fully aware that there is a long tradition and a legislative basis which enables the Secretary of the Department of Veterans’ Affairs to also be the President of the Repatriation Commission and Chair of the Military Rehabilitation and Compensation Commission. But the time has come to ask whether this continues to be the right approach, and I ask the minister to take a closer look at this issue to see whether he has formed a similar view to me.

For the first time since the end of the Vietnam War, the Department of Veterans’ Affairs is faced with a large, younger client cohort. This presents a cultural challenge for the department it has not experienced in four decades. As a parliament, we must ensure that these veterans are looked after properly by the department, that the department is properly resourced to do this and that decision makers are appropriately trained to ensure advice and entitlements are provided accurately. This country cannot afford to treat veterans of conflicts in Iraq and Afghanistan in the same appalling fashion as veterans of Vietnam were treated when they came home. Former Prime Minister John Howard clearly documents this in his memoirs, and I wholeheartedly concur.

The time has come for the Australian parliament to again consider how we treat our veterans. We have to consider whether it is time that the secretary of the department focus solely on delivering services to veterans and their families and that an independent commissioner be appointed to chair the MRCC and the Repatriation Commission. Such a step would enable the secretary of the department to focus on the needs of veterans whilst maintaining the independence of the MRCC and the Repat Commission in determining compensation claims. Cutting the Gordian knot could well be in the long-term best interests of veterans and their families. Mr Campbell is highly respected, and I respect Mr Campbell, but he is conflicted. I ask the minister to have another look at this on the basis of and on the back of the absolutely changed dynamics of this department.

Senator ARBIB (New South Wales—Minister for Indigenous Employment and Economic Development, Minister for Sport and Minister for Social Housing and Home-
lessness) (12.53 pm)—I rise in summation on this very important piece of legislation, especially given my portfolio responsibilities in terms of homelessness. The Veterans’ Affairs Legislation Amendment (Weekly Payments) Bill 2010 will implement in the repatriation system an important element of the government’s strategy to address homelessness. The bill will enable the Department of Veterans’ Affairs to offer the option of weekly pension payments. This option will be available to those who are homeless or at risk of being homeless and who would benefit from weekly payments. This measure is an important component of the government’s strategy to reduce homelessness. While the measure does not affect the total amount of pension a person can receive, the availability of weekly payments will assist vulnerable clients to better manage their money. This action, in conjunction with other elements of the government’s strategy, can contribute to stabilising and improving the circumstances of those who may be facing homelessness.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator ARBIB (New South Wales—Minister for Indigenous Employment and Economic Development, Minister for Sport and Minister for Social Housing and Homelessness) (12.54 pm)—I move:

That:

(a) intervening business be postponed till after consideration of government business order of the day no. 3 (consideration of message no. 37 from the House of Representatives—Evidence Amendment (Journalists’ Privilege) Bill 2010); and

(b) any order of the day relating to the Evidence Amendment (Journalists’ Privilege) Bill 2010 be listed on the Notice Paper as a government business order of the day.

Question agreed to.

EVIDENCE AMENDMENT (JOURNALISTS’ PRIVILEGE) BILL 2010

First Reading

Bill received from the House of Representatives.

Senator BRANDIS (Queensland) (12.55 pm)—The remarkable history of the Evidence Amendment (Journalists’ Privilege) Bill 2010 and the related bill on the same topic, which was introduced by me in this—

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Excuse me, Senator Brandis. You actually need to introduce this bill to the Senate.

Senator BRANDIS—I need to introduce it? It is not my bill.

The ACTING DEPUTY PRESIDENT—I understand so.

Senator McEwen—Someone has to.

Senator BRANDIS—Senator Xenophon is not here, and it is a government—

(Quorum formed)

Senator XENOPHON (South Australia) (12.58 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 XENOPHON (South Australia) (12.59 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 have carriage of the Evidence Amendment (Journalists’ Privilege) Bill 2010 in the Senate, because I believe this Bill is long overdue and will have an extremely positive impact on our democracy and the public’s right to know.

This Bill will amend the Evidence Act 1995 to provide necessary protection for journalists and their sources.

For a long time journalists have been in a position at times when they would be required to provide anonymity for a source, in order to receive information that if broadcast or printed would be in the public interest.

But these agreements, which are standard across the world in many other democracies, posed considerable danger for journalists here in Australia because our laws did not respect a journalists right to protect a source.

If we value democracy we must respect free speech, a free press and the public’s right to know.

This Bill will strengthen our democracy because it starts from the assumption that a journalist and the media organisation he or she works for has a right to protect the identity of a source.

In my first speech in this place way back in 2008 I called for urgent reform in this area.

I specifically mentioned the case in 2004 involving Herald Sun senior political journalists Michael Harvey and Gerard McManus.

These two fine journalists wrote a series of articles about the then Howard Government’s decision to reject a $500 million increase in war veterans entitlements.

This was a legitimate news story that was clearly in the national interest.

And yet, these journalists were charged and convicted of contempt of court for refusing to reveal the source for their stories.

They were fined $7000 and now have criminal convictions on their records.

I have always thought that it was somewhat dubious when Governments of all persuasions call in the Federal Police to chase down the sources of leaks, given how much information the Canberra press gallery gets from all of us, and often on a background only basis.

And so they should get this information because our friends in the gallery perform a unique public service; providing information to Australian citizens.

My staff and I drew up this Bill after considerable discussions with affected parties.

I specifically want to acknowledge the input of journalist Chris Merritt, and John Hartigan and the Right to Know Coalition.

I was delighted for Independent MP Andrew Wilkie to introduce our Bill in the other place as his first Bill, because he too is committed to the protection of whistleblowers. Indeed he has first hand evidence of the need for these types of protections.

This Bill is the right thing to do, and not only that it also shows how, as politicians, we can all get things done if we are willing to work in a nonpartisan fashion.

I believe Bills like this show that Parliament is becoming more about a contest of ideas rather than a clash of personalities.

There’s been a lot of talk about new paradigms, and can I say today, I think we’re soaking in it.

The key element of this Bill is the introduction of a rebuttable presumption in favour of journalist’s privileges.

Under this legislation a court would have to rule that the disclosure of a source was in the public interest before they could compel a journalist to reveal a source.

And the court will have to prove that the public interest in disclosing a source outweighs the public interest in journalists having the right to protect their sources.

It is rightly a tough test and in practice it will mean in the vast majority of cases journalists will not be charged with contempt of court for refusing to reveal their sources.

This Bill isn’t just about journalists or whistleblowers.
It’s for anyone who reads a newspaper, or listens to or watches the news. This will potentially improve the quality of information that every citizen has available to them.

And if you believe in democracy, you have to believe in that.

I commend this Bill to the Senate.

**Senator BRANDIS (Queensland) (12.59 pm)**—This is the second time in two months that the Senate has considered legislation dealing with the introduction or expansion of the categories of journalists’ privilege. The first occasion was when I introduced a bill to substantially similar effect in this place on 29 September. Remarkably, and very late in the piece, the government has adopted Senator Xenophon’s bill which, as you know, had its origins in the House of Representatives as a bill introduced by the Independent Mr Wilkie as a co-sponsored government bill.

The history of this bill— that is, the bill currently before the chamber just introduced by Senator Xenophon— tells us all we need to know about the history of Labor Party foot dragging and recalcitrance when it comes to reforming journalists’ privilege. The fact of the matter is that at the Australian parliament, whether they be the coalition parties, whether they be the Greens or whether they be the Independents, the last political interest to come to the party on the shield laws was the Australian Labor Party.

Ever since this issue became notorious after the Harvey and McManus case several years ago, at which time I called for shield laws in a speech to this chamber which I gave from the back bench, the coalition has been moving in this direction. When I addressed the Public Right to Know Conference in Sydney two years ago this was one of the issues that was under consideration at the conference. It is a policy that the coalition took to the Australian people at the 2010 election, and which was resisted by the government. When I debated the Attorney-General, Mr McClelland, at the *Australian Financial Review* Attorney-General and shadow Attorney-General’s debate in Sydney a fortnight before the election Mr McClelland, on behalf of the Australian Labor Party, was still resisting law reform in this area.

It was only after the entirely unexpected circumstance of the political complexion of the House of Representatives after the election, which deprived the government of its majority and saw elected as the member for Denison Mr Andrew Wilkie, a person with a long history of interest and agitation in this area, that at last, under pressure of political circumstances, the Australian Labor Party came on board.

Let me just say that again: if it had not been for the fact that there was a hung parliament, to this day the Australian Labor Party would have been resisting journalists’ shield laws. But because of that situation, and because of what they perceived to be the need to propitiate Mr Wilkie, at long last the Australian Labor Party were forced to see the light. And so today they co-sponsor the bill introduced by Mr Wilkie in the House of Representatives and by Senator Xenophon in this place.

The bill which Senator Xenophon has introduced and the bill which I introduced on 29 September are substantially similar, though they are different in one material respect. They broaden the circumstances in which a journalist who is the recipient of confidential information from a source is entitled in a court of law or any other relevant form to refuse without pain or penalty to reveal or disclose that source. As I said years ago in this place when I spoke about the Harvey and McManus case, it has for a long time seemed to me to be an anomaly that the question of the confidentiality of...
journalists’ sources and its statutory protection should not be brought under the broad umbrella of the general law—most of it non-statutory—which protects confidential relationships. It is something that the Harvey and McManus case exposed very starkly.

I welcome Senator Xenophon’s bill. I would be bound to say that because it so closely resembles my own.

Senator Xenophon interjecting—

Senator BRANDIS—They do indeed, Senator Xenophon, and I am very proud to be associated with you in the prosecution of this cause, which I know you have prosecuted—if I may say so through you, Mr Acting Deputy President—with great sincerity and diligence in the years that you have been in the Senate. I am sure that if you had been in the Senate at the time of the Harvey and McManus case the issue would have been prosecuted by you even earlier.

Senator Xenophon and I have had a discussion and we have agreed, as has Senator Ludlam, that given the significant public interest in both bills—that is, the Wilkie-Xenophon bill, if I may so call it, and the coalition bill—it is appropriate that there be a reference to the Senate Legal and Constitutional Affairs Legislation Committee for a brief inquiry and report. I foreshadow a second reading amendment to this effect:

… the bill, together with the bill of the same title introduced by Senator Brandis on 29 September 2010, be referred to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 23 November 2010.

That is Tuesday of next week.

I understand that this is an inquiry that is being brought on at very short notice but that will enable the slight difference of approach between the two bills in relation to the breadth of the coverage of the protection to be ventilated. Given the extremely high level of public interest generated by this legislation, it seemed to Senator Xenophon, Senator Ludlam and me to be appropriate that there should be such a reference so that the stakeholders could have their final say on the two bills. By the near reporting date on Tuesday of next week it will still be possible for both bills, hopefully in a harmonised form, to be passed through the parliament before we rise for the Christmas recess.

That is all I want to say on the second reading debate. When I introduced my bill on 29 September I set out the policy reasons and, if I may say so, the ethical reasons why this is an appropriate piece of law reform. Having gratuitously attacked the Australian Labor Party for its extreme tardiness on this issue and its rank political opportunism in only coming to the cause at the last minute because of the political complexion of the House of Representatives I think I can let that matter rest without belabouring the point. On behalf of the opposition I move:

At the end of the motion, add: and the bill, together with the bill of the same title introduced by Senator Brandis on 29 September 2010, be referred to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 23 November 2010.

Senator LUDLAM (Western Australia) (1.08 pm)—I rise to briefly add some comments on the understanding that this is a matter which will come back to the chamber next week and be discussed in more detail. I want to put the position of the Australian Greens on record at this stage in the second reading debate that we will be supporting this bill. It is a principle that we have supported for many years but particularly in the process that Senator Brandis alluded to of investigating the government’s proposal for shield laws.

This was something that the committee investigated some time ago and it became very obvious through that process that almost exclusively all witnesses to that com-
mittee process indicated their support for a rebuttal presumption in favour of protection of journalists’ sources. We do not trespass on the courts’ powers to adduce whichever evidence it sees fit lightly, but this is indeed an exception that we believe is very important. It is not something that you would pass lightly because the general principle obviously is that the court should be able to take whatever evidence it sees fit from either side of an argument. Setting up this exception protecting a particular occupation and their right to protect their sources is something that you would need to do with a great deal of foresight and care.

However, on the basis of the evidence that was received and from long experience overseas as well we certainly came down in support of this bill. Effective shield laws for journalists and whistleblowers, whether they come from the Public Service or wherever, act as a fortification against wrongdoing and, actually, as an encouragement to vigilance and integrity. We believe we owe it not just to the journalists for whom this would most specifically apply but to the people who disclose matters to them in the public interest in the expectation that it might be published often at great risk to themselves, to their careers and to their own wellbeing.

We believe, of course, that a strong and independent press is an essential safeguard for a democratic society and I believe that this view is shared by the members of the Senate and the vast majority of Australians. Most of the submissions, as I said, that the parliament received on the government’s original bill favoured greater source confidentiality protection. Legislation in most democratic countries with institutions similar to our own provides for rebuttable presumption of journalists’ privilege, which is different to an absolute assumption as, I think, exists in Germany. The United Kingdom, which is the source of our Westminster system, New Zealand, which is commonly cited, and many states of the US all provide legal protection for journalists’ sources.

The reform that we are discussing today was a very long time coming. Through cooperation between parties and Independents in this newly diverse parliament, we have seen a good outcome—a comprehensive piece of legislation that addresses concerns that we raised about the government’s lapsed Evidence Amendment Bill 2009. I would highlight that point that Senator Brandis raised before which is that the government have been dragged into this one. When they realised that they did not have the numbers, that the opposition parties in the Senate were going to do what to our minds looked like the obvious thing to do and improve the government’s bill, they did not actually bring it to the chamber to have the debate—they withdrew it. It disappeared and fell out of sight. It disappeared from the government’s reform agenda. So now we are seeing quite a vivid example of what happens when you create greater diversity of voices and opinions in the parliament which is that governments, whether dragged kicking and screaming or not, are actually brought into the debate. Now, with the consent of all members of the Senate, subject to what the Senate Standing Committee on Legal and Constitutional Affairs provides us with over the next couple of days, we will see this bill finally put through the parliament.

The journalists who work on a voluntary basis—the citizen journalists, the bloggers, the independent media collectives and so on—also need the protections afforded by this bill. This is an issue that I was going to raise in the committee stage and test the government’s and the opposition’s views on this matter with the recognition that this is not simple. We have not sought to bring an amendment to the bill that tinkers with the definition of ‘journalist’. Down that path
possibly we get ourselves into a bit of trouble, but I hope that all sides of this chamber can agree—and we will test these views in the committee hearing that is coming—that it should not rest on whether or not your work is paid as to whether these protections are afforded. The test that we are looking for is whether or not it is in the public interest for the source to be protected.

Vexatious or malicious reporting can occur in the News Corp press, in the Fairfax press, on the ABC or in the independent media. It is not something that should depend on whether you are paid to put the piece together or the platform on which you are published. What we are seeking, and I am happy to foreshadow this now in the second reading debate, what we will certainly try to clarify during the committee process and if we take this bill into the committee stage next week, is that we are satisfied with setting that ambiguity to rest and making sure that the parliament is clear—if this matter ever does come before a court as shortly one day it will—that we did not intend that a journalist needed to be paid for that piece of work to be published or to dictate the platform in which it was reported. What we are doing effectively is leaving it for the court to decide whether or not the source disclosure was in the public interest at the time and we would let that decision be made there as appropriate.

My reading of the bill is that it would extend the protection in this way, but we are seeking to lay that ambiguity to rest. We would be seeking Senator Xenophon’s views as the mover of the bill, also the government’s view and Senator Brandis’s view, if he would care to offer it in his comments next week. There are people within independent media, whether they be citizen journalists, bloggers or whatever, who volunteer their time and their efforts to contribute to public awareness. We think that the source protection there should apply just the same as if they were being paid by one of the major national dailies or indeed the ABC.

The media does fulfil such an important role in civil society; it wields an enormous influence and that power must be wielded responsibly. We saw during the last federal election, in my view, the misuse of that power. We are also having this debate in the context of media ownership, with moves by Mr Packer to take up a greater shareholding in Channel 10. We need to revisit the debate about the power of the concentration of media ownership in this country. This bill touches on that to a degree.

While we all acknowledge that source protection is essential and that that presumption should be in Australian law, the bill also increases the responsibility on journalists to use the enormous power that they have in Australian society responsibly. The legislation, on my reading, is intended not to prevent abuse of that power but to protect journalists who are acting in the public interest, and I think that is where that test should lie.

The bill, in combination with observance of the highest ethical standards by the Australian media, will contribute to an atmosphere conducive to accountability and integrity in our public and private institutions. I thank Senator Xenophon for bringing the bill forward. This is a very useful debate for this parliament to have. But as a Western Australian senator I do acknowledge some degree of concern and alarm that the Western Australian coalition Attorney-General, Mr Porter, is the only Attorney in Australia, as far as I am aware, who is on record as being in opposition to the very straightforward and common-sense position that is being advanced here. I would like to add my voice to others calling on the Western Australian Attorney-General to reconsider that position or to at least be clear what on earth it is about.
It is time that Australia moved forward with these reforms and it would be an enormous shame if Western Australia was left behind.

These cases are very clearly not academic in Western Australia. We saw the very high-profile example of the police raid on the *Sunday Times*. Reporter Paul Lampathakis had quite clearly embarrassed the Carpenter government with a quite high-profile piece, and the response of the Western Australian state government was to raid the office of the newspaper. In Australia we need to be very, very careful in instances where a state government believes it is okay to send the police around to a major media outlet because a politically embarrassing story has found its way into a newspaper. That is the kind of abuse that these laws are intended to protect—they are to protect people working in the public interest.

I will conclude my comments there. I very much look forward to participating in the, albeit very brief, committee work that will surround this bill. We will pick up our comments later this week when this bill returns to the chamber.

**Senator WORTLEY** (South Australia) (1.17 pm)—The Evidence Amendment (Journalists’ Privilege) Bill 2010 amends the Evidence Act 1995 by strengthening the protection provided to journalists and their sources. This bill is intended to foster freedom of the press and better access to information for the Australian public. The bill provides that, if a journalist has promised an informant not to disclose his or her identity, neither the journalist nor his or her employer is compellable to answer any question or produce any document that would disclose the identity of the informant or enable their identity to be ascertained. This is based on the premise that it is vital that journalists can obtain information so they can accurately inform the Australian public about matters of interest.

These protections are known as shield laws, and their importance cannot be understated. As Nelson Mandela once stated: ‘A critical, independent and investigative press is the lifeblood of any democracy.’ He also said that the press must enjoy legal protection so that it can protect the rights of citizens—‘It must be bold and inquiring without fear or favour.’ In my previous role as the South Australia and Northern Territory Secretary of the Media, Entertainment and Arts Alliance, I witnessed how important it is for journalists to be able to scrutinise those in power without fear of being prosecuted or even jailed. I did this as I sat in court supporting an Adelaide journalist.

I know that, in the course of their employment, journalists are frequently given off-the-record information from confidential sources. The current situation is that, if a court compels a journalist to reveal his or her sources and they do so, the journalist is in breach of their professional ethics—the Australian Journalists Association’s code of ethics. If they refuse to reveal the identity of a source despite being ordered by a court to do so, they risk criminal prosecution for contempt of court.

Australia currently ranks 18th on the World Press Freedom index—up from equal 38th with Malta, France, Cyprus and Dominica. Australia is one of about 70 nations deemed to have a ‘free’ press. A further 70 have a ‘partly free’ press, and more than 50 are listed as ‘not free’. We need to guard and protect the freedom of our media in this country. That is why this bill is so important. It enables a robust defence of a journalist’s right to protect their sources. It will contribute to the freedom and strength of the media in Australia by repealing parts of the Commonwealth law applying to all prosecutions.
for Commonwealth offences, including those heard in state and territory courts. Under this proposed law, prosecutors or anyone wishing to discover the identity of a journalist’s source must provide enough evidence to overturn a new legal presumption in favour of protecting sources.

Contrary to what some of those opposite and those on the independent benches are saying, the Gillard government was always committed to reassessing its position on shield laws pending its re-election. Attorney-General Robert McClelland personally gave a public commitment to revisit the issue of shield laws if re-elected—and now we keep that promise. The government is also urging all state and territory governments to adopt similar provisions at a state level as part of uniform evidence laws. We are seeking a harmonised approach to journalist shield laws across Australia. It is vital that journalists can obtain information so they can accurately inform the Australian public about matters of interest. Accordingly, strong protection must be provided to enable the full disclosure of information. This bill includes a new provision that provides clear authority for a presumption that a journalist is not required to give evidence about the identity of the source of their information.

When introduced, this bill will begin a new era for journalists in Australia. It will prevent prosecutions such as those of journalists Gerard McManus and Michael Harvey, who in 2007 were convicted of contempt of court and fined $7,000 each for refusing to reveal the source behind the stories they wrote in 2004 for the Melbourne Herald Sun newspaper. The charges related to an exclusive report that exposed a federal government decision to reject a $500 million increase in war veterans’ entitlements.

Media Entertainment and Arts Alliance Federal Secretary, Christopher Warren, said the pair should never have been charged because they were caught in the middle of a campaign by the Howard federal government against whistleblowers and as a result they were charged. At the time, the presiding judge stated that, despite upholding a professional code of ethics to protect their sources, journalists were not immune to criminal charges. He went on to say that until the law was changed, journalists remained in ‘no different position than all other citizens’.

Journalists should never be convicted for doing their job accurately and for acting in the public interest. They must be able to protect their sources in accordance with their Australian journalist code of ethics. Sources, to some extent, are the lifeblood of their work and investigative journalism can be seen to be the lifeblood of a healthy democracy. It is time for a national agreement on shield laws, and the presumption by courts should be in favour of protecting journalists’ sources. I am in favour of greater legal security to protect confidential sources. Journalists should not live in fear of being jailed and should not curtail telling the truth for fear of being jailed.

The freedom of the fourth estate—that is, the profession of journalism—in this country is closely linked to our success as a democracy. In an address in Dublin in 1997, the then Chief Justice of Australia, Sir Gerard Brennan, spoke of the importance of the fourth estate during a lecture series on ‘Broadcasting, Society and the Law’. He said:

The popular media are more familiar to us than the street in which we live, more pervasive than the aromas of the kitchen, more influential with many than the Sunday sermon.

He went on to say:

They inform, they entertain, they prescribe fashion, they form tastes, they mould attitudes and values. They present the three branches of Government to the people. The Fourth Estate is not a
fourth branch of Government but, in the life of a free and democratic society, it has great power and influence.

That power and influence, when used wisely and responsibly, should never be diminished. Under current laws, journalists could choose to fall back on their ethics and defy the law and take the risk of being convicted, fined or going to prison. This new law will come to grips with the reality of how journalists work and reduce the risks that journalists could be jailed for refusing to reveal in court the identities of their confidential sources. Those who wish to discover the identity of journalists’ confidential sources will then bear the onus of persuading a judge to overturn the law’s presumption in favour of confidentiality. To get the mix right is crucial—that is, the media must behave honourably and responsibly in its pursuit of truth and its dedication to informing the public, and the law must achieve a practical understanding of the vital role played by the media in a healthy democracy and give it space to do its job properly.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.25 pm)—In making this contribution to the debate, the government supports passage of the Evidence Amendment (Journalists’ Privilege) Bill 2010. Having recognised Senator Brandis’s amendment to refer this bill to the appropriate Senate committee—presumably the Senate legal and constitutional committee—the government certainly would support that motion. It seems entirely sensible. If there is a view that it should be a matter that a Senate committee should examine, then the government would certainly not be opposed to that. I understand Senator Xenophon has agreed to that process. Of course that will mean that, in terms of how this bill is then dealt with and the second reading contributions that we are making today prior to the Senate having examined, we may come back again after the Senate committee to have another second reading contribution. I suspect that is what people have also foreshadowed, or at least have indicated, by making short contributions. It is not a case that they would be speaking twice in the bill, but they may need to get leave to at least comment on the bill—or alternatively deal with it in the committee stage, which is usually a more appropriate way of dealing with it so that we do not have two contributions to a second reading debate, which would not be my preference as manager.

The government has long recognised the need for appropriate protections for journalists and their sources, having introduced amendments to the Commonwealth Evidence Act 1995 during the last term. Those reforms represented a step forward from the existing protections while remaining consistent with the framework of the model provisions agreed to by the Standing Committee of Attorneys-General. When parliament was prorogued earlier this year, the bill lapsed and the government declared its commitment to revisit the issue. Following constructive discussions with Senator Xenophon and the member for Denison, the Gillard government advised that it has given its support to this bill.

Journalists perform a crucial role in our democracy by making important information publicly available. This bill will support journalists in that task in two significant ways: (1) the bill will help ensure journalists have the confidence to report information that is in the public interest without fear of being held in contempt of court and (2) it will also encourage the full disclosure of information that is within the public interest by reassuring potential sources that their confidentiality can be maintained.

As the Attorney-General noted in his second reading speech to the House, the key
element of this bill is the introduction of rebuttable presumption in favour of journalist privilege based on journalist shield laws in New Zealand. This allows a journalist who refuses to disclose the identity of a source or provide information that would disclose that identity where the journalist has promised to maintain the source’s confidentiality. However, there will also be circumstances where public interest considerations demand disclosure. Therefore, the bill permits a court to overturn the presumption where it has been satisfied by a party that the public interest in the disclosure outweighs, firstly, any likely adverse effect on the informant or any other person, secondly, the public interest in the communication of facts and opinion to the public by the press and, thirdly, the ability of the press to access sources of fact.

Such circumstances could arise, for example, in relation to matters that pose a risk to Australia’s foreign relations, law enforcement operations or where lives may be endangered. The government supports uniform evidence laws and will work with the states and territories through the Standing Committee of Attorneys-General to progress a harmonised approach to journalist shield laws. The bill will provide a good basis for the states and territories wishing to introduce laws based on rebuttable presumption in favour of journalist privilege.

In conclusion, this bill will provide an appropriate balance between the public’s ability to freely access information and the public interest in the prosecution of a crime. The bill is an excellent example of what can be achieved in this parliament through cooperation. I thank Senator Xenophon, the opposition and the member for Denison for their work, particularly Senator Xenophon and the member for Denison for introducing this bill and for their willingness to work with the government on this important issue. I indicate the government’s support for the bill, recognising that it will shortly be referred to the Senate committee and we will then resume at a later time to deal with the subsequent committee report and the committee stage of the bill.

Senator XENOPHON (South Australia)—in reply—I thank honourable senators for their contributions to this important debate. Reform in relation to protecting journalists’ sources is an important one. It is time we had this reform. It is time that journalists no longer feared jail for simply doing their job in bringing matters to the public interest that ought to be there for people to make your own judgment on.

I will refer briefly to the contributions. I acknowledge Senator Brandis’s longstanding interest in this matter. He has been an outspoken advocate for reform in relation to this. I note that he indicated—and I was not here then—his advocacy in the Harvey-McManus case when he was a backbencher. That would have taken an act of political courage, given that Messrs Harvey and McManus caused some embarrassment to the then Howard government in relation to the issue of veterans’ entitlements. I imagine it would not have been an easy thing for Senator Brandis to raise that, given the politics surrounding that particular case. Clearly it was wrong that Gerard McManus and Michael Harvey were dragged through the courts and sustained a criminal conviction for simply doing their jobs.

Senator Jacinta Collins—Do you remember the rat? I will tell you later. That is another story.

Senator XENOPHON—Senator Collins, I do not remember the rat, but I am sure you can illuminate me after I have had a chance to reflect on my colleagues’ contributions.

I know there has been some criticism by the opposition in relation to the Attorney-General not moving on this previously. The
fact is that in all my dealings with the Attorney-General and his office he has been open and willing to advance this. It is also fair to note that when the Attorney previously moved on this area he received resistance from some of the states—ironically, some of his Labor colleagues were particularly hesitant to move in relation to reform in this particular area. So I do not think it is fair to ascribe blame to Mr McClelland as the Attorney-General for delays. I think he had some resistance from the states.

That brings me to Senator Ludlam’s contribution. The issue of ambiguity was raised. I want to make it absolutely clear that under the provisions of this bill a ‘journalist’ is defined as being:

... a person who in the normal course of that person’s work may be given information by an informant in the expectation that the information may be published in a news medium.

It is important to note that the definition does not specify the medium in which the information may be published, and in that way is technology neutral. Certainly, with the advancements of technology, it is important that we do not narrow the terms under which ‘a journalist’ may be defined when it comes to the format in which news and information is delivered. Further, the reference in the definition to that person’s work does not seek to define a journalist as someone who is paid; rather it is to distinguish those who are making one passing comment, from someone who is engaged and active in the publication of news. I think there is a clear distinction between the two. I want to put that on the record for the purpose of this, and I am happy to elaborate on that in the course of the committee stage.

Ultimately it is important to note that under this definition the court has discretion to determine whether or not a person meets criteria under the provisions of this privilege.

That is why this is a huge advance on what has previously been the case. I note that Senator Ludlam has indicated that the Western Australian Attorney-General, Mr Christian Porter, has expressed concerns about these moves. I have already had a good but relatively brief discussion with Mr Porter when parliament last sat several weeks ago and hopefully I will be able to continue further discussions with Mr Porter. I hope to be able to convince him of the merits of this particular reform, because it is important that there is uniform law and I do not think Western Australia would want to be a bit like a slug on a rock—simply be isolated from other jurisdictions which are moving towards this reform. And I hope that Senator Brandis, as shadow Attorney-General, will be able to convince his Western Australian colleague of the merits of the reforms that he himself has proposed. There is one key distinction between what Senator Brandis has proposed—and that relates to whether the classes of persons obtaining privilege should be expanded to other professions. Perhaps comment on that should be delayed until the committee reports next Tuesday week.

In relation to Senator Wortley’s comments, I acknowledge her passion for this issue as a former secretary of the Media Entertainment and Arts Alliance in South Australia. I know of her concern for protecting journalists’ sources—for which this is a very important reform which would involve a new era for journalists in Australia—and acknowledge her long-standing interest in relation to this. I also thank Senator Ludwig for setting out his position. As I understand it, there was Labor Party policy for reform in relation to this back in 2007. It is pleasing that we are all coming together to reform the law in relation to this. So I thank my colleagues for their indications of support. I also thank the member for Denison, Andrew Wilkie, for working together with me in rela-
tion to this. I am also grateful for the work of the federal Attorney-General’s office—in particular, Ms Elizabeth Brayshaw—for the way that the Attorney-General’s office has worked with me on this particular issue.

I am looking forward to the committee’s report, and I am looking forward to the passage of the legislation for this long overdue reform in the Senate next week.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

NATIONAL SECURITY LEGISLATION AMENDMENT BILL 2010
PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT BILL 2010
Second Reading

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

That these bills be now read a second time.

Senator BRANDIS (Queensland) (1.38 pm)—I take this opportunity to state the coalition’s position on these two important bills, the National Security Legislation Amendment Bill 2010 and the Parliamentary Joint Committee on Law Enforcement Bill 2010. On 12 August 2009, the Attorney-General released a discussion paper on proposed reforms to Australia’s counterterrorism and national security legislation. The majority of the amendments proposed in these bills arise from the recommendations of independent and parliamentary reviews of aspects of the national security regime over the past three years. In particular, these are: the Clarke inquiry into the case of Dr Mohamed Haneef, which reported in November 2008; the report of the inquiry by the Parliamentary Joint Committee on Intelligence and Security into the proscription of terrorist organisations in September 2007; the Parliamentary Joint Committee on Intelligence and Security’s report, Review of Security and Counter Terrorism Legislation, in December 2006; as well as the report of the review of sedition laws in Australia by the Australian Law Reform Commission, also in 2006. This bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee, which reported on 17 June. With the exception of two substantive matters, which I will mention in a moment, the committee recommended that the legislation be passed.

The bill proposes amendments to the legislation in four principal areas: firstly, in relation to treason, sedition and terrorism offences; secondly, in relation to powers to investigate terrorism and serious crime; thirdly, the listing and proscription of terrorist organisations; and, fourthly, the protection of national security information in court proceedings. In relation to the first of those matters, the bill proposes that the offence of treason in the Criminal Code be amended by confining the offence to those who owe allegiance to Australia or have voluntarily placed themselves under Australia’s protection, and clarifying that the offence of assisting the enemy refers to material assistance.

The offence of sedition is proposed to be renamed ‘urging violence’, and includes urging the overthrow of the constitutional government and urging interference with parliamentary elections. These provisions will require an intention that force or violence will be used. The renaming of the offence of sedition—which is, as you would know, Mr Acting Deputy President, an ancient crime in the British criminal law—is not intended by the bill to water down the offence, but merely to contemporise the usage in the descriptors of the matters constituting the offence.

As well, a new offence is proposed, of urging the use of force or violence against a group distinguished by race, religion, nationality, national origin or political opinion.
There is a lesser sense if the force does not threaten the peace, order and good government of the Commonwealth. The defence of ‘acts done in good faith’ is clarified by making it relevant that acts were done in the context of artistic work, genuine academic or scientific discourse, or in the dissemination of news or current affairs.

The Senate committee recommended that this clarification not contain an element of good faith in itself, and that recommendation has been adopted by the government. In this respect, the opposition is satisfied that the occasionally competing imperatives of protecting freedom of speech—sometimes, freedom of speech vigorously expressed by groups at the margins of society (sometimes, radical groups who are no friends of democracy but whose freedom of speech our democracy nevertheless respects)—on the one hand, and protecting the institutions of the state from direct threat to their integrity or maintenance, on the other hand, has been achieved.

It is proposed to repeal the offences relating to unlawful associations. These are subsumed by the terrorist organisation laws and, therefore, are outmoded.

Amendments to the definition of a terrorist act are proposed to include the United Nations as the target of an act. The definition of harm intended to be caused by a terrorist act is extended to include psychological harm. May I pause there to observe that this is a piece of law reform which has been long in coming. When we think that the word ‘terrorism’ literally means ‘causing terror through the threat or actuality of violence’, terrorism is specifically defined etymologically by reference to a state of mind. The objective terrorists seek to achieve, in the immediate sense, is to cause violence and harm, and sometimes death, to targets. But their broader objective is to cause fear and terror to populations at large, who must live their lives in the constant, gnawing doubt that they, too, may be the victims of a terrorist strike. For that reason, it has always seemed to me that extending the definition of terrorism to include psychological harm is not only appropriate but essential, as it goes to the very state of mind which terrorists seek to create—thereby to disable citizens in the peaceful going about of their ordinary lives.

A new offence of committing a terrorist hoax is proposed to the maximum penalty of imprisonment of 10 years. The offence of advocating the doing of a terrorist act will be amended to provide that the prosecution must establish that there is a substantial risk that it would lead another person to commit a terrorist act. That is not a weakening of the law. It is done to bring it into line with the concept of risk as elsewhere defined in the Criminal Code. As I said earlier, the offence of providing support to terrorist organisations is clarified to mean providing material support.

I turn to the amendments to the Crimes Act dealing with powers to investigate terrorism and serious crime. These arise from recent operational experience, in particular by the Australian Federal Police. The division relating to powers of detention would be separated into two subdivisions to deal with terrorism and non-terrorism offences. In the case of terrorism offences, the maximum length of time that a person can be detained during an investigation period is proposed as seven days. The majority of the Senate committee recommended a three-day limit. The Liberal senators recommended seven days based on evidence from the Australian Federal Police and the Australian Crime Commission. I am pleased to say the government has seen the wisdom of adopting the stricter approach urged by the Liberal senators. The provisions relating to re-entry un-
der an existing search warrant will be amended to permit re-entry within one hour in normal circumstances and re-entry within 12 hours in an emergency situation. In addition, it is proposed that entry without warrant be permitted in emergency situations when investigating terrorism.

I pause there to say the idea of entry without warrant is a departure from traditional British legal principles, which Australia has always held dear. But there are occasions when entry without warrant is justified, in our view, where there is an immediate and credible threat of terrorist conduct which could take place while the warrant is being sought. I think most people would regard the urgent circumstances in which a suspension of the requirement to obtain a warrant is, in this case, justified. It is proposed that there be a right of appeal both for prosecutors and defendants against bail decisions if there are exceptional circumstances. Minor amendments are proposed to provide full listing and proscription of terrorist organisations if the minister is satisfied of the proscribed matters on reasonable grounds. Listings would be reviewed every three years.

Let me finally turn to the amendments to the National Security Information (Criminal and Civil Proceedings) Act 2004. The purpose of that act is to protect information from disclosure in federal criminal proceedings and its civil court proceedings where the disclosure would be likely to prejudice Australia’s national security. Once again, this is an exception to orthodox and traditional legal principles; that is, that justice be disposed of transparently in public courts, which is necessitated by the circumstances that in some criminal proceedings arising from terrorism and terrorism related offences it is necessary to keep national security information confidential. I think that exception is a matter of common sense and speaks for itself, although like all exceptions from orthodox legal and constitutional principles it is an exception which we hope is available sparingly. The act has been invoked some 38 times and the experience informs some relatively minor although lengthy amendments principally to clarify that notification must be made to a party’s legal representatives and to streamline the definition of situations in which disclosure will be permitted. In some situations, answers to questions in court may be made in writing.

Despite this being a lengthy bill, there appear to be few proposals that are genuinely controversial or that demonstrably strengthen or weaken the national security laws to any significant degree. Most of the proposals are procedural while others clarify the applicable legal test. In some cases, which I have dwelt upon in this speech, there are departures from existing legal principles which have been forced upon us by the necessitous circumstances arising from a new and uniquely dangerous threat.

I have considered the amendments to the bill circulated by the Greens. These amendments were not recommended by the Legal and Constitutional Affairs Committee and I foreshadow, with respect to Senator Ludlam, they do not have the coalition’s support. I should mention that the security briefings that have been provided to me indicate some extremely disturbing emerging threats. This is not the time to open any window of opportunity to enable those threats to be actualised.

Finally, I turn to the Parliamentary Joint Committee on Law Enforcement Bill 2010. The establishment of that committee was a proposal of the discussion paper on proposed reforms to counterterrorism and national security legislation. This bill was introduced with the National Security Legislation Amendment Bill 2010. The proposed committee will replace and extend the functions
of the current Parliamentary Joint Committee on the Australian Crime Commission. The principal extension is the inclusion of the Australian Federal Police under the jurisdiction of this committee. The committee will be asked to examine trends and changes in criminal activities, practices and methods and to report on any desirable changes to the function, structure, powers and procedures of the Australian Crime Commission or the Australian Federal Police. It will also inquire into any question in connection with its functions that is referred to it by either house of the parliament. The coalition does not consider the bill to be controversial. It was referred to the Senate Legal and Constitutional Affairs Committee as a cognate bill with the National Security Legislation Amendment Bill 2010 and the committee unanimously recommended its passage on 17 June 2010. Both bills, amended following the report of the Senate committee, have the coalition’s support and I commend them to the Senate.

Senator LUDLAM (Western Australia) (1.51 pm)—If one phrase could sum up where this debate on the National Security Legislation Amendment Bill 2010 and the Parliamentary Joint Committee on Law Enforcement Bill 2010 finds us today it would have to be ‘missed opportunity’. This process has been turning now for about two years, depending on what you consider the starting point. Senator Brandis said in his speech that nothing in the National Security Legislation Amendment Bill is particularly controversial and that we are not really extending or withdrawing any powers. This process has been turning now for about two years, depending on what you consider the starting point. Senator Brandis said in his speech that nothing in the National Security Legislation Amendment Bill is particularly controversial and that we are not really extending or withdrawing any powers.

I want to give the Senate one example of how dramatically out of balance the debate has become. Right at the moment on the shores of Lake Burley Griffin—and I know this has been the subject of some local controversy right here in Canberra—a gigantic complex is being built, costing about $585 million, in which we are going to house ASIO. I do not know exactly what it is about this secret agency that led them to believe they needed this enormous complex right in the Parliamentary Triangle on the shore of the lake, that will probably be visible from space, but there you go. The secret agency is coming out of the closet, it is tripling its staff numbers and its budget has increased more than sixfold to $438 million per year. That is ASIO. There is not a single amendment—not a word—in this bill that the government has brought forward. Despite a lot of evidence from people who are very close to these issues we have not touched ASIO’s act. There is not a single amendment in this legislation in response to many of the concerns that were raised over the last couple of years. ASIO’s budget has been multiplied by six and its staffing has been increased threefold. Similar things are happening to ASIS and to the Office of National Assessments so that the national security budget—now totalling about $4 billion—is going on against the backdrop of this process, which has pro-
ceeded at a snail’s pace. I will talk in a bit more detail about what it has been like working through this process under the current government and the one directly before it.

At the same time as that extraordinary increase in resources and staffing is going on, we have the office known as the Independent National Security Legislation Monitor, which is an office that I have spoken of a couple of times. This is the person who would be assessing whether these laws of terror, every single word of them that are still on the books from the Howard-Ruddock era, are actually necessary or proportionate to the threats that we face—whether or not they make us safer. This is to be a part-time officer, supported by two part-time staff, I believe, out of the Prime Minister’s office.

It took the Senate about a year, I suppose, on the motion of Senator Judith Troeth, to pass a bill, with the support of the Greens—and with several amendments of the Greens—to bring this office into being. That was quashed in the House of Representatives. The government swatted that aside and said that they wanted to do it their own way. They came back with a vastly more feeble bill several months later, and eventually passed it. Six months after the passage of that legislation through this parliament, that officer has still not been appointed. I think that gives us, quite starkly, a very sound idea of where this government’s priorities lie: massive budget increases for the national security estate, the surveillance estate and the agencies that are tasked with protecting our security and our safety. But the officer, the one part-timer, whose job it would be to assess whether these laws are necessary or proportionate or whether they are doing anything at all to make us safer, has not been appointed six months after this legislation was passed through the Senate. That is how asymmetrical and out of balance this debate has become.

When these laws were passed, we do not believe that the right balance was struck between providing for national security, which is one of the most important responsibilities of the government, and the protection of our fundamental human rights, which is one of the other most important responsibilities of the Australian government. The balance was not struck originally and therefore, in this do-nothing bill, the balance is being struck inappropriately as well.

Before we go to question time, I want to put firmly on the record and remind the chamber, as I have done on many occasions before: nonviolence is one of the four core pillars of the Australian Greens policy platform. We strongly oppose the presence of any form of violent extremism within Australia. We are also committed to the principle of democracy and to the civil liberties that accompany a strong democratic system of government. We acknowledge the very real threats—faced by security agencies and by Australians here in this country and also overseas—that violent acts of terrorism pose to us and the damage that such acts claim to have on our democratic institutions and on our civil liberties. It is a very important principle on which the Australian Greens were formed, and we therefore condemn outright any form of violent extremism or violence in the pursuit of political aims—which of course is the reason that we are legislating.

We are opposed to the corrosion of democratic rights and civil liberties not only through violent means but also through nonviolent, or covert, means. We support the fundamental right to oppose government and corporate conduct through peaceful protest and through civil disobedience and therefore do not support any attempt to restrict legitimate political dissent in this country.

We believe that in responding to terrorism we must address the underlying causes of
violent extremism by acting in conjunction with neighbouring countries and with the international community. Factors, including poverty and social exclusion, which lead to the vulnerable being susceptible to recruitment from extremist organisations, must be addressed both in Australia and abroad. I will acknowledge that in many instances, particularly on the publication of the white paper, the language had shifted very strongly from the Howard government’s ‘war on everything’ terminology to something that was much more nuanced and did acknowledge some of the underlying causes of the violence that we are seeking to combat. However, we believe that the restriction of fundamental civil liberties in pursuit of eradicating the threat of terrorism can be profoundly counterproductive and that the right balance must be struck between security and the protection of civil liberties and democratic rights that Australia has long desired to uphold. If Australians are prepared to give up fundamental civil liberties and their democratic rights, they will effectively be furthering the goals of the very extremist organisations that we seek to confront.

This legislation has been the subject of a public consultation process, with the release of an exposure draft of the bills in August last year. This is a process that the Australian government supported, and I would say to all government ministers that providing an exposure draft giving the public and the parliament an idea of the government’s intention to legislate is almost always a good idea, and this is a process that we supported. But then you have to hope that the government will listen to what is being proposed when people provide a response to an exposure draft of a bill. So we supported the process as something positive—and it is something that we engage with—as did many people in the legal profession and in civil society, on the understanding that perhaps the government would listen to some of the views that were put forward. Unfortunately, while the process for reviewing Australia’s antiterrorism legislation has improved, the outcome has remained exactly the same. Many of the worst aspects of the antiterrorism laws introduced by the Howard government remain in force and are even entrenched by the legislation that we are debating today.

Debate interrupted.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the gallery of a delegation of members of the Regional Representative Council of the Republic of Indonesia, led by Dr Zulbahri. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Asylum Seekers

Senator ABETZ (2.00 pm)—My question is to the Minister representing the Minister for Immigration and Citizenship. How much closer to fruition is the East Timor offshore processing facility as a result of the Prime Minister’s recent overseas trip?

Senator CARR—I thank the senator for his question. The Prime Minister has raised a number of issues with regard to our regional processing initiatives. Those discussions are progressing. As both the Minister for Immigration and Citizenship and the Prime Minister have made clear, this is a process that will require careful consideration and careful negotiation on a regional basis.

Senator ABETZ—I am sure the Australian people are reassured by that answer. Mr President, I ask a supplementary question. With whom did the Prime Minister raise the possibility of an offshore facility during her
recent overseas trip and what were the outcomes of those discussions?

Senator CARR—I do not have a brief on the particulars of the outcomes of those discussions.

Senator Brandis—That’s because there isn’t a brief.

Senator CARR—This sort of Perry Mason approach—

The PRESIDENT—Senator Carr, ignore the interjections. They are disorderly. Those on my left know that. Continue with your answer.

Senator CARR—These are sensitive questions. It does not serve the opposition well to suggest that these things can be dealt with in this sort of glib fashion. There have been discussions with a number of regional governments and those discussions remain the province of those ministers until such time as they are able to report fully to the parliament.

Senator ABETZ—Mr President, I ask a further supplementary question. Given that Ms Gillard was given the prime ministerial mantle because the previous Prime Minister had lost direction, can the Senate be advised of the main points of difference between Mr Rudd’s and Ms Gillard’s plans for controlling our borders?

Senator CARR—The discussions that the Prime Minister has had confirm a strong commitment to regional action to address people-smuggling and the readiness of various governments within this region to work with Australia on the development of a regional set of arrangements. The discussions through the G20, and other conversations, have indicated that the regional solution to the problem of irregular migration is being appropriately discussed in private with those governments to achieve the policy outcomes that I would have thought the opposition would be subscribing to as well. The President of Indonesia, for instance, has indicated that there is value in the regional approach. Other regional leaders have also indicated their support for the initiative. (Time expired)

Economy

Senator CAMERON (2.04 pm)—My question is to the Minister for Finance and Deregulation, Senator Wong. Can the minister advise the Senate on the OECD report into Australia’s economic performance? How does Australia compare internationally on key indicators such as economic growth?

Senator WONG—I am very pleased to update the Senate on the OECD economic survey released yesterday, which overwhelmingly supports this government’s economic strategy. It is a report which provides yet another strong endorsement of this government’s approach to economic management. It attests to the strength of the Australian economy relative to other advanced economies in particular. It endorses the government’s disciplined fiscal strategy and strict fiscal rules, which will see the budget return to surplus more rapidly than any of the other major advanced economies, and supports the government’s policies to deal with the challenges of managing the second commodity boom, including taxation and superannuation reform and critical investments in skills and infrastructure.

This survey is timely. It reminds all of us that the Australian economy is one of the strongest and most resilient in the world. The OECD survey also backs the government’s stimulus package. It says:
The stimulus package was among the most effective in the OECD …
I remind senators that this was the stimulus package that the opposition did not believe we needed. Let us remember also that the OECD indicates that this helped Australia to avoid recession during what we know was
the worst economic crisis in over half a century. We also know that that stimulus contributed to Australia’s currently low unemployment rate. Since this government came to office, more than 650,000 jobs have been created. I notice they are very silent on the other side. More than 650,000 jobs have been created. (Time expired)

Senator CAMERON—Mr President, I ask a supplementary question. In light of the OECD report, can the minister inform the Senate of the midyear budget update released last week?

Senator WONG—As the OECD remarked:
The stimulus was wisely accompanied by a well-designed fiscal exit strategy.

Opposition senators interjecting—

Senator WONG—A well-designed fiscal exit strategy. They do not like to hear it, Mr President. But when we handed down the Mid-Year Economic and Fiscal Outlook—the budget update—it demonstrated that the government is on track to deliver this disciplined fiscal strategy: a budget on track to return to surplus in 2012-13, well ahead of any other major advanced economy, despite the high dollar hitting government revenue; strong growth; falling unemployment; and the fastest, largest turnaround in government finances in more than 40 years. We on this side of the chamber understand the importance of delivering on this fiscal strategy, just as we understood the importance of backing jobs, standing for jobs. That is the difference in this chamber between that side and this side.

Senator CAMERON—Mr President, I ask a further supplementary question. Can the minister outline to the Senate what the OECD’s assessment and the midyear budget update tell us about the Australian government’s fiscal strategy; and are there any alternative approaches to this strategy?

Senator WONG—This government will continue to get on with the job: tackle the challenges that were identified in the OECD survey; continue to put forward policies that build a stronger, broader, more competitive economy; and continue to invest in skills, in infrastructure, in boosting participation and in delivering our fiscal strategy to ensure we return to surplus through complying with some very strict fiscal rules.

The reality is that those opposite like to talk about fiscal responsibility, but we know who their economic team is. Their economic team is a shadow Treasurer who did not bother to check the costings and a shadow finance minister who got his costings wrong—who delivered a $10.6 billion black hole. We on this side stand for jobs. We supported a stimulus. You opposed it. You made the wrong call. We on this side understand the importance of fiscal discipline. You have got a black hole. (Time expired)

Economy

Senator PAYNE (2.09 pm)—My question is to the Minister for Finance and Deregulation, Senator Wong. Given that the budget bottom line has deteriorated over the forward estimates, with next year’s deficit to be $1.9 billion higher, putting further pressure on inflation and the cost of living for homeowners and renters, when will the government concede that it has failed to deliver on its promise to relieve these cost-of-living pressures for genuine Australian families?

Senator WONG—I have not met many non-genuine Australian families, Senator! But I am happy to talk about what we have delivered for Australian families. We have delivered three rounds of tax cuts. We have reduced the tax burden on families.

Opposition senators interjecting—

Senator WONG—We have increased the childcare rebate. We have introduced the education tax refund—
Opposition senators interjecting—

The PRESIDENT—When there is silence, we will proceed.

Senator WONG—I was saying we have increased the childcare rebate, we have introduced the education tax refund, we have increased the pension—all of this delivered within our tough fiscal rules. We are increasing family tax benefit part A and extending the education tax refund as part of our election policies. We also understand the importance of delivering a sound fiscal strategy.

The senator refers to the Mid-Year Economic and Fiscal Outlook, which I also referred to in answer to the first question from Senator Cameron, and I would make this point: the high dollar has hit government revenue—some $10 billion wiped off government revenue over the forward estimates. Notwithstanding that, this government remains on track to deliver a surplus. So the senator can criticise all she likes but the reality is we made the decision, both during the election campaign and in the context of the MYEFO budget update, to ensure that we offset new spending to deliver savings to hold the bottom line in the face of a substantial write-down in government revenue as a consequence of a high dollar.

I would just remind the senator that, for example, Australia’s net debt as a percentage of GDP in 2010 is about 5.7 per cent. The average for the G7 is 74.4 per cent, and the peak net debt for major advanced economies is projected to be about 90 per cent of GDP in 2015. Ours will be 6.4 per cent.

Senator PAYNE—Mr President, I ask a supplementary question. Given that interest rates rose this month and are expected to rise further in coming months, when will the government actually cut back on its stimulus spending in order to ease the pressure on inflation and help provide some relief for homeowners and renters?

Senator WONG—If the senator looked at the figures, she would know that this government is on track to deliver the largest, fastest return to surplus since at least the 1960s. So when she says ‘cutting back on spending’ I would say to her that we are. We are, and we know we are already seeing stimulus subtracting from growth now, and it will continue to subtract from growth as it is wound back. We will deliver about a 4½ per cent—about 4.4 per cent of GDP—fiscal consolidation over three years. So the government is acutely aware of the importance of complying with its fiscal strategy. That is why we have handed down a MYEFO which ensures that we remain on track to deliver the surplus. That is why we have far stricter fiscal rules than were applied by Mr Costello in his last five budgets. (Time expired)

Senator PAYNE—Mr President, I ask a further supplementary question. Why is the government continuing to stimulate the economy and put pressure on inflation and mortgage interest rates, when the Reserve Bank is tackling inflation by increasing rates?

Senator WONG—Senator Payne is one of the people I have more regard for on that side, but she clearly wrote that supplementary before she listened to the first answer. The reality is—

Opposition senators interjecting—

Senator WONG—that is true, Senator Payne. I regret to say it. The fact is—

Honourable senators interjecting—

The PRESIDENT—Order! The time to debate this is at the end of question time.

Senator WONG—The reality is that we are winding back the stimulus and we are delivering the largest, fastest return to surplus since the 1960s. We have already seen Treasury say quite clearly that the government is subtracting growth from GDP in
2010. This is the problem with the opposition’s questions: they ignore these facts. They ignore the fact that stimulus is being wound back, that we are already subtracting from GDP growth in 2010 and that we are delivering the largest, fastest return to surplus since the 1960s. All of these facts are ignored by the opposition. (Time expired)

Employment

Senator HUTCHINS (2.15 pm)—My question is to the Minister for Tertiary Education, Skills, Jobs and Workplace Relations. Can the minister inform the Senate of the labour force results for October 2010?

Senator CHRIS EVANS—I thank Senator Hutchins for the question. The strength of the Australian economy was again on display last week with the release of the labour force figures showing the creation of 29,700 jobs as Australia’s workforce grew to a record high of more than 11.3 million workers—more workers in the workforce than ever before. This follows the creation of 49,500 jobs in September. It is a testament to the strong economic management that the government is providing and it is the case that, since we were elected in November 2007, the economy has created 650,000 jobs. Over the year to October, seasonally adjusted employment has increased by about 375,000 jobs or 3.4 per cent and almost three-quarters of those jobs have been full-time jobs.

The labour force figures also show that the participation rate has climbed to an all-time high of 65.9 per cent, up 0.3 percentage points, suggesting that strong economic conditions may be encouraging more people to enter the labour force. The female participation rates were also at record highs. It is that strong increase in the participation rate that underpins the headline 0.2 percentage point increase in the unemployment rate, which rose to 5.4 per cent in October. While that rate increased in October, this reflects the fact that we have record numbers of Australians joining the workforce with the participation rate reaching its highest level on record. We welcome the fact that more Australians are in work and also that more are actively looking for work. We remain confident that Australia’s unemployment rate will continue to decline in line with the MYEFO forecasts. We are confident that there will be great opportunities for those seeking work in the coming years.

Senator HUTCHINS—Mr President, I ask a supplementary question. How do these results compare with the situation in other developed economies?

Senator CHRIS EVANS—It is a fact that Australia’s unemployment rate remains much lower than any of the major advanced economies excluding Japan. It is interesting to note that in the US the October figure was 9.6 per cent, almost double Australia’s; in the UK the unemployment rate was 7.7 per cent in July; the latest figure I saw for Canada was 7.9 per cent; and in the euro area the unemployment rate was 10.1 per cent in September. It is a fact that we are doing much better than many of our like economies. The fact that we emerged from the global financial crisis in such a very strong position is a testament to strong economic management. The OECD report released recently strongly endorsed the government’s economic management and the strategy to further strengthen our economy. We have been able to achieve what no other major economy could during the crisis: increase job numbers during the worst global recession in 75 years. (Time expired)

Senator HUTCHINS—Mr President, I ask a further supplementary question. How will the Critical Skills Investment Fund be used to address emerging skills shortages as the economy grows and strengthens?
Senator CHRIS EVANS—As the economy continues to grow and strengthen, the government is working hard to respond to what are emerging skills shortages. The Critical Skills Investment Fund is a key part of the government’s skills and sustainable growth strategy of more than $660 million to address those skills shortages, lift foundation skills and reform and improve access to vocational education and training.

The Critical Skills Investment Fund of $200 million will upskill workers and train job seekers who wish to work in the critical industry sectors that have strong demand. It will target skills shortages in the resources, construction, renewable energy and infrastructure sectors. It will also increase workforce participation by groups traditionally underrepresented in these sectors. Government funding support for training will be matched by enterprise contributions on a sliding scale. We will look to double the Commonwealth investment to try and ensure that young people get the opportunity to take advantage of the economic growth. (Time expired)

Broadband

Senator FISHER (2.20 pm)—My question is to the Minister for Broadband, Communications and the Digital Economy. The CEPU says it is mustering resources to unionise the workforce rolling out the NBN and to get good wages and conditions for NBN workers. Has a significant increase in wages been factored into the spend of $43 billion on the National Broadband Network?

Senator CONROY—I thank the senator for her ongoing interest in this issue. I am aware Mr Quigley appeared—and you may even have been present—when there were a number of discussions around the enterprise bargaining agreements that have now been signed and agreed to between the workforce and NBN Co. There are agreements in place based on all the normal principles. I am a little confused when you talk about a blow-out. There is an EBA in place; it covers all of those things. There are no individual contracts for the workforce.

Overall, I believe that the answer will be no, there is no blow-out in wages costs because we have an agreed set of EBA principles. They have now been signed and agreed by the ACTU, coordinating right through with the CEPU and a range of other unions that have been involved in these discussions, and I have been kept reasonably abreast of the issues as they have evolved. These were handled at arm’s length. They have been signed off and agreed and there is no suggestion at all that there would be a wages blow-out. I think that it is a fantasy of those opposite who simply hope that these things will happen, because they just cannot understand why those residents in Willunga are going to get access to fibre optics. I picked Willunga, Mr President, because the good senator who asked the question is from South Australia, and the 84 per cent of people in a small country town like Willunga who want fibre optics. (Time expired)

Senator FISHER—Mr President, I ask a supplementary question. Notwithstanding that trite reassurance, Minister, the industry warns that the NBN rollout will add to construction costs, forecasting that a one per cent rise in construction costs will add $1.4 billion to the bill to build the NBN. Coupled with acute shortages of skilled workers particularly in the government’s priority areas, what extra costs need to be added to the NBN total bill? (Time expired)

Senator CONROY—I thank you for that question. That is a very old front-page headline in the Australian you are drawing from there, Senator, and I would put to you that it is inaccurate in every sense. We have an EBA in place.
Senator Abetz interjecting—

Senator CONROY—It is a very old edition, Senator Abetz. The information I have been given—

Senator Boyce interjecting—

Senator CONROY—Sorry—

The PRESIDENT—Senator Conroy, ignore the interjection. Just address the chair.

Senator CONROY—It sort of pierced an eardrum, Mr President. The costs from the EBA are in place. Yes, there is a very competitive labour market evolving in Australia. It is not yet quite back to the levels of the GFC, but going in that general direction. The NBN Company are very conscious of this. They have been engaged in discussions with the local industry about provision of services. They are aware of that. The government is conscious of wanting to ensure that we have enough technicians. (Time expired)

Senator FISHER—Mr President, I ask a further supplementary question. All right then. Given that the push for good wages and conditions is exacerbated by skill shortages particularly in regional areas, will the minister repeat the government’s promise that there will be no blow-out in the $43 billion cost to build the National Broadband Network?

Senator CONROY—The excitement of those opposite while they are waiting for the release of the NBN business case is understandable. It is a very, very worthwhile read, the NBN Co. business case. Once again it confirms that the NBN project is financially viable and will deliver cheap and affordable broadband to towns like Willunga. It will be one of the most historic builds of an infrastructure project in this country. The government is committed to ensuring that there is a well-trained and accredited workforce. That is why we are putting forward $100 million as part of a package to retrain technicians, who have their primary experience in copper networks, into the future fibre based networks. We are putting $100 million on the table to ensure that we do not have to waste all that experience and expertise. (Time expired)

Mining

Senator BOB BROWN (2.26 pm)—My question without notice is to the minister representing the minister for the environment. When is it expected that the government will approve or disapprove of the Wonga coalmine project in the Surat Basin in the north of the Darling Downs in Queensland? Is this the world’s largest open-cut coalmine? Is it true that in terms of carbon it will produce when burnt, wherever in the world, the equivalent of 10 per cent of Australia’s current greenhouse emissions from this one mining source?

Senator CONROY—Thank you for that question, Senator Brown. The minister, I am advised, has discretion that he has to exercise under the EPBC and he is going to consider all the facts of this case. In terms of some of the more detailed questions you ask, I will take them on notice and get back to you as soon as I can.

Senator BOB BROWN—Mr President, I have a supplementary question. Amongst the detail I asked: is this the world’s biggest open-cut coalmine, at 11,000 hectares? Will it produce the equivalent of 10 per cent of Australia’s greenhouse gases through the combustion of that coal overseas or domestically? My added supplementary is: how much federal government moneys have been expended on this project to date and how much is earmarked for the assistance of this project in any way, including transport of coal to port?

Senator Wong—Mr President, I rise on a point of order. The supplementary question—or most of it—is clearly not in the
minister’s portfolio, or the representing minister’s portfolio. It is just to the wrong minister.

The PRESIDENT—All I can do, Senator Wong, on your point of order, is to ask the minister to answer that part of the question that is relevant to the portfolio that he is representing.

Senator CONROY—Thank you, Mr President. I would concur with my colleague that probably the majority of that question was outside the portfolio. I am happy to take on notice those parts that are relevant to the portfolio and come back to Senator Brown with the information as it becomes available.

Senator BOB BROWN—I cannot get the answers to the questions in the portfolio or outside it, but I will persist, Mr President, with a further supplementary question. I am quite happy for the minister to pass on that question about the expenditure of taxpayers’ money on this massive carbon pollution project in Queensland. But I ask the minister: what studies has the Commonwealth done independently on the impact on the natural heritage, the cultural heritage and the water systems of the Surat Basin?

Senator CONROY—Thank you again, Senator Brown. I am happy to get any additional information around those questions that the minister is able to provide.

Broadband

Senator IAN MACDONALD (2.29 pm)—My question is to Senator Conroy as the Minister for Broadband, Communications and the Digital Economy. Is the minister aware of the growing chorus of criticism directed at Labor’s National Broadband Network from people like Professor Paul Kerin, the OECD and internationally recognised experts in the field, such as Mexican telecommunications tycoon Carlos Slim Helu and Japanese internet industry leader Masayoshi Son, who said that the NBN could be built by private enterprise without the government having to dip into its dwindling resources? Is the minister also aware that these experts believe that the estimated cost of $7,000 per household to provide broadband services is far too high and that the government should consider adopting a multiplatform approach? Minister, why is it that all of these experts are wrong and only you are right?

Senator CONROY—I thank Senator Macdonald for his ongoing interest. It is important for those opposite to read all of the OECD report and not just selectively quote it. The report released by the OECD yesterday concludes that the National Broadband Network has the potential to yield substantial benefits, especially in terms of productivity, and that it will improve internet services for the entire population—something those in the far corner used to believe in—and will promote fairer competition between private firms on retail services. The OECD states that the National Broadband Network is a far-reaching reform project that has been undertaken to fill the gaps in the broadband internet sector.

Through the NBN the Gillard government is ensuring that every Australian, no matter where they live, has access to affordable high-speed broadband. This was confirmed by the OECD’s report which again, if you do not take selective quotes, states that the NBN will avoid the risk of a geographic digital divide as it will cover the entire population, whereas if it were done by the private sector it would be done more gradually and only to the most densely populated areas. I recommend it to you, Senator Joyce. The OECD report also outlined that recent research suggests that the use of the new network can bring large savings, between 0.5 per cent and 1.5 per cent of GDP, to the cost of public services over a 10-year period in just four areas—health care, education, transport and
electricity—which on its own would warrant the construction. So the OECD says that just in those four sectors— *(Time expired)*

**Senator IAN MACDONALD**—Mr President, I ask a supplementary question. Is the minister aware of the recent statement by Councillor Annie Clarke, Mayor of the Burke Shire Council in the Gulf of Carpentaria, that broadband was wasted in the gulf where residents are screaming out for basic services such as reticulated electricity, roads and mobile phone services? Minister, can you go up there and explain to these people why your government is about to splash $43 billion on this much maligned NBN in preference to providing basic infrastructure services? *(Time expired)*

**Senator CONROY**—I am prepared to listen to the Mayor of Barcoo Shire, Mr Bruce Scott, who says, ‘We want fibre to these small communities.’ His communities are begging, crying out and campaigning to ensure that they get fibre—and this is a National Party council. They are demanding that they get fibre. They do not want the opposition’s mickey mouse wireless network. I repeat for those who want to listen that in just the four areas of health care, education, transport and electricity there will be a 0.5 per cent to 1.5 per cent improvement in GDP from building the National Broadband Network. So in all of those areas that the mayor you referred to is expressing concerns there is concrete support from the OECD which says that building the National Broadband Network will benefit health, will benefit education, will benefit electricity and will benefit transport. *(Time expired)*

**Senator IAN MACDONALD**—Mr President, I ask a further supplementary question. The minister’s arrogance is surmounted only by the government’s waste of $43 billion. I wonder if the minister understands the mounting criticism of the $43 billion white elephant. Is the minister’s refusal to ask the Productivity Commission to conduct a cost-benefit analysis yet another sign that he is not only out of step with telecommunications experts but also out of his depth?

**Senator CONROY**—To draw on the question: I was lucky enough to recently travel to Mexico, the land of Mr Slim’s wonderful monopoly that he has run so effectively to make himself the world’s richest man. I have to tell you that I prefer our telecommunications system and how it works to Mr Slim’s any day of the week. I invite you to go to Mexico and try it yourself, Senator Macdonald. When it comes to the question of trying to find a new cloak to hide behind to delay rolling out to residents of Townsville, residents of Willunga, residents in Tasmania, residents in Kiama Downs and residents in Armidale, who have signed up in droves to get the National Broadband Network’s fibre-optic connection—87 per cent in Armidale, 84 per cent in Willunga and it goes on and on— *(Time expired)*

**Housing**

**Senator HURLEY** *(2.36 pm)*—My question is to the Minister for Social Housing and Homelessness, Senator Arbib. Can the minister please advise the Senate about the progress of the government’s Social Housing Initiative investment under the Nation Building Economic Stimulus Plan? Can the minister also inform the Senate about the improvements and upgrades to existing social housing stock as well as additional dwellings constructed? Can the minister inform the Senate as to how many people have been employed under the government’s Social Housing Initiative?

**Senator ARBIB**—I thank Senator Hurley for her question. The Australian government’s $5.6 billion social housing program under the nation-building plan is on track
and delivering much-needed homes for vulnerable people, such as people who are homeless or at risk of homelessness. Around 31,000 Australians will benefit from the Australian government’s investment in social housing under the stimulus plan.

The federal government initially committed to constructing a total of 17,460 dwellings. I am happy to report that we are exceeding our targets. The average price of an individual dwelling is about $272,000, well below the original target of $300,000. Because of that excellent value for money, we will build around 2,000 additional social housing dwellings for Australians in need.

Construction has commenced on 17,800 dwellings, and more than 5,100 dwellings have now been completed. With the high level of rainfall in the states, this is a good figure. Because of the rainfall we are experiencing, there will understandably be some delays in construction, but the states are overall delivering under the agreement. It is also good news for the regions, because four out of every 10 new social housing dwellings are being built in regional Australia.

With regard to repairs and maintenance, 12,000 dwellings that were uninhabitable have been repaired under the stimulus funding, further boosting social housing supply. Our initial target was 2,500 dwellings, so we have successfully surpassed that target in partnership with the states and territories. A total of more than 80,000 dwellings have benefited from repairs and maintenance which was completed in June this year, and that is a very good figure.

**Senator ARBIB**—The states and territories are doing very well in terms of construction and also in terms of receiving awards. I was very pleased to hear that Hadcon Constructions received the 2010 excellence in housing award from the Master Builders Association of New South Wales for their work on a project in Lurnea. Housing New South Wales won the major award and commendation for two nation-building properties from the Urban Development Institute of Australia at its prestigious awards for excellence. One of the awards was for excellence in concept design and was awarded for a 44-unit social housing development for seniors in southwest Sydney.

These awards mean a great deal for the architects and for the builders but they also mean a great deal for the people living in social housing. It is going to improve their everyday lifestyle and their quality of life. These are some of the most vulnerable Australians. We are talking about people with mental illness. We are talking about seniors. *(Time expired)*

**Senator HURLEY**—Mr President, I ask a further supplementary question. Given the success of the social housing program, could the minister tell us if there has been any feedback from these tenants who have taken up the housing? How is the government’s investment in social housing helping to ease pressures on homelessness?

**Senator ARBIB**—There have been numerous comments from social housing tenants. Here are a couple that I have pulled out. The first one is from a Ms Leverton from Bundaberg, Queensland, who said:

As the wife and full-time carer of my husband, who has disabilities, this housing has made a huge difference in both our lives. I am able to concentrate on caring for my husband without the worries of maintaining a yard and constantly moving from house to house when owners decide to sell.
Greg Widders, a New South Wales social housing tenant, is another person who is delighted with his new home:

It is wonderful. I was consulted during the building stage and, because I am on dialysis and dust is a problem, I asked for vinyl flooring throughout rather than carpet. I have room for my dialysis machine and associated supplies and hook up for 9½ hours each night. It means I can keep working.

The good news is that 99.8 per cent of the approximately 16,500 dwellings in stage 2 will meet universal design requirements and energy ratings of at least six stars for over—

(Time expired)

Economy

Senator JOYCE (2.41 pm)—My question is to Senator Sherry, the Minister representing the Assistant Treasurer. I refer the minister to the comments made by the Assistant Treasurer, Mr Shorten, on foreign investment in Australia’s agricultural sector. Can the minister please describe whether the government has defined what is meant by ‘prime agricultural land’ in regard to foreign investment in Australia’s farming sector?

Senator SHERRY—Thank you, Senator, for your question. It might perhaps have been useful if you had referred to the detail of the comments of Minister Shorten. I assume you are referring to his comments acknowledging the need to improve transparency regarding the investment in and purchase of land—that is in the generality; that is not a direct quote from me. I assume that is your general reference.

Firstly, I would make the very obvious point that this government welcomes foreign investment. It has helped build Australia’s economy. In fact, I think that, for all but one year of just over 200 years of European settlement, we have been net foreign investors.

Senator Brandis—Mr President, I rise on a point of order. The point of order goes to direct relevance. The minister was asked whether the government has a definition of a term—‘prime agricultural land’—for the purposes of foreign investment in agriculture. The minister has not addressed that issue either directly or indirectly. Perhaps he does not know. But if he does not address the issue, you should sit him down.

The PRESIDENT—I am listening closely to the minister’s answer. I believe the minister is developing an answer. The minister has 47 seconds remaining. I draw the minister’s attention to the question.

Senator SHERRY—The reference to the comments of my colleague the Assistant Treasurer was extraordinarily general, so general that I am not sure which specific comments the senator is referring to, but I gather that the context of the question is foreign investment in agricultural land, including prime agricultural land in Australia.

As I was saying, foreign investment is important. This includes in our agricultural sector and in the context of the ownership of farmland in this country. In fact, I am aware in the generality that the vast—

(Time expired)

Senator JOYCE—He went all around the question and never even got close to answering it. Mr President, I ask a supplementary question. Has the government rejected any of the $5.3 billion of foreign investment in Australia’s agricultural sector that has been notified to the Foreign Investment Review Board during the life of this government?

Senator SHERRY—Firstly, in case Senator Joyce is not aware, the rules for investment approval for what Senator Joyce has referred to as agricultural land under this government were the same as under his government. They were the same rules that applied for the almost 12 years—

Senator Joyce—Mr President, I rise on a point of order. You did not direct him to be
relevant in the first one and he never answered the question. He is now continuing to be completely irrelevant to the question that was asked. Can you please direct him to the question.

The PRESIDENT—As you know, I cannot direct a minister in how to answer the question.

Senator SHERRY—I am well aware that the rules for approval in investment in this area under this government are the same as those that existed under the previous government. I am aware of the divisions—indeed, the split—in the opposition over issues of foreign investment given the recent—

Senator Joyce—Mr President, I rise on a point of order that once more goes to relevance. He either is or is not aware; the answer is either yes or no. He has three seconds left. In three seconds he should be able to get yes or no out.

Senator Ludwig—On the point of order: Minister Sherry has been answering the question. Minister Sherry has been relevant to the question being asked. Specifically in relation to this point of order, it is not appropriate for a questioner to then use the point of order to encourage the senator to answer yes or no. It is completely outside of the question that was asked to then suggest the response be yes or no. The minister is answering the question in the way that the minister is able to provide information to the Senate, and trying to frame it in a point of order by asking the minister to answer yes or no is completely inappropriate.

The PRESIDENT—I have already said that in question time I cannot instruct the minister how to answer the question. I cannot instruct the minister and put words into a minister’s mouth, but I can draw to a minister’s attention—

Senator Ian Macdonald—You can sit him down if he’s not answering the question.

The PRESIDENT—I do not need assistance, thank you.

Senator SHERRY—in terms of the figure—(TIME EXPIRED)

Senator JOYCE—He had a 50 per cent chance of getting the right answer and he could not even get that right. Mr President, I ask a further supplementary question. Since this government has a plan to shut down Australia’s food bowl in the Murray-Darling Basin, how can we trust that same government to take action in response to the growing ownership of our agricultural sector by foreign governments? What is the government’s plan to secure Australia’s most strategic asset: its ability to feed itself in all sections of a balanced diet?

Senator SHERRY—in terms of the precise figure that you used in the first supplementary—which, unfortunately, I could not fully answer due to the constant interruptions—I will take it on notice and check whether that is accurate or not. In terms of the number of farming agricultural property project investments that have been approved under this government and, indeed, under the previous government—in its almost 12 years they had the same set of rules—I will have to take it on notice to obtain the number. What I can say is that, since white settlement in Australia, the vast majority of foreign investment in this area has come—for very obvious reasons—from the United Kingdom and then the United States. (TIME EXPIRED)

Plague Locusts

Senator FORSHAW—My question is for the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig. Can the minister inform the Senate of the current state of grain crops in Australia?
Senator LUDWIG—I thank Senator Forshaw for his question. I know he maintains an interest in the agriculture portfolio. The Gillard government is working closely with states and territories on the issue of plague locusts. I recently met with my state counterparts from Queensland, New South Wales, Victoria and South Australia to discuss the national situation for a collective response to this threat. This season could see some areas of Victoria facing their worst locust infestation for up to 75 years. With half a million hectares already affected, this year’s outbreak puts at risk a $2 billion crop in Victoria alone. Managing this threat and limiting the damage can only be achieved through a concerted and collaborative effort between government agencies and individual landholders.

To prepare for the actions required to minimise locust damage to crops and pastures in these areas, the Australian Plague Locust Commission, agencies from the affected states and national interest groups have been working positively to develop and implement an integrated response plan. Large swarms of locusts were present over wide areas of New South Wales, Victoria and South Australia in autumn—that is, between April and May 2010—and established egg beds which have now hatched across these three states. Well-defined areas of operation have been established by the Australian Plague Locust Commission and state agencies to ensure effective coverage of infected areas. Resourcing of the response, including aircraft availability and pesticide supplies, has been addressed with plans established for these agencies to collectively treat up to 2.5 million hectares of infestation. Aerial control by the Australian Plague Locust Commission had treated a total area of not more than 54,000 hectares by 11 November. (Time expired)

Senator LUDWIG—I am pleased to say the prospects for the forthcoming winter and summer crops in Australia are favourable. Winter grain crops in the eastern states are in a very positive position after receiving good rainfall over the July-August period, and further rainfall over the eastern parts of Australia for most of September has boosted yield expectations. Given the favourable seasonal conditions in the eastern states, ABARE-BRS is forecasting winter crop production to be around 40.7 million tonnes in 2010, which is 16 per cent higher than last season.

The federal government is committed to minimising locust damage to crops and pastures. The Australian Plague Locust Commission, agencies from the affected states and national industry groups have been working together positively to develop and implement an integrated response plan, but I encourage farmers and landowners to regularly monitor their properties for hatching and report all locust outbreaks to their local authorities to ensure that they already—(Time expired)

Senator FORSHAW—Mr President, I ask a further supplementary question. Picking up the answer to my supplementary question, could the minister advise the Senate as to what measures are in place to combat this potential plague and how landholders can best contribute to that effort?

Senator LUDWIG—the Gillard government, in partnership with the Queensland, New South Wales, Victorian and South Australian governments, fund the Australian Plague Locust Commission. The Australian Plague Locust Commission continues to provide updated information to state agencies referred to plague locusts. I ask the minister to advise the Senate of the risk that the plague locusts pose to Australia’s crop production.
and landholders to assist in their response efforts while also commencing the implementation of its own response plan. The commission has also provided training to state agencies to assist them in preparing an efficient and effective response to the impending locust threat. The states involved have worked hard and collaboratively to develop their own response plans, including education and support for landholders who continue especially to play a vital role in implementing an effective locust control response. While individual states are responsible for the first response in their territories, the commission will take an active role in coordinating the response where a plague is forecast to impact on multiple states. (Time expired)

Defence Procurement

Senator JOHNSTON (2.56 pm)—My question is to the Minister representing the Minister for Defence, Senator Evans. Can the minister confirm that Defence has entered into a $100 million contract for the provision of air services to the Middle East area of operations with a company that owns no planes, employs hardly any Australians and is using a Portuguese charter operator that has no Australian regular passenger transport certificate operator’s licence and that the minimum requirement of the tender specifications requires that any aircraft carrying defence personnel be by an operator who has such a capability? Why was this tender response not voided due to such noncompliance?

Senator CHRIS EVANS—I thank Senator Johnston for his question. I do not have a specific brief on the tender to which he refers. I am aware that we have, under successive governments, tendered for contractors to move Australian personnel through the Middle East and other regions and that we have also tendered for the movement of equipment et cetera. I know it is an issue he is interested in. It was an issue I was interested in when I was shadow defence minister because I think there was a Russian company doing it at the time and there were concerns about whether or not they had enough operating capital and were a reliable enough provider.

Senator, you would be aware that I would not have a brief with the level of detail which you seek. I do not know whether you pursued this at estimates and I do not know whether this is an ongoing matter, but I am certainly prepared to ask the Minister for Defence, Mr Smith, if he can provide me with a brief on this particular tender and the issues surrounding it. If he is able to do that, then I will obviously make it available to you at the first opportunity.

Senator JOHNSTON—Mr President, I ask a supplementary question. Further to that answer, Minister, you may also like to be made aware that Deloitte Touche Tohmatsu on 1 September conducted an assessment and an audit of the contract. This assessment was completed on 15 September this year at a cost of $600,000. The period of time over which that audit was conducted was some six days. How can such an outrageous—

Government senators interjecting—

The PRESIDENT—Order! Senator Johnston, you are entitled to be heard in silence.

Senator JOHNSTON—How can such outrageous expenditure—namely, $600,000 for six days work—be justified when Deloittes admitted upfront in their report that they did not interview any of the tenderers, did not verify or check the integrity of the financial information provided and did not verify the information obtained by online media sources but relied upon the transcripts of interviews undertaken by others? (Time expired)
Senator CHRIS EVANS—Obviously the senator has a great deal of detail regarding this matter, but I understood the first question went to his concerns about the contract and the tender process and to whom it was awarded. But the supplementary seems to go to the fact that he is concerned that the government made some inquiries into that process and took the sorts of concerns he had expressed seriously. So I gather that now he is concerned that we actually inquired into the contract. I do not know whether he is questioning whether Deloitte should have been employed, whether he is just questioning the result of the audit or whether it is purely the costs. Clearly the senator is concerned about the original contract and now he is concerned about the inquiry. No doubt his second supplementary will reflect concern about some other matters. As I say—

Senator Brandis—There’s a lot to be concerned about with this government.

Senator CHRIS EVANS—Well, these contracts have a long history. (Time expired)

Senator JOHNSTON—Mr President, I ask a further supplementary question. I draw your further attention to an audit conducted by PricewaterhouseCoopers on the alleged improprieties associated with this contract, the cost of which remains undisclosed. There was an internal investigation which was a whitewash, conducted by the department itself, and a report from the Australian Government Solicitor’s Office that has been stated to have cost $77,000. So, for a cost of around three-quarters of a million dollars, Defence have a series of whitewashed reports that do nothing to inspire confidence that the integrity of the tender process has been adhered to, and instead awarded— (Time expired)

Senator CHRIS EVANS—I am not sure there was a question in that, but certainly the senator has sought to use question time to raise a series of issues that perhaps might have been done better in an adjournment speech or by providing early advice to me so that I could have helped, if he was genuinely after answers, by seeking a brief from Mr Smith. What I would say, though, is that accusing Defence of conducting a whitewash is a fairly strong claim by the opposition Defence spokesman and, given he has had to walk back from a number of his claims and the military advice he has provided in recent times, I suspect he ought to be a little more circumspect. I have no personal understanding but I think it obviously reflects negatively on Defence Force officers. I think he ought to be a little more circumspect, but that is his call.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Mental Health

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (3.02 pm)—On Wednesday, 27 October, Senator Fierravanti-Wells asked me a question without notice on funding for Lifeline. I seek leave to incorporate the answer in Hansard.

Leave granted.

The answer read as follows—

The Government has committed $18.2m for Lifeline which will fund 3 core activities. It will: build capacity for more calls to be responded to through the 13 11 14 crisis support line; provide a dedicated suicide line at hotspots; and support toll free calls from mobile phones. The breakdown of how the dollars will be apportioned across these three activities is currently being scoped with Lifeline. Funding is for 3 years, commencing in July 2011.

With regard to toll free calls from mobiles—Lifeline has commenced discussions with tele-
communication providers and is seeking to be able to commence offering free calls from mobiles, at least through some networks, early next financial year.

**Alcohol Abuse**

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (3.02 pm)—On Thursday, 28 October, Senator Fielding asked me a question without notice relating to restrictions on the hours to which alcohol is available for sale. I seek leave to incorporate the answer in Hansard.

Leave granted.

The answer read as follows—

Regulatory controls on the availability of alcohol are the responsibility of each jurisdiction and are delivered through state and territory liquor, liquor licensing or liquor control acts.

Following discussions at COAG in 2008 regarding binge drinking and alcohol-related violence several jurisdictions have trialled innovative approaches and/or implemented comprehensive strategies. These have included:

- freezes on the issuing of new 24-hour licences;
- increases in licence fees for high-risk venues;
- earlier closing times;
- late night lock-outs;
- local liquor accords;
- bans on happy hours and other discounting promotions; and
- better enforcement of responsible service of alcohol requirements.

In addition, the Australian Government has stated that it will pursue the recommendations made from the National Preventative Health Taskforce on liquor licensing reform with the states and territories through the Council of Australian Governments and the Ministerial Council on Drug Strategy.

The Taskforce recommendations include reforms concerning licensed venue opening hours, late night and high risk outlets, and outlet density.

The Australian Government is committed to working with the states and territories and supporting community based interventions to change Australia’s drinking culture and to address the problems associated with binge drinking. The National Binge Drinking Strategy has had $103.5 million committed.

**Broadband**

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.03 pm)—I would like to update an answer to a question I gave in the last parliamentary session. Senator Barnett asked me about NBN in Tasmania, and I have some further information. I had been advised that there had been 700 phone calls requesting participation in Telstra’s trial. I am advised that it is only hundreds rather than 700.

**QUESTIONS WITHOUT NOTICE:**

**Economy**

Senator PAYNE (New South Wales) (3.03 pm)—I move:

That the Senate take note of the answer given by the Minister for Finance and Deregulation (Senator Wong) to a question without notice asked by Senator Payne today relating to the economy.

In that response the minister referred, amongst other things, to the recently released Mid-Year Economic and Fiscal Outlook, MYEFO, papers which were released last Tuesday. In fact, as the coalition has been at great pains to point out, what the MYEFO really showed was that Labor’s budget position has deteriorated even as the economy is actually projected to be stronger—quite a ‘stunning’ accomplishment, really, when you think about it. What they have managed to do is to deliver higher deficits, lower surpluses and higher net debt. So what actually should have been going on in this period of time is that so much more should have been
done to cut spending and to reduce upward pressure on interest rates, which of course was the tenor of the question I asked the minister. What is clear to us from their actions in relation to these issues is that they simply cannot take the hard decisions. They make a lot of noise and they talk about it quite a lot but, when it comes to the reality, there is no capacity to make the hard decisions that this economy needs.

The fiscal deficit this year, for example, is projected to be $48½ billion. But for the month of September alone the government’s deficit was $13.8 billion, the highest on record. In the first three months of the financial year, Labor’s spending was $9.6 billion higher than for the same period last year, despite the fact that revenue was $1.9 billion lower. And who is paying the price? The price is being paid by Australian homeowners. They are paying the price for Labor’s extravagance through higher interest rates, and that is a pretty simple fact that the government seems incapable of accepting. The net debt relative to the pre-election fiscal outlook has increased by $4.9 billion and is now expected to peak at $94.4 billion in 2011-12.

When you look at government programs and what is actually being done at the moment, like the Building the Education Revolution debacle, they are quite simply inflationary. They are putting pressure on inflation and on interest rates. Just last week the Treasurer of Victoria, Mr Lenders, said that only 20 per cent of BER projects in Victoria were completed, and that means that 60 per cent of the funding has still to be rolled out. So, by their own admission, Labor are continuing to stimulate the economy even after the worst of the global financial crisis has passed. There is a further $6 billion to come in the construction of school halls in response to that quarter of negative growth back in 2008.

They do try and wave it away. They try and dismiss it with a wave of the hand and a waving around of the MYEFO documents. It is actually not quite that simple, though, because we then come to the September quarter CPI, and that shows that Labor’s excessive spending still continues to put pressure on inflation. We see steep rises in power, in water and in rents accounting for most of the increase in CPI. It is not rocket science to work out where that hurts the most: it hurts the most in the average Australian family.

In the September quarter, water and sewerage charges rose by 12.8 per cent, electricity by six per cent, property rates and charges by 6.2 per cent and rents by over one per cent. When you put that all together, though, since the end of 2007—since this government was elected—electricity prices have risen by 35 per cent, gas prices by 24 per cent, water prices by 29 per cent and rents by 15 per cent. Add to that the fact that there have now been seven interest rate rises on Labor’s watch since October 2009. And what do those interest rate rises do? They also increase the cost of building materials, they make badly needed new homes yet more expensive to build—and we are falling ever behind on new home construction—and renters suffer more as landlords, reasonably, try to pass on the higher costs of mortgage interest rates to tenants. Who hurts? The Australian people hurt. Australian families hurt. In November they have had an interest rate rise, and the commentators say that more are expected. So we look to December, to Christmas and to a new year. If the record of this government since the end of 2007 is anything to go by, there will be very little in the Christmas stocking for most Australian families.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (3.08 pm)—I am glad Senator Payne has chosen,
of all the questions today, to focus on this particular matter, because there has at least been an attempt at some serious consideration of some of the fiscal issues confronting Australia. However, I need to take a short divergence back to the issue of interest rates, because I think Senator Payne has demonstrated—as indeed have some of the other comments today—a fairly selective consideration of some matters. Under those opposite, official interest rates rose to 6.75 per cent. That is two percentage points higher than rates are today, at 4.75 per cent. A family on a $300,000 mortgage is paying $156 less each month in repayments than when the Liberals were last in government. That is a saving of $1,872 a year.

But, after that one brief point, let me go back to the broader fiscal strategy, because I think that is critical and very important and we should not allow the opposition to try and cherry-pick and make trite points on our attempt to deal with the issues associated with the change in exchange rate and the impact of that on our economy. We have a strategy that will get the budget back to surplus in three years, well before any major advanced economy, and we still have such a strategy. It has been endorsed, again, by the IMF; the OECD, the RBA and international credit rating agencies. We are delivering the fastest positive budget turnaround in over 40 years: fiscal tightening by $4\frac{1}{2}$ per cent of GDP over three years, including 1.3 per cent of GDP this year alone. This is faster than we saw in recoveries from previous downturns and faster than anything we have seen since records have been kept. This reflects—

Senator Fifield—You haven’t done it yet. And why is it so big? Because the starting point is so bad. You’re making a virtue of—

Senator JACINTA COLLINS—Thank you, Mr Deputy President. I was in fact finding it difficult, from this place in the chamber, to even hear myself think. This reflects the methodological adherence to our strict fiscal rules, and let me cover them. We are keeping real spending growth to two per cent or less a year; that is around half of what we saw in the last four years of the coalition, and it is around half the rate that spending has grown at in the past 40 years. That is exactly why the OECD has described our strategy as ‘bold’, ‘well designed’ and ‘effective’—some of those references in the OECD report that, of course, selective representation was not covering in question time. We have been offsetting every single dollar in new spending. We have delivered $83.6 billion in savings across three budgets.

I was feeling slightly sorry for Senator Joyce earlier today when I was considering the performance of Joe Hockey as current shadow Treasurer.

The DEPUTY PRESIDENT—Order! Senator Collins, you must refer to members by their proper name.

Senator JACINTA COLLINS—Sorry; you are right. I should not have said Joe Hockey or Sloppy Joe; I should have said Mr Hockey.

The DEPUTY PRESIDENT—Order! You are only compounding the problem.

Senator JACINTA COLLINS—I withdraw that comment. But, as the opposition have flip-flopped, for instance, over their view on the Greens bill with respect to banking regulations and when the serious issues arose around those policies, we have stayed the course on serious policy development in terms of how we will deal with banking regulation.

Unfortunately for Senator Joyce, he lost my sympathy today when he was suggesting that the government should respond to an-
swers in question time by the approach of tossing a coin: ‘Pick an answer; you’ve at least got a 50 per cent chance of being right.’ This is someone who was shadow finance minister: ‘Pick—there’s a 50 per cent chance.’ Certainly he had difficulties in mixing up his billions and his millions, but to suggest in serious governance that we should toss a coin is really quite concerning.

But let me go back to some of the more serious matters about our fiscal strategy. At the same time as we have been quite methodical in our adherence to our fiscal rules, the fiscal stimulus is being withdrawn, contrary to the myths being projected from the other side. Far from fuelling growth, the withdrawal of the stimulus will subtract around one percentage point from growth this year, and the remaining investments are in the long-term infrastructure which is absolutely critical to building our productive economic capacity and maintaining our strong economy and economic growth. This, again, is the issue that the opposition forgets. The opposition forgets the economic circumstances we were left in after many years of underinvestment in nation building and infrastructure. But much of that strength has now been returned to the economy, and that is why we were able to ride through the global financial crisis, contrary to suggestions such as those from Senator Macdonald that it is all related to his friend Mr Costello.

We have a comprehensive strategy to build future capacity, which is the best way to contain inflationary pressures over the long term: investing in major rail and road upgrades and the NBN—yes, the NBN is about future capacity, skills and education—and, of course, cutting the company tax rate. Unlike the opposition’s policy about PPL, we are cutting the company tax rate to make businesses more competitive.

These are all the issues that, of course, Senator Payne in her comments did not go to: how critical they are and, certainly, how seriously the Gillard government takes the issues of our fiscal responsibilities and fiscal plans. As I said at the outset, we do have a strategy that will get the budget back to surplus in three years, well before any major advanced economy.

Nothing in MYEFO has changed that. Nothing that Senator Payne referred to has changed that. Nor, indeed, did she acknowledge that our plan has been endorsed once again by the IMF, the OECD, the RBA and the international credit rating agencies. Where on earth the scaremongering from the opposition—without any support or credible sustenance from serious commentators in terms of economic recovery—came from is beyond me. Whether they think that they can continue to just run these lines and say them often enough so that the punters out there will just accept them, it just will not work. (Time expired)

Senator ADAMS (Western Australia) (3.16 pm)—I too rise to speak on the answers given by Senator Wong at question time today. I will just quote the Treasurer; in July he said:

… we will do everything as we go forward to ensure we minimise those cost-of-living pressures …

In front of me today I have two news articles that have been published since the last rate rise on Melbourne Cup Day: ‘Rate rise compounds woes for cash strapped families’ and ‘Average families struggle to meet costs’.

The Treasurer has said that they will help these families. What evidence do we have? We keep being told that, yes, the budget will come back into surplus in three years time. But the evidence is just not there. Unfortunately, we have this looming dark shadow of the carbon tax as well—the tax that before
the election the Prime Minister said would not happen. Now that is coming as well, and that carbon tax will actually compound on these poor families who are struggling to meet the above average costs.

As an indication of how much it costs, because of higher living costs a family on a single average income of $75,000 a year just cannot exist and meet their living costs for basic necessities. There is research that comes from the Weekend West showing that a family of four would need a full-time and a part-time average income to cover the weekly $1,175 cost of necessities. This includes payments for an average-size mortgage, insurances, food, medical cover, car costs, rates and utilities.

These families really are battling and, coming from a rural background—especially in Western Australia where we have a very limited grain harvest and people who are desperate to try to pay their interest rates—these sorts of costs are unfortunately absolutely out of their depth. The frightening part is that a number of people have to use their credit cards to pay for food. They have maxed out their credit card and they are paying for basic day-to-day things such as food, fuel and transport using their credit card, and are not able to clear the expenses they have already made.

Another indicator which applies particularly to contractors and tradespeople is having no financial contingency plan for when there is no income because of an illness or accident. Small businesses in these farming communities are really battling. They are not getting paid, they have to do a seven-day payment to the people they are buying things from and it is all becoming very difficult.

I return to the carbon tax: as far as electricity costs are concerned, where will all of this end? We hear stories about pensioners who are petrified to have their lights on and their heating on, and who are lying in bed covered in blankets trying to keep themselves warm. It really does worry me just how we are going to deal with that issue when it comes up. For the number of social groups who are trying to help these people, the unexpected rate rise last week has generated a huge surge in activity for financial counsellors and the people who supply families with groceries and also help with their repayments when they are not able to make those. Counsellors have a huge job trying to help with debt management arrangements. It is the last resort when people have to go to these people and say, ‘Look, I just can’t cope’. Unfortunately, often it is too late and their possessions are reposessed and their houses are as well.

We really have a problem and I do ask where this government are going and what they are showing to say that they have this in hand, because to date we have not seen any evidence whatsoever of this.

Senator STERLE (Western Australia) (3.21 pm)—Thank you, Mr Deputy President. It is great to see you here in good health. I have not seen your smiling face for a couple of weeks. Welcome back. I rise to take note of answers given to questions today too, but before I do, if I may, I just want to clarify that it is a very serious issue when we talk about families struggling and, more importantly, when pensioners do it hard. Trust me, we all know how hurtful and distressing that can be. I think it is important that we do clarify one thing for the record. Senator Adams touched on pensioners too scared to turn their heaters on, shivering through the freezing winter, with no help from the Barnett state Liberal government which increased the cost of power by some 47 per cent in Western Australia.

Senator Cash—Your government’s failure.
Senator STERLE—I am sorry, Mr Deputy President, for talking while other senators are interjecting. I do take note that Senator Cash from Western Australia jumped to the defence of the Barnett state government’s increase in energy charges of 47 per cent. Senator Adams sat quietly and listened, but Senator Cash is all of a sudden a defendant for higher electricity charges in Western Australia. Senator Cash, well done! The West Australians must be so proud of your stance. Through you, Mr Deputy President, well done, Senator Cash!

It does give me pleasure to talk about the nation-building stimulus package in particular. It was very rewarding to be able to travel through the great state of Western Australia to open up a lot of these Building the Education Revolution projects. Mr Deputy President, you would be aware $16.2 billion was set aside for Building the Education Revolution. I must say not only do I enjoy going to the openings but so do the Liberal members in Western Australia because they are always pushing their way to the front to get their photos taken even though—I think the record will correct me if I am wrong—I am sure they voted against every stimulus in this chamber when we were putting them through in 2009. When the government was pushing the legislation through not one of them actually came over to this side and voted with the government. They voted against it, so why would they be pushing to get to the photographers to get their photos taken at every opening? That is interesting, but it is all nice; it is all good.

Last week I had the pleasure of attending some four Building the Education Revolution great stories in the federal seat of Hasluck. At Thornlie Primary School they also celebrated their 50th anniversary and I saw the early childhood learning centre that was opened there and the delight of the preschool kiddies that turned up sitting in their uniforms in the new undercover area next to the music and arts centre. It was a fantastic achievement and how thankful not only the P&C, but the teachers, the staff, the parents and the principals of these schools are that the federal government stimulated the economy and kept the employers employing contractors and employees and now they are seeing the reward in their school community with their new education centres. I also had the pleasure of visiting Lesmurdie Primary School. It was the same story. I also went along to Hillside where there was exactly the same story. I am talking about the great work that was done by a very responsible government through the greatest financial challenge that this country and the world faced since the 1930s.

Those on that side have obviously forgotten about it but, mind you, if I had a deputy leader like theirs at the time, the member for Curtin, saying we should just sit on our hands and wait or just look, I would be pretty quiet too. Mind you, I would not have the gall to be pushing my way to the front for a photo opportunity every time one of these buildings is opened, but still they love it, I love it, the parents love it.

The Nobel laureate in economics, Professor Stiglitz, was out here a few months back and he actually commended the Australian government. I think his words were along the lines that it was probably the best economic stimulus that he had seen and thank goodness that the government did move early to create employment opportunities and to put dollars in the pockets of ordinary Australians so that they would get out and stimulate the economy. In all fairness, with no disrespect to the opposition senators over there, I think a recommendation from Professor Stiglitz goes a lot further than pushing your way to the front for a photo opportunity at a school.
Senator KROGER (Victoria) (3.26 pm)—Thank you, Mr Deputy President, and may I join Senator Sterle in welcoming you back. In rising to take note of answers you have to hand it to those on the other side of this chamber who really abuse this chamber to try to rewrite history. I would like to remind Senator Sterle of the facts in relation to the stimulus packages of his government and remind him that we actually did support the first stimulus package. Our concern in supporting the second stimulus package was the fact that it was four times the size and introduced before we saw the effect of that first stimulus package and how it would filter through the system. But it does not ever stop Senator Sterle and those on the other side who want to rewrite history according to their own whims and fancies.

Minister Wong stood up and talked about the lack of fiscal responsibility of those on this side of the chamber. I would put to Minister Wong that it is what you do in government that counts. I will be very happy to stand up any day and hold up our record under the Howard-Costello government and demonstrate what fiscal responsibility is all about—unlike what we have seen on your side: this scandalous, extraordinary, flagrant waste of hard earned taxpayers' money. You on that side have no idea what fiscal responsibility actually means. It is a definition that we are very happy to provide to you. Australians look to their governments for effective and strong management. Your answer to that, as Senator Adams has already raised, is to roll out programs like the BER, which has wasted billions of dollars. There were programs like the insulation pink batts scheme under Garrett. He was sidelined; he was not doing too well. But we still have not fixed it.

The DEPUTY PRESIDENT—Order! Senator Kroger, you must refer to people in the other place by their proper names.

Senator KROGER—Minister Garrett. Thank you, Mr Deputy President. I was getting overwhelmed by the scandalous waste by particular ministers, so I lost my sense of etiquette at the time. My apologies. What needs to be pointed out is that this scandalous waste of money is the very thing that is increasingly putting inflationary pressure on the cost of living. The energy cost that Senator Adams has already raised is but one example. She is absolutely right in saying that the carbon tax that was totally ruled out before the last election and has now been ruled in will actually put upward pressure on electricity prices. All cost of living price rises are a threat.

Now the Prime Minister has formed—to put it in her words—a formal alliance with the Greens so that when they whistle we know that she will be beholden. First up, we have the carbon tax committee, the committee for believers, but there are many, many other policies that they are interested in bringing into this place that will dramatically affect the cost of living and have a significant impact. There are policies such as the introduction of congestion taxes and increasing the tariff on four-wheel drives by 10 per cent. We have already covered the resource super profits tax in this place many times, where they would like to see a 50 per cent tax rate. We have seen the slashing of education support and funding for Catholic and independent schools. There is the abolition of the private health insurance rebate. We are seeing the taxing of family trusts. There is also the review of the GST and the implementation of that. There are many, many policies that directly impact the cost of living, and it is these that we should be very much aware of. The government want to look at changing the taxation system from work based taxes to taxes on natural resources. (Time expired)

Question agreed to.
PETITIONS

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

Australian Farmland

To the Honourable the President and Members of the Senate in Parliament assembled:
The Petition of the undersigned shows:
that there is significant concern about the risk to national food security and national security generally posed by acquisitions by foreign entities of Australian agricultural, horticultural and other farming land

Your Petitioners ask that the Senate should:
(1) commit to the Australian people to prevent foreign government backed consortia and other similar foreign state-related entities from purchasing freehold title in Australian farmland; and
(2) amend the Foreign Acquisition and Takeovers Act and related policies of the Foreign Investment Review Board to give effect to that commitment.

by Senator Heffernan (from 1,384 citizens)

Baby Safe Havens

To the Honourable President and Members of the Senate in Parliament assembled:
The petition of the undersigned draws to the attention of the Senate a need for legislation to be enacted to provide legal abandonment of newborn babies.
Your Petitioners therefore request that the Senate call on the States to consider enacting legislation so that young women would be discouraged from killing, causing physical harm or abandoning their babies if the Commonwealth provided “Baby Safe Havens” where the mothers would remain anonymous and immune from prosecution

by Senator Polley (from 144 citizens)

NOTICES

Presentation

Senator Bob Brown to move on 17 November 2010:
That the Senate—
(a) notes:
(i) China’s condemnation of Liu Xiaobo as a ‘criminal’,
(ii) Mr Liu’s major ‘crime’ was calling for ‘democracy reform’ in China, and
(iii) Beijing’s diplomatic efforts to have the Nobel Prize ceremony in Oslo boycotted; and
(b) calls on the Australian Government to ensure that Australia is officially represented at the Oslo presentation of the prize to Mr Liu’s representatives.

Senator Bob Brown to move on 17 November 2010:
That the following matter be referred to the Environment and Communications References Committee for inquiry and report by 1 June 2011, with effect from the first day of sitting of 2011:
The status, health and sustainability of Australia’s koala population, with particular reference to:
(a) the iconic status of the koala and the history of its management;
(b) estimates of koala populations and the adequacy of current counting methods;
(c) knowledge of koala habitat;
(d) threats to koala habitat such as logging, land clearing, poor management, attacks from feral and domestic animals, disease, roads and urban development;
(e) the listing of the koala under the Environment Protection and Biodiversity Conservation Act 1999;
(f) the adequacy of the National Koala Conservation and Management Strategy;
(g) appropriate future regulation for the protection of koala habitat;
(h) interaction of state and federal laws and regulations; and
(i) any other related matters.

Senator Cormann to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) the current process to select default superannuation funds under modern awards is not transparent, not objective or evidence based, not competitive and not subject to systematic review,
(ii) the top ten most commonly listed default funds under modern awards are all union based industry super funds, with these ten funds listed as default super funds in modern awards 330 times,
(iii) the Cooper Review into superannuation also confirmed that current default superannuation fund arrangements undermined competition as new employees typically become a member of a default fund, and
(iv) a competitive, transparent and efficient superannuation industry is critically important to maximise value for all superannuants;
(b) endorses the Labor Party’s commitment before the 2010 election to instruct 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; and
(c) orders that there be laid on the table, no later than 30 April 2011, a report by the Productivity Commission on the design of a process for the selection and ongoing review of the superannuation funds to be included in modern awards or enterprise agreements as default funds, with the requirements that:
(i) the process is to be based on objective criteria and evidence and be subject to systematic review, so that the selection and ongoing review of eligible default funds is transparent and competitive,
(ii) the process is to help maximise employees’ retirement incomes by ensuring that only those superannuation funds that deliver – and continue to deliver – the best results to their members are able to be included as default fund options in modern awards and enterprise agreements, and
(iii) in designing the process the Productivity Commission make reference to the existing sophisticated system of superannuation fund ratings which has evolved over the past 20 years and is already used widely by employees, employers and financial planners in making decisions on fund selection.

Senator Barnett to move on the next day of sitting:
That the following matter be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 30 June 2011:
The Australian film and literature classification scheme, with particular reference to:
(a) the use of serial classifications for publications;
(b) the desirability of national standards for the display of restricted publications and films;
(c) the enforcement system, including call-in notices, referrals to state and territory law enforcement agencies and follow-up of such referrals;
(d) the interaction between the National Classification Scheme and customs regulations;
(e) the application of the National Classification Scheme to works of art and the role of artistic merit in classification decisions;
(f) the impact of X18+ films, including their role in the sexual abuse of children;
(g) the classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+;
(h) the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme;
(i) the application of the National Classification Scheme to music videos;

(j) the effectiveness of the ‘ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/or Themes’;

(k) the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising;

(l) the interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content;

(m) the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults; and

(n) any other matter, with the exception of the introduction of a R18+ classification for computer games which has been the subject of a current consultation by the Attorney-General’s Department.

Senator Polley to move on the next day of sitting:

That the Finance and Public Administration Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 25 November 2010, from 5 pm, to take evidence for the committee’s inquiry into the exposure drafts of Australian privacy amendment legislation.

Senator Pratt to move on the next day of sitting:

That the Joint Standing Committee on the National Capital and External Territories be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 17 November 2010, from 12.30 pm to 2 pm.

Senator Xenophon and Senator Siewert to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to provide for the accurate labelling of food with genetically modified material, and for related purposes. Food Standards Amendment (Truth in Labelling—Genetically Modified Material) Bill 2010.

Senator Hanson-Young to move on 18 November 2010:

That the following bill be introduced: A Bill for an Act to amend the Migration Act 1958 in relation to asylum seekers and immigration detention, to restore rights and procedural fairness to persons affected by decisions taken under the Act, and for related purposes. Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010.

Senator Boyce to move on the next day of sitting:

—That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Thursday, 18 November 2010, from 11.30 am.

Senator Fisher to move on the next day of sitting:

That the time for the presentation of the report of the Environment and Communications References Committee on the adequacy of protections for the privacy of Australians online be extended to the second sitting day of the second sitting week in March 2011.

Senator Mark Bishop to move on the next day of sitting:

That the time for the presentation of the following reports of the Foreign Affairs, Defence and Trade Legislation Committee be extended to the last day of the second sitting week in February 2011:

(a) provisions of the Defence Legislation Amendment (Security of Defence Premises) Bill 2010; and

(b) provisions of the Autonomous Sanctions Bill 2010.
Senator Hanson-Young to move on the next day of sitting:
That the Senate calls on the Federal Government to investigate and review anti-discrimination laws across Australia and the need to provide further protection to same-sex couples and LGBTI [lesbian, gay, bisexual, transgender and intersex] Australians.

LEAVE OF ABSENCE
Senator McEwen (South Australia) (3.32 pm)—by leave—I move:
That leave of absence be granted to Senator Stephens on 15 November 2010, for personal reasons, and Senator Lundy on 16 November 2010 on account of parliamentary business.

Question agreed to.

COMMITTEES
Gambling Reform Committee
Meeting
Senator McEwen (South Australia) (3.33 pm)—by leave—I move:
That the Joint Select Committee on Gambling Reform be authorised to meet during the sitting of the Senate today, from 7 pm to 9 pm, for a private briefing.

Question agreed to.

NOTICES
Postponement
The following items of business were postponed:
General business notice of motion no. 27 standing in the name of the Leader of the Australian Greens (Senator Bob Brown) for today, proposing the introduction of the Food Standards Amendment (Truth in Labelling Laws) Bill 2010, postponed till 22 November 2010.
General business notice of motion no. 34 standing in the name of the Leader of the Australian Greens (Senator Bob Brown) for today, proposing the introduction of the Plastic Bag Levy (Assessment and Collection) Bill 2010, postponed till 22 November 2010.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.33 pm)—I withdraw general business notice of motion No. 74 standing in my name for 23 November.

COMMITTEES
Community Affairs References Committee
Reference
Senator Siewert (Western Australia) (3.34 pm)—I move:
(1) That the Senate:
(a) 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; and
(b) notes that policies and practices resulting in forced adoptions were widespread throughout Australia during that time.
(2) That the following matters be referred to the Community Affairs References Committee for inquiry and report by 30 April 2011:
(a) the role, if any, of the Commonwealth Government, its policies and practices in contributing to forced adoptions; and
(b) the potential role of the Commonwealth in developing a national framework to assist states and territories to address the consequences for the mothers, their families and children who were subject to forced adoption policies.

Question agreed to.

AGED CARE
Senator Siewert (Western Australia) (3.34 pm)—I move:
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.

Question agreed to.

WORLD VOLUNTEER MANAGERS DAY

Senator McEWEN (South Australia) (3.35 pm)—At the request of Senator Stephens, I move:

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 provide 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.

Question agreed to.

UNITED NATIONS PARLIAMENTARY ASSEMBLY

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.36 pm)—I move:

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.

Question put.

The Senate divided. [3.40 pm]

(The Deputy President—Senator the Hon. AB Ferguson)

Ayes…………… 5

Noes…………… 34

Majority……… 29

AYES

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

NOES

Adams, J.
Bernardi, C.
Bishop, T.M.
Brown, C.L.
Colbeck, R.
Cormann, M.H.P.
Farrell, D.E.
Ferguson, A.B.
Ferravanti-Wells, C.
Forshaw, M.G.
Hurley, A.
Ludwig, J.W.
Marshall, G.

Hanson-Young, S.C.
Milne, C.

Back, C.J.
Bilyk, C.L.
Boyce, S.
Cash, M.C.
Collins, J.
Crossin, P.M.
Faulkner, J.P.
Fielding, S.
Fifield, M.P.
Furner, M.L.
Hutchins, S.P.
Lundy, K.A.
McEwen, A.
Question negatived.

MATTERS OF PUBLIC IMPORTANCE
Asylum Seekers

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

The Gillard Government’s failure to secure Australia’s borders and implement policies to combat people smugglers.

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

Senator Marshall—Mr Deputy President, I rise on a point of order. You will note that, for this motion to be supported, it must be supported by four senators, not including the proposer, rising in their places, and I submit to you that this proposal is not supported.

The DEPUTY PRESIDENT—Senator Marshall, we were just at the conclusion of a division and it would have been difficult for some senators to get to their places in time for them to stand in their places.

Opposition senators interjecting—

The DEPUTY PRESIDENT—Order! I saw at least four, but I could not look to see whether there were any more than four—but I did not have much time. So I will call it again. I call upon those senators who approve of the proposed discussion to rise in their places.

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

The DEPUTY PRESIDENT—There were at least four senators standing in their rightful places, Senator Marshall, so I would suggest you be very careful when you take points of order such as that. I understand that informal arrangements have been made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator CASH (Western Australia) (3.44 pm)—Minister Carr’s disgraceful and completely unprofessional performance in question time today—in fact, it was put to me it was a performance that was unbefitting of a minister of the Crown—shows exactly why the coalition is debating this matter today. Those opposite have absolutely no answers at all to their failed border protection policies. Andrew Bolt, in his online blog on 12 November 2010, posed the following question: is Julia Gillard finished? I have to say, based on Minister Carr’s performance today, perhaps the question being posed by Andrew Bolt should have been: is Minister Carr finished? But the question was in relation to Julia Gillard—and I have to say: if we put that question to Bill Shorten, what do you think Mr Shorten would say?

Senator McEwen—Mr President, on a point of order: the senator persists in refusing to name members of the other place by their appropriate titles.

The DEPUTY PRESIDENT—I apologise, Senator McEwen; I was engaged in another conversation and was not listening as closely as I should have. Senator Cash, you must refer to people in the other place by their proper title.

Senator CASH—Thank you, Mr Deputy President. If we were to put the question to Minister Shorten, one can only imagine what his answer would be. It would be a resounding, ‘Yes, Ms Gillard, the current Prime Minister from the Australian Labor Party, is finished.’
Let us now look at the question in the context of today’s matter of public importance debate on securing Australia’s borders. Again, without a doubt, the answer to the question has to be a resounding yes because, when it comes to protecting Australia’s borders, Gillard Labor, just like Rudd Labor, has failed the Australian people. This government has shown that in the few short months since it was elected it has absolutely no agenda whatsoever when it comes to protecting Australia’s borders. This is a government that has clearly demonstrated to the Australian people that when it comes to irregular maritime arrivals it lurches from one problem to the next. This is a government that, just like the former Rudd Labor government, has no solution to the mess it created when it chose to roll back, in August 2008, the Howard government’s proven strong border protection policies.

Based on Prime Minister Gillard’s performance to date, the Australian people may well be entitled to ask: ‘Why did the Labor Party axe—or politically execute—former Prime Minister Rudd when Ms Gillard’s policies are worse than the former Labor government’s policies?’ The former Labor government was an absolute disaster when it came to border protection. Now, under Prime Minister Gillard, Australia’s border protection policy is in complete, total and utter tatters. To those on the other side who say, ‘No, no, no, it’s not in tatters; that is the coalition’s scaremongering on the issue of border protection,’ I say let us look at the facts. Let us look at the statistics in relation to irregular maritime arrivals, because the arrival of the latest boat, with 42 people on board, means that more than 9,013 people have arrived unlawfully by boat since the Labor Party changed the coalition’s strong border protection policies. This year alone, more than 5,978 people have arrived unlawfully in Australia. That is a border protection policy that is in absolute tatters.

What is even more interesting is that even the Labor Party did not actually believe that the numbers would be that high. We know this because in the May 2010 budget the government allocated $327.5 million for offshore asylum-seeker management—and here is the crunch—based on an estimated 2,000 irregular maritime arrivals for the 2010-11 financial year. That was an underestimation by any stretch of the word.

Mr Deputy President, do you know how many people have actually arrived in the four short months since this new financial year commenced? It is 2,320. And we know that the numbers will continue to rise. Did the Labor Party reflect that in the MYEFO? No. They are absolutely kidding themselves if they think that their budget forecast of 2,000 irregular maritime arrivals for the 2010-11 period is in any way reflective of the number of irregular maritime arrivals who are actually going to come here.

At the end of the day, it is the Australian people who will suffer because of Labor’s failed border protection policies. It is the mums, it is the dads, it is the taxpayers in Australia that are now going to have to brace themselves for a massive budget blow-out under this Labor government. That is because Labor’s costings do not reflect the true indication of the potential costs because of their immigration failures.

Australian taxpayers should be bracing themselves for a budget blow-out that could potentially be in the hundreds of millions of dollars. Despite their continued rhetoric—and we heard it in question time today: ‘We will be bringing the budget back into surplus’—that is an absolute fantasy. Based on just the potential budget blow-out from their immigration failures alone, there is no way that the Gillard Labor government can bring
this budget back into surplus in the time frame that is referred to. What is so sad for the Australian people is that moneys that could have been spent by this government on building new hospitals, building new roads, on employing more doctors in rural areas, supporting our troops currently on missions overseas and helping Australian pensioners, will all need to be diverted to pay for the Labor government’s failures when it comes to border protection.

None of these failures need to have occurred. Why? The coalition have proved that it is possible to stop people-smuggling, that it is possible to stop the boats. We did this when we were in government. But this is the prerequisite: as a government you need to have the stomach to make some very, very tough policy decisions and then you need to have the guts to stand by those decisions. And that it is something the Labor government is completely unable to do.

It just gets worse and worse for the Labor government. Recently we have had the decision of the High Court which has absolutely slammed Labor’s processing system and has sunk any remaining credibility whatsoever in relation to Labor’s policies for processing unlawful maritime arrivals. The decision will no doubt open a door and the Australian people will now see a flood of appeals by failed asylum seekers. None of this was budgeted for in the 2010-11 costings. Yet again, this is another catastrophic example of Labor’s complete and utter failure to control Australia’s borders.

Again, the High Court decision need not have happened. Why? The government could have, and should have, considered the coalition’s Nauru option. Unlike the government’s offshore processing regime which is now in complete tatters, the coalition’s offshore processing regime on Nauru remains intact despite the High Court’s decision. The Labor government needs to swallow its pride and pick up the telephone and speak to the President of Nauru and discuss reopening the detention centre there. The coalition can only say it so many times. But the Labor government will not do that. And do you know why, Mr Acting Deputy President? Because the current Labor government—just like the former Labor government—do not have the stomach, they do not have the guts, to take the tough decisions when it comes to protecting Australia’s borders. Only the coalition is prepared to take strong action, tough decisions, implement strong and tough policies and then stand by those policies to ensure that we stop people-smuggling.

If you do not stop people-smuggling you do not stop people’s lives being put at risk. Those on the other side just do not seem to understand this. The coalition wants to stop people-smuggling. The coalition wants to stop people putting their lives at risk. To do that you need to implement tough policy. If Labor are serious about cleaning up the mess that they have created, they will restore the coalition’s tough immigration and border protection policy regime and stop the boats.

Senator CAMERON (New South Wales) (3.57 pm)—Here we are again—Senator Cash in another strident performance. There is no substance. It is all about the rhetoric and the one-liners. I am always intrigued by the coalition and their love affair for the worst aspects of US politics. I suppose Senator Cash will be joining Senator Bernardi’s new Tea Party, his Australian Tea Party that is on about deregulation, no role for government in society and anti-immigration. That is the Tea Party and that is where Senator Cash and Senator Bernardi are coming from.

We have been lectured over the years about the supremacy and flexibility of the US industrial relations system. So what did the coalition give us? They gave us Work
Choices. We have been lectured about the rugged individualism that dominates United States society, and that was used to attack collectivism and trade unionism in this country. We have been lectured about the supremacy of the market and the need to minimise or remove government from any role in society. We have been lectured about privatisation of health care, privatisation of education, privatisation of public infrastructure, and we are now been lectured on immigration.

But we have heard little of the historic immigration and refugee policies that assisted the US become a global powerhouse. You do not hear that. They want all the worst aspects of the US system but they do not want to pick up some of the great aspects of the US system. Immigration was welcomed and refugees were supported. Refugees were nurtured and refugees were accepted into the US society, the society that the coalition keep lecturing us about, but they never want to pick up the good aspects of the US society.

This historic set of values is epitomised in the inscription on the Statue of Liberty. I am not sure if any in the coalition actually know about the inscription on the Statue of Liberty. It is a sonnet written by Emma Lazarus in the early 1900s. It is well quoted and I want to quote it again. The poem on the Statue of Liberty reads:

“Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!”

The coalition have demonstrated that they do not care about fairness, equity and justice when it comes to refugees. The coalition’s record on asylum seekers and refugees is not based on our international obligations or the recognition that many asylum seekers fear for their lives. It is based on promoting fear and discrimination against the most vulnerable, against those who seek to come to this country for safe refuge. There is nothing of the principle that resulted in the United States providing refuge and support for those who fled their native country in fear of their lives.

The coalition do not care about the tired and the poor. The coalition do not care about providing freedom to asylum seekers. There would be no lamp beside the golden door for refugees if the coalition had their way. The coalition would simply fuel the prejudices and the fears of Australians against those who need our help and our support, and nothing could have epitomised that more than the contribution to this debate by Senator Cash, the previous speaker.

Labor has been the party that has taken steps to protect those who seek asylum in this country. In government we have introduced a number of changes to refugee policy including the closure of the disgraceful offshore processing centre in Nauru. It was a disgrace, it was an international shame and it brought nothing but loathing of this country by people who care about refugees. We ended the temporary protection visa system that left refugees in uncertainty and in desperation. We introduced a merit based appointment process for the Refugee Review Tribunal. We abolished the 45-day rule bar on asylum seekers’ access to work rights and basic health care.

We increased the total Refugee and Humanitarian Program from 13,000 places in 2007 to 13,750 currently. We replaced the Howard government’s community care pilot with an ongoing program to support asylum seekers living in the community. There were also some reforms to immigration detention including: the development of New Directions in Detention, an outline of principles
for the conduct of immigration detention centres; the abolition of the policy of charging immigration detainees for the cost of their detention; and legislative changes to increase penalties for those convicted of people-smuggling and providing material aid.

Some myths are being perpetrated by the coalition in relation to refugees and asylum seekers. We hear a great deal about illegal boat arrivals, detention centres and border protection. It is all spin. There is no threat to Australia’s borders, no flood of illegals and no influx of boat arrivals. There is a trickle, not a flood. The numbers in Australia are very small. In 2009 there were 2,497 successful visa applications, mostly from families. In Europe there were 286,680 applications, 114 times as many. In North America there were 82,270 applications, 32 times as many. Ten years ago there were twice as many asylum seeker applications as there were last year. All up, there are 20,919 refugees in Australia, a tiny fraction of the worldwide total of 15.2 million and less than one-tenth of one per cent of the Australian population. These are the facts; these are not the scaremongering tactics adopted by the coalition.

They are victims of circumstances outside their control. Refugees who apply for asylum are people who have been forced to flee their homelands. Many faced persecution and imprisonment and some faced death. Most have lost everything they own. They have come here to start a new life because we live in a country which is safe and secure. It is hard for us to imagine what it must be like for many refugees. Sadly, nearly one refugee in two is a child.

Everyone who comes into this country undergoes rigorous Australian government security checks. Those opposite should understand that refugees are fleeing from security threats, not creating new ones. They are not illegals. Refugees have jumped no queues, they have broken no rules and they are not illegals. Since when was fleeing persecution a crime? It is not illegal to seek asylum without a visa.

Ninety per cent of boat arrivals are genuine refugees. That was what happened under the Howard government. The boat arrivals were allowed in. That is the reality because they were genuine refugees. When refugees are granted permanent residency they have exactly the same rights and obligations as the rest of us, like obeying Australian laws and paying Australian taxes.

We have a long and proud history in Australia of helping refugees. Since Federation we have accepted more than 740,000 refugees, many of them hard-working Australians who have made Australia the country it is today, like scientist Dr Karl Kruszelnicki and Westfield founder and FFA head Frank Lowy.

The argument is: why do they come here? Can’t they go somewhere else? That is the position being put from across the floor. The answer is: overwhelmingly, they do. By world standards, very few refugees come to Australia. Other countries get far more asylum applications than we do. Sweden, a country with half our population, gets four times as many asylum applications. North America gets 13 times as many, and Germany gets 28 times more refugees. But the argument from across the floor is that we are being swamped. We are not being swamped. There are 15.2 million refugees worldwide, and we have 20,919. That is a tiny fraction; an equivalent of one-tenth of one per cent of the Australian population.

The argument we hear from across the floor is that they are a security threat. No, they are not. Everyone who comes here is required to undergo a rigorous Australian
government security check. These refugees are fleeing persecution. They are fleeing security threats, not creating new ones. Anyone who does pose a security threat is not admitted to this country. We hear the argument that they are breaking the rules. No, they are not. Refugees are not jumping queues. They have broken no rules. When you are running for your life, there is no such thing as an orderly queue. There are no rules. Think about it: would you risk your kids’ lives because you are supposed to wait for a piece of paper? It is not illegal to seek asylum without a visa.

The argument is that they are a drain on the economy. We heard a bit about that from Senator Cash earlier. When a refugee is granted residency, they have the same rights and obligations as everyone else. The Australian economy has been built on the back of immigration. Most people who come here as refugees seeking protection are so grateful that they end up giving back to this country much more than they ever take. We are told that we are splitting at the seams and we cannot take any more. It sometimes seems that way, but this has nothing to do with people who apply for asylum. Every year our population increases by around 300,000. Asylum seekers account for only 2,497. That is less than one per cent.

Then there is the argument that we do not get to decide who comes in and that our borders are now broken. We do decide who comes in: almost everyone who comes here does so by the usual migration channels. Everyone who applies for asylum is individually assessed by the Australian government. Remember: only people who can prove that they are fleeing persecution get a visa.

How fair dinkum are the coalition? We recently had the shameful spectacle of the coalition parading around the country during the August election campaign shouting, ‘Stop the boats,’ as if their bellicosity alone would somehow miraculously stop asylum seekers arriving in this country. According to the best estimates available, as recorded by the Parliamentary Library’s background note on this subject, somewhere between one and four per cent of asylum seekers arrive in Australia by boat. The other 96 to 99 per cent of asylum seekers arrive in somewhat more comfort, aboard Boeing and Airbus jet aircraft operated by the world’s leading airlines. They arrive at our airports with a valid visa, usually a tourist visa, and then apply for asylum at a later date, while living and often working in the community.

So why is it that the coalition cannot be found shouting, ‘Stop the 747s,’ ‘Stop the A380s,’ or ‘Close the airports’? The reason is the coalition are not actually fair dinkum on this issue. They have no interest in a workable policy that meets the test of fairness and humanitarian concern. They are only interested in dehumanising and scapegoating asylum seekers and refugees, and that has characterised the coalition and diminished them for the last decade. Who could forget the refusal of the then immigration minister, Mr Ruddock, to even acknowledge the humanity of a child seeking asylum, whom he referred to as ‘it’—not he, not she, but ‘it’. That epitomises the problems with the coalition and the lack of respect that the coalition have for refugees. (Time expired)

Senator IAN MACDONALD (Queensland) (4.12 pm)—That speech from Senator Cameron will certainly not go down in history as his finest. The speech from Senator Cameron that will go down in history is the one in which he referred to himself and other backbench members of the Australian Labor Party in this place as ‘zombies’ and ‘people who had a political lobotomy’. Senator Cameron’s speech today has demonstrated that clearly. It is a speech written in the minister’s office—certainly not a speech that Senator
Cameron himself believes in and certainly not one that the people he is supposed to represent would believe or support. If Senator Cameron had taken the time to go and talk to people in Western Sydney and people in other parts of New South Wales, the state he represents, he would understand the real issues that are before the Australian people at the moment.

The decision of the Labor Party to open up the borders, its soft approach to border protection, has meant that Labor is running out of places to place the ever-increasing number of illegal immigrants. Their decision to house some of the overflow in the Adelaide Hills in South Australia and at Northam in Western Australia led to howls of protest because nobody from the Gillard government had bothered to let locals know in advance. Talking about Inverbrackie in the Adelaide Hills, I want to refer senators to a very thoughtful article by Alexander Downer in today’s Adelaide Advertiser, where he relates this very interesting scenario put to him by a constituent:

She thought it would be strange there would be the children of serving Australian Defence Force personnel, some of whom are in Afghanistan, at Woodside Primary School with children of boat people from Afghanistan.

As he goes on to say in his article:

The point was simple. How is it that we are sending our young men to Afghanistan to fight the Taliban and young men and women from Afghanistan are paying people smugglers to come here in a method which circumvents our laws?

It is a very interesting point Mr Downer makes. I think people might like to reflect upon it. It also brings the point—and Senator Cameron slightly mentioned this—that we have a very generous refugee immigration system in Australia. We take approximately 13,000 every year, and most of the people that we have taken in are people in refugee camps—not wealthy people who can pay tens of thousands of dollars to people smugglers to bring them into Christmas Island because they know the Labor Party is soft on border protection but genuine refugees in refugee camps who have escaped there with their lives. And, for everyone that we allow in who has come by other methods, some of those people languishing in those horrible refugee camps around the world are prevented from coming in, because they are taking the place of those who would normally be coming in.

I have just returned from a tour of northern defence forces in Darwin and Cairns and I want to take this opportunity to note the important work that the men and women of our Navy and Border Protection Command are performing in these areas, policing our very vast coastline against illegal fishing and immigration, particularly now that, under Labor, the boats continue to come in ever-increasing numbers. Looking at a .50-calibre machine gun made me think of the time when I was able to commission a .50-calibre machine gun on the Oceanic Viking, a vessel that the Howard government had proudly brought into Australia, armed quite substantially, to deter illegal fishing. I was always distressed to find that this boat that was brought by the Australian government to look after our waters insofar as illegal fishing is concerned was being used to house immigrants in Indonesian waters who refused to get off the boat until the Rudd government gave in to their demand—as the immigrants knew the government would, because everybody around the world knows that the Gillard government and, before it, the Rudd government is soft on border protection.

I am also concerned about the fact that Labor is now flying asylum seekers into Scherger Air Force base in Cape York. After stringent denials prior to the election that this was happening—a fact that was exposed by the Hon. Warren Entsch, now the federal
member for Leichhardt, but denied by the Labor Party at the time—we now have the extraordinary situation of this Air Force base, which is bare but has accommodation for a couple hundred Air Force personnel if it has to be used, now having nowhere for those Air Force personnel to go. Let’s hope we do not have any sort of incident which requires that base to be activated by the RAAF. If we do, the RAAF pilots and the support crew will have to sleep on the ground. I do not blame the asylum seekers for that; I blame the Gillard government in its duplicity and its mismanagement of this whole situation.

I also raise in this debate an incident where I am conscious of a constituent who is in Australia—I do not want to mention names, because I do not want to prejudice his case as it comes before the authorities. He is in Australia, applied for a visa, thought he had got it but made a mistake, and then set up a very substantial business in Australia which employs 15 people. He will never be a burden on the Australian taxpayer. He is a young, active, go-ahead professional man very keen to employ people and get involved in substantial infrastructure works in North Queensland. He is the sort of immigrant that Australia desperately needs and that we want. When he realised he did not have the right visa, he contacted people and asked what he could do about it. He is now being told that he has to leave Australia and he might get back at some time in the future. I said to him: ‘Perhaps the best thing I could do to you would be to lend you my tinnie so you could go offshore and sail your boat in, because if you could do that, under the way the Labor government runs things, perhaps you would be allowed to stay. You wouldn’t have to leave the country and stand in a queue to hopefully get back and give to Australia your expertise—the sort of skills and technical knowledge Australia desperately needs. We would be able to take advantage of that.’

The Labor government is simply incompetent at handling this issue of immigration and border protection, as they are incompetent at dealing with roof insulation and as they are incompetent at dealing with the economy. The Labor government simply cannot be trusted with any sorts of serious governmental issues. That is why I am so pleased today to be able to participate in this debate to continue highlighting the deficiencies of the Labor government—not to make a political point, not to gain votes but in the hope that at some time some of the zombies in the backbench of the Labor Party that Senator Cameron so well described might get the intestinal fortitude to stand up to their leaders and the Greens, who now seem to run the government, and say: ‘Enough is enough. Let’s do this right. Let’s go back to the way that the Howard government treated these sorts of things. Let’s go back to the way the Howard government had a very generous refugee intake policy but did it properly.’ The sooner the zombies in the backbench of the Labor Party have the intestinal fortitude to get up and tell the Greens and Ms Gillard that that is what is needed, the better off Australia will be, the better off our immigration program will be and the better off will be those people who currently put their lives at risk coming to Australia in leaky boats.

Senator PRATT (Western Australia) (4.22 pm)—I welcome the opportunity to speak on this matter of public importance. However, I regret that the coalition have yet again demonstrated their utter inability to take a reasoned and credible approach to this issue. It is an issue of great concern to many Australians, an issue which affects the lives of some of the most vulnerable people on this planet and an issue that has significant implications for how our nation is perceived
internationally, particularly by our regional neighbours.

As I have said previously in this place, this is an issue that confronts all developed nations and to which no nation is immune. Senators in this place should be well aware of this fact, but as some on the other side do not appear to have taken note of it, let me repeat the statistics for them. We know that worldwide 380,000 asylum claims were lodged in industrialised countries in 2009. The United States was the single largest recipient of such claims; it received nearly 50,000 and Canada received over 30,000. The European Union received 250,000 asylum claims in 2009, with France receiving over 40,000 of those claims, the UK and Germany about 30,000 claims each and eight other EU countries receiving more than 10,000 claims each. By way of comparison Australia received about 6,000 claims last year, so this number is low by world standards. The overwhelming number of asylum seekers still head towards Europe or North America.

This is a global problem, as you can see, with no easy solution. If there were easy solutions, some of these developed nations would have implemented them and we would not find, as we do, nations around the world wrestling with this problem. Not only is this a problem without easy solutions that confronts all nations; it is a problem that has been around for a considerable time. It is a problem that waxes and wanes depending on civil conflicts around the globe in particular. It was so with Vietnam, Sri Lanka and Afghanistan. For Australia, as for many other developed nations, the situation in Afghanistan has had and continues to have a direct impact on the number of claims for asylum. For example, according to the UNHCR, in 2009 Afghanistan became the main country of origin for asylum seekers in industrialised countries worldwide.

Here in Australia we also saw a surge in boat arrivals. Similarly, the last time Afghanistan was at the top of the global list was in 2001 when there was a surge in boat arrivals under the Howard government. So contrary to the myths perpetuated by the opposition, this is a problem that Australian governments, like other national governments, have struggled with for a long time. Finding permanent, sustainable solutions to this problem is not easy for any government and any honest assessment of the Howard government’s record on this issue would confirm this. But the coalition is not interested in any such assessment. It wants to pretend that there are easy solutions to this problem for its own political purposes. It wants to play on people’s genuine concerns about these issues. It is feeding their fears as it wants to play a knight in shining armour walking in on a white horse to slay the people-smuggling dragons. So we see the opposition advocating a return to Howard government policies which it claims solved the problem.

It is a great story, but it is a fairy story because the Howard government did not have a silver bullet—an instant, permanent, sustainable solution to this problem. Once again the facts speak for themselves. More than 240 boats carrying 13,600 asylum seekers arrived under the Howard government. Boats stopped coming because global circumstances changed. The Taliban regime fell at the end of 2001 and millions of Afghans were able to return home. The Howard government knew this. It knew that the boats had stopped because global circumstances had changed and not because it had discovered a failsafe way of keeping out boats.

How do we know that the government knew this? We know because in 2003 the Howard government started to build a detention centre on Christmas Island that cost $400 million. The Howard government was planning for more boat arrivals and yet de-
spite all this the opposition want to return to the discredited and failed policies of their past. They maintain we can turn the boats back—a very hollow promise. Of the more than 240 boats that arrived under the Howard government, only seven were turned back. No boats were turned back after 2003 and the practical reality is there is nowhere to turn the boats back to. Also, to avoid being turned back, we have seen boats being sabotaged, putting Australian Customs and Border Protection and defence personnel at risk.

In fact, on turning boats back Mr Abbott wants to go one better than the Howard government, because there is Mr Abbott’s ‘boat phone’. Labor will not have a bar of any of this nonsense that would make bad policy even worse. We must support the judgment of the captains of our border patrols. When lives are at risk on the high seas, the last thing our troops need is the interference of Tony Abbott from a desk in Canberra. There is more: the opposition also want to reintroduce the failed temporary protection visa, but the temporary protection visas also did not work; they did not stop the boats and only three per cent of the 11,000 people granted one of John Howard’s temporary protection visas ever left Australia. Still, the list of failed policies that the opposition has put up for retrial goes on.

The opposition also want to return to the Howard government’s go-it-alone approach to offshore processing. I am glad that Mr Abbott at least agrees with Labor on the need for a regional processing centre. But, unlike Mr Abbott, Labor is committed to getting it right by establishing a regional centre with the cooperation of the United Nations High Commissioner for Refugees and in a country which is a signatory to the refugees convention. We will not shirk our international obligations and we will ensure that people are treated decently.

As I said, the problem of displaced people is an ongoing global problem, with a strong regional dimension, and it requires solutions that reflect this reality. That is why Labor supports, and is committed to, achieving a regional processing framework. A regional protection framework, including a regional processing centre, is the most effective and sustainable way to remove the incentive for people to undertake dangerous sea voyages. A regional processing centre will serve to deter irregular movement to Australia by sea, dealing a serious blow to the people-smuggling business model.

Minister Bowen has held talks with senior officials of the Malaysian government following positive and constructive meetings in East Timor and Indonesia. President Ramos Horta and Minister Bowen agreed that a high-level task force with Australian and East Timorese government officials would meet to put together a detailed proposal on regional processing, a proposal that both governments would consider early next year under the auspices of the Bali process. The Indonesian foreign minister agreed to make Indonesian officials available to Australia over the coming weeks to further develop the regional protection framework.

What differentiates this government’s approach on border protection and people-smuggling with that of the current opposition is that our commitment to engaging both with our region and the international community is a serious one. What differentiates us is that we do not believe in selling silver bullets or fairytales about simple solutions. We believe in doing the hard work required to find sustainable solutions to this complex, recurring global problem.

Senator FURNER (Queensland) (4.32 pm)—It gives me pleasure to make a brief contribution to this debate this afternoon, given some experience I have had in this
area. Firstly, I would like to put on the record some of the commitments of the Gillard Labor government in this area. As you would probably know, in the 2010 budget the government announced $1.2 billion to bolster border security and to encourage a wide range of measures, including eight new border patrol vessels—the Armidales. That complements the $654 million border protection and anti people-smuggling package announced in the 2009 budget. The government also has established a dedicated Border Protection Committee of cabinet to drive the whole-of-government strategy to combat people-smuggling. I acknowledge the opposition's support of the introduction of the Anti-People Smuggling and Other Measures Bill 2010, which was recently passed by the parliament.

I also want to remind people that, with regard to the UNHCR, we do have obligations as a nation to accept refugees who are in our waters. The numbers of refugees who have arrived on our shores have really been blown out of all proportion, and there are a number of areas that need to be rectified in terms of understanding what we are talking about. We are not talking overwhelmingly of hundreds of thousands of asylum seekers. In fact, numbers in Australia remain very low and that needs to be put into perspective. There were something like 380,000 claims lodged by asylum seekers in industrialised countries in 2009, and, by comparison, our figures show around 6,000 claims last year.

If you look at the opposition's policy on turning boats back where circumstances permit, you will see that that is a hollow promise, because effectively, since 2003, there have not been any boats that have been turned back. We all know—and it was indicated by the previous speaker, Senator Pratt—that doing that would jeopardise our Australian Defence Force personnel, because all attempts to turn back the boats would result in sabotage, and that would put personnel on Australia’s Customs and Border Protection Service ships at risk. Oddly enough, when I was on the Australian Defence Force Parliamentary Program in July this year, that very question was posed by an LNP member to one of the members on HMAS Broome. The response given, appropriately, was exactly as I have just said—that, if you start turning boats back, what you will get in return is people sabotaging those boats and putting the personnel on our Armidales at risk.

The other observation I want to make is that Mr Abbott has indicated that he wants to use not a bat phone but a boat phone to have direct contact with captains and make a decision based on risk on the high seas. The last thing we need is to have our troops put in a position of having to speak to Mr Abbott about whether or not the boats should be intercepted. What we experienced in July this year was the interaction of a mock exercise as to how the Armidales interact with particular circumstances. There are procedural processes to follow in terms of direct contact with these boats and whether they are boats with people on them or boats doing illegal fishing. There are correct procedures to follow. That is what we experienced when we were up there in July this year in the Timor Sea. We have a great understanding of the excellent professional work our personnel do in the Australian defence forces, serving on the Armidales.

I want to pay particular acknowledgement to a professional young woman who was the CO of HMAS Broome, Kylie, who performs an amazing job in tough and hard circumstances, being away from home. It somewhat frustrates me that this sort of motion comes to this chamber, where I consider it as being an attack not only on the government but also on our Australian Defence Force personnel who are doing an excellent job up
there in the Timor Sea. I think the opposition should think twice before they bring motions like this before this chamber.

Senator BACK (Western Australia) (4.37 pm)—Australia and Australians deserve better than this. We have seen grossly incompetent Labor governments for the last 3½ years, but this takes the cake. It was in June of this year that, because by their own statement they had lost their way, this Labor government got rid of a first-term Prime Minister. They, of course, created a record in the number of people coming to our shores by boat. They now have a second record.

But why do we deserve better? In the eight weeks of the Gillard government after the election in August of this year, we have seen absolute incompetence at every point. In foreign relations, we have seen failure in the last few days. On the world stage, they thought our Prime Minister was from Austria. What an embarrassment and what an insult! In the economy, we see the inability of this government to deal with the banks, whose respect they have totally lost. The minerals resource rent tax is in disarray. The stimulus spending is in chaos. If I turn to the environment, all we see is confusion with carbon taxes, committees of the people, changing climate change et cetera. In communication, only yesterday we heard the OECD come out and criticise the NBN; in water, we see a backflip over the Murray-Darling basin; and in border protection we see an absolute abrogation of responsibility by this government.

It is not only Australians who deserve better; it is all of those thousands of refugees who have applied and been accepted legally, who are in refugee camps around the world and who are being overlooked in favour of these people who are jumping the queue. We are a generous country, and those people have every right to feel as cheated as the Australian community does. Just have a look at the incompetence of this government when it comes to border protection. In the budget in May of this year, the estimate was $327 million for refugee management, estimated at 2,000 people for the year. It is already 2,320 in the first four months. If you multiply that out, we are looking at a blow-out of over $800 million for this absolute abrogation of responsibility.

I turn to consultation with the community. In my own home town of Northam, 1,500 single young men are to be housed on the edge of that town in an army barracks that all of us who have spent time there know very well is very cold in the winter and very hot in the summer. It was said to me the other day, ‘Since there are 1,500 Australian soldiers in Afghanistan and 1,500 young men from Afghanistan coming to the Northam Army barracks, why don’t we train the 1,500 Afghans at the Northam Army barracks to the level where they could go back to Afghanistan and do what our soldiers are doing so ours can come home?’

Seven hundred people from that community turned up to a function on 4 November. This is after the minister did not even have the courtesy to attend a meeting or, in fact, have any of his colleagues turn up. Someone derisively said, ‘700 isn’t many.’ It is 10 per cent of the community of Northam. If 35,000 of the 350,000 here in Canberra turned up to a protest, you can bet your life that plenty of government ministers would be there. The figure of 1,500 young men represents a 20 per cent addition to that community. If 70,000 people were dropped into Canberra on the outskirts, you can bet your life that there would be a high level of concern.

I turn also to service provision. Included in the budget, incidentally, $164 million can be found to turn the old Northam Army barracks into something acceptable for these
people. On service provision, I asked in this chamber: given the fact that we lost a teenager and a baby at the Northam Hospital only in the last few weeks for lack of a doctor, what were they going to do for medical, nursing and psychological services? They said, ‘No problem; we are going to provide those doctors.’ We have an acute shortage—and I do not think the situation is different in other states and territories—of doctors, nurses and psychs throughout rural Australia, particularly rural Western Australia. I can speak with great experience. I have a niece who is the only psychologist in the town of Karratha, servicing everything from 500 kilometres south to 800 kilometres north, with all the associated problems that she has in that community. Yet she learned the other day through the newspapers that there will be no problem providing psychologists, doctors and nurses, and I have heard the same for Derby. ‘Where are they coming from?’ a nursing sister asked in Northam the other day. It is an insult from this minister and this government that they could not even address the community of Northam.

I turn to the people smugglers. We have the decision of the High Court only the other day. What is that going to add to our budget burden? What is that going to add to the legal system? It is in total and utter disarray. What is the minister going to do? He has not got a clue. There is, of course, a solution—a solution originally paid for by the Australian people—in the matter of Nauru. The centre there could be reopened and staffed with UNHCR people, and there would be a solution. But will this government that they could not even address the community of Northam.

Minister to speak to our Prime Minister. In terms of relations, what an insult it is that our Prime Minister was met by the Deputy Prime Minister. The Malaysians have no more intention of being involved in a regional solution than East Timor, and if the government were serious then it would pick up the phone and deal with Nauru right now.

We turn again to the question of border protection. Only in Senate estimates in the last two or three weeks did we address questions to the secretary of the department. I asked him how many people leave their country to go to Malaysia or Indonesia with papers, passports and visas. He told me that the answer is that everybody does. I said to him then: how many of these people have their papers and visas when they are processed after being picked up on the boats? He said that practically none did. I said, ‘Then they have a problem, Mr Metcalfe.’ He said, ‘No, they haven’t got a problem; we’ve got a problem.’ I asked why we had a problem. He said, ‘Because we have to establish who they are.’ You would think that the process of ‘no papers, no admission’ would surely be the starting point in this whole exercise. Surely it is incumbent on these people, if they leave their home country with passports and visas, to present themselves and explain why they do not have them. It is the tail wagging the dog.

This Labor government knows the solution. We have the solution from the past. The figures that have been quoted this afternoon need placing into balance: in 2002-03, no boats; the next year, one boat; the next year, zero boats; and the next year, one boat. Remember that, of course, Iraq and Afghanistan were well and truly alive at that time. The solution lies in the government’s hands; Australia deserves far better than this.
DOCUMENTS

Tabling

The ACTING DEPUTY PRESIDENT (Senator Kroger)—Pursuant to standing order 166, I present documents listed on today’s order of business at item 12 which were presented to the President and temporary chairs of committees since the Senate last sat. In accordance with the terms of the standing orders, the publication of the documents was authorised.

The list read as follows—

(a) Government documents

1. Australian Curriculum Assessment and Reporting Authority—Report for 2009-10 (received 29 October 2010)
2. Australian Prudential Regulation Authority—Report for 2009-10 (received 29 October 2010)
3. Australian Solar Institute Limited—Report for 2009-10 (received 29 October 2010)
5. Cancer Australia—Report for 2009-10 (received 29 October 2010)
6. Food Standards Australia New Zealand—Report for 2009-10 (received 29 October 2010)
7. Future Fund Board of Guardians and Future Fund Management Agency—Report for 2009-10 (received 29 October 2010)
8. National Breast and Ovarian Cancer Centre—Report for 2009-10 (received 29 October 2010)
9. National Health and Medical Research Council—Report for 2009-10 (received 29 October 2010)
10. International Air Services Commission—Report for 2009-10 (received 29 October 2010)
11. Australian Institute of Criminology and Criminology Research Council—Report for 2009-10 (received 29 October 2010)
12. Department of Health and Ageing—Report for 2009-10 (received 29 October 2010)
13. Public Lending Right Committee—Report for 2009-10 (received 29 October 2010)
14. Supervising Scientist—Report for 2009-10 (received 29 October 2010)
15. Superannuation Complaints Tribunal—Report for 2009-10 (received 29 October 2010)
16. Department of Immigration and Citizenship—Report for 2009-10 (received 29 October 2010)
17. Migration Agents Registration Authority—Report for 2009-10 (received 29 October 2010)
18. NBN Co Limited—Report for 2009-10 (received 29 October 2010)
19. Acts Interpretation Act—Statement pursuant to subsection 34C(4) relating to the extension of specified period for presentation of a report—Australian Sports Anti Doping Authority—Report for 2009-10 (received 29 October 2010)
20. Australian Public Service Commissioner—Report for 2009-10, including report of the Merit Protection Commission (received 1 November 2010)
21. Commonwealth Ombudsman—Report for 2009-10 (received 1 November 2010)
22. Australian Institute for Teaching and School Leadership Limited (Teaching Australia)—Report for 2009-10 (received 1 November 2010)
23. Civil Aviation Safety Authority (CASA)—Report for 2009-10 (received 1 November 2010)
24. War Crimes Act 1945—Report for 2009-10 on the operation of the Act (received 4 November 2010)
26. Department of Families, Housing, Community Services and Indigenous Affairs—Report for 2009-10 (received 9 November 2010)


(b) Statements of compliance and a letter of advice relating to Senate orders

1. Statements of compliance relating to indexed lists of files:
   - Australian Public Service Commission (received 3 November 2010)
   - Australian Agency for International Development (AusAID) (received 3 November 2010)
   - Department of Human Services, Centrelink and Medicare Australia (received 9 November 2010)

2. Letter of advice relating to lists of departmental and agency appointments and vacancies:
   - Sustainability, Environment, Water, Population and Communities portfolio agencies (received 29 October 2010)

Responses to Senate Resolutions

The ACTING DEPUTY PRESIDENT—
I present the following responses to various Senate resolutions:

Minister for Health and Ageing (Ms Roxon)—22 and 24 June 2010—Motor Neurone Disease Global Day and the minimum price for alcohol, respectively

Minister for Sustainability, Environment, Water, Population and Communities (Mr Burke)—23 June 2010—Koala population

Minister for Immigration and Citizenship (Mr Bowen)—29 and 30 September 2010—Asylum claims from Afghan nationals

ELECTION PETITION

Court of Disputed Returns

The ACTING DEPUTY PRESIDENT—
For the information of senators, I present an election petition of the Court of Disputed Returns in respect of the matter of Peebles v Rhiannon and Others.

INTERNATIONAL TAX AGREEMENTS AMENDMENT BILL (No. 2) 2010

PROTECTION OF THE SEA LEGISLATION AMENDMENT BILL 2010

Assent

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

DOCUMENTS

Tabling

The Clerk—Documents are tabled in accordance with the list circulated to senators.

Details of the documents appear at the end of today’s Hansard.

MINERALS RESOURCE RENT TAX

Order

The Clerk—I present correspondence from the Australian Information Commissioner, Professor McMillan, relating to the examination of orders for the production of documents concerning the proposed minerals resource rent tax.

Senator CORMANN (Western Australia) (4.48 pm)—by leave—I move:

That the Senate take note of the document.

We were told that the Australian Information Commissioner would arbitrate on the release of information which the Labor government wants to keep secret, and which the Senate, or the House of Representatives for that matter, felt needed to be released in the public interest.

When it comes to the mining tax this government have been absolutely desperate to hide every last little detail around it. They have negotiated in secret a deal with the three biggest mining companies, excluding 99 per cent of the mining industry. They
have come up with a tax design which is complex, unfair and which gives those three big mining companies an unfair competitive advantage compared to the rest of the industry. Every little bit of detail that comes out about this tax exposes it as an absolute mess.

That is why we understand that the government is desperate to keep information about its mining tax deal secret; it is a dodgy deal which has serious implications for the budget, the economy, jobs and investment in the mining industry, and for states like Western Australia, Queensland and even New South Wales.

The Gillard government promised a new era of openness and transparency. They entered into an agreement with Tony Windsor and Rob Oakeshott in particular—members in the other place—and into a separate agreement with the Greens. In that agreement there is a particular commitment made by the government that in relation to issues of public interest disclosure where the Senate or House votes on the floor against a decision of a minister, they would be referred to the Australian Information Commissioner, who will arbitrate on the release of relevant documents and report to both houses. The Senate has voted twice now against the decision of a minister, specifically Minister Swan, who has refused to provide information sought by the Senate about the mining tax.

I will just go through a little bit of history: the then Prime Minister, Kevin Rudd, announced the resource super profits tax on 2 May 2010. It was a tax which we were told would raise $12 billion. Of course, because it was a bad tax pursued by the government through a bad process, the political fortunes of the government started to decline immediately and we know what happened after that. The then Prime Minister, Kevin Rudd, lost his job and the Treasurer, who was responsible for the tax, not only did not lose his job but got a promotion. Julia Gillard was desperate to enter into a deal with the three biggest mining companies, firstly, to get them off her back politically in the lead-up to an election but, secondly, she was also desperate to ensure that she could maintain the very questionable assertion made by the government of an early surplus. In order to be able to do that she needed to be able to preserve a sufficient level of mining tax revenue for her budget. So what happened is that the government manipulated secret mining tax revenue assumptions. They manipulated assumptions on commodity prices, on production volumes, on exchange rate assumptions moving forward and a whole series of other assumptions.

Dr Henry told a Senate committee that up to 100 assumptions and variables were changed in order to ensure that the government could come up with a $10½ billion mining tax revenue estimate. So, when the tax was first announced, it was going to be $12 billion in revenue. Then it was going to be $10½ billion. The changes in assumptions would have meant that the original tax would have raised billion and, since we have had MYEFO, we are now told that because of variations in exchange rate assumptions moving forward the mining tax will raise $7.4 billion. You can see how relevant these assumptions are yet this government has kept them secret.

This has gone through quite a process. A committee of the Senate asked Dr Henry when he appeared before it to provide that information. He was very careful. He did not refuse to provide information because he knew that would trigger the standing order in relation to public interest immunity claims. Instead he referred those questions to the Treasurer, Wayne Swan, for his decision. The Treasurer, Wayne Swan, as soon as there was a request for information from a senate
committee if he was of a mind to refuse to provide that information, needed, in accordance with our standing orders, to identify the ground for his refusal and to specify the harm to the public interest that could result from the disclosure of the information or document. None of that was ever done.

In fact, prior to a second hearing with Treasury secretary, Ken Henry, I wrote to the Prime Minister on 12 July. I asked her to lift the gag on Dr Henry to enable him to answer some very basic questions about the impact of the mining tax on the budget, on the economy, on jobs and, of course on investment in the mining industry and on states like Western Australia and Queensland. To this day I have not had a response from the Prime Minister. I wrote to her on 12 July and to this day I have not had a response to that letter from the Prime Minister. How arrogant is this Prime Minister in refusing to provide this information and not even having the courtesy to respond to my correspondence in relation to it?

What happened then is that the Senate passed three orders of the Senate on two occasions. They were broadly around three issues. They were around the issue of assumptions that were used by the government to estimate the revenue from the original mining tax, the RSPT, and from the revised mining tax, the minerals resource rent tax. In a separate order we sought details on the secret negotiations and deal entered into between the government and BHP, Rio and Xstrata. In a third motion we sought information about how much of the mining tax revenue would come from individual states and territories and how much would come from respective commodities.

It is important to note here that Treasury took questions in relation to this on notice on 5 July at a hearing of the Senate Select Committee on Fuel and Energy and to this day these questions remain unanswered. Even more concerning is that in its response to the orders in relation to these matters the government has arrogantly completely ignored the questions about where the revenue from the mining tax is supposed to come from. David Parker, who is the executive director of the revenue group in Treasury, has said that Treasury has already assessed how much mining tax revenue is expected to come from each commodity yet so far we have not been provided with that information. He also said that it would not be very difficult to come up with the information in relation to how much of the mining tax revenue would come from Western Australia, Queensland, New South Wales and so on.

I would also put on record here that the Western Australian Treasury has put forward very transparently its methodology and its assumptions which led it to the conclusion that up to 65 per cent of the revenue from the mining tax would come from Western Australia. That was back in the middle of July 2010. Nobody from Treasury and nobody from this federal Labor government has had any conversations at all with the Western Australian government either to say that it is wrong or to address any of the concerns that were raised in relation to this. There is serious concern in Western Australia that the mining tax is a tax on Western Australia because 98 per cent of iron ore production across Australia comes from WA and most of the revenue will come from WA.

To cut a long story short, this is an arrogant, secretive government which has repeatedly refused to answer questions and which has not taken seriously orders of the Senate. In fact they have taken them so not seriously that they actually refer to them as ‘a motion made by Senator Cormann on 29 September 2010’. It was not a ‘motion made by Senator Cormann’. It was an order of the Senate. I might have moved the motion in...
the Senate but it is an order of the Senate. Then they gave us two paragraphs of information that is clearly publicly available in the budget papers, which we did not seek, and they refused to address the information that has been sought.

We were told that the Information Commissioner would be able to review this sort of refusal by government to provide information. The Independents and the Greens presumably—and I am sure they did—entered into this agreement with the government in good faith. It was all about the government clinging on to power and convincing the Independents and the Greens to come on board with them. We now hear from the Information Commissioner that he does not actually have the power under his act, under the legislation that governs his operation, to do what the government promised that they would get the Information Commissioner to do. It is an outrage.

Senator IAN MACDONALD (Queensland) (4.58 pm)—I would very briefly like to support Senator Cormann in what he has said. It does again highlight the absolute arrogance of this government in dealing with parliament. I rise simply to draw the attention of the chamber to the absence of the Greens in this debate. The Greens went into an arrangement with the Labor Party—into a coalition one might almost say—to keep Ms Gillard in power as Prime Minister, to keep all the Labor front bench in the ministerial leather, so to speak, and the quid pro quo for that was supposedly greater accountability and openness.

As with most things with the Greens, we know that they are not really what they seem to be. They are not an environmental party at all; they are a radical socialist party. With one or two exceptions, most of their current senators are more interested in radical socialism than they are in the environment. But I would have thought that this would be the sort of debate where the Greens would be here in force. In fact, I would have thought that this would be the sort of issue where the Greens would be saying to Ms Gillard, ‘If you want our support in parliament, you have to make sure that this information that is ordered by the Senate is made available.’ So I totally endorse Senator Cormann’s comments, possibly with one exception, and that is that a lot of the mining tax revenue comes from my state of Queensland. But we will not argue over trifling issues. Certainly Senator Cormann is right, and I had hoped that by this time the Greens might have come down into the chamber to also support Senator Cormann in what is a very, very important issue for parliamentary democracy.

Question agreed to.

DOCUMENTS
Motor Neurone Disease

Senator BARNETT (Tasmania) (5.01 pm)—I seek leave to move a motion in relation to the response from the Minister for Health and Ageing to the Senate resolution relating to Motor Neurone Disease Global Day.

Leave granted.

Senator BARNETT—I move:

That the Senate take note of the document.

The document that has been tabled by the Minister for Health and Ageing, Nicola Roxon, is in response to a Senate motion that was agreed on 21 June this year. That motion was moved by me. I am happy to say that I have a vested interest in this matter, motor neurone disease. My father died of motor neurone disease in 1985. My family have been involved with motor neurone disease ever since—my mother, Lady Sally Ferrall, in particular, and now my wife, Kate, who is on the committee in Tasmania.
There are many people in Australia who have motor neurone disease or who are affected in some way by this muscle-wasting disease. It is a very, very difficult situation for all those families who are affected. Approximately one person per day dies of motor neurone disease. It is very sad indeed. On average, life expectancy is about three years from diagnosis to the conclusion of one’s life.

The motion that was put and overwhelmingly passed by the Senate on 22 June—for which I am most grateful—came a day after Motor Neurone Disease Global Day, which was 21 June. That is the solstice. That is the time in the year when there is a turning, there is a change, and that is what we are seeking in the motor neurone disease community. We want to see change. We want to see research which will benefit sufferers. We want to identify research for a cure and we want action so that people with MND and their families can be better cared for.

The motion also identified the need for support, not just for research but in other ways, including disability support. I notice in this letter that has just been tabled by Minister Roxon that she has advised that the government have invested $74,000 in a website. They have provided that support to Motor Neurone Disease Australia. Of course I am thankful for that, on behalf of MND Australia, an association which I am close to. At this stage I want to commend Carol Birks, CEO of MND Australia, for her work. I commend her for her leadership there in that role, together with the board of MND Australia. I congratulate them on their advocacy.

But a website is not good enough. That is a small amount of money. The minister does refer to the funding provided for motor neurone disease research, through the National Health and Medical Research Council, of some $5.2 million in 2009-10. There is also $750,000 over the five years from 2006 to 2011. Frankly, that is a piddling amount of money. We could do so much more. The significant boost in 2009-10 is very much appreciated. There is a reference to the $4.9 million being spent on MND medications through the PBS, but that is not out of the ordinary. That is medication that is due to Australians who have a health condition through no fault of their own. I repeat that: through no fault of their own.

What is important is that there appears to be nothing in this letter from the minister that addresses the disability support scheme. That was particularly referred to in the Senate motion. If the minister or her office are listening, perhaps they could further advise the Senate on the disability support arrangements for this particular chronic disease. I know that letters have been written to the minister from the various associations and members around Australia. I want to read from the Senate motion which the minister has responded to in her letter tabled in the Senate today. The Senate motion read:

That the Senate—

(a) notes that:

(i) motor neurone disease (MND) Global Day on 21 June 2010 represents an important opportunity to acknowledge those around the world affected by MND,

(ii) in Australia alone, more than 1,400 people have MND and the disease takes the life of more than 10 Australians every week—so more than one every day. The motion continued:

(iii) there is no known cause in 90 per cent of cases, no cure and no effective treatment for MND, and

(iv) the most pressing need for those affected by MND and their families includes easy and timely access to appropriate care and support, including access to aids, equipment and assistance with basic daily living such as mobility,
communication, feeding and breathing to main-
tain independence and quality of life; and
(b) calls on the Government to continue its fund-
ing for MND research and improving health and
disability services for all those affected.

It seems to me that part (iv) of the motion
has not been addressed in this letter. I see
that Senator McLucas is in the chamber, and
I draw this to her attention as well. What is
important is:

… access to aids, equipment and assistance with
basic daily living such as mobility, communica-
tion, feeding and breathing to maintain independ-
ence and quality of life …

This is an important issue for people with
MND; let me make that very clear. There is
an effort on the part of MND associations
around Australia and those with MND and
their families to say they need support. This
need is as a result of people falling through
the cracks between the federal provision and
the state provision of health care. Obviously,
the federal government is doing what it can
and then the state government is doing what
it can. I recently wrote to the relevant minis-
ter in Tasmania—in fact, the Greens member
Nick McKim—on behalf of my constituents
and I know that many others have as well. I
want to put on the record my thanks to Tim
Hynes, President of MND Tasmania, for
what he is doing to advance the cause. He
has a family member who is directly affected
and he is taking a leadership role to try and
make a difference.

But we need support in terms of aids,
equipment and assistance for people with
MND. It is very important. In terms of qual-
ity of life, I cannot tell you how important
this is. It is very, very tough indeed for fami-
lies who are affected by this disease. I call on
the government to address this issue of sup-
port and provide assistance with mobility,
communication, feeding and breathing to
maintain independence and quality of life. I
accept that there was a significant increase in
research funding last financial year and I
hope that that continues in the years ahead.

Before I conclude, I want to say very
briefly that it has been an honour to host
MND Australia here in Parliament House. It
is great to have other federal members of
parliament come and support people with
MND and their families, and there were
many in this past year and, again, last year
and the year before that. So it has been an
honour to be able to support them and ad-
advance the cause. But, clearly, there is a gap
between federal and state government assis-
tance in terms of access to appropriate health
care.

In conclusion, I say to the minister: I note
the letter and I thank you, but it clearly has
not addressed part (iv) of the motion in my
view. She may need to raise this at COAG or
with her state and territory colleagues with
responsibilities in the health or community
services portfolios. There is still a lot more to
be done, and as long as I have breath in my
lungs I will do whatever I can to advocate for
people with MND and their families all
around Australia and all around the globe. I
have been president of the association in Tas-
mania and on the national board, and I want
to thank all the volunteers involved in the
various associations for their work. It is a
fantastic effort, I really thank them for it, and
we will do what we can to assist. I thank the
Senate.

Question agreed to.

AUSTRALIAN CIVILIAN CORPS BILL
2010

AUSTRALIAN NATIONAL
PREVENTIVE HEALTH AGENCY BILL
2010

RADIOCOMMUNICATIONS
AMENDMENT BILL 2010

CHAMBER
SOCIAL SECURITY LEGISLATION AMENDMENT (CONNECTING PEOPLE WITH JOBS) BILL 2010
THERAPEUTIC GOODS AMENDMENT (2010 MEASURES No. 1) BILL 2010

First Reading

Bills received from the House of Representatives.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (5.11 pm)—These bills are being introduced together. After debate on the motion for the second reading has been adjourned, I shall move 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 McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (5.12 pm)—I table revised explanatory memoranda relating to the Australian National Preventive Health Agency Bill 2010 and the Therapeutic Goods Amendment (2010 Measures No. 1) Bill 2010 and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

Australian Civilian Corps Bill 2010

When a country experiences a natural disaster or conflict, the capacity of its government to provide security and basic services for its citizens is often limited. Hard-won development gains can be undermined and poverty exacerbated.

More needs to be done in the aftermath of natural disasters and conflict to assist stabilisation, recovery and development efforts. Australia has responded to this need by putting in place a new capability to assist countries affected by crises.

The Australian Civilian Corps is a select group of civilian specialists who deploy to countries experiencing or emerging from natural disaster or conflict.

The Corps supports stabilisation, recovery and development planning. It will assist crisis-affected countries to restore essential services and strengthen their government institutions.

One such example would be the deployment of an Australian water and sanitation planner to assist local government officials rebuild water infrastructure following a natural disaster.

Another example would be the deployment of an Australian senior government official with expertise in budget administration to assist a country with budget control following a conflict.

The work of the Corps will build on initial emergency humanitarian relief efforts, and help set the foundation for long-term sustainable development.

Between now and 2015 Australia will double its official development assistance and continue to work alongside the international community to help reach the Millennium Development Goals.

The Australian Civilian Corps is just one important new capability in the Australian Government’s development assistance program which is improving the lives of millions of people in developing countries.

The Government announced the initiative at the East Asia Summit in Thailand on 25 October 2009 against the backdrop of multiple disasters in Samoa, Tonga, Indonesia, Vietnam and the Philippines and the ongoing challenges and insecurity in Afghanistan.

This bill provides for the establishment and management of the Australian Civilian Corps.

Members of the Corps will be drawn from a register of civilian specialists selected for their tech-
They will have expertise in areas such as public administration and finance, law and justice, engineering, agriculture and health administration.

They will be sought from all levels of government and the broader Australian community.

A number of civilian specialists have already been selected, screened and trained for inclusion on the Australian Civilian Corps register, which will be built up progressively to 500 by 2014.

The Bill provides for these civilian specialists to be engaged as a new category of Commonwealth employee in order to deploy with the Corps.

Members of the Australian Civilian Corps will be a unique category of Commonwealth employee, engaged to work in crisis environments overseas for specific periods before returning to their regular employment.

As Commonwealth employees, these individuals will represent the Australian Government in highly challenging environments overseas.

They will have all of the rights and protections afforded to Commonwealth employees, and be covered by the same minimum standards of employment as other Australian employees under the Fair Work Act.

The central purpose of the Bill is to create a legal framework for the effective and fair employment and management of Australian Civilian Corps employees.

The Bill provides for terms and conditions and other employment arrangements that are specifically designed for this unique kind of employment.

AusAID will administer the Australian Civilian Corps, in cooperation with other Australian Government agencies.

The Director General of AusAID, who manages the vast majority of Australia’s international development assistance program, will be responsible for managing the Australian Civilian Corps.

The Bill gives the Director General of AusAID the power to engage Australian Civilian Corps employees and determine their remuneration and other terms and conditions.

These terms and conditions will be tailored to the particular requirements of Australian Civilian Corps employment.

The Australian Civilian Corps will have a set of values prescribed by regulation, which will define the principles, standards and ethics to be embodied by the Corps.

The Director General of AusAID will be required to uphold and promote the Values.

A code of conduct for the Australian Civilian Corps will also be prescribed by regulation, setting out the standards of behaviour and conduct expected of Australian Civilian Corps employees.

The Bill provides for sanctions to be imposed in the event that an Australian Civilian Corps employee breaches the Code.

The Bill also facilitates the transition of civilian specialists between Australian Civilian Corps employment and their regular employment.

The Prime Minister is given a power under the Bill to issue directions to Commonwealth employers about the participation of their employees in the Corps.

The Bill also includes a provision to ensure that all employers can grant leave without pay to their employees for the purpose of undertaking Australian Civilian Corps service.

The Australian Civilian Corps will have the flexibility to deploy in a stand-alone capacity or alongside international partners or other Australian operations including military and police.

The Corps will work closely with bodies such as the United Nations, and the Bill provides for secondments of members of the Corps to such bodies.

The Bill also deals with various other employment arrangements including assignment of duties, suspension and termination from employment.

The Australian Civilian Corps is a valuable new capability that will enhance Australia’s ability to meet requests for assistance following natural disasters and conflict.

The Corps will work in partnership with crisis-affected countries in our region and beyond to assist with stabilisation, recovery and development efforts.
It will build on Australia’s proud history of providing assistance in times of crisis and affirm our status as a good international citizen.

For this initiative to be successful it is essential that a framework exists for the effective and fair employment and management of Australian Civilian Corps employees.

This Bill puts such a framework in place.

I commend the Bill.

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Australian National Preventive Health Agency Bill 2010

The Australian National Preventive Health Agency Bill 2010 seeks to focus and revitalise Australia’s preventive health capacity.

It was over a year ago that I first introduced this Bill.

The Government’s intention was for the first Australian National Preventive Health Agency to have been established in January this year.

The Bill now provides a start date as proclaimed by the Governor General once it receives Royal Assent.

The Bill also now proposes:

• that the Australian National Preventative Health Agency’s strategic plans cover a 5 year rather than a 3 year period, and

• Explicitly mentions alcohol, tobacco and other substance abuse, and obesity programs as being included in the scope of social marketing campaigns to be undertaken by the Agency.

These amendments were moved by the Greens and Senator Xenophon when the Bill was previously debated in the Senate and the Government has agreed to support them.

This is an important measure that was recommended by both the National Health and Hospitals Reform Commission, and the National Preventative Health Taskforce.

In fact, the creation of a national preventive health agency was also proposed at the 2020 summit in 2008.

In 2008 the Government reached agreement with the states and territories at COAG to create the Agency and committed to funding it with an investment of over $130 million for its establishment, preventative health research and social marketing campaigns.

The Government has listened and we are now acting because we know that preventative health measures work.

We understand that the rising incidence of chronic illness, combined with an ageing population, mean that sitting on our hands is not an option in terms of both the cost to our health and hospital system, and more importantly in terms of the human cost of illness and lost productivity.

This Bill establishes national infrastructure to help drive major change in the way we behave and how we look after (or don’t look after) our own health.

It is widely appreciated that population growth and an ageing population is one of the major challenges to our health and hospital system.

But there are also major pressures arising from our changing lifestyles and consumption patterns.

The Government knows that prevention is better than cure and is why we have already taken strong action across a range of areas.

We know that between 1950 and 2008, more than 900,000 Australians died because they smoked - despite the fact that there was from about 1950 clear evidence on the dangers of smoking.

That’s why successive governments have taken action – including increasing the excise applying to tobacco products, conducting hard-hitting social marketing campaigns, banning tobacco advertising and introducing graphic warning labels.

Thanks to these and other preventive health measures we now have one of the lowest smoking levels in the world.

However there are still nearly three million Australians who continue to smoke.

Tobacco remains the single-biggest preventable cause of death and disease in Australia.

That’s why the Government has committed to world leading reforms to stop smoking – including

• increasing the tobacco excise by 25 per cent from April this year,
• investing an additional $5 million in Quitline services,
• investing $85 million in anti tobacco campaigns and
• being the first country in the world to introduce plain packaging of tobacco products – ending the last avenue for cigarette companies to advertise.

A key job of the new Australian National Preventive Health Agency established by the Bill will be to build upon these reforms to ensure that we reduce this burden.

Similarly, with alcohol, Australians all around the country know the severe impact of alcohol abuse in our community.

In contrast to tobacco, our overall per capita consumption of alcohol is high by world standards.

One in four Australians drink at a level that puts them at risk of short-term harm at least once a month.

Around 10 per cent of Australians drink at levels that put them at risk of long term harm.

The Government has already taken action, including by:

• Launching the $103 million National Binge Drinking Campaign; and
• Ending the tax loophole on alcopops that target young people. This measure has seen their consumption drop by 30 per cent

But there is more work to be done, which the Preventative Health Agency will be the Government’s leading advisers on.

And on top of that, we are now among the most obese nations in the world.

The National Preventative Health Taskforce stated that if obesity trends are left unchecked, the life expectancy for Australian children alive today will fall two years by the time they are 20 years old.

We’ve understood this through our investments in the National Partnership Agreement on Preventative Health which will invest $872 million for prevention, in particular with a large emphasis on tackling obesity – through workplaces, local governments and programs targeted at children.

These examples illustrate why the Government has made prevention a key focus of our reform agenda.

We must ensure that Australia does not go backwards in health status.

And we have to make our health and hospital system sustainable in the long term.

We need to reduce the burden preventable health problems are already placing on an ageing workforce, and ensure Australia’s productive capacity is maintained.

In the past the prevention effort has been neglected. We know that arrangements have been fragmented and lacked cohesion and focus. Success in changing lifestyles takes a long term, systematic approach informed by the latest evidence and ongoing evaluation of results.

It needs engagement, action and responsibility to be taken by individuals, families, communities, industries and businesses.

But Government, can play a leadership role by gathering and analysing and disseminating the best available evidence, and implementing programs and policies based on the evidence.

We need to bring together the best expertise in the country, and we need to engage employers, businesses and the wider community in prevention.

A new approach is needed, and the new Australian National Preventive Health Agency will play a key role in achieving this ambition through the deployment of a skilled and dedicated team which can work flexibly and responsively.

The Agency will also be an important part of our overall health reform efforts, and will work with Medicare Locals to reinvigorate preventative health efforts at the local level.

There is also opportunity for the Agency to strategically assess the social determinants of health as shown earlier this week by a report commissioned by Catholic Health Australia, Health Lies in Wealth.

The report shows that 65 per cent of those in the lowest income group report a long-term health problem compared with just 15 per cent of the most wealthy.
The establishment of the Australian National Preventive Health Agency will embed preventative health thinking and action, permanently, into the future as an enduring institution.

The staff will include population health and other experts. It will have responsibility for providing evidence-based policy advice to health and other ministers and will administer social marketing programs and other national preventive health programs which it may be tasked with by Australian Health Ministers.

It will also form partnerships with industry, as well as the community and non-government sectors.

$17.6 million has been allocated for the establishment and operation of the Agency, together with funding for social marketing targeting obesity and tobacco ($102 million) and to support preventive health research, especially the translation of research into practice ($13.1 million).

This Bill establishes the Agency as a statutory authority under the Financial Management and Accountability Act 1997, or FMA Act, and specifies its functions, governance and structure.

Health Ministers have agreed to the Agency being established under the FMA Act and were consulted about the broad provisions in the Bill.

A Chief Executive Officer will manage the Australian National Preventive Health Agency and will be directly accountable to the Federal Health Minister for the financial management of the Agency and to the Australian Health Minister’s Conference, via the Minister for Health and Ageing, for the Agency’s performance.

There will be an Advisory Council which will consist of experts in the field of preventative health.

Preventive health is a policy area which the Government has given the highest priority.

That is why I have introduced the Bill this sitting to allow the Agency to commence its important work as soon as possible.

Once established it will mean that for the first time, Australia will have a dedicated organisation to help us combat the complex challenges of preventable chronic disease.

It will benefit all Australians, now and into the future, and will play a significant role in putting Australia on the path to becoming a healthier country.

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Radiocommunications Amendment Bill 2010

The Bill proposes amendments to the Radiocommunications Act 1992 (the Act) to:

- give the independent radiocommunications regulator, the Australian Communications and Media Authority (ACMA for short), greater flexibility in the timeframe in which it can commence reissuing spectrum licences;
- allow the ACMA to issue class licences in the same spectrum space allocated or designated for spectrum licences (coexistence);
- vary the treatment of certain Ministerial determinations and directions made under the Act; and
- provide additional clarity for Ministerial directions to the ACMA relating to spectrum access charges.

In the late 1990s, the Government commenced auctioning a number of spectrum licences to support a market based approach to the licensing of radiofrequency spectrum.

The licences had a 15-year tenure, flexible conditions and were fully tradeable. Australia was amongst the first countries in the world to issue licences on this basis.

Many of these licences are now used by telecommunication carriers to provide mobile phone and wireless access services to millions of Australians.

The first of the 15-year licences are due to expire in 2013 with the remainder by 2017.

Currently the Act requires the ACMA to publish a notice advising which spectrum licences are due to expire within the next two years, and inviting expressions of interest in the spectrum, but prevents it from doing this earlier.

The ACMA is also restricted from issuing draft spectrum licences as part of their marketing plan until two years prior to the licences’ expiry.
Incumbent licensees have consistently called for greater certainty about licence reissue.

Without such certainty it is claimed that there will be a reluctance to maintain investment in infrastructure and service provision with potential adverse impacts on coverage and service quality.

The Bill amends the Act to remove the current timing constraint which restricts the ACMA to publishing notices about expiring spectrum licences and publishing draft spectrum licences to two years prior to licence expiry.

Removing this time constraint will provide greater flexibility for the ACMA in terms of when it can commence licence reissue processes, and allows the industry greater certainty which it is calling for.

The ACMA would still be required to seek expressions of interest for spectrum licences prior to expiry.

The Bill also amends the Act to permit coexistence of class licences and spectrum licences in the same spectrum band.

New technologies are being developed that could greatly increase the technical and productive efficiency of spectrum use, and allow devices to share spectrum with traditional radiocommunications without harmful interference.

Over time there will be widespread adoption of new technologies in a range of devices that would be readily available in Australia.

These new technologies may be authorised for use in Australia by the ACMA under class licences.

Under current legislation, in bands subject to spectrum licensing, the only way to accommodate these new technologies is through a third-party authorisation by the incumbent spectrum licensee. To date, experience has shown this to be problematic.

It is important that the Australian radiocommunications regulatory framework is sufficiently flexible to deal with new technology challenges and to enhance the effective management and allocation of spectrum.

The Bill makes additional amendments to clarify the operation of provisions relating to the variation of existing class licences to coexist with spectrum licences in the same spectrum allocation.

The Bill includes adequate safeguards.

Before applying any coexistence provisions involving class licences in a spectrum licensed allocation, the ACMA would be required to develop adequate safeguards through consultation with industry.

The ACMA would also need to satisfy itself that the new technologies coexist without unacceptable interference to primary services and are in the public interest.

The amendments on coexistence will not affect current spectrum licences and licensees. The new arrangement will only impact future new or reissued spectrum licences issued after the amendments come into effect.

The Bill amends the Act to make ministerial determinations, which specify classes of services for which reissuing the same licence to the same licensee is in the public interest, legislative instruments that are not subject to disallowance.

These determinations will, however, be published on the Federal Register of Legislative Instruments.

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These changes are proposed in order to minimise unnecessary delays in the re-issuance process. Delays from the possible disallowance of a determination could have a material negative impact on conducting licence reissue discussions with incumbent licensees, particularly those licences which are due to expire in mid 2013.

The Bill further amends the Act so ministerial directions to the ACMA concerning spectrum access charges are not legislative instruments.

The measure is consistent with existing provisions in the Legislative Instruments Act 2003 that instruments of this kind are not legislative in nature.

The amendment will also protect commercially sensitive pricing information relating to the licence reissue discussions from being published before ACMA reissue processes are completed.

Consistent with current practices, it is expected the ACMA would make known the prices paid for reissued licences once the reissuance process is complete.
Finally, the Bill makes a minor amendment – for the avoidance of doubt – that a ministerial spectrum access direction may require the charge to reflect the amount that the Minister considers to be the value of the spectrum.

It is intended that such a direction in relation to spectrum licence reissue would only take place once the Minister has taken into account the public interest.

The Connecting People with Jobs package will commence on 1 January 2011 and provide support for long term unemployed job seekers living in areas with high unemployment rates to move take up a full-time job or apprenticeship. Job seekers will be eligible for reimbursement of up to $3000 for relocating to a metropolitan area, or $6000 for moving to fill a job in a regional area. They may be eligible for an additional $3000 if they are relocating with their family.

Relocation often has high costs, especially when it involves moving interstate or even across the country. These job seekers have sought employment in their current location for at least 12 months, but may lack the resources to move to take up employment further afield. That’s why in August the Prime Minister announced the relocation trial as part of ‘Modernising of Australia’s Welfare System’, helping the long-term unemployed overcome costs to take up meaningful work in a new location.

As part of Labor’s election commitment, employers will also be eligible for a wage subsidy of $2,500 to create an upfront incentive for taking on these job seekers. This is in recognition of the additional support and assistance individuals will need in the early stages of their employment in a new location.

Job seeker compliance

While this package will encourage the long term unemployed to relocate to take up a job, it will also create an incentive for individuals to stay in their new location, and keep them in sustainable employment.

This bill, the Social Security Amendment (Connecting People with Jobs) Bill 2010 amends the Social Security (Administration) Act 1999 to extend to 12 weeks the period of non-payment of income support should a relocating job seeker, who receives additional assistance under this measure from Government, leave their job within the first six months as a result of a voluntary act or misconduct.

Previously a job seeker was subject to an 8 week non-payment period.

This bill does not alter existing mechanisms for exemption for such non-payment period penalties that are administered by Centrelink.
Need for a flexible labour market
The national unemployment rate currently sits at 5.4 per cent, down from 5.7 per cent a year ago, however the truth is that the employment situation across Australia varies greatly.
In this modern age, there is a need for greater labour mobility, and relocating parts of the workforce to meet employers’ demand is an effective method of achieving this. The Connecting People with Jobs trial will enhance the flexibility of the labour market by encouraging additional relocation activity, and helping to better match labour supply with demand.
The funds for relocation will provide job seekers with assistance for things such as:
• Airfares
• Removalists
• Temporary accommodation
• Post-placement support and mentoring
This trial will get people off income support and into sustainable jobs.
Conclusion
We know long-term unemployed people are particularly vulnerable in the current economic environment.
We know there are businesses and industries out there experiencing labour shortages in parts of the country.
We know some of our long-term unemployed live in areas with very limited job prospects.
This legislation will assist the long-term unemployed find sustainable work.
It will provide employers with the workers they need to grow their businesses.

Therapeutic Goods Amendment (2010 Measures No. 1) Bill 2010
This Bill makes amendments to improve the regulation of therapeutic goods in Australia under the Therapeutic Goods Act 1989 and to formalise a number of administrative arrangements currently part of that regulation.
The Government is committed to maintaining the position of the Therapeutic Goods Administration as a leading global regulator of therapeutic goods.
This means that the legislation under which the TGA works needs to be updated to meet emerging issues and ensure that the Act gives the regulator the necessary powers to exercise its functions fairly and effectively.
This is the fifth in a series of amendment Bills since 2008 to make much needed improvements to the Act. As a Government we have now disposed of the backlog of amendments to the Act that had been stockpiled in the lead-up to the introduction of the now postponed joint regulatory agency with New Zealand.
Schedule 1 of this bill will introduce measures allowing for the short term exemption from registration of medical devices to serve as substitutes for devices that are included in the Australian Register of Therapeutic Goods but are unavailable or in short supply, and medical devices that have no substitute in the Register. These provisions mirror those already included in the Act in relation to medicines. They are mainly used to deal with disruptions to the availability in Australia of medicines caused by supply chain problems, such as refurbishment of manufacturing facilities.
While the unavailability of medical devices has not been a major problem, the Government believes that including a similar provision in the Act will allow appropriate flexibility in the medical device regulatory framework.
Under the proposed amendments the Secretary of the Department of Health and Ageing may grant a person approval to import, or import and supply, a medical device as a substitute for a device already registered in Australia if the device is marketed in a country specified in the regulations or if an application has been made to register the device in Australia, and the Secretary considers the approval is in the interests of public health.
If the application is to import, or import and supply, a device where there is no substitute already registered in Australia, the Secretary may grant the approval only if an application has been made to register the device in Australia, and the Secretary considers the approval is in the interests of public health.
These provisions do not take away the ability of a doctor to supply an unapproved medical device in...
an emergency situation that already exists under the Act. Rather, they operate to deal in a systematic way with the unavailability of approved medical devices. Other amendments allow the Secretary to gather information on the supply and use of devices covered by an approval, and allow for the recall of the devices under certain circumstances. The Schedule also contains consequential amendments to the offence provisions in the Act relevant to medical devices.

Schedule 1A of the Bill formalises the current processes that apply to the approval of product information documents of high risk medicines such as prescription medicines.

A product information document contains technical information about the medicine such as the characteristic of the active ingredient, its indications and contraindications, precautions, adverse reactions that may occur from the use of the medicine, dosages, and other information relating to the safe and effective use of the medicine. This document assists medical practitioners, pharmacists and other healthcare professionals in prescribing, dispensing and administering the medicine, and in educating patients on its safe and effective use.

Applications for inclusion of prescription medicines in the Register under the Act are required to include a draft product information document that is approved on registration of the medicine. It is also a condition of registration of these medicines that the product information approved by the Secretary at the time of registration can only be varied with the Secretary’s approval.

The amendments under Schedule 1A formalise these requirements. The Minister will have the power to make legislative instruments that specify a medicine or medicines to which the requirements relating to product information documents apply. A draft product information document must be lodged in a form approved by the Secretary with the application for such medicines. Approval of the product information document at the time of registration of the medicine and any approval relating to its variation will be notified to the sponsor of the medicine.

Schedule 2 of the Bill includes a range of amendments to various provisions in the Act. One of the more significant amendments will include an explicit pathway for sponsors of medicines already included in the Register to list an export-only variant of the medicine. Although the Act currently allows medicines to be listed for export, there is no link between these medicines and a medicine already on the Register.

The new provision will allow the Secretary to list a variation of an existing medicine on the Register so long as the variant differs from the medicine in the Register only in respect of characteristics (such as colourings, flavourings and excipients) that are specified in a legislative instrument made by the Minister.

This provision will support Australian companies wishing to export medicines by allowing them to state to authorities in the importing country that the medicines are a minor variation of a medicine available on the Australian domestic market, and point to the provision in the Act that allows the listing of such variants.

Amendments applying to the variation of entries of therapeutic goods in the Register under section 9D of the Act are also included in Schedule 2. Some of these amendments are a consequence of the changes relating to product information described previously and others allow for variation of information in the entry in the Register concerning medical devices and biological in the same way as is currently allowed for the variation of information in relation to medicines.

These amendments also address the possible argument that a request for a variation to an entry of a medicine that has the effect of reducing the class of patients for whom the medicine is suitable could result in the medicine becoming a “separate and distinct” therapeutic good under section 16 of the Act and therefore requiring a new application for registration to be made. As the Secretary is required under section 9D to vary an entry where such a “safety-related” request is made (on the basis that no new evaluation of the safety, quality or efficacy of the medicine is necessary), these amendments clarify that section 16 cannot apply.

Schedule 2 also contains amendments that clarify the Secretary’s power to make determinations that goods are “therapeutic goods”. Section 7 of the Act enables the Secretary to declare particular
goods are therapeutic goods or are not therapeutic goods, including when used, advertised, or presented for supply in particular way.

For this declaration to be made, the Secretary must be satisfied that the goods are or are not in fact therapeutic goods. The current definition of therapeutic goods under the Act excludes goods that fall within a food standard made under the Food Standards Australia New Zealand Act 1991 and goods that have a tradition of use as food for humans in either Australia or New Zealand in the form in which they are presented, unless there is a section 7 declaration that they are therapeutic goods. There are a number of products in relation to which therapeutic claims are made but as they fall within a food standard the Secretary is currently unable to make a section 7 declaration.

These amendments will allow the Secretary to make a declaration that certain goods are therapeutic goods if the only reason that they are not therapeutic goods is because of the existence of the food standard or because they have a tradition of use as food for humans as defined in the Act. This provides flexibility and allows for such goods to be regulated as therapeutic goods in appropriate cases.

The Therapeutic Goods Administration has been working with industry to identify ways in which to improve the regulatory business process in relation to the registration of prescription medicines. The recent review process which commenced in December 2007 has had the extensive involvement of relevant stakeholders. This review identified a number of areas where the registration process could be improved. The changes now being implemented are designed to reduce the current 500 days for a new prescription medicine to be registered to approximately 300 days by eliminating unnecessary queues and delays in the evaluation process.

These amendments include changes to support elements of this business process reform. They will allow the evaluation and decision-making process to proceed even though the applicant may not have provided all the information or documents about the application that have been requested by the Secretary within the agreed timeframes, changes to clarify how those timeframes are determined and for the Secretary to approve the form of requests for the variation of entries of medicines already in the Register.

Another group of amendments in the Schedule improve the TGA’s ability to obtain information from the sponsors of registered or listed medicines. The Act already includes powers for the Secretary to request information and documents on a wide range of matters relevant to registered and listed medicines. However, while the Secretary can impose conditions on the registration or listing of medicines, there is no explicit power for the Secretary to obtain information and documents relating to compliance with these conditions. The amendments include such a power.

The amendments also add a power for the Secretary to obtain information or documents on whether registered or listed medicines have been imported into or supplied in Australia, or exported from Australia. This information can be very important in assessing the risk arising from an identified deficiency with a medicine and some sponsors have in the past refused to provide it. These amendments put beyond doubt the Secretary’s power to obtain the information.

The Schedule also amends the provisions relating to reconsideration by the Minister of initial decisions by the Secretary and delegates in the TGA. Under the current provisions persons affected by an initial decision can request reconsideration by the Minister within 90 days of the decision. The Minister is required to reach a decision within 60 days after the request was made.

It is not uncommon for persons to apply for reconsideration but not supply any supporting information until well into the 60 day period. There is currently nothing in the Act to prevent the applicant providing additional information on 59th day.

The amendments to section 60 address this by requiring persons requesting reconsideration of a decision to submit any information they wish the Minister to consider at the time of application for the review. The amendments then preclude the Minister from considering any further information provided by the person unless it is information provided in response to a request by the Minister or is information indicating the quality,
safety or efficacy of the therapeutic goods involved is unacceptable.

These amendments will ensure that reconsideration by the Minister is based on a deliberate analysis of all the relevant information, and avoid the need for hasty review of what might be complex information supplied when the review is already underway.

The Schedule also amends the provisions allowing the Minister to determine lists of permitted ingredients to be included in medicines. These amendments are essentially technical changes to improve the workability of the provisions by allowing the list of permitted ingredients to include ingredients meeting specific requirements and setting out the criteria (of safety and quality) that the Minister must apply in deciding whether to vary a determination of permitted ingredients in response to an application.

Finally, the Schedule clarifies that any fee payable for an audit of a medical device must be paid before the inclusion of the device in the Register. This will ensure that all applicants pay the appropriate fee.

Together with the earlier regulatory reforms introduced by the Government, this Bill ensures that the TGA can continue to operate effectively as one of the leading therapeutic goods regulators in the world.

Debate (on motion by Senator McLucas) adjourned.

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

NATIONAL SECURITY LEGISLATION AMENDMENT BILL 2010
PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT BILL 2010

Second Reading

Debate resumed.

Senator LUDLAM (Western Australia) (5.13 pm)—I will pick up where I left off right before question time. The National Security Legislation Amendment Bill 2010 has been subject to a great deal of review by way of a process that the Australian Greens would normally support—that is, an exposure draft that went out quite broadly through the legal fraternity and elsewhere to civil libertarians, people involved in terrorism cases directly and so on. A huge number of submissions were made. Once we saw the exposure draft, we got the idea that the Australian government would eventually move on the appointment of a national security legislation monitor to go through the terrorism laws that have been introduced over a period of five or six years—to just work through the items that were so inappropriate it is embarrassing that they had even made it onto the statute books. They do not deserve the dignity of a review at all by the monitor when that office eventually comes into effect.

I introduced a bill that either simply repealed or made substantial amendments to many of the different laws of terror. That bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs. To my great surprise, rather than doing what a government chaired committee would normally do, which is pay it lip service and then just kill it and propose that the bill not go forward, the work that we did was referred back through to the Attorney-General’s Department to be contemplated in parallel with the work that they were doing on the government’s bill. In other words, the committee certainly did not endorse my bill or any of the proposals therein but the work itself was recognised and the proposals that we put forward were recognised because they were simply invisible—as far as we can tell—in the government’s contemplation of these laws of terror.

It is then extraordinary to see out of that process that absolutely none of those ideas were taken up. We cannot find a hint anywhere that any of those ideas were put forward. When we go into the committee stage of the bill—and I warn the chamber now that
I fully intend to do that—we will go into a bit more detail of exactly the opportunity that we are missing today. We have been waiting for this for two years. The legal community has been waiting for this for two years. People who have been unnecessarily surveilled and spied upon have been waiting for this for many years and the opportunity is about to be missed.

The review process, I think, has seen the government pass up a very important and perhaps once-in-a-parliament opportunity to ensure that Australia would remain in compliance with our international human rights obligations, because that is a part of what is at stake here. Instead, we have got this half-hearted and quite feeble attempt to ensure a more proportionate response to antiterrorism in Australia which, apart from a number of cases which I will highlight on the way through as being genuine improvements, it quite simply fails to do.

There is no real justification anywhere in the bill, in the explanatory memorandum and in the second reading speech, and I am presuming in the comments that are to come in the committee stage, for the continued existence of many of the extended powers that law enforcement agencies have been granted since 11 September 2001. Maybe that is because no such justification actually exists in many of the circumstances. The Australian Federal Police, for whom many of these provisions have direct relevance, have at no stage made a submission to the consultation either on the exposure draft or when the substantive bill was put to the Legal and Constitutional Affairs Legislation Committee. We did not hear anything from the AFP. We brought them in and had them give evidence directly, but they did not see fit to make a submission.

The review process, no matter how robust, is completely pointless if the government is then refusing to listen to the advice of the experts that were made, in this case, through 50 submissions to the consultation and 23 submissions on the bills referred to the Senate Legal and Constitutional Affairs Legislation Committee. If you have a look at the tenor of that second batch of submissions to the Legal and Constitutional Affairs Legislation Committee, you will see it is in essence saying, ‘Hang on a second, why didn’t you listen to us the first time? We will resubmit what we told you before, six or eight months ago, because you appear to have not read a word.’ The government there decided to ignore the majority of recommendations put forward by legal experts at both stages of the consultation process. The failure of the government in this way to utilise the process that it established is noted by the Gilbert + Tobin Centre of Public Law which stated:

... of the 267 amendments to Australia’s antiterrorism legislation proposed in the Bill only 66 of these reflect changes made since the Exposure Draft ... most of these 66 changes can be described as technical (as opposed to substantive) changes.

Organisations that have assisted the parliamentary process in Australia’s antiterrorism legislation must be suffering from what we think is submission fatigue and a sense of hopelessness as Australian Lawyers for Human Rights continued calls for reform to Australia’s antiterrorism legislation have fallen upon deaf ears.

I commented at the outset of my speech on the degree to which the government has moved with haste to quadruple or more ASIO’s resourcing, budget and staff while at the same time being strangely unable to fill the position of the Independent National Security Monitor, which was passed by the Senate earlier this year. Madam Acting Deputy President Troeth, partly through your work, in late 2008 the Senate passed such a bill. I find it utterly extraordinary that the
government passed this legislation six months ago and has not seen fit to appoint a part-time person to this role. I would be very interested to see if the minister confirms this, but the government does not want the monitor in place until this feeble attempt at law reform has gone through without criticism from somebody who, I believe, is going to have a great deal of standing and a lot of status in these debates as they are to come.

The government has basically held the monitor out of the way so that it cannot critique this lax attempt at law reform we are seeing this afternoon. I have very little doubt that, if we did have a proper look at whether these laws are proportional, we would need to be recommending much deeper changes than we are seeing this afternoon. All we are seeing today with the proposed government bill effectively is the entrenchment and the consolidation of what was put through in the Howard-Ruddock years, which many people, if they knew what was there, would regret. I intend to take a little bit of time this afternoon to make sure that people are aware of what exactly is still on the statute books that the government is refusing to move. We have been long-time campaigners, as have many coalition senators, for the establishment of such an office and it is a travesty that the office does not exist as yet.

In our additional comments to the report of the Legal and Constitutional Affairs Legislation Committee into the bill, we said that this bill should be deferred until such time that the office of the monitor is on its feet and has had time to review the enormous volume of material that exists and the submissions that have been made. We do not think that this legislation should be passed at all, unless of course the minister is able to stand up shortly and say that as soon as the monitor is up and running the government will come back with a full and frank review of the Australian terror laws, because in the meantime we appear to be simply wasting our time and in some cases entrenching laws that should never have been placed on the statute books in the first place.

The Australian people deserve all legislation to be subject to a very high degree of scrutiny, but particularly laws which impact on our fundamental civil and political rights, which this bill indeed does. They include, for example, the presumption of innocence, which is something that we seem happy to dispense with; the right to a fair trial; freedom of expression; the right to privacy; and freedom from arbitrary detention. I will show this afternoon, as this debate proceeds, that every single one of those fundamental legal principles, some of them hundreds of years old, are threatened by laws on the books that the government is either entrenching or refusing to roll back.

Australia does not have a human rights charter. We do not have a human rights act in any form because the government was too weak to even proceed with that when the criticism got too great. So we have no constitutional or legislative protections of human rights or, at least, very limited protections. Sometimes we might throw to examples in the UK or the United States where there is a constitutional bill of rights. We have no such protections in Australia. Many of the protections that we assume exist are just that—assumed or implied. These laws, I think, go quite a long way towards eroding them.

It makes the process of reviewing these laws all the more important, and the contempt with which the government has treated the consultation and the Legal and Constitutional Affairs Committee process—and I do not use that word ‘contempt’ lightly, but that is what it was—combined with a failure to have established the independent monitor means that we are just ploughing along with bureaucratic inertia and one minister starts to
look very much like the other. It is for this reason that we believe that debate on the National Security Legislation Amendment Bill 2010, this bill, should be deferred and it should be referred to the National Security Legislation Monitor so that we can at last get an independent idea of whether these laws are proportional, whether they are necessary and whether the freedoms that we are giving up—whether we know it or not—are actually making us any safer. This will ensure that the bill and Australia’s antiterrorism legislation are subject to proper review by an office that is independent of government. We moved, with some assistance from the coalition, some amendments to that monitor bill to make sure that the reporting obligations of that office would be directly to parliament, that they would not be subject of laundering—if I may use that word—through the Prime Minister’s office to make sure that they were politically saleable. So at least there is something there. But in the meantime the government has decided to circumvent even that meagre protection by simply preventing the office from getting on its feet in the first place.

I found Senator Brandis’s comments earlier really quite extraordinary, that the amendments that we have proposed which are entirely reasonable and actually quite moderate would not be acceptable to the coalition simply because they do not match what the Legal and Constitutional Affairs Committee recommended. What a remarkable abrogation of responsibility. I hope that Senator Brandis is in here some time later during this debate to explain whether he even read the amendments that we proposed.

I will leave the chamber in absolutely no doubt, as we proceed into the committee stage of this debate, as to why we think we are making a grave mistake here. If other parties will not come to the defence of Australians’ civil and political rights, then the Australian Greens certainly will.

Senator PARRY (Tasmania) (5.24 pm)—I also support Senator Brandis’s comments earlier and I rise to support the National Security Legislation Amendment Bill 2010 and the Parliamentary Joint Committee on Law Enforcement Bill 2010. In particular I have an interest in the Parliamentary Joint Committee on Law Enforcement Bill. This bill will be doing two things: first of all, expanding the role of the current Australian Crime Commission and changing the Australian Crime Commission PIC into the law enforcement PIC, which will then have responsibility for oversight of the Australian Crime Commission and, in addition, the Australian Federal Police.

The Australian Federal Police have not had an opportunity to report directly to a parliamentary committee, as the Australian Crime Commission has. The Australian Federal Police have really had the oversight through the estimates process, as all agencies and government departments do. By the very nature of the work that the Australian Federal Police undertake, to be able to report to a committee that can meet in camera and can take in camera evidence and can discuss things in a far more private way, it means that parliamentary oversight becomes far more effective. If officers, in particular senior officers, of the Australian Federal Police feel more comfortable discussing more sensitive issues with a parliamentary committee, which would be comprised of members of all sides of this parliament and also both houses, I think that will serve the oversight process far better than currently is the case when every single question is asked from a public scrutiny perspective. The public scrutiny perspective will still continue and is essential, but we need to have the additional ability for the Federal Police to be confident in being able to report to a committee and the
committee having the confidence of maintaining a tight jurisdiction and oversight of the Australian Federal Police, as we do with the Australian Crime Commission.

I think that when the public elect members to parliament and the oversight of important agencies such as the Australian Federal Police occurs, the public need to know that the committees are bipartisan and have an ability to probe without damaging any operational aspects and without alarming the public in more sensitive areas. That is the role when you are dealing with agencies that have a more difficult and more secret aspect. However, having 10 parliamentarians with the ability to probe in more detail and feel comfortable probing in the format that a committee such as the Parliamentary Joint Committee on Law Enforcement will enable, just adds scrutiny in a far better way to the parliamentary oversight process and should give the public more comfort. I am very, very supportive of that aspect of the bills that we are debating today.

As indicated by Senator Brandis earlier today, we will not be supporting the amendments proposed by the Greens. That is the only contribution I wish to make in relation to these bills, Madam Acting President Troeth, so I will not detain the Senate any further.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (5.27 pm)—I thank honourable senators for their contributions to the debate on the National Security Legislation Amendment Bill 2010 and the Parliamentary Joint Committee on Law Enforcement Bill 2010. As the Attorney-General mentioned in the House of Representatives, after extensive public consultation these bills were passed by the House of Representatives and were considered by the Senate Committee on Legal and Constitutional Affairs before parliament was prorogued on 19 July 2010. The government took the recommendations of that committee into account in reintroducing the bills.

There have been some points raised during the debate that I would like to take this opportunity to respond to. Senator Ludlam suggested that the government prioritise the national security budget and an expansion of agencies such as the Australian Security Intelligence Organisation, but has not given similar priority to review, oversight and accountability mechanisms in relation to national security agencies and the legislation that they operate under. The government makes no apologies for ensuring that agencies with responsibilities for national security matters are appropriately resourced. However, the government is equally committed to a balanced approach to national security by ensuring that there are strong and rigorous oversight and accountability mechanisms in place and that our national security laws remain proportionate to the nature of the threat. The government has demonstrated its commitment to a balanced approach to national security in these two bills.

The National Security Legislation Amendment Bill contains amendments that implement the government’s response to recommendations from several independent and bipartisan reviews of Australian national security and counterterrorism legislation. The National Security Legislation Amendment Bill also contains amendments to expand and enhance the mandate of the Inspector-General of Intelligence and Security. The Inspector-General of Intelligence and Security is a very important independent oversight mechanism for Australia’s security and intelligence agencies. The inspector-general has extensive powers to monitor and inquire into the actions of those agencies and ensure that they act lawfully, with propriety and with respect for human rights. The National
Security Legislation Amendment Bill will enable the inspector-general’s inquiries to extend beyond the six security and intelligence agencies within its core functions so that the inspector-general may examine security and intelligence matters in full where those matters concern other Commonwealth agencies in appropriate circumstances.

The Parliamentary Joint Committee on Law Enforcement Bill is yet another demonstration of the government’s commitment to strong oversight and accountability. This bill implements the government’s commitment to having parliamentary oversight of the Australian Federal Police.

Finally, as senators will know, the government has passed legislation to establish the independent National Security Legislation Monitor to review the operation of Australia’s counterterrorism and national security legislation on an annual basis. The monitor will be a person of high standing with a sound understanding of Australia’s counterterrorism and national security legislation. A short list of preferred candidates is currently being actively considered by the Prime Minister and a decision on the appointment of the monitor is expected shortly. These two bills constitute a package of reforms to Australia’s national security and counterterrorism legislation aimed at ensuring our laws are appropriately targeted and accountable in their operation.

I thank the Senate Legal and Constitutional Affairs Legislation Committee for its detailed consideration of the bills. As indicated by the Attorney-General, the government has accepted or accepted in principle three of the committee’s five recommendations. In response to the first recommendation, the explanatory memorandum now clarifies the reasons for including the proposed urging violence offences in chapter 5 of the Criminal Code.

The government has accepted in principle the recommendation to encourage proactive reporting of matters to the Parliamentary Joint Committee on Law Enforcement and the Attorney-General has indicated that he is committed to taking appropriate steps to ensure that this occurs. Once established, the committee may wish to actively engage with the agencies and outline the types of matters that the committee would like to be kept apprised of. It is open to the new committee, in accordance with the normal practices and procedures of parliamentary committees, to request regular briefings from the agencies or to make open or specific requests for written submissions from the agencies on matters concerning the performance of the agencies’ functions.

In response to recommendation 3 and in recognition of the importance of ensuring that the rights of suspects are properly preserved while ensuring that the forensic needs of law enforcement officers are met, the government is also committed to giving further consideration to a broader review of the pre-charge detention regime in due course once there has been further operational use of and experience with the provisions. As the Attorney-General has indicated, the government has not accepted the Senate committee’s recommendation to remove the good faith defence to the urging violence offences nor has it agreed to reduce the proposed cap on specified disregarded time for terrorism investigations under part IC of the Crimes Act. Repealing the good faith defence would remove an explicit legislative confirmation that the urging violence offences do not capture legitimate expression.

Reducing the cap on the period of specified disregarded time in the investigation of terrorism offences has not been accepted on the basis that the government believes that a maximum cap of seven days is reasonable and appropriate. Accepting these two rec-
ommendations would dilute the government’s policy objective of ensuring our national security laws are precise, are appropriately tailored and provide our law enforcement and security agencies with the investigative tools they need to counter terrorism.

In conclusion, our government is confident that the reforms contained in both bills deliver strong laws that protect our safety while preserving democratic rights and protecting our freedoms consistent with the principle of the rule of law. I extend the minister’s appreciation to the Senate committee for their report and to the community for their submissions on the bills, which have contributed to the development of a strong and effective package of reforms. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

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

Senator LUDLAM (Western Australia) (5.35 pm)—by leave—I move Greens amendments (1) to (6) on sheet 6181 to the National Security Legislation Amendment Bill 2010 together:

(1) Schedule 1, item 15, page 6 (line 1), after “will”, insert “directly and”.

(2) Schedule 1, item 15, page 6 (line 3), after “conduct”, insert “directly and materially”.

(3) Schedule 1, item 15, page 6 (line 30), after “will”, insert “directly and”.

(4) Schedule 1, item 15, page 6 (line 33), after “conduct”, insert “directly and materially”.

(5) Schedule 1, item 15, page 7 (line 12), at the end of the heading to subsection 80.1AA(6), add “and conscientious objection”.

(6) Schedule 1, item 15, page 7 (line 14), after “purposes of,”, insert “conscientious objection or”.

I will speak briefly on the intention of these amendments and then I will seek guidance from the government, or perhaps the opposition, about whether they would like to reconsider their views once they have had some time to absorb what it is that the Greens are proposing. We do support as a whole the amendments proposed by this bill that relate to the offence of assisting enemies at war with the Commonwealth, as it is stated, and assisting countries and so on engaged in armed hostilities with the Commonwealth in proposed section 80.1AA(1)(d) of the Criminal Code. The offences will be narrowed by this bill by the inclusion of the word ‘materially’ prior to ‘assist’ to ensure, as is stated in the explanatory memorandum that the government provided, that only assistance that is real or concrete will be criminalised, which we think is at least a move in the right direction.

We believe, however, that the provision remains too broad because, as stated by the Parliamentary Joint Committee on Intelligence and Security:

… given the seriousness and penalties attached to the offence it is crucial that the law achieves the highest degree of certainty.

This is a theme that I will return to a couple of times this afternoon. Because these offences relate to behaviours that are so serious and contain such risk to life and limb, they attract enormous penalties indeed, so it is very important that we narrow the terms of application to only apply to the kinds of behaviour we intend them to apply to. In this case, I think it is best that we make sure we are speaking very specifically. Certainty is required to ensure that the offence of treason does not impact on the right to freedom of expression, which is contained in article 19 of the International Covenant on Civil and Political Rights. Again I return to one of the themes I will revisit probably during every single one of these proposed batches of
amendments, which is that we are not seeking to be soft on terror or on the people who are promoting political violence in our community. We are instead trying to make sure that the law is aimed where it is intended to go and that we do not inadvertently catch political free speech by mistake.

Certainty and a very high threshold are required for this offence, as a maximum penalty is life imprisonment and this could be applied anywhere. So we also support the amendment in section 80.1AA(1)(f), which requires that a person only be found guilty of the offence if they have an allegiance to Australia, which is common sense. But we do question the continuing necessity of this provision, considering that no-one has ever been charged with treason under this legislation. If the government is able to contradict that, I would be fascinated to hear it. This legislation has actually never been used. These sections have never been deployed. No-one has been charged with treason since the 1940s. So, in taking a pragmatic approach and knowing that the offence will most likely remain on the statute books, it could certainly be improved by the following two amendments.

The inclusion of material assistance is, as I said before, a positive amendment, but we do not think it goes far enough and it may still criminalise innocent behaviour, such as that of conscientious objectors and peace activists. I would like to draw the minister’s attention to an incident that occurred in the months leading up to the Iraq war, which was found to be illegal by a large number of international lawyers—and international legal opinion is solidly on the side that in fact we participated in an invasion that was illegal under international law. That notwithstanding, I presume senators can remember a number of Greenpeace activists who swam out to a warship as it was leaving Sydney Harbour and attempted to delay it. I wonder whether the minister would like to give us an idea as to whether she thinks this would be construed as providing material support to an enemy, because on a black-and-white reading of the legislation it would.

If you prevent a warship from leaving harbour on its way to a war, then perhaps you have provided material support to an enemy. I do not believe it is the government’s intention to criminalise this kind of behaviour. I do not think this government, or the previous government, sought to level charges of terrorism against those people in the water. Obviously no violent intent was expressed by those campaigners. They were simply expressing the opinion that was held by the majority of Australians at that time and taking their activities to Sydney Harbour. But on a black-and-white reading of the law, you would have to say that it could be construed as material support to an enemy. So my first question to you, Minister McLus— and to Senator Parry, if he is offering opinions on behalf of the opposition—is: is it intended to be drafted in this way? Could we not tighten the definitions to make it absolutely clear that we are not seeking to criminalise this type of activity or have it fall into the net of a ‘terror offence’ for which the maximum imprisonment is life?

In its current form it is not clear to the public what type of conduct will be criminalised by this provision; therefore, we believe, as has been proposed by the Castan Centre for Human Rights Law, that only material assistance which is ‘direct’—that is the word we are seeking to insert here—should in fact be criminalised. This will ensure that those who provide weapons, funds and intelligence—and who are therefore directly assisting enemies of the Commonwealth or those at war with the Commonwealth—will in fact be culpable and will be caught under this provision, which I believe is what the government drafters intended. Therefore, we
propose that the word ‘direct’ be inserted, and you will see that proposed amendments (1) through (4) go some way towards doing that.

Finally, material assistance whilst forming part of the fault element in this section does not form part of the physical element of the offence in section 80.1AA(e). This is interesting considering the ALRC report Fighting words: a review of seditious laws in Australia—which I am sure senators in this debate would be very familiar with—recommended that material assistance form part of the physical element of the offence but not part of the fault element of the offence. We believe material assistance should be a requirement for both elements, particularly considering the potential penalty of life imprisonment. We therefore propose ‘directly’ and materially’ be inserted prior to section 80.1AA(e).

I will leave my comments there and hopefully the minister will enlighten us as to whether she believes that narrowing the definitions in this way, particularly by inserting the word ‘direct’ or ‘directly’ as far as material assistance is concerned, is acceptable to the parliament. I commend amendments (1) through (6) to the Senate.

Senator BRANDIS (Queensland) (5.42 pm)—The coalition will not support these amendments. The key concept here is materiality. Given that materiality is required to constitute the offence of treason, we see no need to insert the word ‘direct’. Indeed, it is our view that if assistance is material, even though it be indirect, it ought to be caught within the definition of the offence.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (5.44 pm)—The question comes to balance. I think in my summing up speech I made the comment that the government has sought to find that balance through the passage of these two bills. Also, by way of a general comment, I think it is important to recognise that the Australian Law Reform Commission considered the questions that you are legitimately raising here and came down on the side of the legislation as proposed by the government.

You made a point in your earlier comment that the legislation has not been used since, I think you said, 1940. I took from that that that means it is not required. I do not know that you can necessarily make that jump. The fact that the legislation has not been used does not necessarily mean it is not required or desirable. In many cases—and potentially in this case as well—the deterrent effect of a piece of legislation is important and very effective. I will go to other questions that you have put in front of us subsequently.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (5.46 pm)—What I would put to you—and Senator Brandis, if he would care to offer a view—is the case that I put earlier of a vessel attempting to leave Sydney Harbour that was stopped for quite a period of time by antiwar campaigners. We know that they did not intend violence. You could also probably argue that they certainly did not intend to materially assist a foreign power in which we were about to engage in an occupation and invasion. But the fact is that the departure of a
warship or an asset such as that, an aircraft leaving an airbase or troops leaving an Australian base could quite coherently have an argument put that delaying or hindering the departure of such assets into a war zone could be considered as material support for an enemy. Somebody please correct me if I am wrong, but I do not believe it is the view of anyone in this parliament that that act should be construed as an act of terrorism, but with my reading of the way that the act stands at the moment—and the government has done nothing to clarify this matter in the bill apart from a slight narrowing of the definition of ‘material support’—I still do not understand why the government or the opposition would not support these amendments. Could I get a view either from the minister or from Senator Brandis as to whether delaying the departure of, for example, military equipment or troops to a war zone could be construed as material support. This is not something that we have invented; this is something that has been made in submission after submission. The definition is indeed too broad.

Senator BRANDIS (Queensland) (5.47 pm)—The case you have posited involves an essentially innocent act of civil protest, albeit in circumstances of what I suppose might be described as aggravated nuisance. The fact that the object of the protest was a warship, in those circumstances, I would not imagine constitutes an offence. I think it would be straining argument beyond its capacity to bear to say that that would constitute conduct prohibited by the section. If the warship or asset were required to be deployed in time of war then that may very well be a different case, but I think to interfere with the deployment of an asset in time of war is something which ought to be caught by the offence provision. But, beyond that exceptional circumstance, I do not think the case you have posited would attract the operation of the provision.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (5.49 pm)—Your question is whether the bill will criminalise a legitimate political protest by conscientious objectors. I can advise that the bill is neither intended nor designed to pick up activity that is not about materially assisting the enemy. It would only pick up serious criminal behaviour. I then extrapolate from that to say that this would not apply, therefore, to peaceful protest activities such as what you have described. If you go to the section of the legislation, I think it is very clear that in the words and in the intent of the legislation it is not designed to disrupt what is legitimate protest—legitimate behaviour of people who are using their democratic rights to make the political point they want to make. This is not designed to pick up that sort of behaviour. It goes to the question of materiality.

Senator LUDLAM (Western Australia) (5.50 pm)—I will not tie us up any longer with these amendments except to point out, perhaps for Senator Brandis’s benefit unless I have misinterpreted his comment, that the vessel in question was the HMAS Sydney. She was attempting to leave Sydney Harbour in April of 2003, sailing for the Persian Gulf during the invasion of Iraq. We were, in fact, at war. So, unless you want to clarify your comments, I offer that by way of clarification. This was not an idle protest action to make an abstract point; the vessel was sailing to support an invasion that the majority of Australians opposed. I will take the minister’s comments in the spirit in which they are intended and hope that, should this point ever come to be the point of conflict in court, the court will see fit to come back to the debates and establish that this kind of conduct is absolutely not what the government intended to be caught. I will not be calling a
division unless it appears that the numbers will be more finely balanced than five against everyone. I submit these amendments to the Senate now.

Question negatived.

Senator LUDLAM (Western Australia) (5.52 pm)—The second batch of amendments to the National Security Legislation Amendment Bill 2010, also on sheet 6181, relate to amendments (7) to (15). They all relate to the sedition provisions which will henceforth be known as ‘urging violence offences’. So this is sedition and antivilification in particular. There is a range of different proposals, but they all share the common theme of relating to sedition offences. We question the necessity of maintaining urging violence offences which require an element of a threat to the Commonwealth. These offences were previously known as sedition and, as the last Commonwealth sedition trial was in 1953, we have to go back a long time to find these laws actually being used in anger. There was an unsuccessful prosecution attempt against three members of the Communist Party and I hold that it is debatable whether these offences are necessary in a healthy democratic system such as Australia’s.

Nonetheless, in principle we support the criminalisation of targeting identifiable and vulnerable groups in Australian society as these offences do not rely on a link to the Commonwealth. The need to protect certain groups should be balanced carefully with the right to freedom of expression to ensure that there are not undue restrictions on legitimate political communication. We do, however, have concerns with section 80 as the government appears to be confusing the very distinct concepts of sedition and vilification. This was raised numerous times with the committee and it was canvassed in the committee’s report. The operation of sections 80.2A(1) and 80.2B(1) would be improved by adding the words ‘is intended to’ prior to ‘threaten’—this is amendment (7)—rather than the current reading which is ‘would threaten the peace, order and good government of the Commonwealth’. Currently, there is a requirement that there be an intention to urge a group or a person to use force against a targeted group or person and that it must be intended that force or violence will occur.

The threat to the Commonwealth, however, does not have to be intended but merely needs to occur. Therefore, the threat to the Commonwealth is conjunctive rather than determinative and, for this reason, there is a risk that the current provision may capture conduct that only incidentally threatens the Commonwealth. So, if these two sections are intended to be sedition offences and to protect the interests of the Commonwealth, they should be drafted towards this end. The Commonwealth is the possessor of constitutional authority and, as stated by Dr Katharine Gelber, it is essential that people are able to criticise, even vehemently criticise, the possessor of constitutional authority. The offences are subject to a maximum penalty of seven years imprisonment and therefore, given the serious penalty, the offence should be more closely linked with a threat to the Commonwealth. I think senators can see where this is going.

Our second concern is the placement of sections 80.2A(2) and 80.2B(2) within the legislation. The offences are placed in chapter 5 of the code which is entitled ‘The security of the Commonwealth’. There seems to be confusion—and it should not really have come to the committee stage of the debate to sort this out—by the government between the very different concepts of sedition and vilification in relation to these two offences. These are offences that you could argue properly belongs within the category of ter-
rorism related offences—if they pose a violent threat to the Commonwealth then certainly they should be—and others which more properly belong in antivilification legislation or sections of the Criminal Code.

Sedition is an expression against the constitutional authority which should be able to handle a high degree of criticism as part of a healthy democratic system. In contrast, vilification is the expression against a vulnerable or marginalised group and, therefore, the level of criticism should not be the same before constituting a criminal offence as vilification offences are designed to protect the vulnerable and marginalised. The urging violence offences in sections 80.2A(2) and 80.2B(2) should therefore be relocated to chapter 9 of the code which is entitled ‘Dangers to the community’. We are drawing a fairly clear distinction that vilification offences are extremely serious, but they are not terrorism and I think there should be a different burden of proof and perhaps different offences should accrue. They certainly should not be all bagged together in this ever-broadening definition of what is considered to be a terrorist act.

Our reasoning for this shift is based on three grounds. Firstly, community support for antivilification offences may be hindered as the community may perceive the offences to be a restriction of freedom of expression put in place for the protection of the Commonwealth rather than for the protection of identifiable and vulnerable individuals and groups. Secondly, the placement of these offences may confuse police and they may shy away from charging a person who may act in a manner in breach of antivilification provisions due to the fact that the conduct does not, in fact, threaten the Commonwealth. So we can see the danger in conflating these two very different kinds of offences. Finally, enacting legislation that includes antivilification offences under the guise of counterterrorism legislation may be counterproductive and further vilify vulnerable groups in the community, such as Australian Arabs and Muslims who already experience vilification on the basis that they supposedly share some responsibility for terrorism.

Our third amendment in this bracket concerning urging violence offences is the removal of political opinion and religion as identifiable grounds under the two sections that we are discussing, 80.2A(2) and 80.2B(2). Again, these will be very familiar to anybody who participated in the committee debates and the very long process of consultation. Firstly, the inclusion of political opinion extends beyond Australia’s obligation under article 20 of the International Covenant on Civil and Political Rights to criminalise vilification. The ICCPR requires that only vilification on the basis of nationality, race or religion be criminalised. Freedom of speech on the basis of political opinion should be protected to a very high degree as the Australian constitutional protection of freedom of political communication is only applied in quite limited circumstances. The inclusion of political opinion is also inconsistent with all state and territory antivilification laws. Secondly, whilst I think the inclusion of religion is consistent with Australia’s obligations under the ICCPR, it is not in line with the International Convention on the Elimination of All Forms of Racial Discrimination, the ICERD, upon which our Racial Discrimination Act 1975 is based.

The inclusion of religion is also inconsistent with the majority of state and territory antivilification laws. So the removal of these two grounds would ensure that the balance is tipped back in favour of robust political debate, particularly where issues of political opinion and religion are often entwined. We also believe that the antivilification offences could be strengthened by requiring that force
or violence only be reasonably likely to occur rather than intended to occur. We would change the burden in that direction with regard to antivilification offences given that they are targeted against vulnerable groups. The reason is that it is difficult to foresee a situation in which someone urges a group or a person to use force or violence against another person or group but somehow does not intend for that force or violence to occur.

Finally, we propose that two new clauses be included to take into account the context in which the acts were carried out. That was recommended by the Australian Law Reform Commission as long ago as in the final words of the Review of Sedition Laws in Australia document, which goes back some years now. It was stated by Associate Professor Ben Saul that the current defence of statements made in good faith may not be as wide as first appears. Associate Professor Saul argues that the range of human expression worthy of legal expression is much wider than that these narrowly drawn exceptions which appear more concerned about not falling foul of the implied constitutional freedom of political communication than about protecting speech as being inherently valuable. The new provisions would require the court to consider whether the acts were done in the development, performance, exhibition or distribution of an artistic work; in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or in the dissemination of news and current affairs. One or more of these factors will assist the court in determining when to criminalise certain expression and ensure that freedom of expression is not curtailed except where absolutely necessary. I am hoping that senators can see that there are a range of different proposals there. I am hoping that senators can see, particularly with those last ones, that there are very broad categories of speech that should be protected beyond the merely political, including the list that I have just enunciated.

I will be very interested to hear any contributions from either side of the house. But I think these are a pretty moderate attempt to go some way towards moderating the existence of the sedition laws on our books, because, as it is, the government is proposing to change the name but not a great deal in substance will actually change if this bill passes unamended.

Senator BRANDIS (Queensland) (6.01 pm)—Let me deal briefly with the different categories of amendments which Senator Ludlam has foreshadowed. First of all, the amendments that would omit the word ‘would’ and substitute the words ‘is intended to’ in clauses 80.2A(d), 80.2A(1)(d) and 80.2B(1)(d) would, with respect to Senator Ludlam, disregard the distinction which the common law draws between the intention for which conduct is engaged in and the consequences of the conduct which are foreseeable. The intention element in each of those two sections is supplied in subclauses (1)(a) and (1)(b) so that there must be an intentional urging of the use of force or violence against a group and there must be an intention that the force or violence will occur. That being the relevant state of mind, it seems to the opposition sufficient to satisfy the mens rea for that offence and, if the consequence of urging force or violence is that it would threaten the peace, order and good government of the Commonwealth, we do not see that it is necessary to require an additional mental element to intend to threaten the peace, order and good government of the Commonwealth, we do not see that it is necessary to require an additional mental element to intend to threaten the peace, order and good government of the Commonwealth, we do not see that it is necessary to require an additional mental element to intend to threaten the peace, order and good government of the Commonwealth, we do not see that it is necessary to require an additional mental element to intend to threaten the peace, order and good government of the Commonwealth, we do not see that it is necessary to require an additional mental element to intend to threaten the peace, order and good government of the Commonwealth, we do not see that it is necessary to require an additional mental element to intend to threaten the peace, order and good government of the Commonwealth, we do not see that it is necessary to require an additional mental element to intend to threaten the peace, order and good government of the Commonwealth, we do not see that it is necessary to require an additional mental element to intend to threaten the peace, order and good government of the Commonwealth.
In relation to the provisions of clause 80.2A and 80.2B, particularly in relation to the latter, I think, Senator Ludlam, that your criticism, as I understand it, was that provisions of this kind would more naturally be seen in anti-vilification laws. But then you go on to say that we should omit religion and political opinion from the categories which distinguish the protected group, because it is not appropriate that they be included in anti-vilification statutes. That seems—if I may say, with respect, Senator Ludlam—something of a circular argument. The whole point of these prohibitions is to prohibit the urging of force or violence against targeted groups which include groups identified or distinguished by, among other things, their religion and political opinion. That is what sedition-like provisions do. They are provisions designed to protect members or elements of the body politic from force or violence for the prosecution of political ends under the bogus claim of merely being the expression of opinion.

In any event, with regard to even those distinguishing characteristics that you would leave unamended—that is, race, nationality and national or ethnic origin—those three categories are not necessarily descriptors of marginalised or vulnerable groups. I believe that it is entirely proper that a law which is the successor to sedition laws should protect groups within society distinguished by race, nationality and national or ethnic origin whether they be a marginalised minority—for example, a race or a nationality which might have very few members in the Australian community and might be thought to be marginalised and vulnerable—or whether it may be a race which has many, many members, millions of members, within the Australian community which could, on no view, be regarded as a marginalised or vulnerable group within society but nevertheless is entitled to be protected from those urging force or violence against it.

I remember that in the 1970s, in particular, in Australia there was within the Yugoslavian population a great deal of activity of this kind between Croatian people and people from elsewhere in Yugoslavia who on the European continent had historically been their enemies, and that was transported to Australia. I think that the Yugoslavian people on one side of that dispute were such a large body of good citizens of Australia that it would be stretching meaning to say that they were a marginalised or vulnerable group. Nevertheless, they were a group which was entitled to have the benefit of the protection of the criminal law against politically motivated force or violence against them. I think we could think of many other examples of that as well.

So with respect, Senator Ludlam, I think you make what is sometimes described as a ‘category error’ when you say that this should apply only to vulnerable and marginalised groups. I think it should apply to precisely the kinds of defined groups to which subsection (d) and each of the relevant sections are directed, and that includes religion and political opinion. I am a proud member of the Liberal Party, as you are a proud member of the Australian Greens. I do not think either of us belongs to vulnerable or marginalised groups in terms of political opinion, but in the expression of our political opinions we are entitled to be protected from people urging force or violence against us by reason of that identifying characteristic. That is the purpose of these laws, and I think the way they are drafted is completely fit for that purpose.

I turn lastly to what I think was your third main point, the proposed inclusion of a defence in proposed section 4A and each of these relevant subsections if:
... the conduct that constituted the offence occurred:

(a) in the development, performance, exhibition or distribution of an artistic work; or

(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or

(c) in the dissemination of news or current affairs.

A defence covering all of those spheres of activity might be a perfectly appropriate defence if these offence-creating provisions were concerned with the expression of opinion. That, I think was your premise. But these provisions are not concerned with the expression of opinion. They all operate upon a person urging force or violence against a targeted person, intending that that force or violence occur. I must say with all due respect that it passes my understanding how the urging of force or violence against a targeted group with the intention that that force or violence should take place could ever be excused on the basis that it, for example, involved the development of an artistic work or was in the course of the publication of an academic opinion or the dissemination of news or current affairs. The offence-creating provisions criminalise acts of violence against targeted groups, and it is, with respect, a bogus freedom of speech argument to suggest that the urging of violence against groups could ever be excused by any of the activities in the various spheres identified by your proposed amendment. The offence-creating provisions are complementary to existing antivilification laws. Further, they extend those laws by outlawing the targeting of groups and members of groups distinguished by race, religion, nationality, national or ethnic origin, and political opinion. The ALRC noted concerns about the inclusion of those elements—political opinion and religion. While these would normally fall within protected free speech, the Law Reform Commission were not convinced that the concerns were persuasive in relation to an offence that seeks to protect a religious or political group from being subjected to force or violence, and the government agrees with the conclusion from the Law Reform Commission.

I go to the question of substituting the phrase ‘is intended’ in the definition of urging violence, as proposed by the Greens amendments. This would make the offence very difficult to prosecute. Its effect would be to make it easier for an individual to urge others to engage in violence and escape prosecution. Replacing the formulation ‘would threaten the peace’ with ‘is intended to threaten the peace’ would significantly increase the evidentiary burden for the prosecution. The government believes that the current formulation in the bill strikes the right balance.

I then go to amendments (10) and (14), which go to the ‘artistic endeavours’ question. It is the government’s view that this is not a necessary set of amendments. The question is already covered by the good faith defence in section 80.3 of the Criminal Code, which the government proposes to expand to explicitly recognise the matters identified in the amendment. The ‘urging violence’ offences in the bill are subject to the good faith defence at section 80.3 of the Criminal Code. Some have suggested that the good faith defence does not apply to situations such as a positive portrayal of a suicide bomber in a
painting or a play. This proposition ignores the fact that a positive portrayal could be for many reasons, and the prosecution must prove beyond reasonable doubt that the painter or playwright intended to urge the use of force or violence or intended to assist an enemy of Australia. It is only when proof of intent is possible that the defence becomes relevant.

The good faith defence would be available to those making a political point to do so within the government’s policies. The amendments suggested by the Australian Greens suggest adding new defences relating to artistic works, statements and public affairs. Adding special defences for artistic, educational and journalistic works is unnecessary as legitimate artistic, educational and journalistic works are already covered by the existing section 80.3 of the Criminal Code.

The danger with using special defences is that terrorists will attempt to use education of the arts and journalism to justify their conduct. It is also important to remember that the offences only cover conduct that intentionally urges violence. I hope that I have addressed the questions that you raised.

Senator LUDLAM (Western Australia) (6.16 pm)—In some way, Minister. I will keep my remarks very brief and then move on.

We had a very interesting discussion just now about the need for anti-vilification legislation and its importance, whether it is against a minority group or not. But at no stage, Minister, have you addressed the question or the amendment that we have proposed at No. 15, that these offences simply fall in the Criminal Code with anti-vilification offences and that we do not need to contemplate them as acts of terrorism. I hoped that one of the intentions of moving one of those amendments, particularly No. 15, was that these amendments are simply in the wrong place. We are conflating—I think quite dangerously—terrorism related offences which give rise to harm to the Commonwealth, or a threat to the Commonwealth or to the government of Australia, and anti-vilification offences, which I agree are extremely important for protecting groups, whether they be marginalised or not, from violence or threats of violence.

I still do not quite understand the government’s intention or the opposition’s support for conflating them and keeping them in the same place. All that our amendment 15 was doing was actually repositioning these offences within the Criminal Code. I just wonder whether you would like to address that question briefly, Minister?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (6.17 pm)—I apologise, Senator, for not addressing it in my earlier contribution.

The government believes that the offences you refer to are appropriately located in chapter 5 of the Criminal Code, which deals with the security of the Commonwealth. As you would be aware, the explanatory memorandum was amended to explain further why this is the case.

The urgent violence offences criminalise the urging of force or violence, and while the offences in section 82A and 82B in effect condemn ethno-racially or religiously motivated discrimination, they are serious criminal offences that target conduct that has the potential to impact on the security of the Commonwealth. The offences have been carefully drafted to capture conduct that is criminally culpable. I hope that this is of assistance.

Senator LUDLAM (Western Australia) (6.18 pm)—by leave—I move Australian Greens amendments (7) to (15) on sheet 6181 together:
(7) Schedule 1, item 35, page 11 (line 21), omit “would”; substitute “is intended to”.

(8) Schedule 1, item 35, page 11 (line 25) to page 12 (line 6), omit subsections 80.2A(2) and (3), substitute:

(3) The fault element for paragraph (1)(c) is recklessness.

Note: For recklessness, see section 5.4.

(9) Schedule 1, item 35, page 12 (line 13), omit “subsection (2)”, substitute “subsection 290.1(1)”.

(10) Schedule 1, item 35, page 12 (after line 6), after subsection 80.2A(3), insert:

(3A) It is a defence to a prosecution of an offence against subsection (1) that the conduct that constituted the offence occurred:

(a) in the development, performance, exhibition or distribution of an artistic work; or

(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or

(c) in the dissemination of news or current affairs.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3A). See subsection 13.3(3).

(11) Schedule 1, item 35, page 12 (line 32), omit “would”, substitute “is intended to”.

(12) Schedule 1, item 35, page 13 (lines 3 to 20), omit subsections 80.2B(2), (3) and (4), substitute:

(3) For the purposes of paragraph (1)(c), it is immaterial whether the targeted person actually is a member of the targeted group.

(4) The fault element for paragraph (1)(d) is recklessness.

Note: For recklessness, see section 5.4.

(13) Schedule 1, item 35, page 13 (line 27), omit “subsection (2)”, substitute “subsection 290.2(1)”.

(14) Schedule 1, item 35, page 13 (after line 20), after subsection 80.2B(4), insert:

(4A) It is a defence to a prosecution of an offence against subsection (1) that the conduct that constituted the offence occurred:

(a) in the development, performance, exhibition or distribution of an artistic work; or

(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or

(c) in the dissemination of news or current affairs.

Note: A defendant bears an evidential burden in relation to a matter in subsection (4A). See subsection 13.3(3).

(15) Schedule 1, Part 2, page 14 (after line 5), at the end of the Part, add:

38 Before Part 9.1 of Chapter 9 of the Criminal Code

Insert:

PART 9.1A—URGING VIOLENCE AGAINST GROUPS IN THE COMMUNITY

290.1 Urging violence against groups in the community

(1) A person (the first person) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a group (the targeted group); and

(b) force or violence is reasonably likely to occur; and

(c) the targeted group is distinguished by race, nationality or national or ethnic origin.
Penalty: Imprisonment for 5 years.
Note: For intention, see section 5.2.
(2) The fault element for paragraph (1)(c) is recklessness.
Note: For recklessness, see section 5.4.
(3) It is a defence to a prosecution of an offence against subsection (1) that the conduct that constituted the offence occurred:
(a) in the development, performance, exhibition or distribution of an artistic work; or
(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
(c) in the dissemination of news or current affairs.
Note: A defendant bears an evidential burden in relation to a matter in subsection (3). See subsection 13.3(3).

290.2 Urging violence against members of groups in the community
(1) A person (the first person) commits an offence if:
(a) the first person intentionally urges another person, or a group, to use force or violence against a person (the targeted person); and
(b) force or violence is reasonably likely to occur; and
(c) the first person does so because of his or her belief that the targeted person is a member of a group (the targeted group); and
(d) the targeted group is distinguished by race, nationality or national or ethnic origin.

Penalty: Imprisonment for 5 years.
Note: For intention, see section 5.2.
(2) For the purposes of paragraph (1)(c), it is immaterial whether the targeted person actually is a member of the targeted group.
(3) The fault element for paragraph (1)(d) is recklessness.
Note: For recklessness, see section 5.4.
(4) It is a defence to a prosecution of an offence against subsection (1) that the conduct that constituted the offence occurred:
(a) in the development, performance, exhibition or distribution of an artistic work; or
(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
(c) in the dissemination of news or current affairs.
Note: A defendant bears an evidential burden in relation to a matter in subsection (4). See subsection 13.3(3).

Question negatived.

Senator LUDLAM (Western Australia) (6.18 pm)—by leave—I move Australian Greens amendments (17) to (20) on sheet 6181 together:
(17) Schedule 2, page 15 (before line 8), before item 2, insert:

1A Paragraphs 102.1(1A)(a) and (b) of the Criminal Code
Repeal the paragraphs, substitute:
(a) the organisation directly counsels or urges the doing of a terrorist act; or
(b) the organisation directly provides instruction on the doing of a terrorist act.

(18) Schedule 2, item 2, page 15 (lines 8 and 9), omit the item, substitute:
Paragraph 102.1(1A)(c) of the Criminal Code

Repeal the paragraph.

Schedule 2, page 15 (after line 20), after item 4, insert:

4A After subsection 102.1(2) of the Criminal Code

Insert:

For the purposes of being satisfied on reasonable grounds under paragraph (2)(b) that an organisation advocates the doing of a terrorist act, the Minister must have regard to whether:

(a) the person advocating a terrorist act is the leader of the organisation;
(b) the advocacy is in any official material distributed by the organisation;
(c) the advocacy is accepted or rejected by other members of the organisation as representing the views of the organisation;
(d) the organisation has any other involvement in terrorism;
(e) the person advocating terrorism did not intend for a terrorist act to be committed.

Schedule 2, page 15 (after line 20), after item 4, insert:

4B After section 102.1 of the Criminal Code

Insert:

102.1AA Review by the Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal for review of a decision to specify an organisation by regulations made for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1.

The regulations may prescribe the procedures to be followed by the Tribunal in considering an application under subsection (1).

Under section 102.1 of the Criminal Code the government may proscribe a certain organisation as a terrorist organisation. As drafted by the government, the bill extends this proscription period for such organisations from two to three years. We do not oppose this amendment in principle but we do believe that it should be subject to important safeguards.

Being proscribed as a terrorist organisation carries serious repercussions for the organisation, its members and outsiders for good reason. For example, the offences for being a member of a terrorist organisation, supporting a terrorist organisation and receiving training from or providing training to a terrorist organisation carry penalties ranging from 10 years to life imprisonment.

Due to the serious repercussions that flow from being proscribed, as well as the extension of the proscription period, we believe this power should be counterbalanced to ensure that the process is accountable. It is not to undermine the process where we do proscribe such organisations, but just to be very aware of the very serious nature of the offences that arise once you have been proscribed. We believe there need to be some checks and balances in the system to ensure that we are, in fact, correctly targeting the kinds of organisations that most Australians would find repugnant but that we are not catching innocent groups or innocent people up in the net.

For this reason, we believe that there should be an opportunity for organisations that are proscribed as terrorist organisations to appeal the merits of the decision under the Administrative Appeals Tribunal Act 1975. I do not think that this is necessarily going to be a live issue for most of the groups that we are probably contemplating—those that most people consider from reports in the media to be terrorist organisations. But I want to con-
sider, perhaps, how we may have treated an organisation supporting the ANC during the anti-apartheid movement in South Africa, or even—to pick an example closer to home—the activities of Fretilin and the activities of people in Timor who, at the time, were conducting an armed resistance against a government that the Australian government considered lawful. Quite reasonably we could have considered people supporting Timorese freedom fighters in Timor-Leste as terrorists and they could therefore have been proscribed, and this range of offences could have been activated. We believe that, effectively, it is very important to take care, given that sometimes a situation probably does seem very black-and-white but that there are very serious shades of grey.

In regard to the grounds for the proscription of a terrorist organisation, we believe that the bill’s amendment to section 102(1A) of the code is an improvement as it clarifies that the organisation may only be listed if it directly praises the doing of a terrorist act in circumstances where there is a substantial risk of leading a person, regardless of their age or their mental impairment, to engage in a terrorist act. So there is some improvement and, we believe, some tightening to the definitions that has occurred here. But it is our view that this minor amendment does not go far enough as the definition of ‘advocates’ in that same section 102.1(1A) is too broad and may restrict legitimate political dissent and therefore be in breach of Australia’s obligations under article 19 of the ICCPR to ensure that right to freedom of expression.

Under subsection 102.1(2)(b) an organisation may be listed as a terrorist organisation if he or she is satisfied that the organisation ‘advocates the doing of a terrorist act’. We believe that proscribing an organisation on the basis that it advocates the doing of a terrorist act is very wide and goes beyond the usual criminalisation of incitement to commit a criminal act. It is also potentially in breach, as I have said, of article 19 of the ICCPR which protects freedom to express legitimate political views. If advocacy is to remain as a ground for proscribing terrorist organisations—and the government clearly believes that it should—then this should be narrowed, we believe, in two ways. Firstly, in subsections (a) and (b) of the definition remove the term ‘indirectly’ so that only directly counselling, urging or instructing terrorist acts to occur attracts criminal liability. I think that would be an appropriate redrawing of that boundary. Secondly, subsection (c) of the definition, which relates to the praising of a terrorist act, should be repealed as such an act is too tenuous a link with the actual committal of a terrorism offence. This would implement recommendation 9 of the Sheller report.

Finally, if advocating the doing of a terrorist act is to remain a criminal offence, there is a need to clarify situations in which an individual or a small group of individuals within a group advocate the doing of such an act as opposed to the organisation as a whole which may favour non-violent means to have their message heard. To provide some concrete examples, there is real concern that proscribing an organisation that advocates the doing of such an act may result in the proscription, for example, of an organisation where the person who praised the act is not the leader of the group or organisation, the statement is not an official material distributed by the organisation, the statement is not accepted or may even, in fact, have been rejected by other members as representing the views of the group, the organisation may have no involvement or no other involvement in terrorism and the person praising such acts did not intend for an act to be committed. Adding to this concern are statements in the EM that advocates include all type of communication, commentary and
conduct. Part of the amendments that we are putting to you go to that ability for review and the ability for a group to make its case. If that appeal is not accepted then so be it, but we believe, as I stated at the outset for the reasons there, that people who would find themselves within a proscribed group and who face a very serious range of potential surveillance and so on and potentially very serious imprisonment should at least have the right of appeal if this group finds itself on the proscription list, particularly if we are extending the period from two to three years. I commend these amendments (17) to (20) to the Senate.

Senator BRANDIS (Queensland) (6.25 pm)—The opposition opposes these amendments because we regard them in each case as an undesirable weakening of the scope of the existing terrorism laws. Amendment (17) would repeal from the existing provisions of the Criminal Code and from the definition of advocacy of a terrorist act in each case the word ‘indirectly’. We are of the view that either the direct or indirect counselling or urging of the doing of a terrorist act or providing instruction on the doing of terrorist act respectively as the provision currently provides for is appropriate. Not all invidious conduct is direct and for that reason indirect conduct should in our view continue to be caught.

Amendment (18) would repeal from the Criminal Code the offence of praising the doing of a terrorist act where there is a risk that such praise might have the effect of leading a person to engage in a terrorist act. We know—and this is a decision that the legislature made when these provisions were inserted, I think, in 2005—that one of the most insidious ways in which terrorism may be promoted and almost glorified is for the conduct of terrorists to be characterised as martyrdom or some other glamorous form of activity when in fact terrorism is nothing but murder, murder for political motivation but murder nevertheless. In these circumstances the existing act, in order to try in every possible way to stop at the source the spread of, in certain communities or populations, an attitude of tolerance or acceptability to terrorism, was in my view quite right to include praising terrorism as within the category of advocacy offences.

In relation to amendment (19) the proposed insertion of guidance for the reasonable grounds for the minister to be satisfied that an organisation advocates doing a terrorist act I must say with respect, Senator Ludlum, I do not think any of those five criteria the amendment proposes are of themselves bad. I think those are the kinds of matters the minister would be bound to have regard to as well—and indeed other criteria which are not listed in your proposed amendment. I think where there is a ministerial discretion vested by an act of parliament and the minister is required to be satisfied of certain statutory criteria on reasonable grounds, it is often bad practice to be too prescriptive in directing the minister’s mind as to what is or is not to be had regard to in forming his conclusion. The two issues that matter are whether the minister addresses his mind to the object of his statutory power and whether his process of decision making is reasonable. Having a prescriptive but by no means exhaustive list of those matters is often more unhelpful than helpful in allowing the minister to come to an appropriate decision.

Senator SHERRY (Tasmania—Minister for Small Business, Minister Assisting on Deregulation and Minister Assisting the Minister for Tourism) (6.29 pm)—In the very brief time I have available—I am sure that whoever takes over from me after dinner will want to extend these remarks—I agree with the shadow Attorney-General, Senator Brandis, that to remove in amendment (17) ‘indirectly’ from the paragraphs of the definition
of ‘advocates’ would mean that organisations could potentially avoid being proscribed.

Sitting suspended from 6.30 pm to 7.30 pm

The TEMPORARY CHAIRMAN (Senator Fisher)—The committee is considering the National Security Legislation Amendment Bill 2010 and amendments (17) to (20) moved by Senator Ludlam. The question is that the amendments be agreed to.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (7.31 pm) — As I understand it, we are dealing with removing ‘directly’ from the definition of ‘advocates’ for the purposes of listing organisations. I think this matter might have been commenced just prior to the break for dinner, so there will be as little duplication as I can manage. This is a provision that will remove ‘directly’ from the paragraphs giving the definition of ‘advocates’. It would mean that organisations could potentially avoid being proscribed as terrorist organisations if they were careful to avoid directly counseling or urging or directly providing instruction on the doing of a terrorist act. It is possible that an organisation could indirectly provide instruction on the doing of a terrorist act or indirectly counsel or urge the doing of a terrorist act by drawing attention to material from other organisations or endorsing other organisations that counsel, urge or provide instruction on the doing of a terrorist act.

Senator LUDLAM (Western Australia) (7.32 pm) — There are a few different matters raised in amendments (17) to (20). Among them is the real effect of what we are trying to discuss. Hopefully, we will move the debate forward somewhat. Given the seriousness of the offences that you can be accused of if you are indeed seen to be counselling or urging a terrorist act, we are simply seeking to narrow the range of factors that could be considered to be advocating terrorism. I just wonder, Minister, whether you would be able to give us some examples and put on record for us the factors that the minister will have regard to when deciding to proscribe a terrorist organisation. I think the government and the opposition are also seeking to jointly oppose the proposition that there be some means of appeal once you find yourself on this list for a period of three years—during which you, your family, everyone you associate with, everybody you make a telephone call to or everybody who calls you can be subject to an extremely severe range of not only penalties but also quite serious surveillance. I just wonder whether you could give some examples of exactly what factors the minister will have regard to when deciding to proscribe a terrorist organisation, if the matters that I have raised here are not deemed to be sufficient or appropriate.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (7.33 pm) — To your proposed amendment (20), concerning the insertion of an AAT review mechanism for the listing of terrorist organisations, I have the following response. The Parliamentary Joint Committee on Intelligence and Security considered whether merits review by the Administrative Appeals Tribunal should be available in its inquiry into the proscription of terrorist organisations under the Australian Criminal Code, the report of which was tabled on 20 September 2007. The committee concluded that merits review was not necessary. Regulations listing organisations as terrorist organisations currently expire after two years. This bill would amend that to a three-year period. This provides for regular review and reassessment as to whether an organisation continues to meet the definition of a terrorist organisation. Adding a process of merits review would lead to uncertainty and the potential for rolling reviews of listing decisions. Listing regu-
lations are disallowable instruments and are subject to parliamentary scrutiny and disallowance. The Parliamentary Joint Committee on Intelligence and Security reviews listing decisions and recommends to parliament whether listing regulations should be disallowed. Additionally, a person or organisation can make an application to the Attorney-General to delist an organisation at any time. Judicial review is also available under the Administrative Decisions (Judicial Review) Act 1977. I am also advised that subsections (2)(a) and (2)(b) provide you with some comfort on this point.

Senator LUDDLAM (Western Australia) (7.36 pm)—Could you just repeat the section.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (7.36 pm)—It is sections 102.1(2)(a) and 102.1(2)(b).

Senator LUDDLAM (Western Australia) (7.36 pm)—For the benefit of the record, Minister, can you just describe what that means, what that does. We are now in the middle of the debate and we may not get this opportunity for another couple of years. Could you tell us how you think that meets the concerns we are raising in this part of the debate.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (7.36 pm)—Would it be of assistance if I read the section or do you simply want me to go to articulating—

Senator Ludlam—That is fine.

Senator FEENEY—Senator, (2)(a) and (b) go to the fact that there is a definition of ‘terrorist organisation’ and that the minister must be satisfied on reasonable grounds that the organisation is ‘directly or indirectly engaged in, preparing, planning, assisting in or fostering’ terrorist acts. I will not read the whole section. But I understand that the non-statutory criteria that the advice to the Attorney-General then depends on go to questions of an organisation’s engagement in terrorism, its ideology and links to other terrorist groups or networks, its links to Australia, its threats to Australian interests, its proscription by the UN or like-minded countries—obviously, how it behaves in other jurisdictions—and its engagement in peace or mediation processes.

Senator LUDDLAM (Western Australia) (7.38 pm)—Thank you, Minister. Just so the minister is aware—he was not at the table earlier when we were discussing these matters—what we are seeking to do is actually somewhat different. We have no intention of meddling with the definition that you just read out, Minister, from (2)(a) and (b). What we are seeking to do is to make sure that people are not inadvertently taking credit for material that may not represent the views of the organisation or are not people whose views the organisation represents. These are the matters that I was discussing earlier. Do we know that the person advocating the act is the leader or is representative of that organisation? I would have thought these were the sorts of matters where it would not do any harm—in fact, it would do quite substantial good—to guide the discretion of the minister when considering this, given how long organisations are going to be listed and given that the government is refusing to allow any process of review. However, I think we have canvassed these issues, and the chamber is well aware of what we are proposing. I would ask you, Madam Chair Fisher, to put the amendments to a vote.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (7.39 pm)—Before we go to that point, it is probably appropriate for me to put some other comments on the record in relation to Senator Ludlam’s amendments (18) and (19).
apologise for not having raised these at an earlier juncture.

With respect to Greens amendment (18), it is the government’s position that that amendment would remove the element to do with an organisation that ‘directly praises the doing of a terrorist act’ from the definition of ‘advocates’ and, further, that the amendment to this provision in the bill, which will provide that such praise will only constitute advocacy if there is a substantial risk that it will lead a person to engage in a terrorist act, responds to concerns raised about this provision and ensures that it does not have an unintentionally broad effect.

With respect to Australian Greens amendment (19), it is the government’s position that that amendment is not necessary. The question of whether an organisation advocates the doing of a terrorist act is a question of fact to be determined in the light of the relevant circumstances of each case. Where one or more individuals who are members of the organisation advocate the doing of a terrorist act, consideration must be given to whether the actions of those individuals constitute actions that can be attributed to the organisation itself. Lastly, in determining whether an organisation advocates the doing of a terrorist act, all relevant information would be taken into account, including but not necessarily limited to the matters outlined in your amendment (19), Senator Ludlam.

Question negatived.

Senator LUDLAM (Western Australia) (7.41 pm)—I will now backtrack to Greens amendment (16) on sheet 6181, which relates to materials that are refused classification. I move:

(16) Schedule 2, item 1, page 15 (lines 5 and 6), omit the item, substitute:

1 Section 9A
Repeal the section.

We support the proposed amendment to section 9A(2)(c), the inclusion of the word ‘substantial’ before ‘risk’ for the purposes of the definition of ‘advocates’, as we have just been discussing in relation to the proscription of a terrorist organisation. However, the provision remains flawed as it does not rely on the reasonable adult test on which Australia’s classification regime has traditionally been based. I put this question to the minister: why, with these categories of offences, have we taken on such a different test? The provision that we are discussing here relies on the test of ‘a person of any age or mental impairment who may be led to engage in a terrorist act’. If you move upstream from that, it looks to me as though a vastly broader range of material could be caught, some of it probably clearly fictional, if the person who is viewing that material can be of any age or suffer a mental impairment. I think, therefore, there is a risk that the provision will catch a much broader array of material.

It is not clear—and I am hoping that the minister and the opposition can clarify why they are voting against this, I think, very sensible amendment—why section 9A is required, given the previously existing prohibition on material that will ‘promote, incite or instruct in matters of crime or violence’. We are not seeking to amend that in any way. The decision to move away from the reasonable adult test, on the other hand, does not seem to have been justified anywhere by the government, or by the opposition in the comments that were offered up by Senator Brandis earlier. I invite the minister, and Senator Parry, if he wishes, to make a comment.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (7.43 pm)—In terms of Greens amendment (16)—that is, your proposal to repeal the classification provision—the government believes this provision is important and that it is not suffi-

Section 9A recognises that some communications about doing a terrorist act are inherently dangerous because they could inspire a person to cause harm to the community. This could be the case where it may not be possible to show that a person had any intention that a specific terrorist offence be committed or to communicate the material to any particular person. Such actions fall outside the prohibitions on materials that ‘promote, incite or instruct in matters of crime or violence’. Further, it is important to note that section 9A is not so broad that it encompasses all forms of advocacy and support of any organisation. Under section 9A(3) of the classification act, material does not advocate the doing of a terrorist act if ‘the depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire’.

**Senator PARRY** (Tasmania) (7.44 pm)—Likewise, for the benefit of Senator Ludlam, we oppose the amendment. We believe that anything that will promote, incite or instruct a person to commit a terrorist offence should be clearly excluded from and refused classification.

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (7.45 pm)—With your indulgence, Madam Temporary Chair, to add to my earlier remarks, the government asserts that this proposed section aims to protect impressionable and vulnerable people from material encouraging the doing of terrorist acts: for example, as a matter of religious duty. The reference in proposed section 9A(2)(c) does not operate in isolation but, rather, as part of a very specific set of circumstances which applies where certain actions could have an extremely negative impact on vulnerable persons.

**Senator LUDLAM** (Western Australia) (7.45 pm)—I will not seek to pursue this matter any further except to say that I would completely agree with every single word that Senator Parry just said in his reasons for opposing the amendment. We are not seeking to promote material that incites terrorism. I am hoping I am not going to have to repeat myself as we move every single one of these amendments. It is not what this is about. The fact here is that we have quite radically changed the burden of proof as to what could be considered offensive material if we consider that someone very young, someone very impressionable, someone with a completely different cultural background or someone with any kind of mental impairment at all could be persuaded to commit some kind of hypothetical act on the viewing of this material. I think we have quite grievously and unnecessarily expanded the range of material to include stuff that in no way could be considered to be inciting of terrorism. Senator Parry, I completely agree with your comments, but I do not think it was an argument against this particular amendment. Without further delay, I commend amendment (16) to the chamber.

Question negatived.

**Senator LUDLAM** (Western Australia) (7.47 pm)—by leave—I move amendments (21) and (22) on sheet 6181:

(21) Schedule 3, item 10, page 22 (line 16), omit “reasonably suspects”, substitute “believes on reasonable grounds”.

(22) Schedule 3, item 16, page 27 (line 19), omit “reasonably suspects”, substitute “believes on reasonable grounds”.

These two amendments regard the state of mind of the arresting officer. There is an inconsistency here between the state of mind required by a police officer to arrest a person...
without a warrant and required to continue to hold the person under arrest. Senators might consider this to be somewhat technical, but I think it is quite important. Section 3W(1) of the Crimes Act provides that an arresting officer must ‘believe on reasonable grounds’ that a person has committed an offence. This is inconsistent with section 23C(2)(b) and proposed section 23D(b) whereby an arresting officer needs to only ‘reasonably suspect’—that is the distinction I am drawing—that the accused committed an offence other than for which they were initially arrested. That is not the offence for which they were originally arrested but something else that a suspicion forms post arrest.

It was held in the case of George v Rockett (1990) 170 CLR 104 that a reasonable suspicion is a lower threshold than reasonable belief. That is the distinction I am drawing here. There does not appear to be any reason for this inconsistency and we therefore propose that proposed section 23DB(2)(b) be amended to refer to a belief on reasonable grounds—so this is doing nothing more than providing consistency—and also that a clause be inserted into the bill that amends section 23C(2)(b) consequentially. That is all these two amendments seek to do.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (7.48 pm)—The government does not support the Greens amendments (21) and (22). These amendments would change the thresholds in paragraphs 23C(2)(b) and 23DB(2)(b) from ‘suspects’ to ‘believes’. So if a person has been arrested for a Commonwealth offence the person may, while arrested for the offence, be detained for the purpose of investigating whether the person committed another offence the investigating officer reasonably believes rather than suspects. Reasonable grounds to suspect require a higher degree of satisfaction of the facts than reasonable grounds to suspect. It must be remembered that police must always have the requisite belief on reasonable grounds that the person has committed a Commonwealth offence for the person to be lawfully detained. This is a strong safeguard. If the thresholds were raised to that of belief, then police investigators would be constrained in their ability to investigate the criminal activity associated with the arrested person. This would not adequately recognise the requirements of contemporary law enforcement.

Senator PARRY (Tasmania) (7.50 pm)—The opposition also opposes these two amendments. The government’s position is the one that we adopt on this. We have heard evidence in the Senate Standing Committee on Legal and Constitutional Affairs and other committees that if you do increase the threshold from ‘reasonably suspects’ to ‘believes on reasonable grounds’ it does make the job of a police officer on the ground, in the field, a lot more difficult. These are serious matters and we believe the police need every tool they can have. This provision would weaken a tool that they have to combat terrorism.

Senator LUDLAM (Western Australia) (7.50 pm)—I cannot describe those responses as anything other than entirely inadequate, but I will move on.

Question negatived.

Senator LUDLAM (Western Australia) (7.51 pm)—The next batch of amendments are Greens amendments (23) to (29). I recognise that two of these amendments I am seeking to oppose, so I think I am required to move them separately. However, I might just speak to them all before seeking to move them that way.

The TEMPORARY CHAIRMAN (Senator Fisher)—Senator, you can move them together but the questions will be separated.
Senator LUDLAM (Western Australia) (7.52 pm)—by leave—I move Greens amendments (23) to (25), (28) and (29) on sheet 6181:

(23) Schedule 3, item 16, page 29 (line 14), omit “23DC,”.

(24) Schedule 3, item 16, page 29 (lines 23 to 25), omit paragraph 23DB(9)(m).

(25) Schedule 3, item 16, page 29 (lines 26 to 32), omit subsection 23DB(10), substitute:

(10) To avoid doubt subsection (9) does not prevent the person being questioned during a time covered by a paragraph of subsection (9), but if the person is questioned during such a time, the time is not to be disregarded.

(28) Schedule 3, item 16, page 37 (lines 7 and 8), omit “20 hours”, substitute “44 hours”.

(29) Schedule 3, item 16, page 37 (line 12), omit “, 23DD(5)(b)”.

We also oppose schedule 3 in the following terms:

(26) Schedule 3, item 16, page 29 (line 33) to page 30 (line 4), subsection 23DB(11) TO BE OPPOSED.

(27) Schedule 3, item 16, page 30 (line 12) to page 34 (line 8), sections 23DC and 23DD TO BE OPPOSED.

These are extremely important. They are among the more important items that I am bringing to the chamber tonight, and that is because most Australians and most people living in democratic societies would, I think, have a reasonable belief—or even a reasonable suspicion—that they can be free from being arbitrarily detained for long periods of time—that is, snatched, held without charge, interrogated, unable to contact lawyers necessarily or family or other people. In some cases, according to these laws, you are able to let people know that you are being held but you cannot say why. These specifically go to precharge detention provisions, which so notoriously came to light in the instance of Dr Haneef, who did fall foul of them.

There are some changes here. I think the way the government has approached these provisions of the terror laws, which were so soundly criticised, in a way provides us with a bit of a microcosm for how the government has handled these reforms overall—that is, with timidity and without any imagination or any ability to look a little bit more deeply into the debate and into the contributions some people have made. The existence of the precharge detention and the periods of time for which people can disappear received a very close scrutiny and subsequent criticism from the Clarke inquiry in the wake of the Mohammed Haneef fiasco.

Firstly, we do commend the government on the bill’s amendment to restrict the hearing and the grant of applications to extend time under proposed section 23DB of the Crimes Act to a magistrate, rather than under the existing framework whereby applications may also be approved by JPs or a bail justice. So the government is to be congratulated for narrowing that range of people and setting the bar a little bit higher as to who is able to allow these things to occur. We also support the government’s decision to place a cap on time that individuals may be held in precharge detention even though it does not go nearly far enough to ensure compliance with Australia’s international obligations that people not to be held arbitrarily without charge for extended periods of time.

Part 1C of the Crimes Act currently provides the Australian Federal Police with the power to arrest and detain a person without a warrant for an indefinite period of time, or the AFP may investigate as to whether the individual has committed a terrorist offence. Part of the problem with the procedure for precharge detention is the very confusing nature in which the current section 23CA of the Crimes Act is drafted. You can see here, I think, the original intention of the act has had successive legislative grafts attached to it. It
has proliferated and has become very complex, I suspect, even for officers in the field who are trying to work with these sections of the legislation.

There are actually three separate mechanisms for extending the investigation period beyond the usual four-hour limit for a terrorism offence. Do we actually need three different ways for the detention period to be delayed or extended? I can recall quite clearly Senator Parry sitting next to me when this matter was being heard by the Legal and Constitutional Affairs Legislation Committee and it did take a while for the committee to nut out exactly how the system works because it is so inordinately complex. So senators should be aware that we are seeking to do two things here, effectively. One is to draw down the period of time for which people can arbitrarily disappear and the second is to simplify the mechanism by which the unspecified time can be extended—that is, the dead time that was used to hold Dr Haneef—and I am hoping that we can hold a debate on the merits of these two separate ideas.

Of the three mechanisms, firstly, we have an extension of investigation time mechanism, which provides that applications may be made to a judicial officer to increase the investigation period any number of times to a maximum of 20 hours, meaning that the total investigation period may now be extended to 24 hours. So we started with four hours and we have used the first mechanism to add another 20 hours. Secondly, there is a specified disregarded time mechanism, which is actually one that we support. Specified time includes categories of time such as for the individual to communicate with a legal practitioner or with their family, to receive medical attention, or to rest and recuperate. We do not oppose such specified time being disregarded. Obviously if the suspect is asleep, then the clock should stop, and we think that is appropriate.

However, we are very concerned with the third extension of time mechanism for what is called ‘unspecified disregarded time’ contained in section 23CA(8)(m) of the Crimes Act and proposed in section 23DB(9)(m) of this bill. Under the unspecified disregarded time mechanism as it currently exists there is no cap on the amount of time an individual may be detained. It is this provision which is responsible for Dr Haneef being held for 12 days without charge by the Australian Federal Police in a case that, from the outset probably, became highly politicised.

The amendment proposed by the government in this bill of placing a seven-day cap on unspecified disregarded time is of course an improvement on there being an indefinite cap or effectively no cap at all. But this amendment does not scratch the surface on the human rights concerns with such a provision. It leaves a mechanism in place and it leaves an inordinate complexity in the police officers being able to apply for three different ways of extending the period of time someone is detained. Even with a seven-day cap in place on unspecified disregarded time, there is still the initial four hours that can be extended to 24 hours by an application to a judicial officer. So therefore we are left with a running total of eight days, which may in fact end up being much more than eight—this is under the government’s proposed amendments—with the inclusion of any of the categories of specified disregarded time, that is, sleep, time zone differences, or whatever that might be, which includes that range of times including rest and recuperation. We could assume safely, I think, that rest and recuperation could be quite an extensive period of time if the individual has been detained for eight days without charge. It will most likely be a time period not much less than 12 days, the same period of time that Dr
Haneef was detained. I think that it is entirely questionable whether a notional seven-day cap, which can be blown out to as many as 12, we believe, is any kind of improvement at all.

As with all terrorism related offences and procedures, the Australian Greens understand the need to protect the Australian public from violence, but we are not convinced that an individual should be subject to being detained for more than seven days without charge, which is what these amendments do. Terrorism related offences are international in scope and therefore there are likely to be practical differences in obtaining communications with relevant law enforcement agencies elsewhere in the world, and I think we probably did see that with Dr Haneef. However, there are many more offences with an international scope completely unrelated to terrorism where precharge detention is not altered from the usual investigation period. The two that come to mind most obviously would be people-smuggling offences or child pornography offences. So we believe the bill's amendment is still not proportionate or justified in that it is in breach of Australia's international obligations. Article 9(1) of the ICCPR provides the right not to be arbitrarily detained. Article 9(3) provides that an individual charge must be brought promptly before a judge. So the bill's amendment for a cap of seven days on unspecified disregarded time does not alter the fact that Australia will be in breach of its obligations under the ICCPR. This is the fourth or fifth time that I have mentioned this instrument in the course of the debate tonight and it does not seem to upset the government much to continually be reminded that we are in breach of international human rights obligations.

Case law from the European Court of Human Rights on the equivalent provision of paragraph 3 of article 9 of the ICCPR and the European Convention on Human Rights deemed that there should be a strict time limit of four days on detention without judicial control, which is obviously considerably less than the seven-day cap that is proposed by the bill. The Australian Greens propose that the precharge detention regime be simplified and we ensure that Australia is compliant with its international obligations. So they are the two things: the period of time and the mechanisms whereby it is extended.

We believe that proposed section 23DB(9)(m) should be removed from the bill, as stated in the Clarke report in relation to the equivalent provision currently in the Crimes Act. Clarke says:

It is not accurate to describe the s. 23CA(8)(m) dead time as dead time. Rather, it is additional investigation time, and the only reason questioning is suspended during that time is because the section so permits.

It is unjustifiable. Proposed section 23CA(8)(m) is, therefore, out of place amongst the other dead time provisions for sleep or whatever and should be included within the power for the AFP to have investigation time extended. Having three mechanisms whereby investigation time may be extended is unnecessary and creates further confusion as to the powers of the AFP and the rights of the individual.

Therefore, the Australian Greens propose, in line with the Clarke report recommendations, that the bill be simplified by removing the unspecified disregarded time mechanisms contained in proposed section 23DB(9)(m). We would then have just one system for extending investigation time and that would be through applying to a judicial officer, as per the government's amendments, to extend investigation time beyond the usual four-hour investigation period.

The Greens propose that accompanying the simplification of the precharge detention regime should be providing a judicial officer
with the power to extend investigation time beyond the 20 hours proposed in the bill. We support an extension of 44 hours to bring the maximum investigation period with the approval of a judicial officer to 48 hours. That is the total cap we are proposing here with these amendments tonight—two days. Even with the inclusion of specified disregarded time, the precharge detention regime would be in compliance with Australia’s international obligations to not arbitrarily detain as has been interpreted by the European Court of Human Rights.

So, as noted before, I am sure I am going to win a couple of these votes tonight. I sincerely hope that this is one of them.

Senator PARRY (Tasmania) (8.02 pm)—I do not like to disappoint Senator Ludlam but, sadly, I have to. I do agree that the coalition and I personally in the committee hearing found these provisions exceptionally complicated. A request was made to the Attorney-General’s Department to examine the entire regime of time frames. However, having said that, as Senator Ludlam has gone through the Greens amendments I think we have seen that there is still a large degree of complexity attached to the Greens’ method of determining how time frames will be established. We therefore are of a mind to support the government’s original amendments and not support the Greens amendments. However, we would still encourage a further wholesale review of the time frames, as highlighted in our committee report. I also add that the committee failed to make any firm recommendation in relation to times on this matter, leaving it to the goodwill of the Attorney-General’s Department to examine the time frames concerned.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (8.03 pm)—The government does not support amendment (23) and consequential amendments (24) and (25). Amendment (24) would remove a specific category of time that is specified by a magistrate and can be disregarded from the investigation period when a person has been arrested for a terrorism offence. This time may be necessary to, for example, collate information from an overseas country before presenting it to a suspect during questioning or waiting for overseas jurisdictions to respond to requests for critical information from the Australian Federal Police. The rationale for this category of disregarded time is that it is not always possible to predict the circumstances where time should be disregarded from the investigation period to enable a proper precharge interview to take place. This ambiguity is balanced by requiring these periods of time to be authorised by a magistrate. Any time that is specified by a magistrate must be reasonable for it to be disregarded from the investigation period. Removing this category of disregarded time would not recognise the complex nature of terrorism investigations. The National Security Legislation Amendment Bill 2010 improves upon these provisions by setting a cap of seven days on the amount of time that can be specified by a magistrate and disregarded from the investigation period.

In addition, the bill will enhance existing safeguards by requiring an application for specified disregarded time to be in writing approved by a senior member of the AFP and given to the arrested person or their legal representative prior to a magistrate considering their application. The seven-day cap for detention responds directly to the Clarke inquiry report, which suggested that a cap of this duration would be appropriate. A single cap of 48 hours as proposed by the Greens does not adequately reflect the complexities of terrorist investigations. Unspecified disregarded time allows for the exchange of information with foreign law enforcement agencies.
The government does not support the Australian Greens’ opposition to proposed section 23DB(11). The government’s amendment will set up a maximum cap of seven days on the amount of time that can be specified by a magistrate and disregarded from the investigation period. This amendment is designed to provide greater certainty and directly responds to the Clarke inquiry report, which suggested that a seven-day cap would be appropriate.

The government does not support the Australian Greens’ proposal to remove proposed sections 23DC and 23DD. These sections will set out the process for making an application for a specified period of time that could then be disregarded under proposed section 23DB(9)(m). Proposed section 23DD will set out the process by which a magistrate could specify a period of time that could then be disregarded under proposed section 23DB(9)(m). These are important provisions that provide significant safeguards.

Lastly, with respect to Greens amendment (28), the government does not support that amendment. This amendment would increase the maximum period by which the investigation period could be extended, when a person has been arrested for a terrorism offence, from 20 hours to 44 hours. This would mean that a person could be detained for up to 48 hours as opposed to 24 hours. I understand this amendment is to complement the proposed Greens amendment to remove the provisions for time that can be specified by a magistrate and disregarded from the investigation period. However, a total investigation period of two days is too restrictive for law enforcement agencies in terrorism cases. The government does not believe the provisions allow arbitrary detention and does believe that they are consistent with the International Covenant on Civil and Political Rights. There are strict legislative requirements and judicial oversight, which are designed to ensure detention is never arbitrary.

Senator LUDLAM (Western Australia) (8.08 pm)—I am a little hurt to hear that Senator Parry thinks the Australian Greens amendments would leave the situation still complicated. And nowhere in the minister’s comments did he address the issue of why we need three separate mechanisms for extending the period of time for which people can disappear. Minister, I wonder if you could, as concisely as you are able, describe for us why we need three mechanism for extending investigative time. As an outsider, I fail to understand why our system has to be this complex. To me it looks very much as though we have a system that has been grafted onto and which has gradually evolved over time as people have added bits and pieces to the legislative framework without any fresh eyes looking at it and saying, ‘Why don’t we just do away with one of these mechanisms for extending time?’ We have one; we have acknowledged the necessity for two; I do not understand why we would need three.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (8.10 pm)—I am advised that, firstly, there are a significant number of safeguards in all three pathways which protect the accused and, secondly, that the reason there are three mechanisms simply reflects the fact that each terrorism case is a unique happening and each case would have, we can anticipate, an enormous number of unique and peculiar complications particular to that case. For instance, it may involve foreign jurisdictions and the need for us to work with overseas agencies and overseas governments. It may require intelligence and intelligence gathering. It may require many domestic agencies. On top of all of that, you can appreciate the fact that there will be a significant amount of domestic law and potentially international
law that comes into play as well. For those reasons, three mechanisms are deemed to provide investigators with the appropriate tools they need to conduct their work, and the legislation embodies safeguards and judicial review to protect those who are accused.

Senator LUDLAM (Western Australia) (8.11 pm)—Thank you, Minister, for what I think could best be described as a completely unsatisfactory response, but thank you nonetheless for seeking it from the officers here in the chamber.

The TEMPORARY CHAIRMAN (Senator Fisher)—The question is that Greens amendments (23), (24), (25), (28) and (29) on sheet 6181 be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Fisher)—The next question is in relation to Greens amendments (26) and (27). The question is that schedule 3 stand as printed.

Question agreed to.

Senator LUDLAM (Western Australia) (8.13 pm)—by leave—I move Greens amendments (30) and (31) on sheet 6181:

(30) Schedule 4, item 4, page 39 (after line 24), after subsection 3UEA(1), insert:

(1A) If one or more police officers have entered premises in accordance with subsection (1), one of them must, within 24 hours after the entry, apply for a retrospective search warrant.

(1B) The regulations must prescribe the requirements to be met before an issuing officer issues a retrospective warrant.

(1C) If the issuing officer does not issue the warrant, then any evidence obtained under subsection (1) or (2) is inadmissible in proceedings against a person.

(31) Schedule 4, page 40 (after line 29), after item 4, insert:

4A Before section 3UF

Insert:

3UEB Commissioner’s annual report to Minister

(1) As soon as practicable after 30 June in each year, the Commissioner of the Australian Federal Police must submit a report to the Minister setting out the details required by subsection (2) in relation to emergency entries to premises made by Australian Federal Police officers under subsection 3UEA(1) during the previous 12 months.

(2) The report must include the following details:

(a) the number of emergency entries that were made during the period to which the report relates;

(b) the number of applications for retrospective warrants that were made during the period to which the report relates;

(c) the number of applications for retrospective warrants that were refused by an issuing officer during the period to which the report relates;

(d) any other information prescribed for the purposes of this paragraph.

(3) The Commissioner must advise the Minister of any information in a report that, in the Commissioner’s opinion, should be excluded from the report before the report is laid before the Parliament because:

(a) the information, if made public, could reasonably be expected to:

(i) endanger a person’s safety; or

(ii) prejudice an investigation or prosecution; or

(b) making the information public would be contrary to the public interest for any other reason.

(4) The Minister must exclude information from a report if the Minister is satisfied on the advice of the Commissioner of any of the grounds set out in subsection (3) and must then cause a copy of
the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

(5) A report must not disclose any information that identifies any person involved in an emergency entry or related operation or that is likely to lead to such a person being identified.

These are probably the simplest two amendments of this batch that I am putting forward tonight. A key concern that we have with the proposed bill is the Australian Federal Police’s power for warrantless searches in proposed section 3UEA. The provision as we read it permits AFP officers to enter premises in emergency circumstances in relation to a terrorist offence where they believe there may be a risk to the safety of the public. So far, so good. Yet again we support the need to protect the Australian public from the harms associated with terrorism, but we are concerned that the proposed provision is in breach of another of Australia’s international obligations. If the proposed provision is to remain, it should be subject to some safeguards. This is especially the case considering an AFP officer must merely have a suspicion rather than a belief before deciding to search a premise under the proposed provision. Furthermore, we were not satisfied during the committee process that the current process of being required to obtain a warrant is actually a burden in emergency circumstances, considering that a warrant may be obtained at very short notice by way of telephone or fax, but we have not sought to make amendments in that regard.

The Australian Greens are particularly concerned that the proposed provision may be in breach of article 17 of the ICCPR—there we are in breach again—which provides:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence …

The use of police warrants is obviously a means by which the right to privacy of those residing at the premise can be protected. Therefore, circumstances in which entry to a premise should be permitted without a warrant should be limited and subject to safeguards. I am amazed that I am probably about to find out that the government and the opposition find that controversial. The Australian Greens, therefore, propose a retrospective warrant procedure whereby a judicial officer would, subsequent to a search, be required to obtain an ex post facto search warrant. The requirement of such a search warrant ensures that the police are required to appear before the judiciary and satisfy the judiciary to the same standard that they would in the case of a normal search warrant application of their right to search the premises.

We also propose that, if an ex post facto search warrant is not granted, any evidence obtained during the search be inadmissible. Here we are again trespassing on several hundred years of legal precedent. A final safeguard we propose would be to include a requirement for the AFP to report every 12 months to parliament on the occasions in which emergency warrantless searches were conducted under section 3UEA and whether a warrant for such a search was subsequently provided by the judiciary. So we are not seeking to amend the nature of the warrantless searches or necessarily raise the bar for who can apply for one or on what ground. I suppose what we are thinking about here is the ticking bomb scenario where the police officer believes that something is going on in the premises, they do not have time to make the phone call to get the warrant, they go in and there is or there is not some kind of dangerous situation that they
have been able to confront. That is all well
and good, and we are not seeking to amend
that. I do not know how often these sorts of
things would be applied for, but there is the
scenario. But I fail to see what exactly the
minister will have to come up with or why
the opposition would oppose an amendment
as straightforward as requiring the officer to
then go back and seek a post facto search
warrant to explain why they acted the way
they did. I will let the minister now explain
why that is a controversial proposition.

**Senator FEENEY** (Victoria—
Parliamentary Secretary for Defence) (8:17
pm)—The government does not accept
amendment (30). This amendment would
introduce an ex post facto warrant procedure
in proposed section 3UEA of the Crimes Act.
I understand this proposed amendment to
have arisen out of a concern that a police
officer may not be held accountable for their
actions. The proposed Greens amendments
are unnecessary to address this concern. The
power cannot be exercised covertly and a
seizure notice is required to be given to the
owner of anything that is taken from the
premises in accordance with existing section
3UF, which will be amended by this bill to
also apply to the proposed new section
3UEA.

It is important to note that this power is
not for general evidence gathering and, if in
the course of searching the premises for the
thing the police officer finds evidential mate-
rial that does not present a serious and immi-
nant threat to life, the police officer must
secure the premises and obtain a search war-
rant in order to seize it. The use of the power
will be scrutinised by the courts if criminal
proceedings are initiated. Furthermore, if a
person is concerned that the power is not
exercised correctly, they will be able to lodge
a complaint either directly with the AFP,
with the Australian Commission for Law
Enforcement Integrity or with the Common-
wealth Ombudsman, who could also investi-
gate the complaint.

The government also opposes Greens
amendment (31). The government certainly
believes there should be appropriate over-
sight of the AFP’s use of its powers but be-
lieves there are already mechanisms to en-
sure officers are accountable in their use of
the powers. As for the exercise of other pow-
ers, the Australian Federal Police would set
up mechanisms as part of its governance
framework to ensure powers are exercised
appropriately and that the grounds upon
which they are exercised are recorded after
the event. AFP internal accountability ar-
rangements, including professional stan-
dards, are sufficient. Furthermore, the power
is not covert. The government’s bill includes
a notification requirement to the occupier of
the premises. So a person could make a
complaint to the Ombudsman if they were of
the view that the power was misused. In ad-
dition the government is establishing a new
parliamentary joint committee on law en-
forcement, which will further enhance the
oversight of the Australian Federal Police.

Lastly, with respect to the senator’s re-
marks concerning the ICCPR, there are strict
requirements. It is addressed to emergency
situations where there is a threat to life and
safety. These kinds of situations are regarded
as legitimate exceptions to ICCPR obliga-
tions. The power is confined to the need to
deal with the emergency situation; it is not a
covert power and it is not a general search
power.

**Senator PARRY** (Tasmania) (8:20 pm)—
The opposition will also oppose amendments
(30) and (31). Senator Feeney has covered
the opposition’s points fairly well. I would
just add that the safeguards exist in particular
in schedule 4, subsection 3UEA. There are
provisions in there—particularly provision 5,
where in the course of searching the police
officer suspects on reasonable grounds it is necessary to do so but only if two provisions apply: in order to protect a person’s life, health or safety; and without the authority of a search warrant because the circumstances are serious and urgent, not frivolous. I think these provisions are quite reasonable. They allow for a situation to take place where, first of all, life is going to be protected above and beyond anything else. Without those provisions, that could not take place. The other matters have been covered by the minister, and I do not propose to detain the Senate any further. We will certainly be opposing these two amendments.

Senator LUDLAM (Western Australia) (8.21 pm)—I thank the minister and Senator Parry for their comments. I listened very carefully because everything that you have said is entirely reasonable and completely neglects the point I was raising: why not require the police officer to apply for the warrant post facto? Why not get that additional piece of paperwork and that additional safeguard on the table? If indeed these provisions are so reasonable and so well safeguarded, why is this the one category of search whereby a warrant would not be required? I do not expect that I will necessarily be getting any new information, so I simply move items (30) and (31).

Question negatived.

Senator LUDLAM (Western Australia) (8.22 pm)—I will speak to amendments (32), (33) and (34) to the National Security Legislation Amendment Bill 2010 on sheet 6181. I acknowledge that amendment (33) will probably need to be moved separately. These amendments deal with bail and a presumption against bail for terrorism offences. Again, these items had quite an airing during the committee hearings and the various materials that were forwarded in the process of evaluating the exposure draft of the bill. We support the amendment to section 15AA of the Crimes Act which provides a right of appeal to both prosecution and defence to a grant or refusal of bail. That seemed to us to be common sense. However, we remain opposed to the presumption against bail for terrorism offences and believe that bail for terrorism offences should be dealt with in the same way as other criminal offences rather than requiring that bail only be granted in exceptional circumstances.

We are concerned that the presumption against bail is a threat to the presumption of innocence that Australia is obliged to respect under article 14(2) of the ICCPR and that the provision may also be a disproportionate interference in the right to liberty contained in article 9 of the ICCPR. Concern with the presumption against bail in section 15AA has also been expressed by the UN Human Rights Committee in their 2009 concluding observations on Australia, where they identified this clause as potentially being in breach of Australia’s obligations under the ICCPR.

By removing the presumption against bail for terrorism offences, the offences would be subject to the usual bail considerations. Usual considerations include the seriousness of the charge and the likelihood of the accused committing further offences if granted bail. We have been considering tonight a range of hypothetical offences. The ones that have been put to us are generally pretty serious and you would have to presume that, if the magistrate is doing their job, bail would not be granted if the person is likely to recommit some kind of offence or if the offences are as serious as proposed. The considerations will obviously ensure that where there is a risk that upon release an individual may commit or assist in committing a terrorist attack they would not be granted bail. There is therefore no need to provide an unduly high hurdle for an accused to overcome, as the bill does with bail only
to be granted in exceptional circumstances—a phrase that is actually not defined in the bill.

I am of the opinion that the presumption against bail, if this is to remain, should be accompanied by safeguards in addition to the right to appeal the granting or refusal of bail, as this bill proposes to implement. The cases of R v Kent and R v Ezzit Raad mentioned by the Law Council of Australia in their submission to the Senate inquiry highlight the difficulty that the judiciary has had in determining whether delay in the investigation period or delay between the arrest and trial constitutes exceptional circumstances and, therefore, whether bail should be granted. In Ezzit Raad it was held that a considerable delay between arrest and trial, even when the accused was being held in particularly harsh conditions of detention, did not constitute exceptional circumstances.

We are also concerned with the proposed implementation of sections 15AA(3C) and 15AA(3D) which provide that, where bail is approved for a terrorism offence and the prosecution decides to appeal that bail, it may be stayed until a decision is made on appeal, prosecution notifies the court that it does not intend to proceed with the appeal or 72 hours have passed since the stay came into effect. Again, we do not believe that the government is approaching the denial of an individual’s liberty with an appropriate degree of seriousness, especially considering to be granted bail for a terrorism offence is no easy feat with, as mentioned, bail only granted for terrorism offences in exceptional circumstances. Therefore, we believe that proposed sections 15AA(3C) and 15AA(3D) be repealed. I will await for the minister to make some remarks before moving those amendments.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (8.26 pm)—Firstly, the government does not support amendment (32) concerning the repeal of presumption against bail. Section 15AA(1) of the Crimes Act provides that bail should not be granted to persons charged with or convicted of offences covered by section 15AA(2) unless the court is satisfied that exceptional circumstances exist to justify bail. The presumption against bail was first inserted in 2004 to ensure a consistent approach to bail proceedings for certain serious offences. Prior to this, the Commonwealth had to rely on state law governing bail proceedings. This resulted in different appeal rights depending on the state or territory jurisdiction that the offence was being tried in. Presumptions against bail currently apply to certain serious offences in most state and territory jurisdictions. It is appropriate that terrorism offences fall within the class of serious offences where the presumption against bail applies. Importantly decisions about bail are ultimately at the discretion of the judge. The presumption against bail does not fetter this right or discretion.

The government does not support amendment (33) concerning the stay on grant of bail. This amendment opposes proposed sections 15AA(3C) and 15AA(3D) of the bill. If a bail authority decides to grant bail, proposed section 15AA(3C) will provide for a stay of the court order. Proposed section 15AA(3D) will provide that the stay will last only until a decision on the appeal is made or the prosecution notifies the court that they do not intend to pursue an appeal or until 72 hours has passed, whichever is the least period of time. These proposed provisions are similar to existing state provisions. However, not all state and territory jurisdictions have such provisions. It is desirable for us to have a consistent approach, particularly given that some of the investigations concern activity that spans state borders. As Senator Ludlam will appreciate, it logically follows that the
government does not support consequential amendment (34).

Senator LUDLAM (Western Australia) (8.29 pm)—Unless Senator Parry is going to make a contribution, I seek leave to move amendments (32) and (34) on sheet 6181 together.

Leave granted.

Senator LUDLAM—I move:

(32) Schedule 6, page 43 (after line 3), before item 1, insert:

1A Paragraph 15AA(2)(a)

Repeal the paragraph.

(34) Schedule 6, item 2, page 44 (lines 9 and 10), omit “, (3B), (3C) and (3D)”, substitute “and (3B)”.

Question negatived.

Senator LUDLAM (Western Australia) (8.29 pm)—We oppose schedule 6, item 1 in the following terms

(33) Schedule 6, item 1, page 43 (line 26) to page 44 (line 7), subsections 15AA(3C) and (3D) TO BE OPPOSED.

The TEMPORARY CHAIRMAN (Senator Fisher)—In respect of amendment (33), the question is that schedule 6, item 1, subsections 15AA(3C) and (3D) stand as printed.

Question agreed to.

Senator LUDLAM (Western Australia) (8.30 pm)—I move amendment (35) on sheet 6181:

(35) Schedule 8, page 47 (line 1) to page 74 (line 33), omit the Schedule, substitute:

Schedule 8—Repeal of the National Security Information (Criminal and Civil Proceedings) Act 2004

1 The whole of the Act

Repeal the Act.

Senators will probably be pleased to discover that this is the last batch of amendments I will be seeking to move to this bill. Amendment (35) is probably the simplest amendment I will be moving tonight. It repeals, in whole, the National Security Information (Criminal and Civil Proceedings) Act 2004. I will confine my remarks and keep them very brief. Senators will appreciate that we have been pretty moderate in our proposals to date. This is the only large tranche of antiterrorism legislation we sought to simply repeal out of hand as being actually quite offensive to the rule of law as we understand it in Australia. If this amendment is lost—and I do not like my chances—I will move the two further amendments by leave and will then describe why we are attempting to simply repeal this offensive act in its entirety.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (8.31 pm)—The government does not support the repeal of the National Security Information (Criminal and Civil Proceedings) Act 2004. Prior to the NSI Act, national security information could be protected from disclosure during court proceedings by relying on the common law doctrine of public interest immunity. Where a public interest immunity claim is successful, a case may be unable to proceed due to a lack of admissible evidence or because withholding information from a defendant may prevent them from mounting a full defence and receiving a fair trial. The NSI Act overcomes these difficulties by providing a framework for the disclosure, storage and handling of national security information. The NSI Act has been working effectively since it was created and the amendments in the bill will improve its practical operation.

As regards the question of whether the NSI Act infringes on a defendant’s right to a fair trial, it is the government’s view that the legislation does not interfere with the defendant’s right. This has been affirmed by recent court decisions. In R v Faheem Khalid Lodhi, the court held that subsection 31(8) of
the NSI Act is consistent with the right to a fair trial. The court has an overriding discretion to order a stay of proceedings if it considers that the practical effect of excluding either certain information or an individual from proceedings would make the position of the parties unequal to the point where one party is prevented from adequately presenting their case.

With respect to amendments (36) and (37), the government opposes those amendments. The purpose of the notification requirements is so that the Attorney-General can determine whether he or she should issue a criminal non-disclosure or witness exclusion certificate under the act. The amendments in the bill will make it clear the notice obligations also apply if the prosecutor, defendant or defendant’s legal representative has applied for and been granted a subpoena and they know or believe that evidence to be produced or documents that are the subject of the subpoena would disclose national security information. For example, if a security or intelligence agency is subpoenaed for documents by the defendant’s legal representative, where that legal representative knows or believes those documents contain national security information, the representative must notify the Attorney-General of that knowledge or belief. The bill simply imposes an equivalent obligation to that which already applies to expected disclosure of security-sensitive information through witness testimony or documentary evidence that is disclosed during a proceeding.

Senator PARRY (Tasmania) (8.34 pm)—The opposition will be opposing this amendment also. I make the comment simply that, in addition to what Senator Feeney has indicated, the National Security Legislation Monitor will be reviewing the entire act, so it would be far too premature to jump into looking at repealing an act until that has taken place.

Senator LUDLAM (Western Australia) (8.34 pm)—I thank the minister for his comments. If we are waiting for the National Security Legislation Monitor to turn up and assess this for us, we could be waiting for a very, very long time. At this point I commend amendment (35) to the chamber. If it is lost, I will speak to amendments (36) and (37).

Question negatived.

Senator LUDLAM (Western Australia) (8.35 pm)—by leave—I move items (36) and (37) on sheet 6181:

(36) Schedule 8, item 26, page 52 (line 27), omit “or”.

(37) Schedule 8, item 26, page 52 (lines 28 to 32), omit paragraph 24(1)(c).

The National Security Legislation Amendment Bill amends the National Security Information (Criminal and Civil Proceedings) Act. This is the piece of legislation that I just unsuccessfully proposed to repeal in its entirety. It is a very complicated piece of legislation. It has in fact been observed by Justice Anthony Whealy of the Supreme Court of New South Wales that:

It may respectfully be observed that it gives the appearance of having been drafted by persons who have little knowledge of the function and processes of a criminal trial.

That is the act we are contemplating now. This is a highly unsatisfactory situation to say the least, given the penalties for terrorism related offences being so severe and the rights to a fair trial being compromised by this piece of legislation. To provide one example of how flawed this legislation is, I refer to section 39, which requires lawyers to obtain security clearances in certain cases. The NSI Act currently provides that during a federal criminal proceeding a legal representative of the defendant may receive written notice from the Secretary of the Attorney-General’s Department that an issue is likely
to arise in the proceedings relating to the disclosure of information that is likely to prejudice national security. They must do so within 14 days of receiving a notice and, if they are denied a security clearance or do not obtain it, they may be prevented from viewing all the evidence in relation to the case, which will obviously severely impact on their ability to continue to represent their client.

This obviously would consequently restrict the pool of lawyers for an accused to select from, because this provision significantly detracts from the guarantee of the right to a fair trial in article 14(3) of the ICCPR. The independence of the legal profession is undermined by section 39 of this act. It ignores the reality that criminal lawyers deal with confidential information every day and already must adhere to very strict professional conduct rules concerning confidentiality. We were not able just now to successfully repeal the act, so I believe that proposed section 24(1)(c) should not be implemented.

Schedule 8 of the bill amends division 2 of part 3 of the NSI Act. Part 3 is entitled ‘Protection of information whose disclosure in federal criminal proceedings is likely to prejudice etc. national security’. Under section 24(1) of the act:

If the prosecutor or defendant knows or believes that:

(a) he or she will disclose, in a federal criminal proceeding, information that relates to … or … may affect national security; or

… … … …

(c) a person whom the prosecutor or defendant intends to call as a witness in a federal criminal proceeding will disclose information in giving evidence or by his or her mere presence—

that relates to or may affect national security, the prosecutor or defendant must as soon as possible notify the Attorney in writing of their knowledge or belief. The maximum penalty for failure to do so is two years imprisonment. The bill proposes to amend section 24(1) so that providing notice to the Attorney is also required when the prosecutor or defendant knows or believes that:

… on his or her application, the court has issued a subpoena to, or made another order in relation to, another person who, because of that subpoena or order, is required (other than as a witness) to disclose national security information in a federal criminal proceeding …

The Australian Greens do not support the proposal to extend the notice provision to cover subpoenas. In closing, I think this sums up for us the extraordinary disappointment that we feel that, after two years of reviewing and taking an extraordinary amount of evidence from a very wide range of experienced legal practitioners, the only thing the government can come up with in relation to this act is to extend its scope. The reason for this position is that the act already covers the production of information on subpoena. The mere issuing of a subpoena will not result in the disclosure of information that may be prejudicial to national security. Only court officials and the party to whom the subpoena is directed are privy to the contents of such a document.

As noted by the Law Council, adding further to our concern is the very broad nature of the definition of ‘national security information’, which I will come to shortly, and the lack of precision with which subpoenas are often drafted. This makes it very difficult for lawyers to be aware of the precise infor-
mation that will result. Somehow your counsel is meant to hypothetically understand what it is that might come back as a result of the subpoena, and if they do not then they are subject to two years in prison if material is adduced that somehow compromises this very broad definition of national security. I think it is putting the courts, and the legal profession in particular, under an impossible burden. It makes it very difficult for lawyers to be aware of the precise information that will result from a subpoena and whether it may result in the revelation of material prejudicial to national security. As counsel you just have to guess, and you had better hope that you get it right, or you might serve two years in prison.

The bill also proposes to insert a definition of ‘national security information’—and this is my final point on this issue:

**national security information** means information:

(a) that relates to national security; or

(b) the disclosure of which may affect national security.

It is a positive step to include a definition of ‘national security information’; at least it provides some clarity for lawyers and the judiciary. However, the breadth of the definition highlights that the notice provisions for lawyers in this act are unduly onerous. As with many of the amendments that I have moved tonight, I would hope that at the last minute the government sees sense and that, if we are not able to repeal this offensive act in its entirety, at least we can make these two minor amendments to limit its scope. So I commend these two amendments to the chamber.

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (8.41 pm)—I have addressed myself to these amendments in my earlier remarks, but I would simply supplement those by saying that it is the government’s view that this legislation does not interfere with a defendant’s right to a fair trial. I again refer the senator to the matter of R v Faheem Khalid Lodhi and the finding of the court in that matter that section 31(8) of the NSI Act is consistent with the right to a fair trial. I further point out the fact that the overriding discretion of a court to stay proceedings in certain circumstances does protect parties when those proceedings might take a form where one party is unequal to another to the point that they are prevented from adequately presenting their case. It is the government’s view that, yet again, this meets the test of exceptions that are allowed under the ICCPR.

**The TEMPORARY CHAIRMAN** (Senator Kroger)—The question is that amendments (36) and (37) on sheet 6181 be agreed to.

Question negatived.

Bill agreed to.

**Parliamentary Joint Committee on Law Enforcement Bill 2010**

Bill—by leave—taken as a whole.

**Senator LUDLAM** (Western Australia) (8.43 pm)—I have a couple of brief amendments, but I might just make some comments, because we have not had much discussion of the Parliamentary Joint Committee on Law Enforcement Bill 2010 apart from some of Senator Parry’s comments earlier; mostly we have confined our comments to the earlier bill. We support the establishment of the Parliamentary Joint Committee on Law Enforcement. We acknowledge the need to have strong oversight powers over the AFP and the ACC, which both have extensive powers that may be used to derogate from fundamental civil liberties. So the initiation of this joint committee is in itself a very good thing.

We propose some improvements to help its scope and to ensure that the committee’s
role is of substance rather than to operate in a superficial manner under which the AFP and the ACC may justify their conduct based on the existence of an oversight committee. So, if that committee is going to exist, we need to make sure that it is able to do its job effectively. I move Greens amendment (1) on sheet 6182:

(1) Clause 3, page 3 (line 37), omit paragraph (h) of the definition of sensitive information.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (8.44 pm)—The government does not support amendment No. 1 proposed by the Greens. The inclusion of paragraph (h) in the definition of sensitive information is based on the provision that currently applies in relation to the Parliamentary Joint Committee on the Australian Crime Commission. Under the current subsection 59(6B) of the Australian Crime Commission Act 2002, the chair of the board of the Australian Crime Commission must not give the parliamentary committee information if the chair considers that disclosure of that information to the public could prejudice the safety or reputation of persons.

When dealing with a criminal intelligence agency such as the Australian Crime Commission, the sort of information that it may have available to it could have serious ramifications and cause highly detrimental prejudice to a person’s reputation. The inclusion of paragraph (h) in the definition of sensitive information in the bill is not designed to enable agencies to avoid providing material that might be embarrassing to their own members. It is about ensuring that information lawfully obtained by these agencies is not subsequently able to be made public in circumstances where it could cause irreparable and unfair prejudice to a person’s reputation. Such material must be handled appropriately and through normal criminal processes.

Senator PARRY (Tasmania) (8.46 pm)—The opposition will not be supporting amendment No. 1 of the Greens.

Senator LUDLAM (Western Australia) (8.46 pm)—Our concern really is with the definition provided for sensitive information as the minister has outlined. We certainly would not want to prejudice a person’s safety, but the fact is that the definition is wider than that used in the Law Enforcement Integrity Commissioner Act 2006 because it includes information that could prejudice a person’s reputation. I suspect that is quite an important grey area, but there would no doubt be information that could prejudice a person’s reputation if that person was acting poorly. You probably would want that information to come forward.

Proposed sections 8(2) and 9(2) of the bill provide that the CEO of the ACC or the Commissioner of the AFP may refuse such a request for disclosure on the grounds that the requested information is sensitive. We do not think it is necessary to include within the definition of sensitive information, information that could prejudice a person’s reputation. Otherwise we are going to exclude potentially a very broad range of material. Parliamentary committees are used to dealing with sensitive information, and they have procedures in place to deal with such information. For example, we can receive information in private session, expunge any such information from the transcript of evidence and forbid publication of the evidence. I think all of us in here are fairly familiar with the fact that committees can do that and that it is part of the normal working role of the committee.

On occasions it is the role of the committee to make judgments as to an individual’s conduct in its role to oversee and to improve
the functioning of an agency. It is not to protect individual’s reputations if they have made poor judgments. Surely, that is what the existence of these committees are, in part, for. We are not talking about witch-hunts here. These committees should potentially be able to hurt people’s feelings if they have been acting poorly. These are people in positions of enormous responsibility, acting without a great deal of public oversight. This committee, which we acknowledge is a very important new proposition and innovation of the government’s, needs to be able to do its work effectively and not have this information excluded on the ground that somebody’s reputation might be harmed, if that person’s reputation is going to be harmed as a genuine consequence of actions or poor judgments that they have made.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (8.48 pm)—Just by way of information, I understand that the legislation does provide that the CEO can provide information to the committee if it is in the public interest to do so. I think that there is an opportunity for the issues you are talking about to be addressed by the parliamentary committee in that public interest.

Senator LUDLAM (Western Australia) (8.49 pm)—At this point I will just commend amendment (1) to the chamber and then move on.

Question negatived.

Senator LUDLAM (Western Australia) (8.49 pm)—I can sense a pattern developing. By leave—I move Australian Greens amendments (2) to (4) on sheet 6182 together:

(2) Clause 7, page 6 (after line 29), after paragraph (1)(f), insert:

(fa) to review and report on the exercise of powers under section 3UEA of the Crimes Act 1914, including a review of the report presented to Parliament under section 3UEB of that Act;

(3) Clause 8, page 8 (lines 24 and 25), omit subclause (5), substitute:

(5) In making a determination under subsection (4), the Minister responsible for the ACC must include in it his or her reasons for making the determination.

(5A) In giving reasons under subsection (5), the Minister responsible for the ACC is not required to provide information that would disclose the content of the sensitive information.

(4) Clause 9, page 9 (lines 26 and 27), omit subclause (5), substitute:

(5) In making a determination under subsection (4), the Minister responsible for the AFP must include in it his or her reasons for making the determination.

(5A) In giving reasons under subsection (5), the Minister responsible for the AFP is not required to provide information that would disclose the content of the sensitive information.

This is my final batch of amendments for this bill.

The substance that I want to speak of is simply caught in the proposed amendments No. 3 and No. 4 relating to the minister providing reasons for the failure to release information. This was canvassed in some depth by the committee’s work. If the AFP Commissioner or the CEO of the ACC decides not to refer information to the committee, the committee may then request the minister to make a decision as to whether the information should in fact be referred.

The minister, however, is not required to provide reasons if he or she agrees that the information should not be released to the committee, and that is what these amendments go to. The operation of the committee would be improved if we required the relevant minister to provide reasons for a failure
to release information to the proposed committee, I have done enough committee work to understand just how frustrating it can be when you ask the minister to oversee and take a view, and what comes back from the minister’s office is simply a failure to accommodate or a letter that says ‘no’. I think the committee would find that it would be very helpful to have some kind of statement of reasons provided. We are not asking the minister to provide a specific explanation or to disclose material that is sensitive or against the public interest but merely to outline why the material should not be released without risking the confidentiality of the material itself.

These bills address quite serious issues of national security and human rights, and it was reflected in the government’s decision last August to release a public exposure draft of the bill. The government has revealed disregard for the detailed nuanced and thoughtful contributions that experts brought to the review process for these bills both at the public exposure stage and at the Senate inquiry stage. That is why I have taken a certain amount of the time of the chamber this afternoon and this evening to give a voice to the huge variety of people who provided input to these bills and who were then summarily disregarded by both the government and the opposition. Perhaps the government feels that it is its job to ignore anything that it does not feel is along the lines of what it has already proposed, but I think we have been let down quite comprehensively by the opposition tonight, which failed to advance even a single amendment.

It is not simply their absence of support for Greens amendments. Obviously they are fully entitled to oppose anything that we bring forward in here, but to just assume that the government got it completely right on all counts on legislation as complex and far reaching as this after the amount of work that has been done and the very strong contest of views that was brought to the committee’s work I think is extraordinary—that the opposition would then just sit back and knock our amendments off one after the other without proposing any ideas at all. We have to assume that somehow they think the government got it exactly right, and I find that very difficult to believe.

Before I leave these final three amendments, because these will be the last comments I make on this bill, I just want to briefly look at what we have not discussed tonight, what has not been debated and what was entirely left out of the ambit of this legislation. This is all material that is waiting for our overworked part-time Independent National Security Legislation Monitor, which does not yet exist. The bills barely scratch the surface we have been discussing tonight with respect to Australia’s antiterrorism laws—the subject of the Senate inquiry that elicited overwhelming support for a thorough and meaningful change in our antiterrorism legislation. The concerns that remain that we have barely touched on tonight are the definition of a terrorist act contained in section 101.1 of the Criminal Code, the offence of providing support to a terrorist organisation in section 102.7 of the Commonwealth Criminal Code, the offence of providing training to or receiving training from a terrorist organisation in section 102.5 of the Criminal Code, balancing the risk to national security against the rights of the defendant in section 31(8) of the National Security Information (Criminal and Civil Proceedings) Act that I spoke of at some length earlier and the requirement for lawyers to have security clearances in terrorism cases under the NSI Act, as I spoke of before, preventative detention orders which are proposed to be reviewed eventually by COAG—if the minister wants to update us as to the progress of that review that would be
appreciated—and control orders to be reviewed by COAG. There was not a word about ASIO, who managed to escape this process entirely unscathed, unamended and unconsidered as far as we can tell.

I commend amendments (2) to (4) to the chamber. If the minister is able to provide us with any comfort or any update at all as to those other matters, particularly the ones before COAG, that would be greatly appreciated but I will end tonight as I began. This is a colossal missed opportunity not just from the government but from the apparent extraordinary silence of the opposition which simply disappeared from view towards the end of a process in which they had participated fully and I thought actually quite meaningfully. They disappeared when it came to the crunch and this is where we come to tonight. I commend these amendments to the Senate.

Senator PARRY (Tasmania) (8.54 pm)—I commence where Senator Ludlam left off. The opposition did participate and thank you for your compliment. We did participate in a very robust and healthy way through the committee process. At the conclusion of the committee process we were satisfied with the amendments and we were satisfied with what the government is putting forward. Again, I will indicate that we will be opposing the three amendments (2), (3) and (4) that Senator Ludlam has just moved. He did not really address amendment (2) but if I could draw the attention of Senator Ludlam to page 7 of the bill which indicates at clause (h) that the committee has the power:

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

So either chamber of the parliament itself, the Senate or the House of Representatives, by simple majority can instruct the committee to inquire into matters that would fall within the purview of the amendment (2) that Senator Ludlam has indicated his support for.

The other matter is in relation to the reporting of the reasons for the minister not disclosing his or her reasons for making a determination under subsection (4). The amendments that Senator Ludlam is putting forward do not really strengthen those provisions because in 5A under amendment (3) the minister still does not have to provide the information and so what would be gained from the clause I do not know. Also we must give the minister the freedom to not disclose any information even if it is within the limited form that Senator Ludlam is suggesting. Even in a limited form material that is disclosed by the minister to the committee may include enough material for identification of a person or a reason that would be not in the interests of the minister, the agency or indeed the country. I indicate that we will not be supporting those final three amendments, (2), (3) and (4). We do support this bill, Senator Ludlam, as I indicated earlier. We did have robust discussion, as you know because you were present with me during the stages of the legal and constitutional committee and also as we have discussed around the table at the Australian Crime Commission and Australian Commission for Law Enforcement Integrity PJC’s. We believe that there has been enough robust debate, enough thorough examination, which you acknowledge, so therefore we are satisfied with the government’s bills and that is why we will be supporting them.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (8.57 pm)—With respect to Greens amendment (2) the government does not support that amendment. It is our view that it is not necessary to add a specific function for the Parliamentary Joint Committee on Law Enforcement to review the exercise of the
emergency entry powers proposed in the bill. To do so would be in our view inconsistent as the bill does not give the committee functions in relation to other specific powers. It confers a more general function of monitoring and reviewing the AFP and ACC in the performance of their functions which could include the use of any relevant powers. It is also open for parliament to refer any matter specifically to the committee for inquiry.

With respect to amendments (3) and (4) the government does not support those amendments. The minister can be asked by the committee to determine if information that the Australian Crime Commission or the Australian Federal Police has declined to provide to the committee is sensitive information and if so whether the public interest in providing it to the committee is outweighed by the prejudicial consequences. The bill currently provides that a minister is not required to disclose his or her reasons for making a determination. However, the minister does have discretion to provide reasons to the committee. The amendments as proposed would require the minister to include reasons for making his or her decision in a determination but would not be required to provide information that would disclose the content of the sensitive information. Given that the purpose of not requiring the minister to provide reasons was directed at protecting information that could disclose the content of sensitive information, the amendment as proposed would not add much to the existing provision. Finally, you asked a question about the COAG review. I am advised that it is due to commence in December 2010 and report within six months of that date. I am advised that it is on track, as expected, and that that time frame should be delivered.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (9.00 pm)—As I indicated in my earlier contribution, when we were discussing the first bill, I understand that the monitor is under active consideration at the moment. The technical answer, Senator, is soon, but I understand that the matter is in front of the Prime Minister at the moment.

Senator LUDLAM (Western Australia) (9.00 pm)—I made this assertion before, and it is probably a little unfair to do so without testing your views on it directly. Have you held back on the appointment of that monitor consequent on the passage of this legislation—that is, were you seeking to avoid the monitor’s evaluation of these matters? Is it the case that you preferred to get this legislative package through before you held the monitor up? Will we be able to find evidence anywhere that the government in fact delayed the installation of this office until such time as these rather feeble bills—particularly the first one—cleared the parliament?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (9.01 pm)—I am advised absolutely not. Any delay in appointing the monitor has had nothing to do with the passage of this legislation at all. The monitor, as you know, will play a role in work that proceeds from this point. I think I need to make it very, very plain that the answer to your question is: absolutely not.

The TEMPORARY CHAIRMAN (Senator Moore)—The question before us is that Greens amendments (2), (3) and (4) be agreed to.

Question negatived.

Bill agreed to.

Bills reported without amendment; report adopted.
Third Reading
Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (9.03 pm)—I move:
That these bills be now read a third time.
Question agreed to.
Bills read a third time.

HIGHER EDUCATION SUPPORT AMENDMENT (2010 BUDGET MEASURES) BILL 2010

First Reading
Bill received from the House of Representatives.
Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (9.03 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 McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (9.03 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—
The Higher Education Support Amendment (2010 Budget Measures) Bill 2010 amends the Higher Education Support Act 2003 to revise the maximum funding amounts to provide additional funding for the transition to the student centred funding system for higher education student places, adjustments for indexation and changes to reflect 2010-11 Budget decisions.
The Bill provides additional funding for the implementation of the student centred funding system for higher education. The Government adopted the new system in response to the recommendations of the Bradley Review of Australian Higher Education.
Under the student centred funding system the Government will fund a Commonwealth supported place for every eligible undergraduate student accepted into an eligible course at a public university. There is a transitional period in 2010 and 2011 during which the cap on over enrolment for Commonwealth supported places will be lifted from 5 per cent to 10 per cent in funding terms.
In the 2009-10 Budget the Government provided an estimated additional $491 million over four years to fund 80,000 Commonwealth supported places.
Universities have responded quickly to the new arrangements and it is now estimated that there will be an additional 115,000 Commonwealth supported places over the period 2010 to 2013. In the 2010-11 Budget, the Government provided $986 million over four years for additional Commonwealth supported places, and for over enrolments in 2009.
This growth puts Australia in a good position to meet the Government’s higher education attainment ambition that, by 2025, 40 per cent of all 25 to 34 years olds will hold a qualification at bachelor level or above.
This Bill increases the maximum amounts for the Commonwealth Grant Scheme in section 30-5 of the Higher Education Support Act for the calendar years 2010 and 2011 to reflect the additional funding for over enrolments in these two years.
The Higher Education Support Act no longer has maximum amounts for the Commonwealth Grant Scheme from 2012 onwards as there will be no overall limit on the number of students that Table A higher education providers will be able to enrol. This means the Bill does not provide an update for the additional funding for Commonwealth supported places in the years 2012 and onwards.
The Bill also increases the maximum amounts for section 30-5, section 41-45 and section 46-40 of the Higher Education Support Act for actual indexation. The indexation of higher education grants in this update is still based on the old index...
for higher education grants which uses the Safety Net Adjustment for 75 per cent of the index.

This will soon change following the introduction of the new index for higher education grants from 2012. From 2012, the Labour Price Index, discounted by 10 per cent, replaces the Safety Net Adjustment component of the Higher Education Grant Index. In 2011, student contributions are indexed at the new rate and the Government will provide facilitation funding of $94 million which is the same value as increased indexation in 2011. These changes to higher education indexation will deliver an estimated $2.6 billion in extra revenue to higher education providers over the period 2011 to 2015, from Government and students.

The Bill changes the maximum amounts in section 41-45 of the Higher Education Support Act for reductions in funding of $18.4 million from the Australian Learning and Teaching Council program and $2.4 million from the Graduate Skills Assessment program across the years of 2010-11 to 2013-14.

The reduction in funding for the Australian Teaching and Learning Council is due to the high level of funding being devoted to the establishment of the Tertiary Education Quality and Standards Agency and the fact that some of this funding will be allocated to the Australian Teaching and Learning Council for its academic standards work.

The Government has provided funding for the Graduate Skills Assessment for 10 years. Participation in the Graduate Skills Assessment is entirely voluntary and students were required to make a co-payment. There has been diminishing interest from the students over time and the Bill reduces maximum funding under section 41-45 of the Higher Education Support Act to reflect this.

The Bill also provides the maximum amounts for the 2014 calendar year for section 41-45 and section 46-40.

This Bill reflects the Government’s continued commitment to an unprecedented investment in our universities through the full funding of the student centred funding system. This commitment will deliver a growing and sustainable higher education system.

**Senator MASON** (Queensland) (9.04 pm)—The opposition supports the Higher Education Support Amendment (2010 Budget Measures) Bill 2010. This bill follows the government’s acceptance of the broad thrust of the higher education reforms recommended by Professor Denise Bradley in her review of Australian universities. In a sense, there are two major thrusts underpinning that review. First of all, there is a move away from a centralised, bureaucratic system where Canberra decided how many students there would be at Australian universities and also what courses students would be doing to a student demand driven system where the students themselves dictate what courses and how many places our universities offer. Universities will have the flexibility to offer as many courses as they like and as many disciplines as they like, depending, of course, on student demand. Secondly—and I know this is of concern to the government—Professor Bradley’s review also flagged the move to increase participation in higher education to ensure that more Australians benefit from university education and that our country benefits as a result of that too.

Tomorrow my friend Senator Nash will be moving a bill that seeks to increase the coverage that youth allowance will have across this country. That is part of increasing access by disadvantaged groups to higher education. Professor Bradley and indeed the Prime Minister when she was minister for education spoke about three particular groups: Indigenous students, students from low-socioeconomic backgrounds and rural and regional students. They are the three groups that quite clearly are underrepresented in higher education. It has been a policy thrust of the government’s to address that inequity. The coalition agrees with that, subject to this: while we agree that there must be added participation from these groups, I sometimes wonder whether the government talks too
much about increasing the supply of tertiary places. I think that the problem is increasing the demand from those three groups for the places. In other words, I think increasingly the problem is that Indigenous students, students from low-socioeconomic backgrounds and students from rural and regional areas are in fact not applying for university places. That is more often the problem—far more often than universities not offering enough places in the first place. The problem is one of student demand, not university supply. That is the policy difference between the coalition and the government.

In a sense, what this bill reflects and what Professor Bradley’s review says, although she does not spell it out, is this: over the last 30 years in Australia, universities have moved from an elite system—when Senator Collins did her degree, it was an elite system—to more of a mass system and increasingly to a universal system, which is the thrust of what Professor Bradley is talking about. As honourable senators would know, the government has a target of 40 per cent of Australians having a bachelor’s degree by 2020. Even if that does not make the system universal, certainly a very substantial proportion of the Australian community will end up with a higher education qualification.

The Higher Education Support Amendment (2010 Budget Measures) Bill deals with several matters, the most important of which is putting in place transitional measures for next year, before Australian universities move to the student demand driven system in 2012. While the coalition endorse the goals and will not oppose the bill, we will certainly scrutinise the government’s actions, because it does not have a good record in implementation—in education as in so many other areas. I was going to say, rather wickedly, that higher education was never really part of the education revolution, which some might find provocative; but actually it is probably a good thing that higher education was not part of the shambles that the Building the Education Revolution has become. So I think higher education is actually redeemable. Redemption is possible; it is still salvageable.

There are some positive signs, certainly, but also many concerns, which the coalition will be focusing on over the next year or two. I will mention some of these just very briefly, such as outsourcing higher education policy. There have been over 20 inquiries and reviews, including now the Lomax-Smith review of university funding, which will not report for another year—again ab solving the government from having to make any decisions in the meantime. It is just another review into higher education.

There is the raiding of the Education Investment Fund and the broken promise to top it up. Honourable senators will recall that under the Howard government the Higher Education Endowment Fund had $6 billion put into it. How much have the government put into it? Well, they promised they were going to top up the coalition’s $6 billion, but they have not added one cent to the Education Investment Fund. In fact, they have used it as a slush fund, and now there is a bit under $2 billion left. The long-term capital fund for Australian universities has been ransacked.

There has been a broken promise on compulsory student services fees. I know the Senate will again be debating this issue; it seems like a perennial issue. But, again, that is a broken promise. About one million Australian tertiary students will be required to pay the $250, so that is about $250 million for which the government will be taxing some of the less fortunate members of our community.

There was the rush by the government to establish TEQSA, the Tertiary Education
Quality Standards Agency, only to finally back down and engage in a proper conversation with the sector. Senator Evans is certainly across these issues. TEQSA has been difficult because the sector does not speak with one voice on the issue. But I have to commend the government because at least it has commenced negotiating with the entire sector, and I think progress is being made.

Finally, there is the uncertainty that remains over university compacts, which is how universities see themselves and how the arrangements between governments and universities will be drawn up. That is still uncertain, but let us hope that the government, and Senator Evans in particular, will manage that process well, because it is vitally important for what is Australia’s principal services export industry.

Those are just some of the issues that will be highlighted over the next 12 to 18 months. I will acknowledge that higher education is finally on the government’s radar, and I think the government has done some good things in relation to higher education. But it is not just the problems I have raised that are critical to the future health of the university sector; the government’s implementation of those policies leaves a lot to be desired. Over the next 12 to 18 months, how we start to fund a mass higher education system will become the debate on higher education in this country.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (9.13 pm)—The Higher Education Support Amendment (2010 Budget Measures) Bill 2010 amends the Higher Education Support Act 2003 to continue the government’s commitment to unprecedented investment in our universities through the full funding of the student centred funding system. This commitment will deliver a growing and sustainable higher education system. The bill provides additional funding for the implementation of the student centred funding system for higher education.

The government adopted the new system in response to the recommendations of the Bradley review of Australian higher education. Under the student centred funding system, the government will fund a Commonwealth supported place for every eligible undergraduate student accepted into an eligible course at a public university. There is, as Senator Mason mentioned, a transition period in 2010 and 2011 during which the cap on overenrolment for Commonwealth supported places will be lifted from five per cent to 10 per cent in funding terms. This bill provides $681 million in funding for 2010 and 2011 for additional Commonwealth supported places in those years, and for the overenrolments in 2009.

Universities have responded quickly to the new arrangements and it is now estimated that there will be an additional 115,000 Commonwealth supported places over the period 2010 to 2013. As a result, Australian universities are in a good position to meet the government’s higher education attainment ambition that, by 2025, 40 per cent of all 25- to 34-year-olds will hold a qualification at bachelor level or above.

This bill increases the maximum amounts of the Commonwealth Grants Scheme in section 35 of the Higher Education Support Act for the calendar years 2010 and 2011 to reflect the additional funding for overenrolments in these two years. The Higher Education Support Act no longer sets maximum amounts for the Commonwealth Grants Scheme for 2012 onwards. Funding from 2012 will be based on enrolment numbers. The bill also increases the maximum amounts to division 40-45 and division 46-
40 of the Higher Education Support Act for actual indexation.

Revised indexation arrangements from 2012 for programs funded under the Higher Education Support Act 2003 already provided in the Higher Education Support Amendment (Indexation) Act 2010 will promote improved quality by ensuring that funding for teaching, learning and research keeps pace with actual increased costs. This will contribute towards the overall financial stability and viability of the higher education sector and will provide greater certainty for individual institutions when planning for future development. The new indexation funding will provide an additional $2.6 billion to the sector over the years 2011 to 2015. The bill also provides the maximum amounts for the 2014 calendar year in division 41-45 and division 46-40.

This bill reflects the government’s continued commitment to an unprecedented investment in our universities through the full funding of the student centred funding system. This commitment will deliver a growing and sustainable higher education system. 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.

BUSINESS

Rearrangement

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (9.17 pm)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 6, Governor-General’s opening speech.

GOVERNOR-GENERAL’S SPEECH

Address-in-Reply

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

That the following address—in-reply be agreed to:

To Her Excellency the Governor-General

MAY IT PLEASE YOUR EXCELLENCY—

We, the Senate of the Commonwealth of Australia in Parliament assembled, desire to express our loyalty to our Most Gracious Sovereign and to thank Your Excellency for the speech which you have been pleased to address to Parliament.

upon which Senator Abetz moved by way of amendment:

“, but the Senate:

(a) regrets that the Gillard Government has already broken its promises to the Australian people by, among other things:

(i) announcing a carbon tax, contrary to the Prime Minister’s express assurances both during the election campaign and immediately afterward that there would be no carbon tax,

(ii) instead of seeking a consensus on measures to deal with climate change, instituting a committee, the conclusions of which are predetermined,

(iii) failing to announce any measures to deal with the influx of asylum seekers arriving by sea,

(iv) failing to provide for a dedicated Minister for Education,

(v) failing to provide for a dedicated Minister for Disability Services,

(vi) failing to clarify its position on the private health insurance rebate,

(vii) failing to announce economically responsible measures to deal with housing affordability, and

(viii) announcing to the Australian people that the Government would not be bound by the promises it made to voters during the election campaign; and

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(b) further notes that the Government has outlined no credible plan to:

(i) bring the budget into surplus,

(ii) cut waste,

(iii) pay off the debt,

(iv) stop the boats, and

(v) stop new taxes, such as the mining tax”.

Senator McGauran (Victoria) (9.17 pm)—At this late hour I am pleased to come and speak to the Governor-General’s speech. It has been a while since we have taken up this debate. I heard you call Senator Pratt, who is not in the chamber as she did not see fit to finish her address to the chamber, so I will take up the cudgels there. I am not surprised because I, after all this time, re-acquainted myself with the Governor-General’s speech, thinking perhaps that at the time I might have been a bit unfair on the Governor-General’s speech. I thought it was a drab speech at the time. In fact, I thought it was one of the worst speeches I had heard at the time. I am beginning to think Senator Pratt might think so too. It was a very shallow speech. So I re-acquainted myself with the speech, and I was right—it is one of the most shallow, drab speeches ever delivered by a Governor-General. It is directionless. I will read you some gems from the speech.

Senator Jacinta Collins interjecting—

Senator McGauran—I see Senator Collins is interjecting—still got life even at this late hour. I will read certain parts of that speech to prove my point. By the way, this is just a sideline—I have done some very deep research, which I would like to address the chamber on, on certain matters to do with industrial relations—but I thought it was necessary to point this out. I will read a couple of gems that came out of that Governor-General’s speech because—I do this for a reason—it will epitomise the very direction of the government since that speech. For example:

During this term, the government will pursue plans to reduce the tax burden on the business sector, simplify tax returns for ordinary taxpayers. They will reduce the tax burden—then the speech goes on to say they are going to introduce a mining tax. I always thought tax reform had more to do with reducing the tax burden on the taxpayer. Their idea of tax reform is to introduce a tax. But then it gets better:

Further deliberations on the nation’s taxation system will be considered at a public forum to be held by mid 2011, which will re-examine the Henry tax review ...

Following that forum, the government will hold a debate on tax reform in the Australian parliament, enabling all senators and members to express their views.

So a forum and a debate will be held. It is the same old rhetoric—same old, same old. Nothing new came out of this address at all. I though—and I see Senator Nash is in the chamber—that we might get something for the rural and regional areas, considering they had to pander to the Independents to win government. So I went to the Governor-General’s address and saw that, under ‘Building Regional Australia’, this is what we got:

Accordingly the government has appointed a new cabinet level minister for regional Australia—Who, by the way, is Simon Crean. What an offence! They could have put Senator Carr in the position; it would be just as credible. So we have a Minister for Regional Australia, Regional Development and Local Government supported by a whole new bureaucracy, a whole new department, for regional Australia. They go a step further for regional Australia, saying they have set up a House of Representatives committee on regional Australia. We have always had one in the Senate and it has been a very good one.

Senator Nash interjecting—
Senator McGauran—Senator Nash, you have been on it. I have been on it myself, for 10 years plus, with Senator Heffernan and the guy who is over in New York—what was his name? I have already forgotten him.

Senator Jacinta Collins—Senator O’Brien.

Senator McGauran—Senator O’Brien, of course, very diligent! That is what we got. That was the Governor-General’s speech. There was nothing but rhetoric going in circles. It epitomises and sets the pattern of this government. Look at today’s agenda. We have got two weeks of parliament. We are not sitting in December at all. It is the first time I have ever known parliament not to sit in December. This is a government that has ground to a halt. Look at today’s agenda. We have got three bills on it, all noncontroversial. Thank goodness for the Greens’ minutiae and petty questions on what is a terrorist organisation. However, it was padded out for the government for hours and hours; if it had not been for that we would be on this discussion a lot earlier. You have got three noncontroversial bills.

I was outside before and I had to rush back in to see what tomorrow will bring. You are reintroducing noncontroversial bills. This side is not even against them. This is your agenda for 2010—you do not have one. This is going to be a long week for the government, and it is going to be a long two weeks if this is what you are putting up.

Nothing much is happening down in the House of Representatives either. You want to take heed of some of your wise counsel—though I do not know whether you would call them that. Former Senator Richardson used to be in this chamber and I remember him well. I was going to say I used to serve with him—well, combat with him—and he was a fearsome warrior. You know that your-
was asked a question, a two-to three-minute question—however long this new system runs for—and he sat down after 30 seconds. What do you think the issue was? It happened to be the issue of the day—security, asylum seekers and border security. He is the spokesman in this chamber for it and he sat down after 30 seconds, unable to even waffle through the question. He is tired. He is shell-shocked. He is not interested. He is unbriefed.

Listen to your own. If you do not want to listen to the former Senator Richardson—and I would not blame you—or Senator Faulkner, listen to an up-and-comer within your own ranks, Senator Cameron. He is calling you zombies. He has said that you have all had lobotomies. I have kept his quote, do not worry about that.

Senator Jacinta Collins—You cannot find it now.

Senator McGauran—No, I can find Senator Cameron’s quote, for sure. I cannot believe he had the courage to do it.

Senator Jacinta Collins—Have a look at page 1 of the Notice Paper.

Senator McGauran—I have looked. I have got the red. In all my time I have never seen such a shallow agenda on a Monday with only two weeks of parliament left. God, I remember the last two weeks when the question used to be: would we still be here at Christmas time? We would be pumping through the reforms—the sale of Telstra, the VSU legislation—it was one bill after another. You might not have liked it but we had an agenda.

I will tell you what Senator Cameron said—do not distract me, because this has to go down in the Hansard. Dougie said—

The ACTING DEPUTY PRESIDENT (Senator Moore)—Senator, that is not the appropriate way to address Senator Cameron.

Senator Jacinta Collins interjecting—

Senator McGauran—Senator Cameron said that we were the rabble? It has turned out that you are the rabble. Dougie has worked out that you are the rabble. He says: ‘They are stifled in the caucus, they are stifled in the public’—

God, you cannot even speak frankly to the public, according to Senator Cameron—Cameron said of Labor’s MPs, ‘and so people see the Labor Party having no values and no vision on a whole range of issues and I think that must change ...

It seems to be like having a political lobotomy.’ They are ‘zombies’, he said. You could not be more frank than that. I make this observation because it is only Monday of a two-week sitting. I have got to make my calls early these days and my call is this: if this drift goes on much longer—and I am only talking about until Christmas time—those polls are going to lock in. You are about the only government that has never enjoyed a honeymoon. Every government in history since Federation has enjoyed a honeymoon. You have never even had a honeymoon under this Prime Minister, and she is now collapsing in the polls. Your primary vote now is getting to very dangerous levels and if it still holds till Christmas, I will make this call now: you are gone. You will be having an election this time next year.

What is more, the Prime Minister—with all those polls around personalities and the capabilities of the leadership—is now starting to slump. That was always something you could hang onto under Kevin Rudd as compared to the opposition leader, or Julia Gillard as compared to the opposition leader. But now that has fallen. Now that is slumping in the polls. And if that is not turned
around by Christmas, and you have not got much time to act, then I say that that is going to lock in and the public are not going to be turned around by any of your false rhetoric.

You have a Prime Minister who is a giggling gertie in this country and on her overseas trips. That is all I ever see. She has become an embarrassment with all of the giggling that goes on. There is nothing statesmanlike about the Prime Minister at all. She has become a total embarrassment. I only make those points as a sideline to the real address I want to make.

Whilst I berate and point out to you—no worse than your own side, by the way: Senator Faulkner, Senator Cameron or former Senator Richardson, who is really laying it out for you—there is one policy you will introduce that concerns me greatly as a Victorian senator. I have no doubt you will introduce a policy at some point in this term to strip and effectively abolish the Australian Building and Construction Commission. As a Victorian senator I am very concerned about this because the building and construction industry is one of the largest industries in Victoria. It drives Victoria. Of course, it was the epicentre of the Cole royal commission into the corruption and the illegalities of this industry. It basically all came out of Victoria.

Senator Jacinta Collins—That’s rubbish.

Senator McGauran—‘Rubbish’ says Senator Collins.

Senator Jacinta Collins—You need to go back and look at the Cole report.

Senator McGauran—I have looked at the Cole report, and I have plenty of it here. I happened to have this land on my desk recently. The man your side axed, the head of the commission, Mr John Lloyd—

Senator Jacinta Collins—Another Howard political appointment.

Senator McGauran—No. This was a man with royal commission powers. He was totally independent.

Senator Jacinta Collins—We know the powers he was given.

Senator McGauran—You have just shown your colours, and you are a Victorian too. You know only too well the goings-on, the culture and the illegalities that the royal commission found in Victoria. I am going to run out of time, but Mr Lloyd, the former Australian Building and Construction Commissioner, said in his last annual report, which has just been handed down:

The performance outlined in this report demonstrates that unlawful conduct continues. This is especially so in Victoria. Victoria is responsible for 61 per cent of legal proceedings commenced during 2009-10. Similarly, Victoria represents 40 per cent of investigations and 68 per cent of compulsory examinations. Also, Western Australia continues to be overrepresented in ABCC data.

It is unclear exactly why this situation persists. The construction unions and some contractors appear committed to continue unlawful practices and possibly regard prosecution by the ABCC as an acceptable business risk.

The attainment of the outcomes is a credit to ABCC staff. They are professional and dedicated. Some encounter abuse, taunts, being photographed and physical provocation when going about their work. On occasions this has involved assaults, matters that are and will continue to be reported to the Police.

And he expressed his appreciation of the police.

So Victoria, I repeat, was the epicentre of the Cole royal commission and it still is after so many years of the Australian Building and Construction Commission. Yet, as a payback to the union for their $64 million in the 2007 campaign and less obviously in the 2010 campaign, for the money they give the Labor Party and for the outright control that they
have of the Labor Party not just at a national conventions, which we know is up to 50 per cent of the vote, but in the preselections of all of those on the other side—every single one of them belongs to a union; it is compulsory—this legislation will make its way back to this chamber and will, with the support of the Greens, be in danger of passing the Senate.

This concerns me greatly. It concerns me not just because of the lawlessness and not just because of the knock-on costs to households, small businesses and small and large developers. It has a productivity effect over the whole economy, not just in Victoria. Enough evidence came out of the Senate inquiry into this in 2009 and from independent sources such as the Bureau of Statistics and other economic data. I will refer to the report of the Senate Standing Committee on Economics from September 2009. It states that, over the seven years that the commission has been operating, there has been a 10 per cent increase in the industry productivity. Even the weekly wages in the industry have increased because of productivity, because the strike numbers are down, because the corruption is down, because the payoffs are down and because work is being finished on time or ahead of time in some cases. Because of the watchdog with teeth watching over this industry these have been the knock-on effects.

It is such a large industry that if costs start to blow out because of lawlessness, because of strikes, because of slow work days and because of increases, you will get a CPI increase. The economic data shows that the CPI has been positively affected. It is some 1.2 per cent lower than it would have been had the watchdog not been on the prowl.

With only a minute or so to go, I signal my deep concern that post July this legislation will be rushed through the parliament as a payback to the unions. It will have devastating effects on my state of Victoria in the building and construction industry. It will return all of the intimidation, lawlessness, the crime and the corruption. We have already got it at a certain level. Without the watchdog it will explode. We already have the Mick Gattos wandering around. He even has to be careful. We have even got the sycophants to the Mick Gattos from the larger companies.

This is not just about unions, but predominantly it is about the corruption and the lawlessness of the unions. There is a lot corruption and lawlessness by some of the big construction companies too. There are a lot of them that hire the Mick Gattos of this world. There are a lot of them that allow the criminality onto their sites. As John Lloyd rightly said, they seem to think it is a legitimate risk. We have to take that legitimate risk away from them for the sake of the public.

So I alert the Senate to this. I condemn the Labor Party. Someone from the other side should just stand up and condemn this legislation and this policy that will be coming up, I am sure, after July.

Senator LUDLAM (Western Australia) (9.37 pm)—That is quite an extraordinary act to follow for an address-in-reply—you really will be missed, Senator McGauran. The Governor-General’s speech, which this debate addresses and which was some time ago now, I found quite fascinating. It is only my second experience of an address-in-reply in my brief time here, being halfway through the term. I listened to the speech quite intently, partly because it is an expression of what the government is most proud of and because it is an indication of the agenda they are setting for the next couple of years. But I was also listening most acutely to hear what was not in the speech—what the government...
is doing, what its agenda is and what legisla-
tion it pursues that did not make its way into
the speech—because I think that will proba-
bly tell us a little about what the government
is up to that it is not proud of.

So, considering the kind of day that I have
had, I am probably going to focus somewhat
on the negative. But isn’t it interesting that
there was nothing in the speech on the pro-
posal for mandatory filtering of the internet?
There was nothing in it on what we wit-
nessed this afternoon, the entrenchment and
furthering of the laws of terror. There was
nothing in it on data retention, the Attorney-
General’s proposal to start logging all the
material and traces that people leave behind
in web traffic and email and so on. But, most
strikingly, there was nothing in the speech,
nothing that any of the relevant ministers had
sought to put forward, about how we were
about to outsource our foreign policy to ura-
nium-mining companies for the short-term
interests of the nuclear industry here and
overseas.

Australia is on the verge potentially—if
people around the country have bulldozers
driven over them in the next couple of
months and years—of becoming the No. 1
uranium provider in the world. We will be
selling uranium at that stage to most of the
world’s nuclear weapons states, including
places—obviously, most recently, such as
Russia and China—with rather a queasy pro-
liferation record. We will be the No. 1 ura-
nium provider, providing jobs, providing tax
and royalty revenues and providing the boost
to the economy that the government never
ceases to spruik. Why wasn’t that in the
speech? Is that not something the govern-
ment is proud of? I found that rather curious.

For the amount of time that Minister Mar-
tin Ferguson spends enabling and furthering
the interests of this industry, you would have
thought he would have managed to get a
mention into the Governor-General’s
speech—something about how proud the
government is that it is taking this step to-
wards becoming the world’s supplier of ura-
nium to nuclear weapons states. But there
was not a peep.

There was nothing in there about how the
Australian government is pursuing the How-
ard agenda of a radioactive waste dump in the
Northern Territory. It was an issue that
played very heavily in the federal election
campaign. Certainly in Melbourne it played
its part in the huge swing we saw against the
minister, the member for Batman, Martin
Ferguson. I can tell those folk who did not
manage to visit the NT during the election
campaign, as I was fortunate enough to do,
that in the NT it was in the top three or four
issues that were debated. There was nothing
in the speech about that. Nor was there any-
thing about the Northern Territory interven-
tion, which is dramatically unpopular in the
NT.

There was nothing in there about our sup-
port for the United States nuclear weapons
umbrella or the fact that Australia, while far
from being a de facto nuclear weapons state
ourselves, relies on security assurances from
our alliance with the United States. Unlike
New Zealand, which managed to kick free
that prop decades ago, Australia still relies
on the United States government’s ability to
provoke Armageddon at any particular time
and annihilate cities at the throw of a switch
for our so-called security. There was nothing
about that.

Speaking of outsourcing our foreign pol-
icy to multinational uranium-mining compa-
nies, it is important to mention the agreement
that the Prime Minister announced recently
about uranium sales to Russia. This has been
coming for some time. Shortly after I arrived
here I took my place on the Joint Standing
Committee on Treaties, which published a
document on uranium sales to Russia. It was not merely a majority report; it was a unanimous report, I believe. It pointed out that certain criteria would need to be observed before any such sales could be contemplated. The government has chosen to simply sidestep that—set it to one side, ignore that risk—in the cause of increasing uranium exports to Russia, for which there was no apparent mention that I could discern in the speech. Perhaps this is something that the Australian government is not so proud of. There were not multiple press releases put out. It was not an announcement that was heralded. It was dropped at a very odd day, very late in the day, too late for the newspapers and so on.

I would like to go back briefly and identify some of the issues that the Joint Standing Committee on Treaties put into the public domain and put forward for the government to consider, just in case there is that small moment or that small pause for hesitation for the Australian government to contemplate whether doing this to our foreign policy is a good idea. And it is a foreign policy issue, not a mining or a resources issue. When you get into the uranium business, you are engaging in foreign policy whether you like it or not, and you are engaging in a very old and very nasty story that is now three generations old about what happens to this material when it leaves Darwin.

There are 32 nuclear power reactors now operating in Russia. Twenty-three of those were constructed prior to the 1986 Chernobyl disaster. Russian generators are generally licensed for 30 years, but 12 of the current reactors have been operating for more than 30 years. Late in 2000, plans were announced by Russian authorities for lifetime extensions of these 12 first-generation reactors. So the extension period is now envisaged at between 15 and 25 years. So currently operating in Russia are an early generation of nuclear reactors that were designed and built before the Chernobyl explosion and that will be operating for a period of up to 40 or 50 years—that is, longer than most of the operators who will be running the plant have been alive.

By the late 1990s Russian authorities were exporting nuclear reactors and related technology to China and India. India, of course, is not a signatory to the Nuclear Non-Proliferation Treaty. In August this year Russia announced that it would begin the start-up of Iran's only nuclear power plant. Uranium fuel shipped by Russia into Iran began use at the Bushehr reactor on 21 August despite the fact that Iran refuses to sign up to the Convention on Nuclear Safety, which would make it subject to international monitoring of its atomic safety standards. That is looking at the state of Russia's peaceful nuclear sector.

The foreign minister will need to stand up here every now and again in this building, as he has done in the past, on the announcement of some kind of grievous breach of international protocol by the Iranian government in starting up this plant or operating uranium centrifuges in apparent contravention of international obligations. The foreign minister will say: ‘Actually, folks, Iran is a grave threat to international security. You don't mess around when it comes to nuclear weapons.’ But we are potentially about to start, at the behest of Rio Tinto, BHP and their allies in the uranium mining sector, large-scale exports of this bomb fuel to the Russian government.

We have contemplated the state of Russia's peaceful nuclear sector. The Institute for Political and Military Analysis, which is a Moscow based non-government research organisation, reports that Russia has 3,100 nuclear warheads. The US Department of State claimed in April 2009 that the correct
figure is around 3,909. Russia also has a large but unknown number of tactical nuclear weapons. Russia is actively producing and developing new nuclear weapons, manufacturing Topol-M, or SS-27, intercontinental ballistic missiles since 1997. That puts them in direct and fundamental breach of their obligations under the Nuclear Non-Proliferation Treaty to stand these things down and dismantle them once and for all, but the Australian government seems to think it is appropriate that we start shipping this material to them nonetheless. So the very real security and proliferation concerns of uranium deals with Russia were spelled out, in my view, forensically by the Joint Standing Committee on Treaties late in 2008. It was a committee that urged the Australian government not to undertake this same sale. The government has blindly dismissed these warnings. It is an example of short-term profits taking precedence over long-term health and security interests. There is cross-border and internal aggression from the Russian government, there is an ongoing abuse of power and corruption of democracy in that country, there is persecution and assassination of journalists and critics, including with radioactive material, there is alleged election rigging, there is an ageing nuclear power sector and there is a vast and growing nuclear arsenal. All of these things make a compelling case against uranium sales to Russia, which was probably why it was neglected and did not find its way into the Governor-General’s speech.

Even if we forget the past, as supporters of the deal announced by the Prime Minister at the G20 conference exist, we cannot ignore the future. This is the kind of really blind self-interest at the behest of the uranium mining sector that mars us as a country. It is not enough for the Australian government to step back and say, ‘If we don’t sell this material then other people will’, because quite frankly that is the defence of the heroin dealer. If this trade is bad and toxic and the Labor Party has struggled with this issue for decades then under no circumstances should we condone it on the grounds that if we do not sell this material somebody else will. That is not good enough. I look forward in the next address-in-reply speech to being able to comment on the Governor-General’s acknowledgement that uranium mining is in the process of being phased out in Australia and that this carcinogenic and obsolete trade has no place in a modern and sustainable Australia of which all of us wish to be proud.

Senator HURLEY (South Australia) (9.48 pm)—I would like today, in this 43rd parliament, to reply to Her Excellency’s address and discuss some of the aspects of the Governor-General’s speech. But firstly I would like to congratulate all the newly elected and returned senators and members, especially those on this side of the chamber. For each elected and returned member or senator, each term brings the wonderful honour of representing the constituencies that have elected them. It is also a profound responsibility to uphold the interests of the constituency and all Australians in this great parliament. To those who sat in the 42nd parliament and were unsuccessful in re-election, I offer my deepest commiseration, as each of us can respect the demanding nature of this place and each of us can value the individual contributions made in the desire to make the lives of Australians better no matter the ideology or side that we sit on.

I would also like to take the time to congratulate my South Australian colleagues on a successful campaign which saw a positive swing towards the Labor Party on a two-party-preferred basis. The sitting members of parliament achieved some amazing swings for the Labor Party, none more so than Kingston member Amanda Rishworth, who achieved a 9½ per cent swing, the largest to
the Labor Party in this election. I would also like to congratulate Mr Nick Champion, the member for Wakefield, on his substantial swing, and Annabel Digance’s hard fought campaign in Boothby, which made it Australia’s third most marginal seat.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Moore)—Order! It being 9.50 pm, I propose the question:

That the Senate do now adjourn.

Health

Senator BILYK (Tasmania) (9.50 pm)—Tonight I rise to speak on two very important health issues that are close to my heart. I am speaking about brain tumours and mental health and, in particular, the link between the two. I know I have spoken on both issues in this place previously, but I really believe it is important that the community be educated about these health issues, and I am pleased to be able to do my part to help raise awareness. Brain Tumour Alliance Australia, or BTAA, and beyondblue are two organisations that play an important role in educating the community and also in supporting people who suffer from brain tumours and mental health issues, respectively. These organisations have joined together to raise awareness about the link between brain tumours and mental health. They have been supported by a number of medical professionals, including associate Professor Jane Turner, Dr Eng Siew-Koh and Dr Ally Rooney.

On 28 October I was pleased to host the two organisations at Parliament House in Canberra and launch their joint project, a fact sheet titled ‘Brain tumours, depression and anxiety disorders’. The six-page fact sheet includes information about what brain tumours are, the symptoms and treatment, and advice on managing resulting mental health conditions. There is also advice for carers so that they can stay in the best possible health to ensure that they can provide much-needed support for their loved one. Contact details for a variety of support organisations are also included. There were about 40 people present at the launch, including senators; members; staff; members of the press gallery; and people from the broader community, many of whom have had brain tumours of varying degrees and types.

The CEO of beyondblue, Ms Leonie Young, travelled to Canberra for the launch. Ms Young said:

Being aware of the early signs of depression and anxiety means those who may be affected can get the right treatment. We know that brain tumours increase the risk of depression and anxiety, but people who are well informed about their illness are more able to make decisions and get help early.

This launch also doubled as the launch of International Brain Tumour Awareness Week. I was honoured to be able to represent the Minister for Health and Ageing, the Hon. Nicola Roxon MP, who was unfortunately unable to attend due to other parliamentary commitments. There were other speakers at the launch, and they included Mr Matthew Pitt, Chairman of BTAA and a brain tumour survivor; as I mentioned, Ms Leonie Young, CEO of beyondblue; Ms Sarah Mamalai who is also a brain tumour survivor and has suffered from a mental health condition as a result; Ms Tracey Kristiansen, a carer and fundraiser; and Ms Mary Anne Rosier, who has lost two siblings to brain tumours. Mr Denis Strangman, Secretary of BTAA and Chair of the International Brain Tumour Alliance, was the MC for the event.

Listening to all the speakers tell their stories was a very moving experience. Sarah Mamalai is in her 30s, married with two children and was diagnosed three years ago. She has had two brain surgeries and has had...
chemotherapy as well as radiation treatment. She has also suffered emotionally and this resulted in a suicide attempt which she acknowledges was fortunately not completed. Despite all this, with the support of her husband, Oscar, and the love of her two young children, Sarah is now thriving. She has even walked the Kokoda Track. Sarah is full of determination and genuinely believes laughter is the best medicine. Sarah spoke very frankly about her personal experience and it was obviously very hard for her to do this. Her speech had a great impact on the audience and what a message she sent.

Mary Anne Rosier spoke of the heartbreak of losing two siblings to brain tumours. She also talked about her surprise at the link between brain tumours and depression and anxiety disorders. Mary Anne spoke of her review of literature on the subject of the link between brain tumours and mental health. She told us the most respected papers put incidences at between 25 and 38 per cent of patients. Caregiver Tracey Kristiansen spoke about caring for her husband who has a brain tumour and also her fundraising efforts. On the pamphlet that we launched, Matthew Pitt stated:

This resource will allow people to recognise the symptoms of depression and anxiety. It will allow them to understand that anxiety and depression are common in people living with a brain tumour, and effective treatment options are available.

We urgently need to find a cure for brain tumours. We also need to find extra support for people living with the disease and for their carers. One of BTAA’s key functions is preparing and distributing information material to patients and their carers and we see this resource as vital for people living with brain tumours and their carers.

Denis Strangman told the meeting that the launch was the most important brain tumour related event to have occurred in federal parliament since May 2004. This was when a bipartisan resolution in the House of Represenatives brought attention to the needs of brain tumour patients.

I take this opportunity to sincerely thank all of the speakers for their involvement and also to acknowledge that speaking on such emotional and personal issues is obviously not easy. They all did a wonderful job and I am sure I speak for everyone who was present when I say that we all admired their courage. I also thank the members and senators and their staff who supported this event by attending and, in the case of many senators and members, by wearing the grey awareness ribbons circulated by BTAA. That show of support meant so much to the representatives in the building on the day.

I also acknowledge the strong commitment the Gillard Labor government is making to fighting illness and cancers, including brain tumours. The government considers research into brain tumours and depression—which are linked—as vitally important to the quality of life, health and wellbeing of people affected by these illnesses, their carers and families. In 2006, 1,402 new cases of brain cancer were diagnosed in Australia, representing just over one per cent of all cancers. Brain tumours often affect people’s mental health, including through depression and anxiety disorders. Of course, a diagnosis of cancer does not just affect the person diagnosed but affects the family, caregivers and friends.

The work of beyondblue is a significant component of the Gillard government’s commitment to improve the lives of people with mental illness. Over the next four years the government will provide $36.8 million for beyondblue, the national depression initiative, to continue and build upon its great work. The Brain Tumour Alliance Australia provides an important role in representing the brain tumour community from the viewpoint of the patient, the family and the care-
The government, through Cancer Australia, is supporting research, clinical trials and cancer support networks to improve outcomes of those affected by brain cancers. Our commitment to fight cancer is clear.

In conclusion, I thank once again all the people who spoke at the launch. As I said, it is not easy for any of those people to stand up and lay their lives open like that. I also thank BTAA and beyondblue for all the hard work that they do to raise awareness and to support people when that support is absolutely critical. I encourage everyone to visit their websites www.beyondblue.org.au and www.btaa.org.au and to spend some time learning about these illnesses.

 Senate adjourned at 9.58 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.]

A New Tax System (Goods and Services Tax) Act—

Goods and Services Tax: Recipient Created Tax Invoice Amendment Determination (No. 1) 2010 [F2010L02949].

Goods and Services Tax: Waiver of Tax Invoice Requirement (Visa Purchasing Card) Amendment Determination (No. 1) 2010 [F2010L02954].

Acts Interpretation Act—

Statement pursuant to subsection 34C(6) relating to the extension of specified period for presentation of a report—Department of Sustainability, Environment, Water, Population and Communities—Report for 2009-10.

Statement pursuant to subsection 34C(7) relating to the delay in presenta-
Taxation Ruling TR 2010/7.

Copyright Act—Select Legislative Instruments 2010 Nos—
249—Copyright Amendment Regulations 2010 (No. 1) [F2010L02831].
250—Copyright Tribunal (Procedure) Amendment Regulations 2010 (No. 1) [F2010L02832].

Corporations (Aboriginal and Torres Strait Islander) Act—Select Legislative Instrument 2010 No. 257—Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2010 (No. 1) [F2010L02821].

Corporations Act—Select Legislative Instrument 2010 No. 272—Corporations Amendment Regulations 2010 (No. 8) [F2010L02820].

Crimes Act—Select Legislative Instrument 2010 No. 251—Crimes Amendment Regulations 2010 (No. 4) [F2010L02829].

Criminal Code Act—Select Legislative Instruments 2010 Nos—
252—Criminal Code Amendment Regulations 2010 (No. 5) [F2010L02825].
253—Criminal Code Amendment Regulations 2010 (No. 6) [F2010L02826].
254—Criminal Code Amendment Regulations 2010 (No. 7) [F2010L02828].

Currency Act—Currency (Royal Australian Mint) Determination 2010 (No. 5) [F2010L02891].

Customs Act—
CEO Determination No. 2 of 2010 [F2010L02906].
CEO Instrument of Approval No. 17 of 2010—Import Declaration [F2010L02911].

Tariff Concession Orders—
0912410 [F2010L02833].
0917315 [F2010L02902].
0917878 [F2010L02837].
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**Tariff Concession Revocation Instruments—**

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Defence Act—Determinations under section 58B—Defence Determinations—

2010/52—Partial rent allowance—amendment.

2010/53—Medical officers—amendment.

2010/54—Salary—member undergoing training—amendment.

Environment Protection and Biodiversity Conservation Act—Amendments of lists of exempt native specimens—

EPBC303DC/SFS/2010/42 [F2010L02943].

EPBC303DC/SFS/2010/51 [F2010L02944].

EPBC303DC/SFS/2010/53 [F2010L02945].

EPBC303DC/SFS/2010/54 [F2010L02942].

Family Law Act—Select Legislative Instrument 2010 No. 255—Family Law Amendment Regulations 2010 (No. 4) [F2010L02823].

Federal Financial Relations Act—

Federal Financial Relations (General purpose financial assistance) Determination No. 19 (October 2010) [F2010L02993].

Federal Financial Relations (National Partnership payments) Determinations—

No. 26 (October 2010) [F2010L02992].

No. 27 (November 2010) [F2010L02999].

Financial Management and Accountability Act—
Financial Management and Accountability Determinations—
2010/20—Section 32 (Transfer of Function from DAFF to AFMA) [F2010L02830].
2010/22—Section 32 (Transfer of Functions from the former DITRDLG to DORA) [F2010L02923].
2010/23—Section 32 (Transfer of Functions from the former DITRDLG to DORA) [F2010L02938].
2010/24—Section 32 (Transfer of Functions from DEEWR to Austade) [F2010L02991].
2010/25—Section 32 (Transfer of Functions from DEEWR to APSC) [F2010L02996].
2010/26—Section 32 (Transfer of Functions from DEEWR to APSC) [F2010L02997].
2010/30—Section 32 (Transfer of Functions from DAFF to DIISR) [F2010L02995].

Select Legislative Instruments 2010 Nos—
258—Financial Management and Accountability Amendment Regulations 2010 (No. 4) [F2010L02808].
259—Financial Management and Accountability Amendment Regulations 2010 (No. 5) [F2010L02758].

Freedom of Information Act—Select Legislative Instruments 2010 Nos—
269—Freedom of Information (Fees and Charges) Amendment Regulations 2010 (No. 1) [F2010L02781].
271—Freedom of Information (Miscellaneous Provisions) Amendment Regulations 2010 (No. 1) [F2010L02817].


Health Insurance Act—
Health Insurance (Positron Emission Tomography) Facilities Determination 2010 (No. 2) [F2010L02816].

Select Legislative Instruments 2010 Nos—
260—Health Insurance Amendment Regulations 2010 (No. 2) [F2010L02796].
261—Health Insurance Amendment Regulations 2010 (No. 3) [F2010L02770].
262—Health Insurance Amendment Regulations 2010 (No. 4) [F2010L02797].
263—Health Insurance (Diagnostic Imaging Services Table) Regulations 2010 [F2010L02765].
264—Health Insurance (General Medical Services Table) Regulations 2010 [F2010L02791].
265—Health Insurance (Pathology Services Table) Regulations 2010 [F2010L02766].

Higher Education Support Act—VET Provider Approvals Nos—
14 of 2010—Kal Multimedia Training Pty Ltd [F2010L02936].
15 of 2010—Wealth Within Institute Pty Ltd [F2010L02937].

Judiciary Act—Select Legislative Instrument 2010 No. 274—High Court Amendment Rules 2010 (No. 2) [F2010L02913].
Lands Acquisition Act—Statement describing property acquired by agreement for specified public purposes under section 125.
Migration Act—Office of the MARA Notices—
MN44-10a of 2010—Migration Agents (Continuing Professional Development – Program of Education) [F2010L02822].
MN44-10b of 2010—Migration Agents (Continuing Professional Development
-- Private Study of Audio, Video or Written Material) [F2010L02824].
MN44-10c of 2010—Migration Agents (Continuing Professional Development – Attendance at a Seminar, Workshop, Conference or Lecture) [F2010L02827].
National Health Act—Instruments Nos PB—
95 of 2010—Amendment declaration and determination – drugs and medicinal preparations [F2010L02854].
96 of 2010—Amendment determination – pharmaceutical benefits [F2010L02855].
97 of 2010—Amendment determination – responsible persons [F2010L02856].
98 of 2010—Amendment determination – prescription of pharmaceutical benefits by authorised optometrists [F2010L02857].
99 of 2010—Amendment determination – conditions [F2010L02858].
100 of 2010—Amendment determination – exempt items [F2010L02859].
101 of 2010—Amendment special arrangements – Highly Specialised Drugs Program for public hospitals [F2010L02866].
102 of 2010—Amendment special arrangements – Highly Specialised Drugs Program for private hospitals [F2010L02860].
103 of 2010—Determinations – pharmaceutical benefits supplied by medical practitioners and authorised nurse practitioners [F2010L02861].
105 of 2010—Amendment special arrangements – Chemotherapy Pharmaceuticals Access Program [F2010L02862].
106 of 2010—Amendment determination – pharmaceutical benefits – early supply [F2010L02895].
107 of 2010—Amendment determination – listed drugs on F1 or F2 [F2010L02863].

Private Health Insurance Act—
Private Health Insurance (Benefit Requirements) Amendment Rules 2010 (No. 7A) [F2010L02894].
Private Health Insurance (Complying Product) Amendment Rules 2010 (No. 5) [F2010L02893].
Private Health Insurance (Lifetime Health Cover) Amendment Rules 2010 [F2010L02896].

Remuneration Tribunal Act—
Determination—
2010/18: Remuneration and Allowances for Holders of Public Office [F2010L02865].
2010/19: Judicial and Related Offices – Remuneration and Allowances [F2010L02864].

Renewable Energy (Electricity) Act—
Select Legislative Instrument 2010 No. 256—Renewable Energy (Electricity) Amendment Regulations 2010 (No. 7) [F2010L02806].

Schools Assistance Act—Determination No. 2010-385—Specification of criteria for the purposes of the definition of ‘eligible new arrival’ [F2010L02892].

Sydney Airport Curfew Act—Dispensation Report 05/10.

Tax Agent Services Act—Select Legislative Instrument 2010 No. 273—Tax Agent Services Amendment Regulations 2010 (No. 1) [F2010L02815].

Therapeutic Goods Act—Select Legislative Instruments 2010 Nos—
266—Therapeutic Goods Amendment Regulations 2010 (No. 4) [F2010L02771].
267—Therapeutic Goods (Medical Devices) Amendment Regulations 2010 (No. 3) [F2010L02787].

Veterans’ Entitlements Act—
Amendments of Statements of Principles concerning—
Ischaemic Heart Disease No. 96 of 2010 [F2010L02852].
Ischaemic Heart Disease No. 97 of 2010 [F2010L02853].

Statements of Principles concerning—

Labral Tear No. 94 of 2010 [F2010L02850].
Labral Tear No. 95 of 2010 [F2010L02851].
Morton’s Metatarsalgia No. 92 of 2010 [F2010L02848].
Morton’s Metatarsalgia No. 93 of 2010 [F2010L02849].
Poisoning and Toxic Reaction from Plants and Fungi No. 84 of 2010 [F2010L02839].
Poisoning and Toxic Reaction from Plants and Fungi No. 85 of 2010 [F2010L02840].
Ross River Virus Infection No. 90 of 2010 [F2010L02846].
Ross River Virus Infection No. 91 of 2010 [F2010L02847].
Schistosomiasis No. 86 of 2010 [F2010L02842].
Schistosomiasis No. 87 of 2010 [F2010L02843].
Strongyloidiasis No. 88 of 2010 [F2010L02844].
Strongyloidiasis No. 89 of 2010 [F2010L02845].

Return to Order

The following document was tabled pursuant to the orders of the Senate of 26 October 2010:

Taxation—Mining tax—Revenue estimates—Government estimates—Letter from the Australian Information Commissioner (Professor McMillan) to the Clerk of the Senate relating to the examination of three orders for the production of documents concerning the proposed mining tax, dated 11 November 2010.

The following document was tabled pursuant to the order of the Senate of 24 June 2008:

Departmental and agency grants—Budget (Supplementary) estimates—Letter of advice—Attorney-General’s portfolio.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Australian Transaction Reports and Analysis Centre

(Question No. 1)

Senator Abetz asked the Minister representing the Minister for Justice, upon notice, on 28 September 2010.

With reference to the Australian Transaction Reports and Analysis Centre (AUSTRAC):

(1) Why is AUSTRAC proposing to charge anti-money laundering and counter-terrorism financing reporting entities a $500 annual fee.

(2) Will each and every reporting entity be required to pay the fee.

(3) Will small businesses that are reporting entities be liable to pay the same fee as large reporting entities such as banks.

(4) Why does AUSTRAC expect small business to fund its activities.

(5) Why is AUSTRAC not paying small businesses for performing work for AUSTRAC.

(6) Is AUSTRAC proposing to introduce any other fees on reporting entities.

(7) What consultation with industry took place before this fee was announced.

(8) Why was the Post Office Agents Association Limited, as the representative body for thousands of reporting entities, those being Licensed Post Offices, not consulted before hand.

(9) Will the proposed $500 annual fee be indexed.

(10) Who made the decision to introduce the fee.

(11) Has AUSTRAC performed any analysis of the impact this fee would have on small business.

(12) Did AUSTRAC take into account that the owner/operators of Licensed Post Offices are unable to pass on this fee to their customers.

Senator Ludwig—The Minister for Justice has provided the following answer to the honourable senator’s question:

(1) to (6) The Government has announced that, from 2011-12, AUSTRAC will introduce cost recovery in relation to its regulatory activities. Cost recovery is being introduced pursuant to the Cost Recovery Guidelines which were first adopted by the former Coalition Government in December 2002 and have been continued by the current Government. The Government has advised that industry will be consulted on the design of the cost recovery arrangements.

(7) and (8) Not applicable. As indicated above consultations will be undertaken in relation to the design of the cost recovery arrangements.

(9) to (12) See (1) – (6).

Mr Oleg Deripaska

(Question No. 3)

Senator Bob Brown asked the Minister representing the Prime Minister, upon notice, on 28 September 2010:

In 2010, which federal government officials, including the Prime Minister and the former Prime Minister, Kevin Rudd MP:
(a) met with Mr Oleg Deripaska, the Chief Executive Officer of the Russian aluminium company, United Company RUSAL, or his representative; and
(b) held discussions regarding the possibility of Russian participation in bauxite mining in Queensland, including the Aurukun project recently abandoned by Aluminium Corporation of China Limited (CHALCO).

Senator Chris Evans—The Prime Minister has provided the following answer to the honourable senator’s question:
I have not met with Mr Oleg Deripaska or his representative in 2010 and am not aware that any of my staff or employees of the Department of the Prime Minister and Cabinet have met with Mr Oleg Deripaska or his representative in 2010.
I am advised by the Department of the Prime Minister and Cabinet that it has no records of the former Prime Minister, the Hon Kevin Rudd MP, or his staff meeting with Mr Deripaska or a representative in 2010.

Koala Population
(Question No. 7)

Senator Bob Brown asked the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, upon notice, 28 September 2010:

(1) Given that the Australian Koala Foundation estimates the number of koalas left in Australia at just 43,000, does the Government recognise this as an accurate figure; if not, what is the Government’s estimate of the koala population.
(2) Given that the Minister has floated the idea of listing the koala as ‘conservation dependent’, even though both Queensland and New South Wales already list it as ‘vulnerable’, why is this lesser protection being considered before the Threatened Species Scientific Committee has made a decision on listing under the Environment Protection and Biodiversity Conservation Act 1999.
(3) Why is the Government considering giving state governments responsibility to protect koala habitat when the widespread destruction of its habitat, through logging and land-clearing, has occurred on the watch of state governments.

Senator Conroy—The Minister for Sustainability, Environment, Water, Population and Communities has provided the following answer to the honourable senator’s question:

(1) The Department of Sustainability, Environment, Water, Population and Communities has been aware of the Australian Koala Foundation’s koala population estimates, ranging from approximately 44,000 to 85,000 (excluding South Australia), since November 2009. An explanation of the methodology by which that estimate was calculated was provided to the department and the Threatened Species Scientific Committee on 15 June 2010.
The Threatened Species Scientific Committee has previously noted that there is currently no published, scientifically peer-reviewed estimate of the total number of koalas in Australia and no definitive past estimate within an appropriate timeframe to enable comparison. The report on the 1986-7 national survey of koala distribution noted that a total population size was “impossible to estimate as survey techniques varied greatly from area to area”.
(2) The status of the koala under state law varies across its range. The koala is listed as ‘vulnerable’ in south-east Queensland and New South Wales, with some New South Wales populations listed as ‘endangered’. In other parts of its range it is listed as ‘of least concern’ or is not listed as a threatened species. The 2010 IUCN Red List of Threatened Species lists the koala as ‘of least concern’. The Threatened Species Scientific Committee must first assess the eligibility of the koala for listing as a threatened species under the Environment Protection and Biodiversity Conservation Act 1999.
(EPBC Act), and then the category under which it should be listed. Because there is a national plan of management for this species, the Threatened Species Scientific Committee has considered whether the koala is eligible for listing in any appropriate category, including ‘conservation dependent’ and ‘vulnerable’.

The final decision on listing will be made by the Minister for Sustainability, Environment, Water, Population and Communities, taking into account the advice provided by the Threatened Species Scientific Committee and public submissions on the listing nomination.

(3) As the koala is not currently listed as a threatened species under the national EPBC Act, actions that are likely to have an impact on this species do not currently require assessment and approval under the EPBC Act prior to commencement. Nevertheless, the reason that the then Minister for Environment, Heritage and the Arts asked the Threatened Species Scientific Committee to assess the koala for possible listing was because of concerns about the pressure on koala populations. That is the best process by which to objectively assess the status of the koala nationally and the severity of the threats it faces.

**Timberwolf**

**(Question No. 9)**

Senator Bob Brown asked the Minister representing the Minister for Financial Services and Superannuation, upon notice, on 28 September 2010:

Will the Government ask the Australian Securities and Investments Commission to investigate:

(a) in accordance with its commitment to ‘assist and protect retail investors and consumers’, the behaviour of the financial advisers that recommended the Timberwolf collateralised debt obligation product to small investors;

(b) directors and officers of Basis Capital and Goldman Sachs’ Australian office to ensure they have carried out their duties honestly and diligently in recommending the Timberwolf product without misleading or deceiving consumers; and

(c) ratings agencies that gave the Timberwolf product a triple A rating to ensure that their recommendation was achieved via a means that was honest and fair and did not result in consumers being misled or deceived.

Senator Sherry—The Minister for Financial Services and Superannuation has provided the following answer to the honourable senator’s question:

(a) ASIC is an independent statutory authority responsible for the administration of the Corporations Act 2001 (Corporations Act) and related legislation. Under its governing statute, the Australian Securities and Investments Commission Act 2001 (ASIC Act), the Government is specifically precluded from giving ASIC a direction in relation to a specific case. One of the reasons that ASIC was established as an independent body was to ensure that its decisions and actions are, and are seen to be, independent of the political process.

The Government has confidence in ASIC’s ability to handle this matter and to exercise its independent judgement and statutory powers in this situation.

In April 2010, the Government announced the Future of Financial Advice reforms which focus on improving the quality of financial advice and enhancing retail investor protection. The reforms are the Government’s response to the Parliamentary Joint Committee on Corporations and Financial Services’ Inquiry into financial products and services in Australia.

The key reforms include a prospective ban on conflicted remuneration structures, including commission payments, and a statutory fiduciary duty for financial advisers requiring them to act in the best interests of their clients, subject to a ‘reasonable steps’ qualification. Other reforms include strengthening the powers of ASIC in relation to the licensing and banning of individuals from the
financial services industry, and simplifying the disclosure of advisory services provided to consumers. The reforms also involve examining the need for, and costs and benefits of, a statutory compensation scheme for financial services. Key reforms will apply from 1 July 2012.

(b) Under the Corporations Act and at common law, company officers including directors owe broad fiduciary duties to the companies that they serve. These duties require directors to act honestly for the good of the company, for proper purposes, and to avoid actual conflicts of duty.

Corporations law aims to ensure that companies conduct their businesses honestly and responsibly and meet their commitments to their shareholders and creditors. Company directors are subject to statutory and common law duties in the performance of their functions, including the duty to exercise their powers in good faith, for a proper purpose and in the best interests of the company as a whole. ASIC, as the corporate is responsible for monitoring compliance with these duties and breaches of them may result in criminal or civil penalties.

The Government has confidence in ASIC’s ability to handle this matter and to exercise its independent judgement and statutory powers in this situation.

(c) The global financial crisis and the Southern European debt crisis have both provoked criticism of the performance of credit rating agencies (CRAs). In relation to the financial crisis, the complaint has been that products such as collateralised debt obligations (CDOs) were over-rated. In response, G20 Leaders have agreed that CRAs should be required to be licensed and to comply with the International Organization of Securities Commission’s (IOSCO) Code of Conduct.

Australia has enacted reforms to improve the oversight of CRAs. All CRAs operating in Australia were required to have an Australia financial services licence (AFSL) from 1 January 2010. This requirement included an obligation on CRAs to report on their compliance with the Code of Rating Fundamentals issued by IOSCO. The three major CRAs have each applied for and received a wholesale licence to operate in Australia.

The regulation of CRAs which operate in the retail space is important for the protection of retail investors.

ASIC, as the independent corporate regulator, has the authority under the law to impose conditions on an AFS licensee. The Government has confidence in ASIC’s ability to handle this matter and to exercise its independent judgement and statutory powers in this situation.

The Corporations Act contains additional conditions for retail licensees, such as membership of an external dispute resolution scheme, that are designed to protect retail investors.

These measures will ensure that CRAs reach their recommendation via a means that are honest and fair and reduce the incidence of consumers being misled or deceived.

Woodside Energy Ltd

(Question No. 12)

Senator Siewert asked the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, upon notice, on 28 September 2010:

(1) Why was approval given for Woodside Energy Ltd to carry out marine seismic and near-shore seismic refraction geotechnical surveys, starting on 25 May 2010, at Browse Basin and off the coast of James Price Point in the north-west of Western Australia, during the whale migration period when it is known that this area is one of the most significant humpback whale nurseries in the world.

(2) Is the Minister aware that noise from oil and gas seismic testing can hinder whale communication and threaten the whale’s ability to navigate, kill prey and reproduce.
(3) Was this seismic survey assessed as a controlled action under the Environment Protection and Biodiversity Conservation Act 1999; if not, why not.

Senator Conroy—The Minister for Sustainability, Environment, Water, Population and Communities has provided the following answer to the honourable senator’s question:

(1) In March 2010 Woodside Energy Ltd (Woodside) referred a proposed seismic survey, approximately 40 kilometres offshore from Broome, under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). Woodside committed to undertaking the survey in accordance with departmental seismic-whale interaction guidelines, and agreed to conduct the survey between April and June 2010. This time is outside the peak migration period for the Humpback whale, which migrates annually to the calving area 100 kilometres north of Broome between mid-July and mid-August. Additional management measures were also required, including having a dedicated Marine Mammal Observer onboard.

The delegate of the Minister was satisfied that a significant impact to this listed vulnerable and migratory species was unlikely. Therefore, the action was determined to be ‘not a controlled action because the Minister believes it will be taken in a particular manner’.

The Department of Sustainability, Environment, Water, Population and Communities is also aware of three near shore seismic refraction geotechnical surveys undertaken by Woodside in the region offshore of James Price Point during 2010. The Department has looked into two of these activities and concluded that they were low impact activities, unlikely to require EPBC Act approval. The third is still under consideration.

(2) Yes.

(3) No. See (1) above.


(Question Nos 21, 30, 40 and 43)

Senator Humphries asked the Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Minister representing the Minister for School Education, Early Childhood and Youth, Minister for Employment Participation and Childcare and Minister for Indigenous Employment and Economic Development, upon notice, on 29 September 2010:

Do any of the departments or agencies within the Minister’s portfolio consider that new or additional office accommodation may be required in the next 2 years; if so, would that accommodation be provided in Canberra; and if so, approximately how many staff are estimated to need accommodation in the new or additional offices.

Senator Chris Evans—The answer to the honourable senator’s question is as follows:

The Department of Education, Employment and Workplace Relations (DEEWR) does not anticipate the need for a net increase in office accommodation in the next two years but will be looking to manage the number of leases downwards. This includes consideration of future requirements including density and environmental factors.

The Australian Institute for Teaching and School Leadership is anticipating an increase to accommodate 34 staff across three offices. This is to support a recent decision by the Ministerial Council for Education, Early Childhood Development and Youth Affairs to establish offices in Melbourne, Brisbane and Canberra.
Regional Australia, Regional Development and Local Government: Accommodation
(Question No. 22)

Senator Humphries asked the Minister representing the Minister for Regional Australia, Regional Development and Local Government, upon notice, on 28 September 2010:
Do any of the departments or agencies within the Ministers portfolio consider that new or additional office accommodation may be required in the next 2 years; if so, would that accommodation be provided in Canberra; and if so, approximately how many staff are estimated to need accommodation in the new or additional offices.

Senator Sherry—The Minister for Regional Australia, Regional Development and Local Government has provided the following answer to the honourable member’s question:
The Department of Regional Australia, Regional Development and Local Government (Regional Australia) was established as a result of Administrative Arrangements Orders of 14 September 2010. Regional Australia’s Canberra based staff are currently based in interim accommodation leased by the Department of Infrastructure and Transport. The Department will consider long term accommodation options in due course when its budget and ongoing staffing profile is agreed.

Sustainability, Environment, Water, Population and Communities: Accommodation
(Question No. 28)

Senator Humphries asked the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, upon notice, on 28 September 2010:
Do any of the departments or agencies within the Minister’s portfolio consider that new or additional office accommodation may be required in the next 2 years; if so, would that accommodation be provided in Canberra; and if so, approximately how many staff are estimated to need accommodation in the new or additional offices.

Senator Conroy—The Minister for Sustainability, Environment, Water, Population and Communities has provided the following answer to the honourable senator’s question:
The Minister’s portfolio consists of the:
• Department of Sustainability, Environment, Water, Population and Communities;
• Bureau of Meteorology;
• Murray Darling Basin Authority;
• Great Barrier Reef Marine Park Authority;
• Sydney Harbour Federation Trust;
• National Water Commission;
• Environmental Protection and Heritage Council; and
• Australian National Botanic Gardens.
Of these, only three agencies are considering new or additional accommodation within the next two years:
• The Bureau of Meteorology is currently considering the augmentation of its Water Division tenancy at Childers Street, Canberra. The space under consideration is 262sqm with an overall increase of 25 staff within the extended office area. No other accommodation acquisition is envisaged by the Bureau over the next two years.
• Due to an expiring lease arrangement the Murray Darling Basin Authority will be looking for space in Canberra for approximately 50 staff.
Australian National Botanic Gardens are seeking approval to extend the Australian National Herbarium which would include office space for between 6 and 10 staff.

In addition, as a result of the recent machinery of government changes, the department will be taking on a sub-lease for the new Affordable Housing function from FaHCSIA (for approximately 70 staff within HSA House in Woden). This will be off-set by the loss of the National Portrait Gallery and the Arts and Culture divisions (which house c. 130 staff in the department’s Allara Street lease) to the Department of Prime Minister and Cabinet.

Resources and Energy, and Tourism: Accommodation
(Question Nos 32 and 33)

Senator Humphries asked the Minister representing the Minister for Resources and Energy and Minister for Tourism, upon notice, on 28 September 2010:

Do any of the departments or agencies within the Minister’s portfolio consider that new or additional office accommodation may be required in the next 2 years; if so, would that accommodation be provided in Canberra; and if so, approximately how many staff are estimated to need accommodation in the new or additional offices

Senator Sherry—The Minister for Resources and Energy and Minister for Tourism has provide the following answer to the honourable senator’s question:

The Department of Resources, Energy and Tourism is looking to consolidate its accommodation requirements into one building during 2011. It is proposed that this consolidation will be into an existing building in the Canberra central business district and will provide for approximately 500 staff.

Human Services: Accommodation
(Question No. 37)

Senator Humphries asked the Minister representing the Minister for Human Services, upon notice, on 28 September 2010:

Do any of the departments or agencies within the Minister’s portfolio consider that new or additional office accommodation may be required in the next 2 years; if so, would that accommodation be provided in Canberra; and if so, approximately how many staff are estimated to need accommodation in the new or additional offices.

Senator Arbib—The Minister for Human Services has provided the following answer to the honourable senator’s question:

It is envisaged that an additional building in Canberra will be identified and a lease negotiated in the next two years to complement further the functional integration of business activity associated with Centrelink, Medicare Australia and the Department of Human Services.

Potentially, some 1,700 portfolio staff located in dispersed secondary premises within the ACT may be accommodated in the additional building. This initiative is in line with the Department of Human Services property strategy to consolidate portfolio accommodation requirements into a single precinct and premises.

Workers Entitlements
(Question No. 59)

Senator Johnston asked the Minister representing the Minister for Financial Services and Superannuation, upon notice, on 28 September 2010:

When banks make a decision to commence recovery procedures of their securities, are they required to take into account the rights of employees to unpaid wages and other entitlements.
Senator Sherry—The Minister for Financial Services and Superannuation has provided the following answer to the honourable senator’s question:

The Corporations Act 2001 and Bankruptcy Act 1966 provide that in a corporate or personal insolvency administration, any amounts owing to employees receive a special priority above most other creditors.

As part of the Government’s announced Protecting Worker’s Entitlements Package, the ranking of employee creditors in personal insolvencies will be improved to bring their ranking into line with the priority given to employee creditors in corporate insolvencies.

If employees have entitlements outstanding, they may also be eligible to make a claim through the General Employee Entitlements and Redundancy Scheme.

Sheikh Mansour Leghaei
(Question No. 146)

Senator Ludlam asked the Minister representing the Minister for Immigration and Citizenship, upon notice, on 29 September 2010:

(1) Did the United Nations (UN) Human Rights Committee (the committee) write to the Australian Government on 21 April 2010 requesting that Sheikh Mansour Leghaei not be deported until it had considered his case.

(2) Has the Government responded formally to the letter from the Chief of the UN human rights treaty division who wrote on behalf of the committee.

(3) Has Sheikh Mansour Leghaei or his legal representatives been provided with a summary or an indication of the elements of the evidence the Australian Security Intelligence Organisation has collected against him.

(4) In this regard, how does the Government understand Australia’s obligations under the Optional Protocol to the International Covenant on Civil and Political Rights, taking into account the committee’s General Comment No. 33, paragraph 19 (CCPR/C/GC/33, dated 5 November 2009).

(5) Has the Government noted instances where the committee has expressed its indignation and found that the state has committed a grave breach of its obligations under the Optional Protocol, such as the committee’s Report of the human rights committee (UN General Assembly Official Record, 49th Sess., Supp. No. 40, UN Doc. A/49/40, vol. 1 (1994), para. 411) and Piandiong v. The Philippines (Communication No. 869/1999, para. 7.4).

(6) Will the Government provide an assurance to Sheikh Mansour Leghaei that he will not be removed from Australia until the committee has finally determined his case on the merits, as required by the committee’s interim measures request of 21 April 2010.

(7) Did the current Attorney-General write two letters of support for Sheikh Mansour Leghaei describing him as ‘an asset to the Muslim community in particular and the Australian community at large’.

Senator Carr—The Minister for Immigration and Citizenship has provided the following answer to the honourable senator’s question:

(1) Yes.


(3) I am advised that Dr Leghaei was notified that he had been assessed by ASIO to be a direct risk to national security. He was advised of the substance of the allegation against him (by being invited to comment on whether he is a threat to security generally, and, specifically, whether he had engaged in acts of foreign interference) and he was interviewed eight times by ASIO (during which he was given an opportunity to comment on various matters relevant to his security assessment).
Dr Leghaei was not advised of the specific grounds upon which ASIO made its assessment or provided with the information upon which ASIO’s assessment was based as this could not be provided to him without prejudicing national security. Any further enquiries regarding Dr Leghaei’s security assessment should be directed to ASIO through the Attorney-General.

(4) The Australian Government recognises the importance of the ability of the UN Human Rights Committee to issue requests for interim measures of protection and carefully considers all such requests. Australia notes in this regard that interim measures are founded in the rules of procedure of the relevant human rights treaty body, rather than the Optional Protocol to the International Covenant on Civil and Political Rights. It is in this regard that successive governments have considered that they are not legally binding on States Parties.

In Australia’s view, however, State Parties must consider interim measure requests made by the Committee in good faith and in light of the specific circumstances of the case.

(5) Yes.

(6) No. The Government requested that the Interim Measures Request (IMR) be lifted on the basis of new and pertinent information. This information related to the former Minister’s decisions regarding the Ministerial Intervention request. On 17 June 2010, the Australian Government received advice through the Australian Mission in Geneva that the Committee had lifted the request for interim measures on 15 June 2010. Dr Leghaei departed Australia voluntarily on 27 June 2010.

(7) This question should be directed to the Attorney-General.

**Burma**

*(Question No. 147)*

Senator Ludlam asked the Minister representing the Minister for Trade, upon notice, on 28 September 2010:

With reference to the Government’s policy of neither encouraging nor discouraging trade or investment in Burma:

(1) Does the Austrade office in Bangkok and the Australian Embassy in Rangoon provide advice to Australian companies enquiring about the operating environment in Burma for business.

(2) Does the Austrade office in Bangkok and the Australian Embassy in Rangoon provide advice to Australian companies about country risk factors, economic governance, forced labour and consumer boycotts.

Senator Conroy—The Minister for Trade has provide the following answer to the honourable senator’s question:

(1) and (2) In accordance with longstanding government policy, the Austrade office in Bangkok and the Australian Embassy in Rangoon neither encourage nor discourage trade with or investment in Burma. In response to enquiries from Australian companies, the Austrade office in Bangkok and the Australian Embassy in Rangoon provide advice about the operating environment in Burma.

**Prime Minister: Hospitality**

*(Question No. 153)*

Senator Abetz asked the Minister representing the Prime Minister, upon notice, on 29 September 2010:

Did the Prime Minister dine with representatives from the superannuation industry at the Lodge on Monday, 24 May 2010; if so: (a) can a list be provided of all attendees; (b) on what basis were individuals invited to the dinner; (c) who compiled the invitation list; and (d) what was the total cost of the dinner.
Senator Chris Evans—The Prime Minister has provided the following answer to the honourable senator’s question:

As outlined in the Budget Estimates hearings of 27 May 2008, when requested, the Government will make available information about guests and costs of official functions held at The Lodge or Kirribilli House, but not private functions.

Official functions are defined as those organised by the Ceremonial and Hospitality Branch of the Department of the Prime Minister and Cabinet.

I am advised that the function referred to in this question was a private function held by the then Prime Minister.

Medicare
(Question No. 155)

Senator Abetz asked the Minister representing the Minister for Health and Ageing, upon notice, on 29 September 2010:

(1) Has the number of Medicare claims on hyperbaric oxygen treatment been stable over the past decade?

(2) Can the number of services provided over the past decade be provided on a yearly basis, by either calendar or financial year?

(3) Given that MSAC has conducted a number of reviews into hyperbaric oxygen treatment:
   (a) how much has each of these reviews cost?
   (b) what is the anticipated cost of the latest review?

(4) Given that the validity of this treatment seems to be acknowledged through worldwide medical literature:
   (a) what are the technical medical issues that require MSAC to further investigate this treatment?
   (b) on what basis did MSAC review the existing technology in relation to this treatment?

(5) Given that it is understood that MSAC’s brief is to review new technologies not existing funded technology, are there any other examples where MSAC has reviewed existing funded technologies; if not, why has hyperbaric oxygen treatment been singled out?

Senator Ludwig—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) There has been neither a significant increase nor a significant decrease in the aggregate number of claims for these services over the past decade.

(2) The data on the number of Medicare claims on hyperbaric oxygen treatment for eight indications over the past decade are:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Medicare Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000/2001</td>
<td>10,358</td>
</tr>
<tr>
<td>2001/2002</td>
<td>10,094</td>
</tr>
<tr>
<td>2002/2003</td>
<td>9,264</td>
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<tr>
<td>2003/2004</td>
<td>8,864</td>
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<tr>
<td>2004/2005</td>
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<tr>
<td>2005/2006</td>
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<tr>
<td>2006/2007</td>
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<tr>
<td>2007/2008</td>
<td>10,536</td>
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<tr>
<td>2008/2009</td>
<td>10,137</td>
</tr>
<tr>
<td>2009/2010</td>
<td>12,262</td>
</tr>
</tbody>
</table>
Changes in the utilisation of services over time may reflect structural changes to the Medicare Benefits Schedule (MBS), population growth/decline and net migration, ageing of the population, cost shifting (services previously provided by the states/territories at no charge, are now available under Medicare), minor additions of new items to the MBS and changes in the coverage of Medicare as a result of Government policy.

(3) (a) The Department of Health and Ageing (the Department) cannot reasonably identify the cost of previous reviews, dating back to ten years, as this information is not readily available and its compilation would involve a significant diversion of resources. (b) The anticipated cost for the current review (Reference 1054.1) is $150,000.00, which includes the contracted assessment report and guidance from an advisory panel.

(4) (a) The current review is of the existing indications being funded on the MBS on an interim basis pending the outcomes of international trials and data collection. It aims to provide an up to date comprehensive evidence based assessment of all treatment options for hyperbaric oxygen treatment (HBOT) of late soft tissue radiation injury or necrosis and HBOT of non-diabetic chronic or recurring problem wounds where hypoxia can be demonstrated. The applicant was asked to collect data during the interim funding period, and they have provided two submissions to the Department to assist in the review. (b) In May 2003, the Medical Services Advisory Committee (MSAC) advised the Minister for Health and Ageing that "the clinical evidence was inadequate to substantiate claims that hyperbaric oxygen therapy (HBOT) was cost-effective in the treatment of refractory soft tissue radiation injuries or non-diabetic refractory wounds. However, MSAC recommended that, as there are no effective alternative therapies and in view of the progress of local data collections and an international trial, funding for HBOT continue for MBS listed indications at currently eligible sites, for a further three years".

The then Minister for Health and Ageing noted this advice in August 2004, and interim funding of these items expires on 31 October 2010. As the interim funding period is due to expire in the foreseeable future, it was appropriate for the items to be reviewed at this time.

(5) The principal role of MSAC is to advise the Australian Minister for Health and Ageing on the strength of the evidence relating to the safety, effectiveness and cost-effectiveness of new medical technologies and procedures. MSAC also provides advice on new and/or existing services for which a reference is made from Government. This advice informs Australian Government decisions about public funding for new, and in some cases existing, medical procedures.

MSAC may support the funding of a service on an interim basis for a specified period pending collection of further data. MSAC then subsequently reviews such services in the light of any additional evidence, and provides advice as to whether public funding should cease, be continued on an interim basis pending further data collection, or whether the service should receive ongoing funding.

In accordance with its terms of reference, MSAC is currently reviewing the interim funded status of an existing HBOT indication, as well as considering an additional indication requested by the applicant.

**Tasmanian Community Forest Agreement Industry Development Program**

(Question No. 162)

**Senator Milne** asked the Minister for Agriculture, Fisheries and Forestry, upon notice, on 1 October 2010:

With reference to the answer given to question on notice CP 02 asked during the 2008-09 Budget estimates hearing of the Rural and Regional Affairs and Transport Committee, which stated in attachment B that, ‘The Tasmanian Community Forest Agreement Industry Development Program (TCFA) consists of three competitive, discretionary grant programs administered by the Department of Agriculture Fisher-
ies and Forestry to assist investment in re-tooling the forest industry to assist its adjustment to the change in wood supply resulting from the Tasmanian Regional Forest Agreement and TCFA' and noting that this contradicts paragraph 4.43 of the Australian National Audit Office report no. 26 of 2007-08, Tasmanian Forest Industry Development and Assistance Programs: Department of Agriculture, Fisheries and Forestry, and the department's own response to this audit report:

1. How were the programs 'competitive', as described in the department's 2008-09 Budget estimates.
2. Why was the term 'competitive' used to describe the programs when it was explicitly decided by the Advisory Committee that they would not be.
3. What was the basis of the Advisory Committee's 'explicit decision' to this effect.
4. Why did the Advisory Committee decide not to prioritise criteria such as adjusting to the changing nature of supply, investing in value adding or protecting existing jobs, when in the 2008-09 Budget estimates statement above, 'adjusting to the change in wood supply' is cited as the purpose of the programs.
5. Why did the Advisory Committee determine not to weight eligibility criteria such as capable business management, contributing to industry competitiveness or commercially viability.
6. How many businesses allocated grants under the three programs have ceased to be commercially viable.
7. Could the allocation of grants to such businesses have been avoided if the eligibility criteria cited in (5) above had been weighted.
8. Why did the administration of these programs differ from departmental best practice guidelines, specifically the 'Chief Executive Instruction on Grant Management'.

Senator Ludwig—The answer to the honourable senator’s question is as follows:

1. The program was described as a competitive program, rather than as a demand-driven program, under which applications that satisfy stated eligibility criteria automatically receive funding. If an application was eligible for consideration and was considered by the Advisory Committee to satisfactorily target funding priorities, and funding was available, a recommendation was made to the Minister.

Under the Australian National Audit Office guide Implementing Better Practice Grants Administration released in June 2010 the program would now be described as a non competitive open process under which applications may be submitted at any time over the life of the program, and assessed individually against the funding priorities, with funding decisions made in relation to each application being determined without reference to the comparative merits of other applications.

2. The use of the term in the response to question on notice CP 02 asked during the 2008-09 Budget estimates was incorrect.

3. The Committee's role was to provide advice to decision makers. It assessed applications against the program’s guidelines which stated that funding would be allocated taking into account the merit of the proposal and its contribution to the future of the Tasmanian forest industry and that proposals would be assessed on a continual basis until funds were fully allocated. The Committee considered that the multiple priorities listed under the guidelines indicated that the Australian and Tasmanian governments wanted the funding to be available to businesses involved in any aspect of the forest industries affected by the impacts to be addressed by the TCFA, and it made its recommendations on this basis.

4. The funding priorities approved for this Program did not rank criteria in importance and were treated by the Advisory Committee and the decision-maker as being of equal importance.

5. The eligibility criteria were framed on the basis that applicants either met the criteria or they did not.
(6) The department does not collect this information.

(7) The department does not have information available to make such an assessment.

(8) The assessment of applications and recommendations for funding to decision-makers was undertaken by an advisory committee established by the Australian and Tasmanian governments. The department accepts that this bilateral arrangement meant that some aspects of the program’s administration differed from the department’s best practice guidelines.

**Governor-General**

(Question No. 2911 amended)

Senator Ronaldson asked the Minister representing the Prime Minister, upon notice, on 25 June 2010:

For all passengers travelling on VIP flights requested by the Governor-General and listed in the Department of Defence document, Special purpose flights schedule for the period 1 July to 31 December 2009, can a list be provided of: (a) their full names and titles; (b) their positions and/or classifications; and (c) the reason for travel.

Senator Chris Evans—The Prime Minister has provided the following answer to the honourable senator’s question:

The flights requested by the Governor-General between 1 July 2009 and 31 December 2009 were all to enable her, usually accompanied by Mr Michael Bryce, to undertake official business in places outside Canberra. Full details of the Governor-General’s activities during each visit are published in the Governor-General’s Program section of the Office of the Official Secretary to the Governor-General (OOSGG) website at www.gg.gov.au.

Staff of the OOSGG and military Aides de Camp (whose names appear in Table 1 below) accompanied the Governor-General on flights over the period to provide logistic, administrative and/or policy support during her visits, as directed by the Official Secretary.

The non-OOSGG persons listed in Table 2 below provided a range of official support services to the Governor-General when she travelled interstate or overseas.

Table 3 below provides details of persons who travelled as guests of the Governor-General at her invitation.

The flight listed as Sydney/Sydney on 19 August 2009 was to have landed in Norfolk Island, but could not do so due to extreme weather conditions prevailing at the scheduled time of arrival.

Table 1: OOSGG staff and Aides de Camp who travelled from 1 July to 31 December 2009

<table>
<thead>
<tr>
<th>NAME</th>
<th>POSITION</th>
<th>REASON FOR TRAVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beer, Ms Michelle</td>
<td>Apprentice chef</td>
<td>Official duties</td>
</tr>
<tr>
<td>Begg, Mr Sam</td>
<td>Assistant Media &amp; Communications Adviser</td>
<td>Official duties</td>
</tr>
<tr>
<td>Brady, Mr Stephen</td>
<td>Official Secretary to the Governor-General</td>
<td>Official duties</td>
</tr>
<tr>
<td>Burke, Flight Lieutenant Renee</td>
<td>Aide de Camp to the Governor-General</td>
<td>Official duties</td>
</tr>
<tr>
<td>Chapple, Ms Kate</td>
<td>Consultant speechwriter</td>
<td>Official duties</td>
</tr>
<tr>
<td>Creed, Ms Niree</td>
<td>Senior Media &amp; Communications Adviser</td>
<td>Official duties</td>
</tr>
<tr>
<td>Cruickshank, Dr Frances</td>
<td>Manager, Speechwriting &amp; Community Relations</td>
<td>Official duties</td>
</tr>
<tr>
<td>Evered, Mr Stephen</td>
<td>Senior Chef</td>
<td>Official duties</td>
</tr>
<tr>
<td>Fraser, Mr Mark</td>
<td>Deputy Official Secretary to the Governor-General</td>
<td>Official duties</td>
</tr>
<tr>
<td>Hollins, Ms Sue</td>
<td>Executive Assistant to the Governor-General</td>
<td>Official duties</td>
</tr>
</tbody>
</table>

**QUESTIONS ON NOTICE**
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<table>
<thead>
<tr>
<th>NAME</th>
<th>POSITION</th>
<th>REASON FOR TRAVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>King, Mr Roger</td>
<td>Household attendant</td>
<td>Official duties</td>
</tr>
<tr>
<td>King, Flight Lieutenant</td>
<td>Aide de Camp to the Governor-General</td>
<td>Official duties</td>
</tr>
<tr>
<td>Leake, Ms Sally</td>
<td>Manager, Strategic Program Planning</td>
<td>Official duties</td>
</tr>
<tr>
<td>Mace, Ms Lynette</td>
<td>Assistant Manager Household Operations</td>
<td>Official duties</td>
</tr>
<tr>
<td>McConnell, Mr Mark</td>
<td>Manager Household Operations</td>
<td>Official duties</td>
</tr>
<tr>
<td>McKenzie, Mr Nathan</td>
<td>Senior Events Adviser</td>
<td>Official duties</td>
</tr>
<tr>
<td>Nibaldi, Lieutenant Rebecca</td>
<td>Aide de Camp to the Governor-General</td>
<td>Official duties</td>
</tr>
<tr>
<td>O’Grady, Ms Pamela</td>
<td>Director, Executive and Protocol Branch</td>
<td>Official duties</td>
</tr>
<tr>
<td>Schaefer, Mr Ryan</td>
<td>Household attendant</td>
<td>Official duties</td>
</tr>
<tr>
<td>Sciacca, Ms Sarah</td>
<td>Household attendant</td>
<td>Official duties</td>
</tr>
<tr>
<td>Singer, Mr Paul</td>
<td>Senior Operations Adviser</td>
<td>Official duties</td>
</tr>
<tr>
<td>Townsend, Ms Leanne</td>
<td>Indigenous Adviser</td>
<td>Official duties</td>
</tr>
<tr>
<td>Williams, Captain Matthew</td>
<td>Aide de Camp to the Governor-General</td>
<td>Official duties</td>
</tr>
</tbody>
</table>

Table 2: non-OOSGG support persons who travelled from 1 July to 31 December 2009*

<table>
<thead>
<tr>
<th>NAME</th>
<th>POSITION</th>
<th>DATE OF TRAVEL</th>
<th>REASON FOR TRAVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fairweather, Flight Officer</td>
<td>Staff Officer VIP Operations, 34 Squadron RAAF</td>
<td>19 August 2009</td>
<td>RAAF support</td>
</tr>
<tr>
<td>Nicholas</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Killer, Dr Graeme</td>
<td>Consultant physician</td>
<td>29-30 August 2009</td>
<td>Medical support for overseas visit</td>
</tr>
<tr>
<td>Lane, Squadron Leader Ian</td>
<td>Staff Officer VIP Operations, 34 Squadron RAAF</td>
<td>29-30 August 2009</td>
<td>RAAF support</td>
</tr>
</tbody>
</table>

* The Australian Federal Police does not disclose the number of Protection officers it provides, for operational reasons. To do so could endanger the future security of the Governor-General. Accordingly the names and dates of travel of CPP officers have not be published in this table.

Table 3 – Guests travelling at the invitation of the Governor-General between 1 July and 31 December 2009

<table>
<thead>
<tr>
<th>NAME</th>
<th>POSITION</th>
<th>DATE OF TRAVEL</th>
<th>REASON FOR TRAVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buergenthal, HE Judge Thomas and Mrs Peggy</td>
<td>International Court of Justice Judge</td>
<td>18 August 2009</td>
<td>Travelling to Sydney at the same time the Governor-General was to attend an official event</td>
</tr>
<tr>
<td>Button, Ms Penny</td>
<td>QANTAS Foundation Museum Longreach</td>
<td>14 September 2009</td>
<td>Attending official events with the Governor-General in Longreach and Winton</td>
</tr>
<tr>
<td>Coles, Ms Jenny</td>
<td>Personal Assistant to Kirsty Gusmao</td>
<td>6 August 2009</td>
<td>Travelling to Rockhampton to attend same official event as Governor-General</td>
</tr>
</tbody>
</table>

QUESTIONS ON NOTICE
<table>
<thead>
<tr>
<th>Name and Position</th>
<th>Reason for Travel</th>
<th>Date of Travel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cosgrove, General Peter and Mrs Lyn</td>
<td>Returning to Canberra after attending same official event as Governor-General in Dili</td>
<td>30 August 2009</td>
</tr>
<tr>
<td>Gill, Flight Lieutenant Naomi</td>
<td>Travelling to Sydney to attend same official event as Governor-General</td>
<td>31 August 2009</td>
</tr>
<tr>
<td>Gusmao, Ms Kirsty</td>
<td>Travelling to Rockhampton to attend same official event as Governor-General</td>
<td>6 August 2009</td>
</tr>
<tr>
<td>Hannon, Ms Cate</td>
<td>Media covering Governor-General’s visit to Timor-Leste</td>
<td>29-30 August 2009</td>
</tr>
<tr>
<td>Hope, Lieutenant Commander David</td>
<td>Travelling to Sydney to attend same official event as Governor-General</td>
<td>31 August 2009</td>
</tr>
<tr>
<td>Houston AC AFC, Air Chief Marshal Angus</td>
<td>Travelling to Sydney to attend same official event as Governor-General</td>
<td>31 August 2009</td>
</tr>
<tr>
<td>Kingwell, Ms Sue</td>
<td>Returning from Albany after attending same official events as Governor-General</td>
<td>30 October 2009</td>
</tr>
<tr>
<td>Purritt, Mr Alan</td>
<td>Media covering Governor-General’s official visit to Timor-Leste</td>
<td>29-30 August 2009</td>
</tr>
<tr>
<td>Razak, Mr Ishkander</td>
<td>Media covering Governor-General’s official visit to Maningrida</td>
<td>15 July 2009</td>
</tr>
<tr>
<td>Rosas, Mr Elton</td>
<td>Media covering Governor-General’s official visit to Maningrida</td>
<td>15 July 2009</td>
</tr>
</tbody>
</table>